

# FACULTY SENATE

## MEETING #626 AGENDA

### CHAN Auditorium

### March 31, 2022

### 12:50 PM to 2:20 PM

#### Call to Order

1. Approve Faculty Senate Meeting #625 Minutes from February 17, 2022
2. Accept FSEC Report from March 3, 2022
3. Administrative Reports
4. Officer and Committee Reports

<ul style="list-style-type: none"><li>• President Carmen Scholz</li><li>• President-Elect Joey Taylor</li><li>• Past-President Tim Newman</li><li>• Parliamentarian Mike Banish</li><li>• Ombudsperson Officer Carolyn Sanders</li><li>• Governance and Operations Committee Chair Andrei Gandila</li></ul>	<ul style="list-style-type: none"><li>• Undergraduate Curriculum Committee Chair: Azita Amiri</li><li>• Finance and Resources Committee Chair Laird Burns</li><li>• Undergraduate Scholastic Affairs Committee Chair Gang Wang</li><li>• Faculty and Student Development Committee Chair Elizabeth Barnby</li><li>• Personnel Committee Chair Andrea Word</li></ul>
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#### 5. University Committee Reports

#### 6. Business

- Title IX Sex Discrimination, Sexual Exploitation, Sexual Harassment, and Sexual Violence Policy
- Bill 458 Lecturer Bill
- Bill 469

#### 7. Adjourn

Proxies for Senate meetings must be a Senate-eligible individual from the same academic unit. No individual may carry more than one proxy.

PLEASE SEND PROXIES TO LAUREN BAKER: [facsen@uah.edu](mailto:facsen@uah.edu)

## Senate Bill 458: Inclusion of Lecturers Among Full-Time Faculty as Eligible for Faculty Senate Membership [with Bylaw Revisions]

### History

presented to FSEC, 1/22/21  
returned to originator with request for clarification on language amending by-laws  
presented to FSEC, 2/11/21  
voted to defer  
raised in FS as question of order, 2/25/21  
voted to send to G&O  
raised in FSEC as report of G&O, 3/4/21  
discussed in G&O, 3/5/21  
G&O returned to FSEC  
called for first reading, failed first reading, voted to defer in FSEC, 4/1/21  
referred to Ad Hoc Committee in FSEC, 4/22/21  
query regarding Ad Hoc Committee activity in FSEC, 9/9/21  
Ad Hoc Committee returned report to FSEC  
referred to Personnel Committee to consolidate, 10/14/21  
discussed in Personnel Committee, 10/28/21 and 11/04/21  
Personnel returned to FSEC, 11/5/21  
returned to Personnel Committee for further revisions per language in Appendix L and pending resolution/bill, 11/11/21  
passed first reading, FSEC, 12/2/21

“When half or more of the faculty at an institution may not participate in meetings of the faculty senate, when decisions about revisions to a course are made without input from those who teach it, or when the majority of a department’s faculty has no voice in the selection of its chair, something is amiss.” (AAUP Report on “The Inclusion in Governances of Faculty Members Holding Contingent Appointments”)

“Faculty must participate in the structures of their governance systems because if they do not, authority will drift away from them, since someone must exercise it, and if members of the faculty do not, others will.” (AAUP 1994 Statement on the Relationship of Faculty Governance to Academic Freedom)

Whereas the AAUP recommends in pertinent part both that “‘Faculty’ should be defined inclusively rather than exclusively” and that “Faculty members who hold contingent appointments should be afforded responsibilities and opportunities in governances similar to those of their tenured and tenure-track colleagues” (AAUP Report on Governance of Faculty Members Holding Contingent Appointments); and,

Whereas “[t]he Faculty Senate is the permanent body representing the faculty for the formulation of university policy and procedures in matters pertaining to institutional purpose, general academic considerations, curricular matters, university resources, and faculty personnel (appointments, promotion, and tenure);”<sup>1</sup> and,

