

**Senate Bill 453: UAH FACULTY SENATE RESOLUTION (EMERGENCY):
THIS COULD BE YOU: UAH VIOLATIONS OF POLICIES, ETHICS PRACTICES, AND ALABAMA STATE LAW
DURING AN INVESTIGATION OF SEXUAL MISCONDUCT ALLEGATIONS**

History: Introduced at Faculty Senate Oct. 22, 2020 as an emergency resolution. Passed First Reading that day.
Second Reading will occur at a future Senate meeting.

22 October, 2020

This resolution is per Faculty Member's recollection and extensive notes, and subject to corrections if and when the UAH Administration ceases its repeated and sustained violations of Alabama state law (Code of Alabama § 36-26-27.1) by providing copies of all related documents to Faculty Member, which number at least 40-50 pages for the final report alone, as mandated by state law.

Background: Faculty Senate Considering 2020 Interim Sexual Misconduct Policy and Related procedures

WHEREAS, the Faculty Senate is currently considering a review of the 31-page [Title IX Sex Discrimination, Sexual Harassment, and Sexual Violence Policy](#) (Interim) ("2020 Interim Sexual Misconduct Policy") dated August 17, 2020 and posted on the UAH [Policies and Procedures](#) webpage (the document itself is unsigned and undated), along with three other documents with filenames dated "8-14-20 FINAL", which are not posted on the UAH Policies and Procedures webpage and which were submitted to the Faculty Senate Executive Committee in September 2020, specifically, and collectively referred to as the "proposed Sexual Misconduct Procedures", and where the procedures are comprised of

- 1) the 31-page *Procedures for The Resolution of Title IX Sexual Harassment and Sexual Violence Complaints*,
- 2) the 11-page *Procedures for The Resolution of Title IX Sex Discrimination Reports (Non-Harassment) Against Faculty, Staff, Affiliates, And Non-Affiliates*,
- 3) the 17-page *Procedures for the Resolution of Title IX Sex Discrimination Reports (Non-Harassment) Against Students, and*

WHEREAS this complex set of related documents contains considerable legal language and volume (90 pages), and should be considered from the perspective of where specific prior examples and context of how the university has applied, investigated, and enforced allegations against respondents, particularly in cases involving violations of due process, ethical practices, and Alabama state law, and can serve to illustrate actual UAH practices and concerns to Faculty Senators who have not personally experienced said process, and can serve to illustrate areas of concern that should be addressed by the Faculty Senate as they review the current 2020 Interim Sexual Misconduct Policy and Proposed Sexual Misconduct Procedures, and

Goal of this Resolution

WHEREAS the goal of this bill is to inform and help improve policy making and related policy implementation procedures for all parties, including but not limited to the faculty and administration, and

Considering of prior UAH Investigation practices in consideration of current policy and procedures review

WHEREAS knowledge of prior and current university investigative practices under said policies and procedures, including egregious and persistent violations of UAH policies, ethical practices, and of Alabama state law, willful and otherwise, even in cases of the UAH Administration (“Administration”) being informed of ethical and policy violations that were specifically noted and objected to at the time of an investigation (and which removes the “or otherwise” aspect of “willful or otherwise”), serve to inform members of the UAH Faculty Senate as to problematic practices and behaviors by or sanctioned by senior UAH administrators and in certain cases, UAH Office of Counsel, that should be reviewed and addressed during the review of the 2020 Interim Sexual Misconduct Policy and Proposed Sexual Misconduct Procedures, not only in the language of *what* constitutes sexual misconduct for policy making purposes, but also *how* of how investigations are prosecuted while working to arrive at what is supposed to be fair, unbiased, and just resolutions to allegations of sexual misconduct and harassment, and

UAH Prior Policies not Archived with Public Access

WHEREAS policies on the UAH Policies and Procedures webpage are removed at time of updates, rather than archived online for future reference, making reference to policies and potential policy violations that precede any current policy very difficult for respondents to defend themselves for allegations of policy violations prior to any effective date of a given policy or procedures, and

