

6.21 Sexual Misconduct Policy

General Policy

University Commitment. The University is committed to fostering a safe and nondiscriminatory campus, one that is free from sexual misconduct. It encourages prompt reporting by victims of this kind of misconduct, and a student or employee charged with committing sexual misconduct will be subject to discipline if those charges are established under the University's disciplinary policies and procedures. The University also provides ongoing prevention and educational efforts to inform the campus community about these issues.

Sexual Misconduct.

Types. This policy deals with a broad range of sexual misconduct behaviors. Where applicable, the full definitions in the Alabama Criminal Code of the offenses described below are attached to this policy.

Sexual harassment is defined in the University's Equal Opportunity/Affirmative Action (EO/AA) policy, as follows:

Sexual harassment . . . includes sexual advances, requests for sexual favors, and other conduct of a sexual nature that is unwelcome and is directed toward a person on the basis of that person's sex. It may take one of two generally recognized forms. First, the employee's or student's submission to such conduct is made a condition, explicitly or implicitly, of access to an employment or academic opportunity; or the employee's or student's submission to or rejection of such conduct is used as the basis for employment or academic decisions affecting the individual, such as, for example, a salary or grade determination, respectively. Secondly, hostile environment harassment occurs when the conduct is so severe, persistent, or pervasive that it unreasonably interferes with an individual's performance as an employee or student or creates an intimidating, hostile, or offensive working/learning environment

Sexual violence is a form of sexual harassment and is also defined in the University's EO/AA policy as referring "to physical sexual acts perpetrated against a person's will or carried out when the person is not able to give valid consent due to the use of drugs or alcohol, to physical or mental disability, or to legal incapacity." Some examples of sexual violence are rape and sexual abuse. It also includes *domestic violence* - assault, menacing, reckless endangerment, criminal coercion, harassment, or certain other criminal offenses committed by a current or former spouse or cohabitant or by one sharing a child with the victim; and *dating violence* - any of the acts described above as constituting domestic violence committed by one in a dating or engagement relationship with the victim.

A term closely related to sexual violence is *sexual assault*, which includes forcible sex offenses (rape, including sodomy and sexual assault with an object/sexual torture; and fondling/sexual abuse) and non-forcible sex offenses (incest and statutory rape).

A final behavior encompassed by the policy is *stalking*, which refers either to (a)

intentionally and repeatedly following or harassing another person, coupled with the making of a threat intended to place that person in reasonable fear of death or serious bodily harm; or (b) after being told to stop, intentionally and repeatedly following, harassing, or communicating with another person, or a family member or acquaintance, causing the person mental/emotional harm or reasonable fear of harm to his/her business or employment. Stalking may, depending on the circumstances, amount to the hostile environment form of sexual harassment.

Consent is generally a defense to these offenses. Under Alabama law, “consent” in this context refers to a party’s acquiescence to the behavior of another. However, consent is not valid if obtained by forcible compulsion or if the victim is physically helpless at the time, is mentally incapable of consenting, or is not of sufficient age to provide legal consent.

Violation of University Policy and the Law - Sexual Misconduct. All of these types of conduct, referred to generally in this policy as “sexual misconduct,” are unacceptable and violate University policy. They may also violate federal and state law and subject the perpetrator to criminal prosecution.

Violation of University Policy and the Law - Retaliation. University policy and federal law also prohibit retaliation against anyone who reports or brings a complaint of sexual misconduct or otherwise participates in a proceeding to address such a complaint. The University is committed to taking reasonable steps to prevent retaliation and to respond if it does occur.

Reporting of Sexual Misconduct

Initial Reporting - University Authorities.

- The University encourages prompt reporting of all types of sexual misconduct by anyone who has information (whether as a victim or otherwise) indicating that such misconduct may have occurred. A student who has been subjected to such misconduct should report the incident to the Dean of Students (the Deputy Equal Opportunity (EO) Coordinator/Students), and a staff or faculty employee should report it to the Associate Vice President for Human Resources (the Deputy EO Coordinator/Staff and Third Parties) or the Vice President for Diversity (the Senior EO Coordinator/Faculty), respectively. This contact should be made even if the victim does not intend to pursue disciplinary or criminal action against the alleged perpetrator.
- A report may also be made to a “responsible employee,” defined for the purpose of this policy as a manager or administrator who has overall responsibility for the daily operations of an academic, support, or operational unit. When such a report is made, the responsible employee shall make a reasonable effort to advise the victim or other reporting party about 1) the employee’s duty to inform the appropriate EO Coordinator about the incident, e.g. the names of the individuals involved; the time, place, and location; etc., 2) the option of the victim or other reporting party to request confidentiality, and 3) the fact that the victim or other reporting individual may share the information on a confidential basis with professional mental health counselors and health personnel on campus.

