



**Procedures for Complaints of Sex Discrimination,  
Sex-Based Harassment or Sexual Misconduct  
Between or Among Employees  
Effective August 1, 2024**

I. OVERVIEW

Utica University is committed to providing a learning and working environment in which all interpersonal relationships are based upon respect and dignity. Therefore, in accordance with Title IX of the Education Amendments of 1972 (Title IX), the Clery Act, the Violence Against Women Act, and New York Education Law Article 129-B, Utica University will not tolerate sex-based harassment or sexual misconduct, which are forms of discrimination on the basis of sex, that include any of the following when they impact or have the potential to impact the educational or employment environment of any members of the University community: sex discrimination, sex-based harassment (including harassment based on gender identity, gender expression, or transgender status); sexual assault; domestic or dating violence; stalking; sexual exploitation; or other behavior prohibited by the *Utica University Sex Discrimination, Sex-Based Harassment and Sexual Misconduct Policy* (the “Policy”).

The University’s policy and processes relative to Prohibited Conduct, and the definition of Prohibited Conduct, are described generally in the Policy. As set forth in the Policy, the processes described in the Policy apply to any situation where a student is a reporting party/complainant or responding party (as defined therein), and the University reserves the right to apply the processes described in the Policy or another applicable University policy or process in other situations. The University has established these Procedures to investigate and adjudicate allegations of Prohibited Conduct that (a) the University determines fall within the scope of Title IX, and (b) do not involve a student as a reporting party/complainant or a responding party. Capitalized terms used but not defined in these Procedures shall have the meanings ascribed to them in the Policy.

These Procedures are effective on August 1, 2024, and will only apply to Prohibited Conduct that allegedly occurred on or after August 1, 2024. For Prohibited Conduct allegedly occurring prior to August 1, 2024, Utica University will respond and comply in accordance with the Title IX statute and regulations, and University policy, in place at the time that the alleged Prohibited Conduct occurred.

II. Jurisdiction of Procedures

As noted above, these Procedures apply to the investigation and adjudication of allegations of Prohibited Conduct that (a) the University determines fall within the scope of Title IX, and (b) do not involve a student as a reporting party/complainant or a responding party. All complaints meeting the requirements of the Policy (“Complaints”) received or filed by the Title IX Coordinator will be reviewed by the Title IX Coordinator, who will determine whether the allegations meet the aforementioned criteria. The Title IX Coordinator may consult with other University officials for purposes of making this determination. If it is determined that the allegations fall within the scope of these Procedures, the Title IX Coordinator will:

- Offer, and if applicable provide or arrange for, resources and/or supportive measures in accordance with the Policy;

- Evaluate the Complaint for potential dismissal in accordance with the Policy;
- If appropriate offer, and if agreed upon by the parties and the Title IX Coordinator arrange for, an informal resolution process in accordance with the Policy; and
- If warranted refer the Complaint to the Office of Human Resources for investigation and adjudication in accordance with these Procedures.

To the extent information is discovered during the course of carrying out these Procedures suggesting that other University policies and/or procedures may have been violated, the University may either (a) address such potential violations in accordance with these Procedures, or (b) initiate a separate and independent investigation that is outside the scope of these Procedures that will be handled in accordance with applicable University policies and procedures. If it is determined that a Complaint does not fall within the jurisdiction of these Procedures, the University will consider whether an alternative University policy or procedure is more applicable.