Sexual Misconduct? Remarkable Resemblance to a Case of Retaliation

WHEREAS the university, under what appears to be a clear case of retaliation, saw fit to investigate a faculty member (“Faculty Member”) under the 2018 Sexual Misconduct Policy for allegations that alleged acts that occurred prior to the effective date of the 2018 Sexual Misconduct Policy, and this investigation arose several months after the Faculty Member informed the President Pro-Tempore of UA System Board of Trustees (“BOT”) during the February 2018 BOT meeting in Birmingham that the UAH Administration had announced, in January 2018, to the Faculty Senate Executive Committee and then the full Faculty Senate, despite strong disagreement from members of the Faculty Senate, that the Administration was agreeing to a joint agreement with a Chinese university to offer two degree programs, specifically in cybersecurity and aerospace engineering, and recognizing where UAH is awarded more than \$50,000,000 per year in contract funding from the Department of Defense, NASA and other U.S. Government agencies, and where UAH is a National Security Agency Center of Excellence, and where the China degree program program was planned to bring in up to 400 students at a time at full capacity with tuition dollars estimated at \$4,000,000 per year, and where the President Pro Tempore of the BOT stopped implementation of the plan to partner with the Chinese university for these degree programs, as China is a military adversary to the United States, in education their university students in cybersecurity and aerospace engineering and giving them access to UAH networks despite protests from UAH faculty, and

WHEREAS the first alleged retaliation occurred, starting in August 2018 where the university initiated an investigation of Faculty Member, initially under the 2018 Sexual Misconduct Policy, under clauses §II.2A and II.2B, as detailed below, and did not indicate any issues reported concerning § II.1 sex discrimination, II.3 nonconsensual sexual contact, § II.4 nonconsensual sexual intercourse, § II.5 sexual

exploitation, § II.6 intimate partner violence, § II.7 stalking on the basis of sex/gender, or § II.8 bullying on the basis of sex/gender, and

WHEREAS the second alleged instance of retaliation occurred in May 2019, also during the time of the then-ongoing sexual misconduct investigation, the university also “received information” that faculty Member was “conducting classified research in his unclassified office”, and that, perhaps conveniently, this action on “information” occurred around 3:30 pm on Friday, May 24, the last workday before Memorial Day weekend, weeks after most faculty had left campus, whereby the Vice President of Research, an Associate Vice President of Research, and the Research Security Officer of UAH came to Faculty Members office to “search” the office, and apparently were surprised that Faculty Member was in his office, and happened to be meeting with the then-President of the Faculty Senate, whereby the President of the Faculty Senate was asked to leave, an investigation proceeded including a request to search the office, which Faculty Member completely agreed with and invited them to search anything they wished to search, and where they didn’t proceed to search anything, and where they then asked if Faculty Member was on any classified contracts, to which he responded no, and for which they already knew or should have known since a faculty member who does a contract through UAH is under the jurisdiction of the Vice President of Research, so he could have simply sought the answer directly within his team (or in the case where a faculty member may be under a UAH-approved individual contract with some entity, such contract must be disclosed and on record with the university), and then the investigators proceeded to ask other questions, all of which were answered to their satisfaction, and where they refused to provide the name of the “whistleblower” that filed a false report with absolutely no basis whatsoever, and

WHEREAS Faculty Member had previously worked on UAH-approved individual consulting contract with a government agency some years prior, and where a retired senior leader from said agency informed Faculty Member of a proposal opportunity where, among the many facets of the proposed project, faculty member could gainfully employ the same skills previously employed on the UAH-approved individual consulting contract, and where faculty member sought and received UAH approval to engage in the proposal process for individual consulting, and where Faculty Member also argued successfully with the firm acting as Prime Contractor on the proposal to also engage some UAH technical capabilities for which Faculty Member would serve as Principal Investigator, and for which people under the Vice President for Research claimed this was a conflict of interest, which subsequently the UAH Office of Counsel officially determined was not a conflict of interest, and for which the Vice President of Research would not make the final decision to allow this UAH aspect of the proposal to proceed forward in a timely manner even though UAH Office of Counsel had rendered a *not-a-conflict-of-interest* finding in the matter, and a subsequent meeting weeks later with the Vice President of Research, who had the final decision, to get the proposal moving again through the Office of Sponsored Programs, and in which Faculty Member met with the Vice President of Research and presented his position, armed with policies and documents and the opinion of UAH Office of Counsel, and offered to provide these documents to the Vice Presidents of Research, who declined to look at them, and whose initial question was “did you tell generals on the Arsenal about our UAH strategic plans to bring cybersecurity and aerospace engineering degree program to China?”, for which the answer was “no”, and for which the reason for the extended and numerous hurdles and delays became clear, at least to Faculty Member, as when this question was resolved the proposal process was allowed to proceed forward, and