Reporting - Police Authorities. A victim of sexual misconduct also has the right to file a police report and a criminal complaint against the alleged perpetrator. Reporting to University police is encouraged. If desired, University officials will assist the victim in notifying local police authorities. The victim, however, has the right to decline to notify police authorities.

Professional and Non-professional University Personnel. A professional counselor who acquires information about an alleged incident of sexual harassment/violence is not required to report any information about the incident to University coordinators or other personnel. A professional counselor is an individual whose official responsibilities include providing mental health counseling services to the University's students and/or employees and who is acting within the scope of his/her professional license or certification at the time the information is acquired. University personnel who provide health services to students and/or employees under a professional license requiring confidentiality are not required to report, without the consent of the student/employee, information about an alleged incident of sexual misconduct in a way that identifies the victim. These University personnel should, however, inform students or employees about their right to file a complaint with the appropriate coordinator and with campus or local law enforcement authorities, with assistance if desired, and of the protection afforded by the University's non-retaliation policy.

Preserving Physical Evidence. It is important that any physical evidence of the sexual misconduct be preserved, which will almost always be important in the investigation of the incident and in any criminal prosecution of the alleged perpetrator.

Prompt Reporting. Prompt reporting will facilitate the collection and preservation of physical evidence and make possible the early and timely investigation of the incident by police authorities. It may prevent additional assaults on other individuals. Additionally, more timely medical and psychological attention may be made available to a victim who reports an incident without undue delay.

Notice of Rights. A student or employee who reports that he/she has been the victim of sexual misconduct, whether occurring on or off campus, shall be provided a written statement or summary of rights and options by the appropriate EO Coordinator.

Child Abuse. A University employee who knows or suspects that a child - defined as any individual under age 18 - has been the victim of sexual abuse is required under Alabama law to immediately report the matter. A freshman student, a "dual enrolled" high school student, or a summer camp participant may fall into the category of a "child." The Alabama law imposes the mandatory reporting duty on certain individuals, including nurses and other medical professionals, mental health professionals, and schoolteachers and officials. University policy implementing the law, however, broadens the reporting obligation to all University personnel and, further, directs that the report (orally and then in written form) be made to University police. Sexual abuse, which is one element of the more comprehensive term "abuse" under the Alabama law, includes rape, molestation, sexual exploitation, etc., actual or attempted. A more complete statement of University policy may be found online at http://www.uah.edu/images/administrative/compliance/Child_Protection_Policy.pdf.

Confidentiality

Request for Confidentiality or No Action. A victim or other reporting party may request the nondisclosure of his/her name or other identifying information to the alleged perpetrator. Such a party may also indicate a reluctance for the University to pursue the matter against the accused and/or be hesitant or unwilling to cooperate. In these instances, the University shall inform the victim/reporting party that such limitations may prevent it from responding to the incident and that University policy offers protection against retaliation.

University Response. Confidentiality and related requests will be taken seriously. When the victim/reporting party persists in these requests, the University must determine whether it can honor them consistent with its duty to provide a safe, nondiscriminatory campus for all students and employees, including the victim/reporting party. The determination shall be made by the EO Coordinator most closely related to the case, upon consultation with other EO Coordinators (and, in the case involving a faculty member, the Provost or designee) and the Chief University Counsel. All relevant factors shall be considered, including credible evidence of the alleged perpetrator's prior sexual misconduct, any risk of additional sexual misconduct by the alleged perpetrator, the use of a weapon in the incident, etc.

- If the University determines that it should proceed and that disclosure of the name of the victim/reporting party will likely occur, it shall so advise such party. It shall also inform the alleged perpetrator about any request from such party to the University not to go forward with the matter.
- If the University decides to honor a confidentiality request, it shall still take steps, to the extent reasonable under the circumstances and consistent with the request, to investigate and address any sexual misconduct.
- Even if a victim/reporting party does not request confidentiality, the University's activities in responding to a complaint shall take place within the constraints of its policy of confidentiality set forth below.

Confidentiality/Limited Disclosure. Disclosure of information about a case involving charges of sexual misconduct is to be limited, to the extent reasonably possible, to the parties and the University officials who have a role in the procedure for addressing such charges. This includes information about any accommodations or protective measures provided to the victim. Information in a case in which a student is either the victim or the accused is subject to student privacy rights afforded by the federal Family Educational Rights and Privacy Act (FERPA), and disclosure beyond the foregoing parties and officials shall only be made in compliance with FERPA. Reporting of sexual offense crime data under the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act by the University will not include personally identifying information about the victim or the accused.