### III. PRINCIPLES FOR HANDLING COMPLAINTS UNDER TITLE IX AND THESE PROCEDURES

- Equitable Treatment:* The University will treat reporting parties/complainants and responding parties equitably.
- Conflicts and Bias:* The University requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against reporting parties/complainants or responding parties generally or an individual reporting party/complainant or responding party. Under these procedures, a decisionmaker may be the same person as the Title IX Coordinator or investigator, a supervisor or other appropriately trained University employee, or an appropriately trained external resource appointed by the Title IX Coordinator.
- Presumption:* The University presumes that the responding party is not responsible for the alleged Prohibited Conduct until a determination is made at the conclusion of the Procedures.
- Reasonably Prompt Timeframes:* The University will attempt to review, investigate, and adjudicate a Complaint within a reasonable time period, typically within no longer than 90 days after a Complaint is made, provided that the process may be extended with notification to the parties for good reason, including but not limited to the absence of party or a party's advisor (if applicable), or a witness; concurrent law enforcement activity; breaks in the academic schedule; or approved extensions. The timeframes of the major stages of the process are estimated as follows: Intake: 7 days; Investigation: 28 days; Evidence Review: 20 days; Adjudication: 21 days; and Appeal Process: 14 days. Both parties will be notified simultaneously if the University determines the process cannot be concluded within 7 days. The notification will outline the reasons for the extension.
- Privacy:* The University will take reasonable steps to protect the privacy of the parties and witnesses under these procedures in accordance with the Policy. This means that University officials and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible, consistent with the University's obligations as an employer and the need for the Title IX Coordinator to identify and address patterns and systemic issues. The University will limit disclosures as much as practicable, even if the Title IX Coordinator determines that a request for confidentiality cannot be honored.
- Objectivity:* The University will objectively evaluate all evidence that is relevant and not impermissible, including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a reporting party/complainant, responding party, or witness.
- Advisors:* In cases involving allegations of Sexual Assault, Domestic Violence, Dating Violence or Stalking, the parties will be entitled to be accompanied by an Advisor of Choice (provided that any cost associated with a paid advisor will be the responsibility of that party) to the extent required by the federal Violence Against Women Act of 1994 (VAWA).

h. *Impermissible Evidence*: The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by the University to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are otherwise relevant:

- evidence that is protected under a privilege as recognized by federal or state law or evidence provided to a Confidential Resource, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in the investigation and adjudication process; and
- evidence that relates to the reporting party/complainant's sexual interests or prior sexual conduct, unless evidence about the prior sexual conduct is offered to prove that someone other than the responding party committed the alleged conduct or is evidence about specific incidents of the alleged reporting party/complainant's prior sexual conduct with the responding party that is offered to prove consent.

#### IV. INVESTIGATION AND ADJUDICATION PROCEDURE FOR COMPLAINTS OF PROHIBITED CONDUCT FOR EMPLOYEES

##### A. Notice of Allegations

Upon initiation of the investigation and adjudication process under these Procedures, the Office of Human Resources will notify the parties, verbally or in writing, of the following:

- The applicable process under these Procedures;
- Sufficient information available at the time to allow the parties to respond to the allegations, including (to the extent known) the identities of the parties involved in the incident(s), the conduct alleged to constitute Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
- That Retaliation is prohibited; and
- That the parties are entitled to an equal opportunity to access and respond to the relevant and not impermissible evidence, or an accurate description of such evidence, as provided in these Procedures.

If, in the course of an investigation, the University decides to investigate additional allegations of Prohibited Conduct by the responding party toward the reporting party/complainant that are not included in the notice provided, the University will notify the parties of the additional allegations.

##### B. Investigation

The University will provide for an adequate, reliable, and impartial investigation of Complaints. Investigations will be conducted by trained, impartial investigators. Investigators may be staff within the Office of Human Resources or other appropriately trained University personnel, or external investigators, as appointed by the Title IX Coordinator.

The burden is on the University—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. The University will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible. The University will keep the investigation confidential to the extent reasonably possible and in keeping with applicable law. All employees, including managers and supervisors, are required to cooperate with any internal investigation of Prohibited Conduct. The University will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible.

The University will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of Prohibited Conduct and not otherwise impermissible, or a written or verbal description of such evidence, and to respond to such evidence before a determination is made. This description may, but is not required to, take the

form of an Investigative Report that fairly summarizes the relevant and not impermissible evidence. If the University provides an Investigative Report or other description of the relevant and not impermissible evidence, it will provide the parties an equal opportunity to access the evidence upon request.