Inflammatory Claim via Title IX Coordinator from the Onset of the Investigation

The initial Notice of Investigation, signed by the Title IX Coordinator and dated October 11, 2018, noted that “*you may have engaged in acts of sexual misconduct concerning your daily interactions with a student worker*”. During the beginning of the interviews, Faculty Member requested an initial meeting to understand the process, as allowed by the 2018 Sexual Misconduct Policy, and on October 26, 2018, met with Independent Investigator, a Lawyer with a Huntsville law firm who had more than 30 years of legal experience, and informed the Independent Investigator that Faculty Member had had **no daily contact with any student worker in more than five years**, and that the most recent student worker involved interactions of once or twice per week for several weeks, and that “daily interactions” was clearly inflammatory as it suggested repeated and persistent acts, which would subsequently be completely unfounded during the Independent Investigators investigation, and which appeared to intentionally or unintentionally bias the investigation from the onset, based on a gross exaggeration of the facts.

Gross Violation of Due Process

WHEREAS, the 2018 Sexual Misconduct Policy refers to an approximate two-month investigative timeline, with allowances for complicated cases, and whereas this case, according to Student Worker and Faculty Member, had no components of sexually inappropriate behavior of any sort, verbal or physical, or any sexually suggestive invitations by Faculty Member whatsoever, and thus was not a complicated case at all, and in the end and could have and where the investigation could have and should have been completed within two months of the initial mandatory reported email dated on or around August 20, 2018, and where this case took 361 days from the time of initial email from mandatory reporter to final decision by the Provost, and where the Independent Investigator’s investigation and report took 7 months from time of mandatory reporter email, and the final decision by the Provost took another 5 months, and which taking 4 days shy of a year to conduct what should have been a two month investigation is a gross violation of due process¹, and

Shifting Policy Basis for Investigation – Including the Title IX Coordinator and UA System Lawyers

WHEREAS, the Title IX Coordinator initiated an investigation and knowingly used the 2018 Sexual Misconduct Policy that didn’t exist at the time of alleged violations, then used the prior and expired 2014 Interim Sexual Misconduct Policy which had expired four years prior, then later used both policies simultaneously as the basis of the investigation, and where the word “knowingly” is used purposefully, as they should have known prior to implementation, and if through ignorance or malice did not know, Faculty Member informed them formally on October 26, 2108 at the first meeting between Faculty Member and the Independent Investigator, and continued to inform him and protest the inapplicability of the policies through the investigation, and

¹ See 2018 Sexual Misconduct Policy, bottom of page 5 and top of page 6, §VII.: “The University will address all allegations of Prohibited Conduct with a prompt, thorough, and impartial inquiry...”, AND page 11, §VIII.A. “Reasonable efforts will be made to arrive at an initial investigative finding as outlined herein (excluding hearings and appeals) within 60 University business days following the receipt of a formal complaint, unless the University determines, in its sole discretion, that additional time is required.”

WHEREAS it appears clear that the sexual misconduct investigation, filed under a policy that didn't exist at the time of the alleged violations (the 2018 Sexual Misconduct Policy, dated July 9, 2018), then, after protest by Faculty Member later investigated under an earlier-but-expired policy (2014 Interim Sexual Misconduct Policy, dated September 17, 2014, expired March 17, 2015 per the 2015 Policy on Policies - effective date January 13, 2015) that expired four years earlier, then later charged Faculty Member under both policies, and included claims from two claimants, one of which ("Claimant 1" and "Staff Member") appears to clearly be a frivolous and malicious claim², which is specifically prohibited under the 2018 Sexual Misconduct Policy, and the basis for the frivolous and malicious claim only discovered by Faculty Member seven months into the investigation when the Independent Investigator shared the almost-final report, for review with any corrections prior to submission to the university, where it was discovered by Faculty Member that the Title IX Coordinator used Staff Member's baseless claim (see Figure 1, this claim met **zero** of the necessary and sufficient conditions of *any of the 426 ways to violate the 2018 Sexual Misconduct Policy in Sections II.A. and II.B.*) to inform the second claimant ("Claimant 2" and "Student Worker"), and apparently used only to as a tactic to induce Student Worker to file the claim she said she didn't want to file, where the Student Worker noted during the investigation that the Title IX Coordinator proceeded to "pressure and coerce" (Student Worker's own words) her to file the claim, upon which Staff Member then withdrew her claim, and from which the merits of the "claim" was so lacking in basis, especially after initial review by the Title IX Coordinator, who is a degreed lawyer and attorney registered with the Alabama Bar Association, that this frivolous and malicious claim should have never survived initial review by the Title IX Coordinator, and