Whereas other members of the full-time, non-tenure, renewable contract (NTRC) faculty, including Clinical and Research Faculty, are eligible to serve in UAH’s Faculty Senate; and,

Whereas full-time Lecturers are NTRC employees subject to reappointment and annual or biennial review,<sup>2,3</sup> with opportunity for advancement in rank;<sup>4</sup> and,

Whereas full-time Lecturers have a significant and vested interest in--as they are affected by--Faculty Senate decisions that concern issues of teaching and curricula, academic organization and administration, university finances, and matters of employment benefits; and,

Whereas the exclusion of full-time Lecturers from the Faculty Senate is antithetical to the Senate’s stated goal of shared governance; and,

Whereas full-time faculty of all ranks, including Lecturers and Instructors, are eligible to serve and vote on Faculty Senate at our sister campuses, UA and UAB; and,

Whereas Senators are elected for two-year terms (Senate Bylaw II.D) while the length of Lecturer contracts is often one year; and,

Whereas in the past years the number of lecturers continued to rise, their number doubling in some colleges (Science); and,  
Now, therefore, be it resolved that the following sections of the Faculty Senate Bylaws be changed accordingly to include “lecturers” among other full-time faculty--tenured,

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<sup>1</sup> Faculty Handbook 6.2

<sup>2</sup> According to Chapter 7 of the current Faculty Handbook, Research Faculty appointments are “for one year and are subject to annual review prior to reappointment or non-reappointment” (7.2.2.1). Clinical Faculty are subject to “non-tenure earning appointment[s] of one to three-year renewable contracts” with “contract renewal . . . always based on curricular, enrollment, and financial factors as well as on individual faculty evaluation” (7.2.2.2). Lecturers are subject to term appointments from “one semester to three years, with the initial appointment usually for one year” and these appointments “may be renewed depending on the satisfactory performance of the lecturer and continuing instructional needs of the department” (7.2.2.3).

<sup>3</sup> According to the Policy 02.01.60 Policy on Lecturers, individuals holding full-time status as non-tenure track faculty, are expected to perform service as a condition of promotion, and are protected under the

<sup>4</sup> Lecturer Series, Academic Policy 02.01.60, retrieved from <https://www.uah.edu/policies/02-01-60-lecturer-titles-and-positions>

tenure-earning, research, and clinical faculty--as these sections regard Faculty Senate membership eligibility, duties, and representation requirements per academic unit or department.

And, be it also resolved that upon final approval of S.R. 20/21-04, the following sections of the Faculty Senate Bylaws be changed accordingly to include "lecturers" among other full-time faculty--tenured, tenure-earning, research, and clinical faculty--as these sections regard Faculty Senate membership eligibility, duties, and representation requirements per academic unit or department.

And, be it also resolved upon final approval of S.B. 459 (Revision to Ombudsperson, Ch 4), that Faculty Senate Bylaws be changed accordingly to include "lecturers" among other full-time faculty--tenured, tenure-earning, research, and clinical faculty--as this section regards Faculty Senate duties in election of officers.

And, be it also resolved that the Faculty Senate president will cause the Senate Bylaws to be updated as needed upon approvals by legal counsel of S.R. 20/21-04 and S.B. 459.

Now, therefore, be it resolved that the following sections of the Faculty Senate Bylaws, as presented in Appendix L of the Faculty Handbook or, pending final approvals, as recently revised in Faculty Senate Resolution 20/21-04, be changed accordingly to include ~~"lecturers" among other full-time faculty--tenured, tenure-earning, research, and clinical faculty--as these sections regard Faculty Senate membership eligibility and Faculty Senate representation requirements per academic unit or department.~~

additional, specific lecturer positions to the body of the Faculty Senate, given the title of Lecturer College Representative. There will be one Lecturer College Representative position allotted per college. The Lecturer College Representative positions will be accorded all privileges of Faculty Senate membership, including voting, presenting bills, and serving on Faculty Senate committees, but as non-tenure, renewable contract faculty, will not be eligible to serve as Faculty Senate officers. The process of selecting a Lecturer College Representative will take place at the college level, through a nomination process in which all lecturers within a college, who have been employed at UAH for at least two years will be eligible for nomination, with the electorate including all lecturers and full-time faculty, including tenured, tenure-earning, research, and clinical faculty of that college. The length of term for Lecturer College Representatives will be two years.

