



Title IX and MOUs

Based on Current Title IX Regulations

July 2023



UTAH
SYSTEM OF
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EDUCATION

Legal Advice

Legal Advice: This training does not constitute legal advice. Please consult with your institution's general counsel for legal advice.

Training Overview

- What is the purpose of the memorandum of understanding (MOU)?
 - Who are the parties in the MOU?
 - What topics should the MOU cover?
 - Who should be involved in the process of drafting and implementing the MOU?
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Purpose of MOU

- Create partnerships between community agencies and your institution to collaboratively **prevent** and **respond** to sexual misconduct
 - Coordinating sexual misconduct prevention and response works best when there is a concerted effort to develop close working relationships and trust among the institution and community partners (including, but not limited to, law enforcement, district attorney, victim advocates, etc.)
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Parties in an MOU

- Your Institution
 - Title IX Coordinator, administration, institution chief of police, etc.
 - Community Agencies
 - Law Enforcement
 - District Attorney's Office
 - Victim Advocates
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MOU Content

- Parties
 - Purpose
 - Role of the community agency
 - Role of the institution
 - Confidentiality/privacy
 - Termination
 - Signatures
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MOU Content – Law Enforcement

- Outline the protocols and procedures for: (1) sharing information concerning allegations of sexual misconduct (sexual assault, dating violence, domestic violence, and stalking) between the parties; and (2) conducting contemporaneous investigations.
 - Information about institution police jurisdiction and local law enforcement jurisdiction (if relevant)
 - Information Sharing
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MOU Content – Law Enforcement

- Information Sharing from Law Enforcement to the Institution
 - Share information with the institution Title IX Coordinator when Law Enforcement receives information that an institution student or employee either engaged in or experienced sexual misconduct.
 - When applicable, Law Enforcement will share with individuals who have experienced sexual misconduct information about institution resources, including the Title IX office.
 - Respond promptly, as required by state law, to a request for records from the institution Title IX Coordinator under the Government Records Access and Management Act.
 - Share aggregate reporting data with the institution as required under the Clery Act.
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MOU Content – Law Enforcement

- Information Sharing from the institution to Law Enforcement
 - Share information with Law Enforcement when sexual misconduct behaviors create an articulable and significant threat to an individual or campus safety under Utah Code section 53B-28-303 and in accordance with the Family Educational Rights and Privacy Act.
 - The institution Title IX Coordinator will provide information to individuals who have experienced sexual misconduct about: (1) reporting to Law Enforcement; (2) the preservation of evidence; and, if relevant, (3) a sexual assault forensic exam.
 - Respond promptly to a subpoena according to federal, state, and local law.
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MOU Content – Law Enforcement

- Conducting Contemporaneous Investigations
 - The institution may delay notifying the respondent of a Title IX investigation or informal resolution process when: (1) delaying notification would not create an immediate threat to the health and safety of the individual who experienced the sexual misconduct or the campus community; (2) the institution Title IX Coordinator is aware of a Law Enforcement investigation and Law Enforcement or the individual who experienced the sexual misconduct has asked the institution Title IX Coordinator to delay notification based on an impact to the criminal investigation; and (3) delaying notification complies with federal, state, and local law. The institution will notify Law Enforcement if they cannot delay a Title IX investigation or informal resolution.
 - Both parties acknowledge that the institution must meet its Title IX obligations to resolve complaints promptly and equitably even when there is a contemporaneous criminal investigation. The institution may delay notification or an investigation for a period of time, due to a criminal investigation, but the delay must be reasonable and not extend indefinitely. Law Enforcement and the institution will communicate about case needs and timing as they arise, in accordance with federal, state, and local law.
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MOU Content – Law Enforcement

- Sexual Assault Response Team
 - Law Enforcement and the institution agree to have a representative at the community Sexual Assault Response Team (“SART”) to: (1) share prevention and training strategies and opportunities; (2) provide information about trends and patterns in sexual misconduct occurring at the institution and in the community; (3) discuss collaboration and feedback concerning the parties’ response to sexual misconduct; and (4) conduct other matters as necessary.
 - Training
 - The institution agrees to provide training to Law Enforcement annually about institution resources and support, including supportive measures for individuals who have experienced sexual misconduct and Title IX requirements.
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MOU Content – District Attorney

