Interim University Policy 305: Discrimination based on Protected Characteristics

Category: Human Resources
Subcategory: General
Covered Individuals: All Employees, Students, and third parties
Responsible Executive: President
Policy Custodian: Executive Director of the Office of Equity
Last Revised: 2023/02/10

305.1 POLICY

Utah State University is committed to providing an environment free from harassment and other forms of discrimination based on race, color, religion, sex, gender identity or expression, sexual orientation, national origin, age (40 and older), disability, genetic information, or status as a protected veteran (“Protected Characteristics”). Harassment and discrimination on the basis of Protected Characteristics are prohibited as further defined by this Policy. Furthermore, Retaliation as defined by Section 305.5 of this policy is prohibited. For information on the definitions, prohibitions, and procedures relevant to Sexual Misconduct, see Policies 339, 339A, and 340.

This Policy is administered by the Office of Equity and subject to the supervision of the Office of Equity Executive Director. The Office of Equity Executive Director may choose to delegate any of the responsibilities of the Office of Equity to another employee or non-employee as they may determine to be appropriate at their sole discretion. The Office of Equity Executive Director may also extend deadlines in this Policy based on good cause. All days are calendar days.

The University reserves all rights and authority afforded to it under applicable law. This Policy, along with all accompanying policies, procedures, and practices, is not intended to and does not create any contractual rights. The University’s policies, procedures, and practices are subject to change at any time, at the University’s sole discretion.

305.1.1 Jurisdiction

This Policy addresses Prohibited Conduct that occurs on university property or within the context of a university Employment or Education Program or Activity. Where Prohibited Conduct is alleged against a third party (non-student and non-employee), the University may choose whether to exercise jurisdiction under this Policy. If the University chooses to exercise jurisdiction over a third-party Respondent, the Office of Equity may choose to follow the grievance process set forth in this policy or to modify these procedures or take any other action as may be appropriate at the discretion of the Office of Equity given the relationship between the Respondent and the University. If the University chooses not to exercise jurisdiction over a third party under this Policy, the University may still exercise jurisdiction under other university policies and may still take any action for which it has authority, including but not limited to trespassing an individual from university property or otherwise excluding them from University Programs or Activities, consistent with state and federal law.

305.1.2 Complaints
A Complaint is an allegation of Prohibited Conduct within the Jurisdiction established by this Policy. Any individual who experiences Prohibited Conduct may file a Complaint with the Office of Equity. Individuals may file at any time but are encouraged to file as soon as possible after experiencing the Prohibited Conduct. Complaints may be filed online at equity.usu.edu/report, calling 435-797-1265, by emailing discrimination@usu.edu, visiting the Office of Equity in Distance Education, Room 400, or via mail at Office of Equity, 5100 Old Main Hill, Logan, Utah 84322-5100. Persons who call after hours may leave a message on the Office’s private voicemail that will be received within the next business day.

Complaints may be filed anonymously, but failure to provide contact information may limit the ability of the university to provide Supportive Measures, request follow-up information, and address the reported Prohibited Conduct.

Complaints filed with the Office of Equity for allegations of Prohibited Conduct will be resolved by the grievance process detailed by Interim Procedures 305 and 339A: Discrimination Based on Protected Characteristics and Non-Title IX Sexual Misconduct.

Complaints may also be timely filed with the Utah Anti-Discrimination Labor Division (UALD) in Salt Lake City, the Equal Employment Opportunity Commission (EEOC) with regional offices in Phoenix, Arizona, or the U.S. Department of Education’s Office for Civil Rights.

305.2 Abuse of Process

Abuse of the processes supported by this policy is strictly prohibited. Abuse of process includes, but is not limited to, the following behavior by anyone involved with the process or by anyone at the direction of a person involved in the process:

a) failure to comply with the directions related to an equity matter of a university official, including but not limited to the Provost, the Vice President for Student Affairs, the Equity Executive Director, or other university official
b) falsification, distortion, or misrepresentation of information before an investigator, hearing or appeals panel;
c) disruption or interference with the orderly conduct of the grievance process or any other inquiry or investigation process;
d) providing false or misleading information in an Equity Process (the sole fact that an allegation was investigated by the Office of Equity, but was not found to constitute a violation of the Policy, is not enough for a Complaint to be deemed false);
e) attempting to discourage an individual's proper participation in, or use of, an equity process;
f) attempting to influence the impartiality of an investigator, hearing panel member, or appeals panel member during an equity process;
g) threatening (verbal or physical) or intimidating an investigator, hearing panel member, appeals panel member, other administrator involved in an equity process;
h) failure to comply with the penalty imposed, or other action taken, under the Student Code or university policy;
i) influencing or attempting to influence another person to commit an abuse of process; or
j) tampering with, influencing, or attempting to influence any Witness or potential Witness in an equity process;

Complaints of abuse of process shall be made to the Office of Equity, who shall refer such claims to the Appropriate Administrator. An abuse of the process may result in a Sanction under Policy 311: Setting Expectations and Managing Performance, Policy 407: Academic Due Process: Sanctions and Hearing Procedures, or Student Code Section V-3.

305.3 Employee Reporting Obligations

If an employee becomes aware of Prohibited Conduct under this Policy, that employee is encouraged to report such Prohibited Conduct to the Office of Equity as soon as reasonably possible. Student
employees are similarly encouraged to report Prohibited Conduct when they become aware of the Prohibited Conduct in the course of completing their employment duties for the University.