² Staff Member (Claimant 1) complained that the faculty member, who met her for the first time at the 2018 Welcome Back Picnic in August 2018, where she admitted she was drinking, filed a complaint that Faculty Member talked about her name tag and was uncomfortable, she said, that he was looking at her breasts, whereas Staff Member failed to mention to the Independent Investigator that the name tag was high on her left shoulder and was one of the UAH-issues magnetic name tags, whereby Faculty Member commented that this is exactly where they should be in these modern times and not hanging on a lanyard in the front like happens with UAH-issued lanyards to students each year. It is important to note three facts: 1) the Faculty Member, who was a newlywed married to a successful business professional that happened to be a former professional model, and wasn't looking for someone else, and 2) even if that claim was true on its merits, in no way did it meet the criteria in the 2018 Sexual Misconduct Policy OR the 2014 Interim Sexual Misconduct Policy for sexual misconduct, and 3) Staff Member knew of the mandatory reporter report of potential sexual misconduct of Student Worker, prior to Student Worker agreeing to pursue a claim. Yet this frivolous and malicious claim was allowed to proceed forward by the Title IX Coordinator, Laterrica Shelton, a university degreed lawyer who is a member of the Alabama Bar Association, and who knew or should have known that this claim violated zero of the requirements for sexual misconduct. This "claim" was withdrawn after Student Worker (Claimant 2) agreed, after pressure and coercion (Student Worker's own words) by the Title IX Coordinator, to file a claim, and after withdrawing her frivolous and malicious claim, Staff Member offered herself as a witness to the Independent Investigator against Faculty Member on behalf of Student Worker.

it was filed and yet was allowed to proceed after initial review by the Title IX Coordinator (see also Figure 1 in the Appendix), and it appears very consistent with the pressure and coercion claim that Student Worker reported to the Independent Investigator, and the Staff Member's claim, if it had merit in the first place, should not have been withdrawn, or at least the Title IX Coordinator should have provide the same level of pressure and coercion she provide to Student Worker when the Title IX Coordinator induced Student Worker to not withdraw her claim after Student Worker found out Staff Member withdrew hers, and it appears consistent with an ethics violation to allow a meritless, frivolous and malicious claim to proceed forward only until it helped induce Student Worker to file a claim, and later, in August 2019 when Faculty Member was allowed to see the final report from the Independent Investigator, the Student Worker, known in the report as Complainant, reported to the Independent Investigator that "Complainant advised us that she did not want to file a complaint, but only did so because it was insisted upon by the Title IX Office at UAH", clearly indicating pressure, coercion and bias, and

WHEREAS allowing the investigation to proceed while pursuing claims by Student Worker under 1) a 2018 Sexual Misconduct Policy that didn't exist at the time of the alleged activities, then 2) after Faculty Member continued to protest the inapplicability of the 2018 Sexual Misconduct Policy, the Independent Investigator reached out to John Cates, then-Chief Counsel in the Office of Counsel at UAH, who informed the Independent Investigator to proceed under "the policy that was relevant at the time" (the date of this exchange escapes Faculty Member at the moment, but is buried in his notes), whereby someone in UAH leadership provided to the Independent Investigator instructions to pursue the investigation under the 2014 Interim Sexual Misconduct Policy (and provided a copy), which the Title IX Coordinator knew or should have known at the time had expired, given her central role in helping to develop and implement the 2018 Sexual Misconduct Policy, and where after Faculty Member discovered the 2015 Policy on Policies that limited the effective valid time of an interim policy to six months (and if an earlier Policy on Policies had existed and also limited interim policy effective dates, it was not found due to UAH not archiving policies on the website for Policies and Procedures), the investigation was then pursued under a policy that had expired four years prior, and upon protest by Faculty Member of the invalidity of the policy, UAH responded, after John Cates retired, in or around February or March of 2019, the Title IX Coordinator, along with guidance from Elizabeth Hamrick, UAH Office of Counsel, had the Independent Investigator proceed to investigating Faculty Member simultaneously under the 2018 Sexual Misconduct Policy and the 2014 Interim Misconduct Policy, apparently to see if any mud would stick to any of those walls, and

Student Worker Use of Curse Words and Consent to Same

WHEREAS, according to the 2014 Interim Sexual Misconduct Policy, page 2, "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." The Independent Investigator ascertained from Student Worker that she did provide consent to such language, and did not revoke it at any time. The 2018 Sexual Misconduct Policy, per the Independent Investigator, does not directly address consent except for sexual interactions, and