20/21-04 Revision, Appendix L, Section II. Membership (Sub-sections B, C (1-3), E)

**Commented [1]:** Sanders' amendment language begins here (in red throughout)

Personnel Committee discussion follows...

Recommendation: Consider the following concerns regarding the structure of the amendment

\*Representation would be by rank rather than for dept/college as it is with all other senate reps

\*Determining a method for identifying eligibility numbers is challenging

\*Forces duplication of representation

\*Potentially forces representation by individual within unit where numbers are low

\*Need for clarity of representation and rationale regarding department/rank

B. Any full-time tenured or tenure-earning faculty as well as non-tenure, renewable contract, (NTRC, meaning research, clinical or lecturer faculty) faculty, including department chairs, will be eligible to be elected to membership in the Senate; administrators above the level of department chairs are not eligible to serve. Faculty must have two consecutive years of full-time service at UAH before they are eligible to serve in the Faculty Senate. If a formally-recognized department from the units listed in (II.C.1) is represented by two or more members, based on the algorithm described in (II.C.2), only up to one member can be NTRC, where unit staffing allows. Additionally, specific Lecturer College Representative positions will be included in the body of the Faculty Senate, with one Lecturer College Representative position allotted per college.

Commented [2]: Uncertain how to adjust this language in light of Carolyn's proposed amendment.

Commented [3]: Sanders' amendment language

### C. Distribution

#### 1. Each of the units:

- College of Arts, Humanities, & Social Sciences;
- College of Science;
- College of Engineering;
- College of Business;
- College of Nursing;
- College of Education, and
- The Library

will have a number of members in the Senate which will assure that the unit has one member for each seven full-time tenured, tenure-earning, clinical, research, and lecturer faculty members, or major fraction thereof. Units will not have representation until they have at least four members from among full-time tenured, tenure-earning, clinical, research, and lecturer faculty.

2. Each unit named in (1) which has formally recognized departments will elect its senators as follows: within the unit each formally recognized department will elect one member of the Senate for each seven full-time tenured faculty, tenure-earning faculty, research faculty, clinical faculty, and lecturer member in the department, or major fraction thereof. Elections will be held by the full-time tenured, tenure-earning, research, clinical, and lecturer faculty members of each department. If necessary, all the full-time tenured, tenure-earning, research, clinical, and lecturer faculty members will then elect sufficient at-large members to bring the total unit membership (including department selections) up to the number required to achieve the 1:7 ratio.

3. Units named in (1) which have no formally recognized departments will elect one senator for each seven full-time tenured, tenure-earning, research, clinical, and lecturer

faculty members in the unit, or major fraction thereof. Elections will be by the full-time tenured, tenure-earning, research, clinical, and lecturer faculty members of the unit.

E. Each college or academic department is responsible for determining nominees for their faculty senate membership, and is responsible to conduct elections. All the full-time tenured, tenure-earning, research, clinical, and lecturer faculty members of an electoral unit shall be eligible to vote in the election of senators. Vacancies in the representation of any department or unit shall be filled as soon as practical by the department or unit by election. **The process of selecting a Lecturer College Representative will take place at the college level, through a nomination process in which all lecturers within a college, who have been employed at UAH for at least two years will be eligible for nomination, with the electorate including all lecturers and full-time faculty, including tenured, tenure-earning, research, and clinical faculty of that college. The length of term for Lecturer College Representatives will be two years.**

**Commented [4]:** Sanders' amendment language added here.

20/21-04 Revision, Appendix L, Section III: Officers and Staff of the Faculty Senate, subsection C.

