INTERIM University Policy 340: Required Reporting of Sexual Misconduct

Covered Individuals: All Employees
Responsible Executive: Provost
Policy Custodian: Executive Director of the Office of Equity
Last Revised: 2021/09/07

340.1 PURPOSE AND SCOPE

Utah State University is committed to providing a learning and working environment free from Sexual Misconduct. To this end, the University encourages all individuals who have experienced Sexual Misconduct to report incidents to the Title IX Coordinator as soon as possible so that the University can take appropriate steps to support the individual and address the Sexual Misconduct. (For additional information on the University’s Sexual Misconduct policies, see USU Policy 339: Sexual Misconduct in an Employment or Education Program or Activity.)

This policy explains individuals’ options for disclosing Sexual Misconduct. Individuals who wish to disclose an incident of Sexual Misconduct should review this policy to understand what information will be shared with the Title IX Coordinator and under what circumstances information will not be shared and will remain confidential. Disclosing Parties who are uncertain as to a University employee’s designation should ask the employee before disclosing information they wish to keep confidential.

This policy also provides details relating to the responsibilities of each designated group of employees when a Disclosing Party shares information about Sexual Misconduct with them. All employees should review this policy carefully to ensure they understand their responsibilities as either a Reporting Employee, a Resource Connection Employee, or a Designated Confidential Resource. Questions about employee reporting obligations under this policy should be directed to the Title IX Coordinator in the Office of Equity.

340.2 POLICY

2.1 Reporting Employees

To ensure that the University can provide persons who have experienced Sexual Misconduct with Supportive Measures and information about resources, reporting options, including the option of filing a Formal Complaint, certain University employees are designated as Reporting Employees.

Not all employees are designated as Reporting Employees. The Title IX Coordinator, working with the Office of Human Resources, identifies Reporting Employees in the Reporting Employees list. The specific procedures governing the identification of Reporting Employees are provided in USU Procedures 340: Required Reporting of Sexual Misconduct. Reporting Employees include those employees who have the authority to institute corrective measures concerning allegations of Sexual Misconduct, including but not limited to, Campus Security Authorities, Supervisors, resident assistants, faculty, and other similar individuals. Employees with an ongoing nine-month contract are considered Reporting Employees for twelve months.

2.1.1 Reporting Employee Obligations

Reporting Employees are required to report all information they receive concerning incidents of Sexual Misconduct to the Title IX Coordinator.
All Reporting Employees must submit an Incident Report with information about Sexual Misconduct to the Title IX Coordinator within 24 hours of receiving the disclosure. All Reporting Employees must also provide the Disclosing Party with information about support services and reporting options. If an individual is in immediate danger, the Reporting Employee must call 911.

Reporting Employees must submit Incident Reports using the online form at equity.usu.edu and must include all information disclosed to the Reporting Employee, including:

- The name of the person who experienced the Sexual Misconduct;
- The name of the person who reported the Sexual Misconduct to the Reporting Employee, if different from the person who experienced it;
- The name of the person(s) alleged to have engaged in Sexual Misconduct;
- The name of any witnesses or individuals who have information about the incident(s);
- The date, time, and location of the alleged incident(s);
- The nature of the incident(s);
- All documentation the Reporting Employee has received related to the incident;
- The date the incident was reported to the Reporting Employee; and,
- All other relevant information known to the Reporting Employee.

Reporting Employees may not report anonymously. The submitted report must include the Reporting Employee’s name and contact information. A single Incident Report can be submitted by an individual Reporting Employee or multiple Reporting Employees. A department or unit can collectively report information in one single Incident Report, as long as all Reporting Employees are named on the Incident Report and every Reporting Employee has provided all information known in the Incident Report concerning the Sexual Misconduct. The Office of Equity will document each Incident Report received by the office in its case management system.

The University also evaluates Incident Reports for Clery Act reporting purposes, including whether timely warnings should be issued. See USU Policy 533.

2.1.2 Notice to Disclosing Party of Reporting Employee Reporting Obligations

Reporting Employees should inform the Disclosing Party of the Reporting Employee’s obligation to report the incident of Sexual Misconduct to the Title IX Coordinator, along with information to assist the Disclosing Party to connect with the Office of Equity and other support resources. Reporting Employees receiving such a disclosure should not investigate allegations of Sexual Misconduct.