Assistance for Victims

Medical and Counseling Resources

- Confidential professional counseling is available to a student who is the victim of sexual misconduct in the University Counseling Center (256-824-6203). Counseling

resources for an employee may be obtained through the University's Employee Assistance Program (1 800-925-5327 for referral to a local professional counselor). For those individuals suffering from physical trauma, the on-campus Student Health Center (256-824-6775) is available to provide some ongoing care for students, and the Employee Health Clinic (256-824-2100) is an option for employees. Any of these offices may provide referrals for more extensive or specialized services in the community. Under University policy, the foregoing professional counselors and medical personnel are not obligated, when receiving information about an incident of sexual misconduct, to report it to a responsible employee or an EO Coordinator in a way that identifies the victim without the party's consent.

- The foregoing personnel are to inform a victim of the right to file a complaint of sexual misconduct with the appropriate EO Coordinator and also to file a criminal complaint with police authorities. They should offer assistance in the filing of these complaints, if desired.
- Crisis Services of North Alabama (256-716-1000) also offers free, confidential assistance to victims of sexual violence, including rape examinations and group counseling.

Protective Accommodations and Orders

- A victim may request from University officials a change in class schedules, campus housing assignments, transportation, and work assignments as an accommodation to minimize contact and interaction with the alleged perpetrator. Such changes will be made, in an appropriate case and where feasible, on an interim basis pending the outcome of the University's resolution of charges of sexual misconduct brought by the victim. These accommodations are not dependent on the victim's filing of charges with police authorities.
- Certain protective measures may be imposed by the University pursuant to its procedures where a student victim is subject to a significant risk of imminent or serious harm from an accused student. These measures include, with respect to the accused, interim suspension, interim suspension from housing, restriction from attending class(es), restriction from access to University facilities and property, a "no-contact" directive, etc., and they shall continue until completion of the disciplinary process. Protective measures, such as a suspension with or without pay, may also be implemented on an interim basis with respect to an accused employee and for the benefit of an employee victim at risk, where appropriate.
- A victim may, if desired, seek judicial remedies, such as protective orders, restraining orders, "no contact" orders, etc. University officials will provide information, if requested, to a victim about obtaining these remedies.

Disciplinary Procedures

Discrimination Complaint/Grievance Procedure. Sexual misconduct, as defined herein, violates University policy, and a charge of any form of sexual misconduct (including stalking of a nature that constitutes the hostile environment form of sexual harassment) will be addressed through the University's Discrimination Complaint/Grievance Procedure.

Sanctions and Remedies. Following a determination, under the Discrimination Complaint/Grievance Procedure, that sexual misconduct occurred, the University may impose one or more disciplinary sanctions. The types of sanctions available are set forth in the University's Discrimination Complaint/Grievance Procedure. Additional, non-disciplinary remedies to benefit the complainant and the broader student and/or employee populations may also be implemented by the University as part of its response to the misconduct and/or to prevent recurrence of the sexual misconduct.

Awareness and Prevention Programs

Educational Efforts

- **New Students and Employees.** Incoming students and new employees are provided an educational program designed to increase their awareness of the risk of sexual misconduct incidents and the knowledge of how to prevent them. This program encompasses the following topics: the University's policy prohibiting behavior that constitutes any form of sexual misconduct; the definitions of the forms of sexual misconduct; the definition of consent as it relates to sexual activity; options for bystander intervention; warning signs; and information about reducing the risk of being the victim of sexual misconduct. It also provides information relating to victim reporting, victim's rights, University procedures for addressing charges of sexual misconduct (as set forth more fully in the University's Discrimination Complaint/Grievance Procedure), resources available to victims, confidentiality, and other matters required by law or reflected in University policy. This information is presented to new faculty prior to the beginning of the Fall semester each year and to new employees at various times throughout the year as they are hired.
- **Current Students and Employees.** The University also conducts ongoing, periodic educational programs for current students and employees covering the topics mentioned immediately above.

Environmental Factors. The University community is encouraged to help detect and report areas of the campus that may be unsafe due to poor lighting, the presence of structural or landscaping features (such as overgrown bushes near a walkway) that may increase the risk of attack, etc. These reports should be made to the University's Office of Facilities and Operations and will be used to identify modifications that may help make the campus safer. Such modifications will be a priority, consistent with considerations of cost, impact upon institutional operations, the extent of the risk, and other relevant factors.

Bystander Intervention Options. The University recognizes that there are preventive actions that can be taken by individuals on campus to reduce the potential for sexual violence generally. In specific situations, there are ways in which an individual who is aware that an incident of sexual violence may be imminent can intervene to stop it from occurring. There are also actions that may be taken to thwart or stop an incident that is taking place. These "bystander" options are described in the educational programs presented to new and current students and employees. More information about this

effort is provided below.