C. Election of Officers: In the spring of each year, the Senate Governance Committee will nominate from the Senate membership (from current members of the faculty senate and from newly-elected incoming members) candidate(s) for president-elect and ombudsperson. Contract faculty must have at least three years left on their contract in order to become nominees for the position of president-elect. The names of these candidates will go to all full-time tenured faculty, tenure-earning faculty, clinical faculty, research faculty, and lecturers of the university for election. This election will be conducted by the Senate Governance Committee before the end of the spring semester. As the president and president-elect serves the entire faculty, the department/unit from which the president/president-elect is selected will elect another senator to represent the department/unit during the officer's term of office.

Current Senate Bylaws, Appendix L, Section II. Membership (Sub-sections B, C, E)

B. Any full-time tenured or tenure-earning faculty as well as non-tenure, renewable contract, (NTRC, meaning research, clinical **or lecturer faculty**) faculty, including department chairs, will be eligible to be elected to membership in the Senate; administrators above the level of department chairs are not eligible to serve. **Additionally, specific Lecturer College Representative positions will be included in the body of the Faculty Senate, with one Lecturer College Representative position allotted per college.**

**Commented [5]:** Sanders' amendment language

### C. Distribution.

#### 1 Each of the units:

- College of Arts, Humanities, & Social Sciences;
- College of Science;
- College of Engineering;
- College of Business Administration;
- College of Nursing
- College of Education, and
- The Library

will have a number of members in the Senate which will assure that the unit has one member for each seven full-time tenured, or tenure-earning or NTRC faculty, or major fraction thereof. Units will not have representation until they have at least four full-time tenured or tenure-earning faculty and/or NTRC faculty.

2. Each unit named in (1) which has formally recognized departments will elect its senators as follows: within the unit each formally recognized department will elect one member of the Senate for each seven full-time tenured, tenure-earning, or NTRC faculty, or major fraction thereof. Elections will be by the full-time tenured, tenure-earning, and NTRC faculty of each department. If necessary, all full-time tenured, tenure-earning and NTRC faculty will then elect sufficient **at-large members** to bring the total unit membership (including departmental selections) up to the number required to achieve the 1:7 ratio.

3. Units named in (1) which have no formally recognized departments will elect one senator for each seven full-time tenured, tenure-earning, and NTRC faculty in the unit, or major fraction thereof. Elections will be by the full-time tenured, tenure-earning, and NTRC faculty of the unit.

4. At the start of the academic year, the secretarial staff of the Senate will determine the number of members to which each unit and department is entitled. In the event that any unit or department is entitled to additional members, they will be elected immediately and the Senate will determine by lot whether the term of office will be until the end of the first or second following year. In the event that any department or unit suffers a decrease in the seats to which it is entitled, the terms of the requisite number of senators from that department or unit, beginning with the senator with the shortest service in the Senate and proceeding in order of length of service, shall end immediately.

E. All full-time tenured, tenure-earning, and NTRC faculty of an electoral unit shall be eligible to vote in the election of senators, and the vote shall be taken by secret ballot

with absentee balloting procedures available to eligible electors who cannot be present at the time of election. Vacancies in the representation of any department or unit shall be filled as soon as practical by the department or unit by election. **The process of selecting a Lecturer College Representative will take place at the college level, through a nomination process in which all lecturers within a college, who have been employed at UAH for at least two years will be eligible for nomination, with the electorate including all lecturers and full-time faculty, including tenured, tenure-earning, research, and clinical faculty of that college. The length of term for Lecturer College Representatives will be two years.**

**Commented [6]:** Sanders' amendment language added here.

This section C will be in force if Senate Bill 459 is accepted by Legal; otherwise, the paragraph after it will be the Section C in force.

Current Handbook, Appendix L, section III: Officers and Staff of the Faculty Senate, subsection C.