2.1.3 Exceptions to Reporting Employee Reporting Obligations

A Reporting Employee’s obligations do not apply to Sexual Misconduct in circumstances where the Reporting Employee is the Claimant. In addition, there is no Reporting Employee reporting obligation when the disclosure of information about Sexual Misconduct is made through:

- Applications to the University or a specific program offered by the University;
- Human subject research, subject to the review of the University’s Institutional Review Board. For example, a survey to collect data about trauma given to participants that ask if they experienced sexual violence;
- Job applications and interviews;
- Office of Equity resolution meetings;
- University-led focus groups related to Sexual Misconduct;
- Sexual Misconduct prevention trainings provided by designated prevention specialists;
- Public awareness events;
- Protected Health Information (PHI) generated by clinical care teams who are providing services subject to HIPAA that are designated as “Healthcare Provider Covered Components” in the University’s Hybrid Entity Declaration (clinical care teams include but are not limited to faculty, clinicians, student trainees, and support staff engaged in Covered Component work), except
where such PHI may be evidence of Sexual Misconduct between a client or patient and a member of a clinical care team; or,

- Work submitted in course assignments and discussions related to course materials.

When the disclosure of information about Sexual Misconduct is made to:

- A Pastoral Counselor who is associated with a religious order or denomination, recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a Pastoral Counselor;
- A Process Advisor serving in that role in an Office of Equity Formal Investigation or Earlier Resolution process;
- A spouse, domestic partner, or immediate family member by their spouse, domestic partner, or immediate family member; or,
- Certain designated teams defined in USU Procedures 340 that routinely review health information and/or records pursuant to a limited release of information agreement.

When the disclosure of information about Sexual Misconduct is made concerning:

- Privileged requests for legal advice; or,
- Sexual Misconduct that occurred outside an Employment or Education Program or Activity and:
  1. The Claimant was not a student, program participant, or employee at the time of the incident; and,
  2. The Respondent was not a student, program participant, or employee at the time of the incident; and,
  3. The Respondent is not a current student, program participant, or employee.

If the Reporting Employee is unsure whether to report the information to the Title IX Coordinator, they should err on the side of reporting the information.

2.1.4 Consequences of Failing to Report

Reporting Employees who fail to report may be subject to corrective action, up to and including termination of employment, under USU Policy 311: Setting Expectations and Managing Performance, if they are a non-faculty staff member, or USU Policy 407: Academic Due Process – Sanctions and Hearing Procedures, if they are a faculty member.

2.2 Designated Confidential Resources

Designated Confidential Resources are responsible for providing confidential advocacy and other professional services to the Disclosing Party. This includes the University’s professional counselors, non-professional counselors, and Sexual Assault and Anti-Violence Information Office (SAAVI) advocates.

Designated Confidential Resources provide critical support services to the Disclosing Party in a confidential and professional setting. Individuals who wish to seek support following an incident of Sexual Misconduct may generally, with a few exceptions as described below, disclose information to Designated Confidential Resources and the disclosure will remain confidential (i.e., it will not be reported to the University’s Title IX Coordinator or result in an Office of Equity response).

2.2.1 Designated Confidential Resource Obligations

All Designated Confidential Resources must provide the Disclosing Party: (1) information about support services and reporting options; (2) notification that their disclosure to a Confidential Resource will not result in a report to the Title IX Coordinator or result in an Office of Equity response; and (3) an explanation that their personally identifiable information will remain confidential.

2.2.2 Professional Counselors
Professional counselors are not permitted to report to the University, including the Title IX Coordinator, except where required by state law, any information that an individual shares with them about an alleged incident of Sexual Misconduct without the individual’s permission. Information disclosed to a professional counselor, or an employee working in the office of a professional counselor, absent a waiver will not result in an Office of Equity response under USU Policies 339, 339A, and 339B.

The following Professional Counselors are Designated Confidential Resources:

- Counseling and Psychological Services (CAPS) Office (available in-person on Logan, Brigham City, Salt Lake, and Tooele campuses, as well as remotely throughout the state);
- Sexual Assault and Anti-Violence Information Office (SAAVI) (when conducting therapy services);
- Student Health & Wellness Center; and,
- USU Eastern Student Counseling Office.

2.2.3 Non-professional Counselors and Advocates

Non-professional counselors and advocates can provide support and advocacy services without revealing any personally identifiable information to the University. Pursuant to the Clery Act and USU Policy 533, non-professional counselors and advocates are required to provide anonymous information that occurred on Clery Geography see USU Policy 533, including incident date, time, and location, to University police, who then file an Incident Report as Reporting Employees to the Title IX Coordinator so that the Title IX Coordinator can track patterns and trends in the University community.