- **Purpose:** To ensure information remains confidential regarding alleged sexual misconduct (including sexual harassment, sexual assault, dating violence, domestic violence, or stalking) that is shared by individuals during a Title IX informal resolution process.
 - **Institution informal resolution process explanation:**
 - An informal resolution is a voluntary process that allows the respondent, or individual that allegedly engaged in the sexual misconduct, to acknowledge and accept responsibility for the harm they caused. During an informal resolution, the parties may share their experiences with what occurred, understand the harm caused, and determine how to repair the harm. This is not an investigative process and once an informal resolution agreement has been reached the parties cannot pursue an institution grievance process (which includes evidence gathering and an investigation). It is critical that the information shared in an informal resolution remains confidential to effectively facilitate the purpose of this process.
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MOU Content – District Attorney

- **Confidentiality**

- The DA agrees that all information learned, gathered, or recorded in the institution's informal resolution process is confidential and will not be accessible to the DA. This includes, but is not limited to, information, documents, and testimony from parties, witnesses, participants, process advisors, informal resolution facilitators, or institution staff.
 - If the DA gains access to any information in the institution informal resolution process, they agree that this information will be treated as confidential as "mediation communications" under Utah Code section 73B-10 and shall not be used against any respondent in a criminal proceeding, determination of probation violations, or furtherance of an immigration proceeding.
 - The DA agrees that an individual's agreement to participate in the informal resolution process, or the failure of a case to resolve through informal resolution, will not be introduced into a criminal proceeding for any purpose, including impeachment purposes, or in furtherance of an immigration proceeding.
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MOU Content – District Attorney

- **Subpoena:** The DA agrees to not subpoena information learned, gathered, or recorded in the institution's informal resolution process. This includes, but is not limited to, information, documents, and testimony from parties, witnesses, participants, advisors, informal resolution facilitators, or institution staff.
 - **Prosecution:** The institution understands that prosecution may proceed against respondents based on information gathered before, after, or otherwise outside the institution informal resolution process. If the institution learns that the DA has initiated prosecution of a case referred to informal resolution, the institution will contact the DA, when allowed under institution policy, state and federal law, to alert them to the ongoing institution informal resolution.
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MOU Content – Community Victim Advocates

- An institution may enter in a MOU with community victim advocacy services to provide prevention and response services related to sexual assault, dating violence, domestic violence, and stalking
 - Determine the types of conduct covered in MOU (e.g., sexual assault, dating violence, domestic violence, and stalking)
 - Determine services that will be provided by the community victim advocacy agency
 - Examples: access to crisis intervention services, assist complainants throughout the judicial or institution process; provide awareness events to prevent sexual misconduct; assist with campus climate surveys; provide prevention training to students
 - Outline expectations for the institution and coordination between the institution and agency
 - Identify point of contact at institution; train agency on Title IX requirements; institution will meet regularly with agency; provide institution resource guide for agency; etc.
 - Explain employees who are confidential resources
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MOU Draft and Implementation Process

- Consider including the following stakeholders at the institution:
 - Title IX Coordinator, institution chief of police (if applicable), Student Conduct, General Counsel, relevant administration, victim advocates (when drafting MOU with community victim advocates)
 - Consider including the following stakeholders in the community:
 - Law Enforcement, District Attorney's office, community victim advocates, tribal offices, community sexual assault response teams ("SART"), hospitals and urgent care facilities, social service agencies, and other agencies that serve the public safety needs of the community.
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Resources

- Building Partnerships among Law Enforcement Agencies, Colleges and Universities: Developing a Memorandum of Understanding to Prevent and Respond Effectively to Sexual Assaults at Colleges and Universities
 - <https://www.justice.gov/archives/ovw/page/file/910376/download>
 - SUNY Model MOU Information
 - <https://system.suny.edu/sexual-violence-prevention-workgroup/mou-model/>
 - Restorative Justice Approaches to the Informal Resolution of Student Sexual Misconduct
 - <https://jcul.law.rutgers.edu/wp-content/uploads/2020/06/RESTORATIVE-JUSTICE-APPROACHES-TO-THE-INFORMAL-RESOLUTION-OF-STUDENT-SEXUAL-MISCONDUCT-POSTED.pdf>
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Questions?