WHEREAS the Independent Investigator thoroughly investigated this aspect regarding any course language used in casual conversation between Student Worker and Faculty Member. The Independent Investigator ascertained that both Student Worker and Faculty member, in casual conversation, occasionally used curse words, but never in terms of some sexual interaction between them or suggestion or interest toward each other, and that Student Worker has admitted she said she used such

words on occasion and didn't consider them offensive. The Independent Investigator determined that consent was provided by Student Worker in terms of such language in casual conversation, and not withdrawn, and where later a witness for Faculty Member, a Research Center Director who employed Student Worker months later, informed Independent investigator that Student Worker also used such language in casual conversation with him during working sessions, where this will become important in reviewing the final decision by the Provost later in this document,

No Protective Measures – Left Faculty Member Open to Risk

The initial mandatory reporting regarding Student Worker occurred on or around August 20, 2018, and the Title IX Office did not inform Faculty Member, nor did she deem it necessary to impose interim protective measures to protect Student Worker from any potential harm, as provided by the 2018 Sexual Misconduct Policy, even though Student Worker had ceased employment under Faculty Member months before, and even though **Faculty Member was not informed for 12 weeks that Student Worker, by name, was the complainant, and Student Worker had been in Faculty Member's graduate class as an undergraduate (non-Jump) student for 12 weeks**, when Independent Investigator finally revealed the name of the Student Worker, leaving the unaware Faculty Member exposed for 12 weeks to uncertainty and risk should Student Worker have wished to somehow "set up" faculty member as a generic concern in such circumstances, although this did not happen in this case, and **this clear non-concern for risk to the student on the part of the Title IX Coordinator, the Independent Investigator, and the university in terms of not imposing any interim protective measures**, other than the no-retaliation clause in the (still inapplicable) 2018 Sexual Misconduct Policy (and no retaliation occurred) indicated that no protective measures were necessary, an important fact that will come into play in relation to the Provost's comments about later sanctions and Faculty Members appeal, and

Title IX Coordinator Office Breach of Confidentiality

The Title IX Coordinator, or someone in her office, breached confidentiality regarding Faculty Member more than once during the time the Title IX Coordinator was, according to Student Worker's words, pressuring and coercing Student Worker into filing a claim, and later attempting to withdraw her claim, as this came out during a draft Independent Investigator report review by Faculty Member in March 2019, seven months after the mandatory reporter email, that Student Worker became upset that Staff Member had withdrawn her claim against Faculty Member after Student Worker agreed to file a claim against Faculty Member, clearly indicating someone in the Title IX Coordinator's office breached confidentiality, and where certainly there are conditions under which the Title IX Coordinator or her designed may have cause to breach confidentiality, but there were no interim protective measures put in place while Student Worker was in Faculty Member's class so there appears to be no basis for breaching confidentiality other than using Staff Member's claim to induce Student Worker to file, prior to Staff Member withdrawing her claim, and

Independent Investigator Findings and Recommendations – No Policy Violations by Faculty Member

WHEREAS, only after the Provost rendered her final decision on the investigation in August 2019, **361 days after the mandatory reporter email to the Title IX Coordinator**, in gross violation of due process for a timely investigation, did the Faculty Member find out that the Independent Investigator formally responded to the Title IX Coordinator that is "is our opinion that that the Respondent, Dr. XXXXX, did not violate the above (2018 policy) reference provisions of the 2018 policy", and as such noted that a determination by Independent Investigator as to the applicability of the 2018 Sexual Misconduct Policy

was unnecessary, and in reference to [the 2014 Interim Sexual Misconduct Policy](#), the Independent Investigator reported that “it is our opinion that the Respondent, Dr. XXXXX, did not violate the above referenced provisions of the 2014 policy”, acknowledged that the Student Worker and Faculty Member engaged in conversations with such words and that Faculty Member was not aware that such words were offensive to Student Worker and that Student Worker did not indicate they were, [implying consent and that consent was not withdrawn](#), and indicated that the conversations were not objectively offensive, and as such noted that a determination by Independent Investigator as to the applicability of the 2014 Interim Sexual Misconduct Policy was unnecessary, and