Absent an immediate, ongoing, or significant threat to physical health or safety, or a pattern of Sexual Misconduct by Respondent, information shared with non-professional counselors and advocates will not initiate an Office of Equity response but may require a timely warning notification be sent to the campus community. Non-professional counseling and advocacy services available at the University that are Designated Confidential Resources include:

- Sexual Assault and Anti-Violence Information Office (SAAVI) (when conducting services other than therapy services)

2.2.4 Designated Confidential Resources Reporting Obligations

Designated Confidential Resources are required to report to the Title IX Coordinator all information concerning allegations of Sexual Misconduct that are alleged to have been committed by another Designated Confidential Resource.

An individual’s medical, psychological, and other similar treatment records should not be shared by a Designated Confidential Resource directly to the Office of Equity without the individual’s voluntary, written consent, except where such records may be evidence of Sexual Misconduct as between a Designated Confidential Resource and a client or patron of a Designated Confidential Resource.

2.3 Resource Connection Employees

Resource Connection Employees must provide information to a Disclosing Party about reporting options, Supportive Measures, and confidential and advocacy resources available to them. Resource Connection Employees generally do not have an obligation to report Sexual Misconduct to the Title IX Coordinator. However, a disclosure to a Resource Connection Employee may result in a report to the Title IX Coordinator, as described below.

A list of Resource Connection Employees can be found at the Employee Reporting Obligations website.

2.3.1 Resource Connection Employee Obligations

Resource Connection Employees should not report disclosures of Sexual Misconduct to the Title IX Coordinator. However, all Resource Connection Employees must provide information about support services and reporting options to the Disclosing Party. Upon learning about an individual’s experience with Sexual Misconduct, a Resource Connection Employee must take the following steps with the Disclosing Party: (1) inform the Disclosing Party that the Resource Connection Employee is not a Confidential Resource; (2) that their disclosure will not initiate a University response; (3) offer to connect the Disclosing Party with a Designated Confidential Resource at the University; and, (4) instruct on how to report to the Title IX Coordinator.

2.3.2 Resource Connection Employees Information Sharing

As described in Section 2.3, Resource Connection Employees might receive information from a Disclosing Party about an individual’s experience with Sexual Misconduct. A Resource Connection Employee might also receive information about an individual’s status with the University, their wellbeing, and/or other information. In receiving and managing this information, Resource Connection Employees are subject to USU Policy, including without limitation USU Policy 319 (Employee Privacy and Confidentiality), USU Policy 504 (Student Records), and to applicable law, including without limitation, the Family Educational Rights and Privacy Act of 1974 (FERPA). After receiving such information from a Disclosing Party, and consistent with USU Policy and applicable law, a Resource Connection Employee may further share information about a Claimant or Respondent’s student record information with University officials when the receiving official has a legitimate educational interest in receiving that information (for additional information, see Utah State University Catalog). Solely by way of example, the University maintains teams dedicated to assisting students in distress, and a Resource Connection Employee may report information from a Disclosing Party to one of these teams details about a student who is exhibiting signs of distress (see Assisting Students in Distress).

Likewise, consistent with USU Policy and applicable law, after receiving such information from a Disclosing Party, a Resource Connection Employee may share information concerning a Claimant or Respondent’s employment records or other employment information with other University officials who have a legitimate need to know this information. Solely by way of example, the University maintains various benefits, as well as an Employee Assistance Program, administered through the Office of Human Resources, and it may be appropriate to share information with the Office of Human Resources concerning details about an employee who is exhibiting signs of distress (for additional information, see Benefits and Employee Assistance Program).

The Resource Connection Employee should not disclose information about Sexual Misconduct to another University office or report to the Title IX Coordinator without consent from the Disclosing Party.

A Reporting Employee who receives information concerning incidents of Sexual Misconduct from a Resource Connection Employee through the methods described in this subsection is required to report it to the Title IX Coordinator.

2.4 Other Employees

An employee who is not categorized as a Reporting Employee, Designated Confidential Resource, or Resource Connection Employee does not have obligations under this policy.

2.5 Additional Reporting Obligations

Reporting Employees, Designated Confidential Resources, and Resource Connection Employees may have additional reporting obligations under University policy and state law. See, e.g., USU Policy 533.