305.4 REFERENCES

- Titles VI and VII of the Civil Rights of 1964
- Title IX of the Higher Education Amendments of 1972
- Sections 503 and 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act;
- Age Discrimination in Employment Act
- Genetic Information Nondiscrimination Act of 2008
- Vietnam Era Veterans’ Readjustment Assistance Act of 1974;
- Executive Order 11246 (as amended)
- Campus Sexual Violence Elimination Act (SaVE) – reauthorization of Violence Against Women Act of 2013
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
- Utah Anti-Discrimination Act and others as applicable.

305.5 DEFINITIONS

Claimant. The person who has experienced the alleged Prohibited Conduct.

Complaint. An allegation of Prohibited Conduct under this Policy.

Discrimination. Discrimination is treating an individual or group differently on the basis of a Protected Characteristic in the provision of a university aid, benefit, or service to such individual or group. Where such discrimination is explicitly authorized by federal or state law or regulations, such as in residential assignments by gender, the conduct does not constitute Discrimination for purposes of this Policy.

The denial of a specific accommodation requested by the individual as a result of their religious beliefs, pregnancy, or their status as an otherwise qualified individual with a disability is not on its face discriminatory and will be reviewed by the Office of Equity given the totality of the circumstances.

The appeal process for the denial of a student disability or religious accommodation is governed by the appeal process of the Disability Resource Center. The appeal process for a pregnancy accommodation is governed by the accommodation appeal process of the Office of Equity. Additionally, the appeal process for the denial of an employee disability, religious, or pregnancy accommodation is governed by human resources policies and procedures.

Employment or Education Program or Activity. Employment or Education Program or Activity includes all operations of the university 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 Prohibited Conduct 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.

Harassment. Harassment is unwelcome conduct on the basis of a Protected Characteristic that is so severe or pervasive as to alter an individual’s ability to access the university’s Employment or Education Program or Activity, using a subjective and objective standard.
Preponderance of Evidence. Whether it is more likely than not that a policy violation occurred. This is the standard of evidence used in investigations of Discrimination and Harassment at the university.

Prohibited Conduct. Discrimination or harassment on the basis of a Protected Characteristic.

Sexual Misconduct defined as conduct on the basis of sex that meets the definition of Relationship Violence, Sexual Harassment, Sexual Assault, Sex-based Stalking, and Sexual Exploitation is not Prohibited Conduct under this Policy and are governed by separate policies and procedures (see Interim USU Policy and Procedures 339, 339A).

Protected Characteristics. Race, color, religion, sex, gender identity or expression, sexual orientation, national origin, age (40 and older), disability, genetic information, and status as a protected veteran.

Respondent. The person who is alleged to have committed Prohibited Conduct. Where the Respondent is not an employee or student, the university may choose not to exercise jurisdiction under this Policy. See Section 305.1.1 of this Policy.

Retaliation. 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 under policies 340, 339, 339A, or 305. A causal relationship between an adverse action and good faith reporting or participation under this Policy is needed to demonstrate that retaliation has occurred.

Supportive Measures. Short-term, non-disciplinary, non-punitive individualized services offered as deemed appropriate by the Office of Equity based on the circumstances of the incident and without fee or charge to the Claimant and/or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such 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 and include measures designed to protect the safety of all parties or the University’s educational environment, and/or to deter Discrimination. Supportive Measures may include but are not limited to counseling, extensions of deadlines or other academic course-related adjustments, work or class schedule changes, campus security or law enforcement escort services, mutual no-contact orders, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, supplementary education about Discrimination, and other similar measures.

University-driven Formal Investigation. A Formal Investigation of allegations of Discrimination Based on a Protected Characteristic undertaken by the University when there is no participating Claimant. While the Executive Director signs a Formal Complaint to initiate a university-driven Formal Investigation, neither the Executive Director nor the University serves as a Claimant in such circumstances.

RESOURCES

Notice of Non-Discrimination

In its programs and activities, including in admissions and employment, Utah State University does not discriminate or tolerate discrimination, including harassment, based on race, color, religion, sex, national origin, age, genetic information, sexual orientation, gender identity or expression, disability, status as a protected veteran, or any other status protected by University policy, Title IX, or any other federal, state, or local law.

Utah State University is an equal opportunity employer and does not discriminate or tolerate discrimination including harassment in employment including in hiring, promotion, transfer, or termination based on race, color, religion, sex, national origin, age, genetic information, sexual
orientation, gender identity or expression, disability, status as a protected veteran, or any other status protected by University policy or any other federal, state, or local law.

Utah State University does not discriminate in its housing offerings and will treat all persons fairly and equally without regard to race, color, religion, sex, familial status, disability, national origin, source of income, sexual orientation, or gender identity. Additionally, the University endeavors to provide reasonable accommodations when necessary and to ensure equal access to qualified persons with disabilities.

The following individuals have been designated to handle inquiries regarding the application of Title IX and its implementing regulations and/or USU’s non-discrimination policies:

**Executive Director of the Office of Equity/Interim Title IX Coordinator**
Matthew Pinner
[matthew.pinner@usu.edu](mailto:matthew.pinner@usu.edu)
Distance Education Room 401
435-797-1266

For further information regarding non-discrimination, please visit [https://equity.usu.edu/](https://equity.usu.edu/), or contact:

U.S. Department of Education
Office of Assistant Secretary for Civil Rights
800-421-3481
[OCR@ed.gov](mailto:OCR@ed.gov)

U.S. Department of Education
Denver Regional Office
303-844-5695
[OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)