C. Election of Officers: In the spring of each year, the Senate Governance Committee will nominate from the Senate membership (new and old) candidate(s) for president-elect and ombudsperson. The names of these candidates will go to all full-time tenured faculty, tenure-earning faculty, clinical faculty, research faculty, and lecturers of the university for election. This election will be conducted by the Senate Governance Committee before the end of the spring semester. As the president and president-elect serves the entire faculty, the department/unit from which the president/president-elect is selected will elect another senator to represent the department/unit during the officer's term of office.

Revised language regarding election of Ombudsperson, per S.B. 459

C. Election of Officers: In the spring of each year, the Senate Governance Committee will coordinate the nomination process from the Senate membership (new and old) for candidate(s) for president-elect, and it will coordinate nominations for the ombudsperson every other year. The names of these candidates will go to all full-time tenured, tenure-earning, and NTRC faculty of the university for election. This election will be conducted by the Senate Governance Committee before the end of the spring semester. As the president and president-elect serves the entire faculty, the department/unit from which the president/president-elect is selected will elect another senator to represent the department/unit during the officer's term of office.



Senate Bill 469

History

- presented as an amendment to S.B. 458
- voted to decouple from S.B. 458
- sent to Personnel to adjust language to serve as standalone bill in light of current and pending versions of CH 7 (S.B. 462)

Whereas having lecturers serve on Faculty Senate is tied to lecturers being able to speak freely, without undue fear of denial of academic freedom via non-renewal;

Be it therefore resolved that:

That the Faculty Handbook revision submitted (S.B. 462) be amended to include the following addendum, entitled "Experienced Lecturer Non-Renewal Proviso" which states:

Lecturers who, for the 4 most recent years, have had continuous service as a full-time member of the faculty are subject to the following provisos regarding renewal/non-renewal of service.

- a. Such lecturers will be notified at least one year prior to the end of their current contract of any University decision to not renew. If not so notified, such lecturers shall be automatically renewed for one year .
- b. Such lecturers being non-renewed will also be given a set of reasons, with supporting documentation, showing the reasonable reason(s) for non-renewal, where exercise of academic freedom is not considered to be a reasonable reason for non-renewal.
- c. Such lecturers being non-renewed will be allowed the option to present a case countering the non-renewal reasons at a hearing to be held not less than 2 weeks from the notice date (and not more than 5 weeks from the notice date), with the hearing group made up of a representative selected by the Provost, the faculty ombuds, and a faculty senator selected by lot from those serving on the Faculty Senate Personnel Committee who are not in the unit of the party pursuing the case (or the Senate President if no Personnel Committee members are available/eligible). The unit head will also attend, but not vote, and present the case for non-renewal. Hearing particulars include the following 4 items.
  - c.1. The hearing group will be allowed to ask questions of the party and of the unit head.
  - c.2. The hearing will last for up to one hour, with each party given at least 15 minutes to present a case and with the balance of time reserved for the questions and answers.

**Commented [1]:** We have been asked to review/revise the wording here in light of current handbook protocols in lecturer appointment/reappointment, and in light of changes pending in the revised Ch 7. I have copied in the relevant text from the current Ch 7 (see at the bottom of page).

The revision to Ch 7 appears not to have the one year grace period on renewal for lecturers. It is also worth noting that none of the NTRC faculty appear to have that protection in the original Ch 7 or in the revision.

Note: given that a revision of Ch 7 is pending administrative review, we need to discuss the process for revision of SB 469 to ensure its alignment moving forward.

**Commented [2R1]:** Issue of due process for all NTRC

**Commented [3]:** Consider replacing "Lecturers" with "NTRC Faculty"

**Commented [4]:** NTRC

**Commented [5]:** NTRC?

c.3. The hearing group shall prepare a recommendation within one week, presented to the Provost and Cced to the unit head and the party who asked for the hearing.

c.4. The Provost shall then decide within one more week if the party shall be renewed or non-renewed, with reasons given in writing to both the party and the unit head.