2.6 Training Requirements
Reporting Employees, Resource Connection Employees, and Designated Confidential Resources are required to complete all training requirements as outlined in Procedures 340. Supervisors of these employees must ensure all Reporting Employees, Resource Connection Employees, and Designated Confidential Resource Employees complete the required training.

**340.3 RESPONSIBILITIES**

3.1 Office of Equity, Executive Director, and Title IX Coordinator

The Office of Equity is responsible for enforcing this policy.

3.2 Supervisors

Supervisors are responsible for ensuring their direct reports are aware of and follow this policy and complete all training required by this policy.

3.3 Employees

Employees that are classified as a Reporting Employee, Designated Confidential Resource, or Resource Connection Employee are responsible for understanding and following this policy and the associated procedures and meeting the obligations of their role. Employees are responsible for completing all training required by this policy.

3.4 The Office of Human Resources

The Office of Human Resources is responsible for working with the Title IX Coordinator to update the reporting employee lists once a year on July 1 and maintain the lists of Reporting Employees, Designated Confidential Resources, and Resource Connection Employees.

**340.4 REFERENCES**

- Title VII of the Civil Rights of 1964
- Title IX of the Higher Education Amendments of 1972
- The Clery Act
- Confidential Communications for Institutional Advocacy Services Act, Utah Code 53B-28-201 et seq.

**340.5 RELATED USU POLICIES**

- [USU Policy 305, Discrimination Complaints](http://www.usu.edu/policies/340/340.pdf)
- [USU Policy 339, Sexual Misconduct in Employment or an Education Program or Activity](http://www.usu.edu/policies/340/340.pdf)
- [USU Policy 339A, Sexual Misconduct outside Employment or an Education Program or Activity](http://www.usu.edu/policies/340/340.pdf)
- [USU Policy 339B, Sexual Misconduct in a Study Abroad Program](http://www.usu.edu/policies/340/340.pdf)

**340.6 DEFINITIONS**

**Advocate.** An individual who is employed or volunteers for the University, acts under the supervision of SAAVI’s director, and has completed at least 40 hours of training in counseling and assisting victims who have experienced Sexual Misconduct.

**Campus Security Authority.** As defined by USU Policy 533: Public Safety, Response, and Reporting, a Campus Security Authority is any employee of the University’s Public Safety Department; any individual who has responsibility for campus security but who is not an employee of the Public Safety Department,
such as an individual who is responsible for monitoring entrance into University property; any individual or organization specified in USU Policy 533 as those to which students and employees should report criminal offenses; and any official of the University who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a Pastoral Counselor, as defined below, or a professional counselor, as outlined in USU Policy 533, the official is not considered a Campus Security Authority when acting as a Pastoral or professional counselor.

**Claimant.** A person who is alleged to have experienced conduct that could constitute Sexual Misconduct. Referred to as "complainant" in 34 C.F.R. § 106.30 (2020).

**Designated Confidential Resources.** The University’s professional counselors, non-professional counselors, and advocates. They provide critical support services to campus community members in a confidential setting and do not share disclosures of Sexual Misconduct with the Title IX Coordinator or with law enforcement unless they receive express permission to do so from the Claimant.

**Disclosing Party.** An individual who provides information about Sexual Misconduct to a University employee.

**Earlier Resolution.** A process in which parties agree to resolve a Formal Complaint without completing an investigation and/or hearing. An Earlier Resolution may be facilitated through arbitration, mediation, restorative justice, or another appropriate method. Such an agreement may include Sanctions or other disciplinary measures.

**Employment or Education Program or Activity.** All operations of the University, including locations, events, or circumstances in the United States 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 and, generally, University-sponsored activities by recognized student organizations.

**Formal Complaint.** A signed document that indicates the University will proceed with a Formal Investigation of Sexual Misconduct or an Earlier Resolution. A Formal Complaint may be signed by the Claimant or, for University-driven Formal Investigations, by the Title IX Coordinator.

**Formal Investigation.** The information and evidence-gathering process that begins with the filing of the Formal Complaint and ends when the Investigation Report is issued. Formal Investigations, conducted by the Office of Equity Investigator or an investigator appointed by the University, include interviewing parties and witnesses and gathering other relevant evidence, exculpatory and inculpatory. The Formal Investigation may be University or Claimant-driven.

**Incident Report.** A report of alleged Sexual Misconduct filed online, via email, by phone, by mail, or in person to the Office of Equity, Title IX Coordinator, or a Reporting Employee.