University Challenges to the Initial Findings of the Independent Investigator

WHEREAS, upon receiving the findings and recommendations of the Independent Investigator, the university provide six (or so) challenges for the Independent Investigator to answer after reporting his findings, all of which were subsequently upheld by the Independent Investigator, among which some are provided here, and where 1) the university requested the Independent Investigator’s response as to whether the Independent Investigator properly reviewed the Staff Member’s request to be a witness against Faculty Member, whereby the Independent Investigator responded that he had, and that Staff Member had in fact not witnessed anything, an observation that had, by ignorance or intent, escaped the Title IX Coordinator, a trained attorney registered with the Alabama Bar Association, even though the Title IX Coordinator knew the details of Staff Member’s situation, which is consistent with bias or malicious intent on the part of the Title IX Coordinator to add unfounded pressure to Faculty Member’s case, and 2) investigate whether Faculty Member’s behaviors had limited participation or benefit from the Student Worker’s educational opportunities (a necessary but not sufficient requirement for violating the 2018 Sexual Misconduct Policy regarding, see Figure 1 and the policy), whereby the Independent Investigator noted that, based on comments from Student Worker and Faculty Member, there was indisputable evidence that [Student Worker willingly and needlessly took Faculty Members graduate class during the investigation](#) and received the highest possible grade [when Student worker was still an undergraduate student, was not in the Jump program at UAH, and did not need Faculty Member’s class for any degree requirement other than as any elective in Faculty Member’s college](#), therefore these was no evidence of impeding Student Worker’s educational opportunities, and

Provost’s Decision and Sanctions Imposed Prior to Appeal – Willfully Ignoring Facts and Findings from Independent Investigator’s Report

WHEREAS Faculty Member had, on several occasions, indicated he did not believe he violated any of the provisions of the 2018 Sexual Misconduct Policy or the 2014 Interim Sexual Misconduct Policy, and had been subsequently vindicated by same by the Independent Investigator’s report, the Provost still found Faculty Member in violation of the “Sexual Misconduct Policy”, [where the letter of findings from the Provost ignored the findings of the Independent Investigator’s report](#) and found that Faculty Member’s conduct violated both the “[2015 Sexual Misconduct Policy](#)” (which does not nor ever did exist, perhaps she is referring to the 2014 Interim Sexual Misconduct Policy) and the “[current](#)” [Sexual Misconduct Policy](#)⁴, the applicability of which the Independent Investigator said was not needed to be determined as there were no violations. [The Provost’s findings claimed the conduct “was unwelcomed”, even though](#)

⁴ Since at most, one policy on the same matter can be in place at any given time, this indicates, along with the Provost’s specific ignoring of specific findings by the Independent Investigator on these same facts, bias and an overzealous pursuit of a foregone conclusion, regardless of the facts of the case, rather than an independent and bias-free investigation, and again, neither policy was valid at the time of the alleged acts.

the findings of the Independent Investigator directly dispute this, and claimed this was “sex-based and objectively offensive”, even though the Independent Investigator specifically investigated these claims and found no evidence of this, and where the Provost also based her findings on a claim she states Faculty Member “may have said”, using the f-word, when Faculty Member specifically denied this particular claim, and for which Faculty Member cannot yet provide evidence of same to the Faculty Senate and the Provost and Title IX Coordinator, and the Office of Counsel refused, and have repeatedly refused to provide any and all copies, documents, communications, et cetera <insert the UAH Office Counsel’s definition of documents and records used in document preservation instructions for lawsuits and governmental investigations>, that constitute records in this case against Faculty Member, in direct violation of Code of Alabama 1975, § 36-26-27.1, as detailed below and made other comments and claims of violations taken out of context, even though the complete context would show these were not violations of any past or present sexual misconduct policies, and

Back-justifying the Unwarranted Imposition of “Interim Protective Measures” During Appeal

WHEREAS Faculty Member exercised his right to appeal this decision and sanctions to the President of UAH, had ten calendar days to do so, while starting the semester, while beginning a highly time intensive university service assignment, was required to move offices as part of the sanctions imposed by the Provost against Faculty Member, and write his appeal all in the same 10 day period, while having zero access to the 40 or 50 pages of the final report, and without access to any other related documents, and where Faculty Member informed the Provost that he believed these sanctions should not take effect until the appeal to the President of UAH is decided, and the Provost then responded by informing Faculty Member that these were “emergency interim protective measures”, which was not noted in the initial Provost’s finding letter, and that they were allowed by 2018 Sexual Misconduct Policy that didn’t exist at the time of the alleged acts, and even though neither policy applied, the interim protective measures were more than one year after the initial email from the mandatory reported and were not imposed while Student Worker was in Faculty Member’s class, and were being imposed months after Student Worker had graduated from UAH, indicating a baseless back-justification to justify the imposition even though there was no valid policy in place from which these interim sexual misconduct sanctions would derive their enforcement, and

Faculty Member Appeal to UAH President - Is Pressure and Coercion Now UAH Policy?

