

Sexual Misconduct Policy Terms

The University prohibits Employees, Students, and third parties from engaging in Relationship Violence, Sexual Harassment, Sexual Assault, and Sex-based Stalking (collectively referred to herein as "Sexual Misconduct"). The University will take swift action to address Sexual Misconduct when the University has Actual Knowledge that it has occurred.

Sexual Misconduct is 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 types of conduct:

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

Visit interim USU Policies [339](#), [339A](#), and [339B](#) and USU [Policy 533](#) for more information about Sexual Misconduct. Policies 339, 339A, and 339B related to sexual misconduct are applicable to conduct alleged to have occurred August 14, 2020 or later per 34 CFR 106 (2020). They are subject to change at any time.

Sexual Misconduct Definitions

Sex-based: USU considers actions based on someone's sex assigned at birth, gender identity, gender expression, and/or sexual orientation to be sex-based.

Relationship Violence includes Dating Violence and Domestic 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** 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 cohabitated 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.

Sexual Harassment includes Hostile Environment and Quid Pro Quo.

- **Hostile Environment** is 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** is an Employee's conditioning of the provision of a University aid, benefit, or service on a person's participation in unwelcome sexual conduct.

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

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- **Sodomy** is oral or anal sexual intercourse with another person without their Consent.
- **Sexual Assault with An Object** is 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** is the touching of the private body parts of another person for the purpose of sexual gratification without their Consent.
- **Incest** is 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** is sexual intercourse with a person who is under Utah's statutory age of Consent.

Sex-based Stalking is 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.

Consent Definition

Consent is an understandable exchange of words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent is an agreement to do the same thing at the same time in the same way. Consent can be withdrawn or modified at any time, as long as it 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.

Sexual Assault occurs when at least one party does not consent to the sexual activity. There is no Consent in the presence of coercion, incapacitation, force, or where the sexual activity violates state law relating to age of Consent.

- **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.
- **Incapacitation** means the person lacks the ability, temporarily or permanently, to Consent to sexual activity including because of a disability, drug or alcohol consumption (whether 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.
 - It is not an excuse that the party initiating sexual contact was intoxicated and therefore did not realize the incapacity of the other. 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.
- **Force** includes the use of physical force or threats of force that affects a person's ability to Consent to sexual contact.

Retaliation Definition

University policy prohibits retaliation by Students and Employees, regardless of whether they are parties.

Retaliation includes intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege under USU [Policy 339](#) or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Formal Investigation, formal or informal proceeding, or hearing related to Sexual Misconduct.

A Student or Employee who engages in retaliation is subject to Corrective Action or Sanctions. An Employee who engages in retaliation may be subject to discipline up to and including termination.

Retaliation is governed by USU [Policy 305](#).