The University will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through these Procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Prohibited Conduct are authorized.

C. Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility

When a party's or witness's credibility is in dispute, and such dispute is relevant to evaluating one or more allegations of Prohibited Conduct, the investigator and/or decisionmaker must have an opportunity to question such party or witness. If applicable, this will occur during individual meetings with a party or witness.

D. Determination Regarding Responsibility

Following an investigation and evaluation of all relevant and not impermissible evidence, the University will:

- Use the preponderance of the evidence standard of proof to determine whether Prohibited Conduct occurred. That means that cases shall be determined as to whether it is more likely than not that the responding party committed the alleged violation(s). This determination will be made by a staff member in the Office of Human Resources.
- Notify the parties in writing of the determination whether Prohibited Conduct occurred, including the rationale for such determination, and the procedures and permissible bases for the reporting party/complainant and responding party to appeal;
- Not impose discipline on a responding party unless there is a determination at the conclusion of the process that the responding party engaged in Prohibited Conduct; and
- Not discipline a party, witness, or others participating in these Procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether Prohibited Conduct occurred.

If there is a determination that Prohibited Conduct occurred, the Title IX Coordinator will, as appropriate:

- Coordinate the provision and implementation of remedies to a reporting party/complainant and other people the University identifies as having had equal access to the University's education program or activity limited or denied by Prohibited Conduct;
- Coordinate the imposition of any disciplinary sanctions on a responding party (which sanctions may be determined by the decision-maker or his/her/their designee (who may include, without limitation, the responding party's direct or indirect manager or supervisor, or other appropriate University personnel), including notification to the reporting party/complainant of any such disciplinary sanctions. Faculty and other collective bargaining unit members who are found responsible will be issued disciplinary action in accordance with the current Collective Bargaining Agreement between Utica University and AAUP-Utica. Staff who are found responsible will be issued discipline in accordance with the current Utica University Employee Handbook; and
- Take other appropriate prompt and effective steps to ensure that Prohibited Conduct does not continue or recur within the University's education program or activity.

E. Appeals of Dismissals and Determinations Regarding Responsibility

Appeals regarding the dismissal of a Complaint (or allegations within a Complaint) or the determination as to responsibility or sanctions shall be addressed in accordance with the Policy.

V. INTERPRETATION/OTHER ISSUES

Final interpretation of these Procedures is vested in the Title IX Coordinator, who will have discretion to construe any uncertain or disputed provisions. Issues that are not specifically addressed in this Policy may be resolved by the Title IX Coordinator in his/her/their discretion. Without limiting the generality of the foregoing, the Title IX Coordinator will have discretionary authority to interpret, construe and apply the terms of these Procedures in conjunction with the terms of the Policy, and to resolve any conflicts between such terms.

VI. DISABILITY ACCOMMODATIONS

These Procedures do not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the processes described above that do not fundamentally alter the applicable process(es). The Title IX Coordinator may consult with the Office of Accessibility Services & Accommodations to provide support to individuals with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973 (if applicable). The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the parties, even where the parties may be receiving accommodations in other institutional programs and activities.

VII. DELEGATION OF AUTHORITY AND USE OF EXTERNAL RESOURCES

Any University administrator or official whom these Procedures empower to act may request that the Title IX Coordinator delegate that authority to another appropriate University official, or the Title IX Coordinator in his/her/their own discretion may delegate that administrator's or official's authority to act to another appropriate person. The Title IX Coordinator may also delegate his/her/their responsibilities and/or authorities under these Procedures to any other appropriate official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a University official named in these Procedures from fulfilling his/her/their designated role.

The University may utilize appropriately trained external personnel for any role under these Procedures as it may deem necessary or appropriate.

Any University administrator or official involved in implementing these Procedures may seek the advice of the University's legal counsel, to be coordinated through the Title IX Coordinator.