WHEREAS the President of UAH (the “President”) reviewed the case and sanctions, and upheld all of the sanctions except the merit increase penalty imposed by the Provost, and where the President, among other comments, indicated it was acceptable for the University to “pressure” students to file claims of sexual misconduct, which is in violation of the “unbiased” position in the policies and in the UAH sexual misconduct training, and where the President, by omission or intent, did not comment on the acceptability of “coercion” in addition to “pressure”, but his acquiescence to and approval of the Provost’s findings, in direct opposition to the Independent Investigator’s findings as noted in the appeal letter, suggest that “pressure” and “coercion” are now part of UAH policy and practice in sexual misconduct matters, regardless of any statement otherwise, **and that the 2020 Interim Sexual Misconduct Policy and related procedures that employ independent lawyers to help adjudicate matters are irrelevant to any final decision by the university due to the UAH practice of ignoring or violating its own policies and stated procedures**, and

WHEREAS in 2018 the Faculty Senate had considerable concerns regarding the proposed 2018 Sexual Misconduct Policy providing due process to faculty and expressed these concerns directly to President

Altenkirch and Provost Curtis during the Faculty Senate review and approval of the 2018 Sexual Misconduct Policy, during which **any and all Faculty Senate concerns were ignored and the policy was approved by the Administration with no changes**, and when the Faculty Senate raised concerns of due process, **then-UAH President Altenkirch responded that any concerns of due process would be handled in the appeal process, which no longer appears to be the case**, and

Stress on Faculty Members During Such Investigations, Particularly Those Where Faculty Member Was Cleared by an Independent Investigator

WHEREAS any claims of sexual misconduct can be career threatening and highly stressful and where Faculty Member, for example, having never had any complaint or records of sexual misconduct on his professional or personal record, or any other type of work misconduct, and where Faculty member endured more than 23 months of stress, during and after the investigation, and suffered from sleep loss, psychological and physical stress, and difficulty concentrating on task at hand for months on end as these issues and allegations and what appears to be clear retaliation by the university continued to play out in the investigation and in his mind at all hours, even when away from work, from allegations that turn out to be unfounded, despite the Provost's complete ignoring of the findings and recommendations of the Independent Investigator, including financial stress of retaining an attorney, the engagement of which added stress as Faculty Member had to inform his attorney, a family member, of this investigation of Faculty Member and (initially) two separate allegations of sexual misconduct, incurring many hours of attorney time, and also inform his newlywed wife that he had been accused of same, and

Faculty Member Subject to Federal Investigation in Response to Irresponsible Findings of UAH

WHEREAS Faculty Member had to disclose these disciplinary findings to a governmental agency conducting background checks, and whereby Federal agents proceeded to initiate a multi-month Federal investigation of Faculty Member, specifically and only because of this issue, and whereby Faculty Member had to endure the additional stress of a Federal investigation on him, of which he was eventually cleared but which added additional and considerable stress and risk of loss of professional reputation and income should the result of the investigation be adverse, and

UAH Fails to Produce Any and All Requested Documents Related to the Disciplinary Process, Citing Application of Non-applicable Policy

WHEREAS Faculty Member has repeatedly requested written copies of any and all documents related to this investigation, including the initial complaints in written form, and all documents produced by UAH or the Independent Investigator thereafter as produced, and as requested at each meeting with the Independent Investigator, including access in March 2019 to the Finding and Recommendations that UAH prohibited Faculty Member from seeing until the final disposition by the Provost in August of 2019, whereby Faculty also requested copies of the final report from the Provost, who bluntly declined and referenced the inapplicable 2018 Sexual Misconduct Policy that prohibits providing such reports and documents, and which same policy had already been demonstrated to be invalid in this case, and

WHEREAS the current practice under the August 2020 Interim Sexual Misconduct Policy and related procedures provides access to said documents, and

WHEREAS employees of the University of Alabama are state employees, and

Repeated Violation of Alabama State Law

WHEREAS during the investigation Faculty Member was aware of *Code of Alabama § 36-26-27.1*, and had no obligation to inform any representative of UAH of said Alabama law, of which they should have known as attorneys serving the UA System Office of Counsel, including when writing the sexual misconduct policies, and for which “ignorance of the law is no excuse”, and