- The fundamental principle to be stressed is that prevention of sexual violence is the responsibility of each person on campus. Each person, both male and female, must play a positive role in stopping sexual violence and in changing the culture so that behavior leading to sexual violence is not acceptable on the campus.
- Potential bystanders will be taught safe and positive ways to act in a situation posing a risk of sexual violence. For undergraduate and graduate students, this is accomplished through an online educational module.
- The outcomes expected as a result of bystander training are to create an expectation for bystander intervention on campus and to facilitate that intervention by equipping students and employees to:

Increase awareness: Develop greater sensitivity to physical and social environments and individual behaviors in the context of the potential for a sexual violence incident.

Identify problems: Have the knowledge to evaluate a situation to determine if there is a risk of the occurrence of sexual violence and if preventive/interventive action is warranted.

Act: Select and implement an appropriate, safe, and effective preventive-interventive response, such as speaking up, attempting to remove the individual at risk from the situation, calling for help, etc.

Risk Reduction. The University is committed to identifying strategies to make less likely the perpetration of sexual violence on campus. The University is also concerned about ways to empower victims and address bystander inaction as a means of making its campus safer. Information about these strategies is provided to new and current students and employees in the educational programs presented to them. These programs emphasize that risk reduction actions are not the sole responsibility of potential victims, and they focus both on strategies for individuals to reduce the likelihood of committing sexual violence and strategies for individuals to reduce the likelihood of being the victim of sexual violence. The following messages are included in the educational programs.

- Reducing the risk of committing sexual violence:

Sexual violence is a crime. It is never acceptable to force or coerce sexual activity.

Alcohol and drugs can alter one's thinking and behavior. However, an individual is always responsible for the consequences of his/her behavior, even while under the influence of alcohol and drugs.

Having sex with someone who is mentally or physically incapable of giving consent

- someone who is drugged, intoxicated, unconscious, or otherwise incapable of saying "no" or understanding what is happening - constitutes rape.

It is important to listen carefully and to take time to hear what the other person has to say. If the other person is not being direct or is giving a "mixed message," clarification should be requested, at the least, and it is always the better course to go no further with physical contact or activity.

The cliché that "the other person, even when saying 'no,' really means 'yes,'" is

false and will only lead to trouble. If a partner says “no” to sexual contact, the only wise course of action is to accept that statement and stop.

It can be foolish and dangerous to make assumptions about a person’s behavior, such as assuming that he/she wants to engage in sexual activity because of any of the following: the way the person is dressed, whether or how much the person is drinking, the person’s agreement to go to one’s room, the fact that the person has engaged in sexual activity previously, or the fact that the person consents to kissing or other intimate activities.

Be careful in group situations. Pressure from friends to participate in sexual misconduct must be resisted.

Reducing the risk of being the victim of sexual misconduct:

Alcohol, if consumed, should be consumed in moderation. An open beverage should not be left unattended or a drink accepted from an unknown person.

It is important to know and make known one’s sexual intentions and limits. A person has the absolute right to say “no” to any unwanted sexual contact and to insist that his/her partner respect that expression of intent and feelings.

Sexual conduct limits should be communicated firmly and directly. Mixed messages are to be avoided. Words should be communicated in a firm voice and tone (saying “no” with “meaning”), accompanied by clear body language. It is a mistake to assume that the other person will automatically know one’s feelings or will eventually “get the message” without anything being said.

Initially saying “yes” to sexual activity does not prevent a change of mind to “no,” even in a situation where sexual activity has previously occurred with this partner.

Some individuals may conclude that drinking, dressing provocatively, or going to a date’s room indicates a willingness to engage in sexual activity. It is prudent to be explicit and clear up front about intentions and limits in such situations.

Feelings of discomfort or concerns about risks should be taken seriously and should prompt appropriate actions, such as leaving or withdrawing from the situation immediately and going to a safe place.

Attending large parties with trusted friends is generally a safe option. Friends can agree to “look out” for one another in the context of known limits and the risks of predatory behavior by others. Leaving with the group, versus leaving alone or with people who are not well known, is recommended.

Attending a workshop or educational program on sexual violence risk reduction or taking a self-defense course can help equip a person to avoid being the victim of sexual violence.

Resource Information

Telephone Numbers. The following is information for offices and organizations that may be able to provide assistance to a student or an employee dealing with a sexual misconduct matter:

EO Coordinators - Offices

Division of Student Affairs
CTC 223
265-824-6700

Office of Diversity
SKH 341
256-824-4600
smithdh@uah.edu

Human Resources
SKH 114
256-824-6545
longl@uah.edu

Community Resources

Huntsville Police
Emergency 911
Non-Emergency 256-772-7100

Crisis Services of North Alabama
256-716-1000

Other Campus Resources

University Police
Office of Public Safety
IMF
256-824-6911

UAH Hotline
866-362-9476

Employee Health Clinic
WIL 327
256-824-2100

Student Health Center
WIL 327
256-824-6775

Counseling Center
WIL 329
256-824-6203

Employee Assistance Program
800-925-327