**Current Handbook** (<https://www.uah.edu/faculty-senate/faculty-senate-handbook?view=article&id=2220:chapter-7&catid=164:facsen#p7.2.2>)

### 7.2.2.3 Other Full-Time Non Tenure-Earning Faculty

**Term appointments** are non tenure-earning full-time faculty appointments of limited or specific duration. Term appointments are for a delineated period of time and convey no right or expectation of employment beyond the period stated in the letter of appointment. Term appointments are normally for one academic year but may be for longer or shorter periods as detailed in a letter of appointment. (Notice of non reappointment may be provided at any time prior to the end of the specified term). Term faculty are eligible for selected university benefits and are expected to participate in the academic programs of the unit.

**Lecturer** is a term appointment for full-time, non tenure-earning faculty who are appointed to serve special instructional needs in academic departments. Lecturers are eligible for selected university benefits and are included in considerations for merit salary increases.

Lecturers must have completed at least 18 graduate semester hours in the teaching discipline and hold at least a master's degree, or hold the minimum of a master's degree with a major in the discipline in which the lecturer teaches. Any exceptions to these criteria must be justified and documented.

Letters of appointment for lecturers define the length of the appointment that may be from one semester to three years, with the initial appointment usually for one year. Offer letters state that tenure cannot be earned in the position. Appointments may be renewed depending on the satisfactory performance of the lecturer and continuing instructional needs of the department. Lecturers are evaluated in the spring semester of the last year of their appointment term by the chair who consults with the tenured faculty in the department and

makes a recommendation to the dean on continuing employment or non reappointment. Lecturers who have served continuously for at least four years must be given one academic year's notice prior to non reappointment.

The teaching load for lecturers is normally 24 semester hours in the academic year with additional service expectations in student advising, participation in departmental programs concerned with student activities and instructional matters, and other responsibilities as assigned by the chair of the department. Teaching requirements may be adjusted for involvement in important projects or special activities of value to the department and the college. Lecturers do not participate in departmental processes concerning appointments, reappointments, promotion, and tenure.

**Commented [6]:** This is a sticking point and is not consistently understood across campus. It is not clear whether this has been followed - just don't know... It does not appear in the revised version of Ch 7, which is currently with the administration.

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**FACULTY SENATE MEETING**  
**February 17, 2022**  
**12:50 P.M.**  
**SSB Conference Room 3<sup>rd</sup> Floor**

- ***Present: Tobias Mendelson, Anthony D’Costa, Dilcu Barnes, Laird Burns, Jose Betancourt, Angela Balla, Kwaku Gyasi, Andrei Gandila, Kristin Weger, Kyle Knight, Mike Banish, Rui Ma, Maria Pour, Gang Wang, Azita Amiri, Miranda Smith, Larry Carrey, Jeff Weimer, Harry Delugach, Gang Li, Andrea Word, Sarah Dyess, Ron Schwertfeger, Carmen Scholz, Joey Taylor, Carolyn Sanders, Tim Newman***
- ***Absent with Proxy: Sophia Marinova, Fat Ho, Donna Guerra, Vineetha Menon***
- ***Absent without Proxy: Deborah Heikes, Emil Jovanov, Bryan Mesmer, Sarma Rani, Chang-Kwon Kang, Susan Alexander, Beth Barnby, Amy Hunter, Lori Lioce, Leiqui Hu, Jerome Baudry, Sivaguru Ravindran, Themis Chronis, Michael Crow***
- ***Ex-Officio: Interim Provost Bob Lindquist***
- ***Guest: Rhonda Gaede, Trustee Ron Gray***
- **Faculty Senate President Carmen Scholz called the meeting to order at 1:00 pm.**
- **Trustee Ron Gray**
  - Thank you for allowing me to come. It is an honor for me to be here today. Our BOT consist of 15 trustees among the state. I am from Huntsville. I am a businessman here. The two fifth district trustees are myself and Britt Sexton. He normally attends with me but had a conflict for today. I asked Trustee Mauldin to meet with us today from Tusculumbia. We meet annually with you to make sure that we are meeting needs. This campus is well represented between us three.
  - I will report quickly on the rest of the campus. We had a board meeting two weeks ago in Birmingham. Our system has never been set up as well as it is now. Going forward, our future has never been brighter. Those comments reminded me of this campus. This campus is the focus of our Board of Trustees. Our interest as never been lessened. We recognize that we have to do everything that we can to keep this campus in the focus.
    - Mike – For those that don’t know, we recently negotiated the ELSEVIER contract. It is now a shared resource. I have very strong suspicions that there was some strong arm twisting that allowed that to happen. We really do thank you for that. It makes all the campuses stronger. It takes time and we understand that. This is really a credit to you all.