WHEREAS *Code of Alabama § 36-26-27.1* reads, in its entirety: “Notwithstanding any other laws, rules, or regulations to the contrary, when a document pertaining to disciplinary action, including, but not limited to, written reprimands, suspensions, notes pertaining to oral reprimands or counselings regarding a state employee, or notes pertaining to matters that may be used regarding the employee in a disciplinary action are placed in the employee's personnel file, the agency which is the employer shall supply a copy of the documentation to the employee no later than 10 days after its inclusion in his or her personnel file. In the event that the information is not provided to the employee within 10 days as herein required, the reprimands or notes shall be removed from the employee's file and shall not be used against the employee in any future proceeding or disciplinary action.”, and

WHEREAS the Provost and Title IX Coordinator at UAH have Repeated Failed to Comply with *Code of Alabama § 36-26-27.1*,

THEREFORE BE IT RESOLVED that this resolution calls for The University of Alabama in Huntsville to 1) provide any and all copies of all reports, notes, communications and any other documents, digital or otherwise, using the UAH Office of Counsel definition of documents and communications used in various investigations, to Faculty Member per Code of Alabama § 36-26-27.1 , and 2) since the University of Alabama in Huntsville has repeated violated the first clause of Code of Alabama § 36-26-27.1, and providing any and all document at this late date does not free for the University of Alabama in Huntsville from its obligations under the last sentence of Code of Alabama § 36-26-27.1, this resolution demands that the University of Alabama in Huntsville comply with Code of Alabama § 36-26-27.1 and remove all reprimands or notes from Faculty Member’s file, including all sanctions, and including moving Faculty Member back to his previous office, in compliance with Code of Alabama § 36-26-27.1, and not use them against Faculty Member in the future, and

BE IT FURTHER RESOLVED that the President of the University of Alabama in Huntsville either explicitly codify in policy his written claim, in response to Faculty Member’s appeal, that pressure and coercion, apparently without specified limit, will replace the otherwise unbiased approach to sexual misconduct investigations claimed in prior documents and training sessions, and then make it clear to all employees and students, including to all new students, staff and faculty that join the university that pressure and coercion is the stated policy, OR rescind this terrible, unjustified, and biased practice, and codify the unbiased and non-coercion approach in the new sexual misconduct policies (interim and forthcoming permanent policy), and related procedures, and

BE IT FURTHER RESOLVED that the university cease investigating claims against faculty from policies that did not exist at the time of any alleged acts, nor investigate faculty members from policies that have expired and are no longer valid, and

BE IT FURTHER RESOLVED that when the university employs independent investigators, the Provost and the President do not completely ignore any and all findings and impose unilaterally desired sanctions against faculty members without **valid** justifications, and

BE IT FURTHER RESOLVED that the Vice President for Research be compelled provide the name of the source for the completely false complaint of conducting classified research in an unclassified office, as this source does not fall under whistleblower protections since there was absolutely no basis from which to inform the university of such violations of university policy and federal laws, and

BE IT FURTHER RESOLVED that the university, in cases where faculty members are alleged to have committed violations of policy against student who attend the faculty member's classes, faculty members will be informed that student filing claims will be notified of same, even early in the investigative process, to protect the rights of all parties in the investigation, and

BE IT FURTHER RESOLVED that the Title IX Coordinator and Provost respect and adhere to the required "timely" aspects of investigations, and cease and desist in gross violations of due process, that for example take twelve months instead of two months, as stated in the 2018 Sexual Misconduct Policy, for a simple investigation, and

BE IT FURTHER RESOLVED that UAH administrators will not use falsely justified breaches of confidentiality as a lever to coerce cooperation from potential claimants, including from frivolous and malicious claims that only serve to influence someone to file a claim before being withdrawn, and

BE IT FURTHER RESOLVED that if an administrator is to be recused due to conflicts of interest, then she or he should be recused at the start of the process, not after the administrator has exerted undue influence into the process and then recuses herself or himself, and

BE IT FURTHER RESOLVED that the university retain an independent investigator to investigate the likely case of retaliation against Faculty Member, whereby his position in service to the university, in addition to the three false allegations that are consistent with retaliation, that were alleged against him in a twelve month period while he was service to the university (sexual misconduct, breach of federal laws regarding classified data, ethics violations that were groundless and took months to resolve rather than weeks), and

BE IT FURTHER RESOLVED that the University of Alabama in Huntsville should compensate Faculty Member for the considerable stress, hundreds of hours of personal investigative activities in his defense, hundreds of hours of stress and anxiety across more than 23 months, and reasonable legal costs for the necessity of retaining an attorney in Faculty Member's defense.