**Pastoral Counselor.** A person, who is associated with a religious order or denomination, recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a Pastoral Counselor.

**Process Advisor.** Any person, including an attorney, chosen by a party to the Hearing or by the University, to advise and assist the selecting party in the Formal Investigation and/or hearing, including in conducting questioning of another party and Witnesses on behalf of the party. A Process Advisor may be a parent, legal guardian, a USU faculty or staff member, a USU Student Association (“USUSA”) Student Advocate, an attorney, or any other person with whom a Claimant or a Respondent wishes to consult during a disciplinary proceeding; however, a Process Advisor may not also serve as a Witness. A Process Advisor may accompany a student in a disciplinary proceeding and must adhere to the rules of the proceeding.

Relationship Violence. Includes Dating Violence and Domestic Violence.

- **Dating Violence.** Dating violence includes 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: (a) the length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.

- **Domestic Violence.** Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Claimant, by a person with whom the Claimant shares a child in common, by a person who is cohabitating with or has cohabited with the Claimant as a spouse or intimate partner, by 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 by 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. A criminal charge or conviction is not a predicate for an allegation of Domestic Violence to be brought under this policy.

**Reporting Employee.** An employee who is required to report all information they receive concerning incidents of Sexual Misconduct to the Title IX Coordinator.

**Respondent.** An individual who is alleged to have committed Sexual Misconduct.

**Resource Connection Employee.** An employee to whom a disclosure of Sexual Misconduct will not automatically result in an Incident Report to the Title IX Coordinator or a further University response. However, a Resource Connection Employee will provide information about support services and reporting options.

**Sex-based.** The University considers actions based on someone’s sex assigned at birth, gender identity, gender expression, and/or sexual orientation to be sex-based.

**Sex-based Stalking.** 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. Stalking may occur in person, by telephone, mail, electronic communication, social media, or any other action, device, or method.

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.

**Sexual Assault.** Includes any sexual act or attempted sexual act, including Rape, Sodomy, Sexual Assault with An Object, or Fondling, directed against another person without their Consent. This includes instances where the person is incapable of giving Consent because of their age or because of Incapacitation. Sexual Assault also includes unlawful sexual acts, such as Incest and Statutory Rape.

- **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.

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.

**Sexual Harassment.** Includes Hostile Environment and Quid Pro Quo.

- 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 the provision of a University aid, benefit, or service on
a person’s participation in unwelcome sexual conduct.

**Sexual Misconduct.** Referred to as “sexual harassment” in 34 C.F.R. § 106.30 (2020). Sexual
Misconduct is conduct on the basis of sex including one or more of the following:

- Relationship Violence;
- Sexual Harassment;
- Sexual Assault; and
- Sex-based Stalking.

**Supervisor.** A person who has the power to take tangible employment actions against an employee, i.e.,
to affect a significant change of employment status, such as to hire, fire, promote, reassign with
significantly different responsibilities, or make a decision causing a significant change in benefits.
Regarding a person who supervises a student, “Supervisor” means a person who assigns job duties,
makes decisions about how the student spends their time, or oversees the student’s day-to-day tasks.

**Supportive Measures.** 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 Sexual Misconduct. 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, and other similar measures.

**Title IX Coordinator.** The person designated to coordinate the University’s efforts to implement and
monitor compliance with the University’s Sexual Misconduct policies, including USU Policy 339: Sexual
Misconduct in an Employment or Education Program or Activity; USU Policy 339A: Sexual Misconduct
outside an Employment or Education Program or Activity; USU Policy 339B: Sexual Misconduct in a
Study Abroad Program and with federal Title IX law and regulations more generally. As set forth in USU
Policy 339, the Title IX Coordinator is responsible for ensuring the University’s prompt response to
Incident Reports of alleged Sexual Misconduct, coordinating effective implementation of Supportive
Measures, and informing Claimants of their option to file a Formal Complaint, and informing the parties of
their rights and obligations under the Grievance Process. The Title IX Coordinator works within the Office
of Equity.

See USU Policy 339: Sexual Misconduct in an Employment or Education Program or Activity for a
complete list of definitions, including definitions for each form of Sexual Misconduct.

RESOURCES

Notice of Non-Discrimination

- USU is committed to a learning and working environment free from discrimination, including harassment. For USU’s non-discrimination notice, see https://equity.usu.edu/non-discrimination.

Procedures

- USU Procedures 340: Required Reporting of Sexual Misconduct

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