- Trustee Gray – If you didn’t have other information, you would ask what is the benefit of UAH being a part of the system. The board made a conscious decision to make sure that the three campuses and health systems benefited. We have an excellent governance relations team. Your campus and our system are better represented in Montgomery and Washington than our peers are by a lot. We lead the pack in representing higher education.
- Harry – We had a presentation from our Chief Financial Officer. We had a very large cash reserve it appeared. I was disappointed to see that, but no salary raises. We have received a memo this week for a one-time money allocation. We are extremely grateful that this one-time bonus has happened. The CFO stated that he couldn’t commit to recurring fund, i.e. salary raises, because the board would jump down his throat from an irresponsible action.
- Trustee Gray - I am sure Todd didn’t use those exact words. The terms of salaries are at the recommendation at the President. As soon as Dr. Karr took over, he addressed these issues. The board approved it right off. Let me assure you that your FSEC conveyed their concerns over faculty salaries. We monitor the budget. The salary budget does come to us from the President.
- Carmen – We have gotten ourselves in a pickle over the past few years (with scholarships). I hope the board helps us get out of that and doesn’t allow the same mistakes to be made. Going forward, we don’t want to repeat past mistakes.
- Joey – With House Bill 312, the language talks about institutions disciplining faculty if they violate that bill. Does the board have any position on this bill or what it proposes? Will the board and administrators support faculty in this matter?
- Trustee Gray – The board has been actively informed and is working the issue through. We knew this was coming. We are running a balancing act with the legislature. We worked as hard as we could to have the bill address those legislatures riding it. Clay Ryan (System Vice Chancellor for External Affairs) has been trying to thread that needle. The board strongly supports academic freedom. The focus isn’t on higher education but K-12 and taking control of those curriculums. No one on our board would advocate for limiting teachers. I would say in terms of recruiting diverse faculty and students, the board has gotten behind that.
- Carmen – Passing bills like this, keeps Alabama at the bottom in regards to education.
- Trustee Gray – I can’t answer for our legislature. We have been affected financially. We have had a funding disparity among the campuses and Auburn. Improvements were made to Auburn. The State Legislature will not listen to us on top issues.
- Miranda – We know that in the College of Nursing, the faculty pay is lower than any other colleges. We all want increases. We are losing great faculty because they can make more money somewhere else. The concern is that we aren’t getting the most qualified faculty because the salary isn’t comparable. How can we keep the nurses and give them a fair salary?
- Trustee Gray – Faculty salary is the responsibility of the President and Provost. The one sitting in the Presidents chair is knowledgeable in how to grow the faculty. I will convey that concern to him. It is completely appropriate to remind us each time. The President comes to your meetings so reiterate those concerns. The board is supportive of it. I was shocked at the nursing salary. It seems unnaturally low.
- Miranda - We had a great professor leave to become a traveling nurse. We are realistic but she was a great professor and great with students.

- Carmen – If you explain to the faculty what is going on and show what the budget looks like, they will understand. Treating us like children and just saying no, that has left a sour taste.
  - Jeff – I have a question about the identity the board sees about UAH. When I came, we were the best regional commuter college in the southeast but we have dropped even as we moved to a research grade college. We would not ever stand the chance to start a medical school here and compete with UAB. It has taken 30 years to get a Chemistry PhD started. What does the board see as they look at the three campuses? Should we start announcing ourselves as the best engineering college?
  - Trustee Gray – The board’s vision is this university should be designed to meet all needs locally. We want it completely well rounded. If you look at the campuses, UA is complete and well rounded. UAB is focused on medicine. UAH is filling the role of technical, scientific, engineered bases institution. Our board does not turn down a program because it exists somewhere else. I take great pride in being a graduate from UA engineering but Auburn has traditionally been recognized as the dominate engineering school. We don’t want to desensitize in any way.
  - Jeff – Thank you for that. We should help support our sister college departments.
  - Carolyn – In all my years here, I have had very little confidence in Arts and Humanities being marketed well. I would love to see if it is dollars or clout in our marketing unit. It seems UAH as a comprehensive institution has never been done well. It just seems good marketing has been lacking.
  - Trustee Gray – That is a good point.
  - Interim Provost – Trustee Gray will not be able to attend the April meeting due to his son’s marriage.
  - Trustee Gray – I have never missed a meeting. I do have a very good excuse. I might very well Zoom in depending on my Friday morning activities. I have enjoyed this. Thank you for your leadership on campus.
  - Carmen – I would like to get the meeting report from January accepted. Can we do that without a computer?
- Mike – I move to accept the report. Tim seconds.
- Carmen – All in favor of accepting.
    - Ron – With the January FSEC report, on page 3, Chih Loo’s name is misspelled. Can we get that corrected?
    - Carmen – All in favor of accepting as modified. Ayes carry.
- **Approve FS Minutes from January. Andrea Word moves. Laird Burns seconds. All in favor. Ayes carry.**
- **Accept February FSEC Report. Laird Burns moves. Carolyn Sanders seconds. All in favor. Ayes carry.**
- **Administrative Reports**
- Interim Provost Robert Lindquist
    - Blue Lights – Eight are going down and will not be replaced. No one uses the blue lights. There is an app that allows this to be done through the phone.
      - Carmen – Why don’t they take all down?
      - Interim Provost – They take them down as they fail.
    - Provost Search – We will have six candidates come to campus starting next week. They are giving a presentation. There is some concern about making it public. You will have to go into myUAH and look there. One o’clock every day either in SSB 112 or Charger Theatre they will give a presentation. Everyone in the senate is welcome

to stay at 2 for half an hour to ask question but only if you are in the senate. It is a very tight schedule. We are fearful of losing candidates due to ongoing other searches, so we are trying to get these in quickly for an offer to be made.

- On Monday Tuscaloosa removes all COVID mandates, masking, etc. I think per their dashboard they have 24 positive cases. UAH is sitting around 24 positive students and 4 faculty. As far as positive, we are testing less. There will be a lot of pressure. We need a representative on the Communicable Disease Committee. We need your voice heard. No one is going to be happy in these situations. We have no intention of following UA instantly.
  - Laird – I just saw on the news that Madison City is now optional.
  - Interim Provost- Some school districts are making it optional, some are not changing.
  - Harry – They have decided their campus is their own county. You stated that we would follow ADPH per county but Tuscaloosa is at 40% still, so why no masks at UA?
  - Interim Provost – UA has considered themselves a “county” (the campus) and their numbers are down. Yes, you could say they are ignoring or fudging the rules.
  - Joey – I do want to warn that if we go maskless, with the clinic being on the third floor of an academic building, that could exacerbate the issue.
  - Jeff – I have a question back to the blue light. In this line that we are now going to cellphones as the blue lights, I want to make sure that you do a check on campus the strength of signal. I have lost all signal in my building to call out. If any case, the request would be to check that.
  - Angela- I understand the wish to ask IT. They are understaffed. I have audio issues that were reported last semester but haven’t been addressed yet.
  - Interim Provost – That is within ETL. I think they are down to one staff. We have all the applications out. We have 30% positions unfilled and 20% out in quarantine.
  - Carmen – I want to chime in to what Angela stated. In our building, when you try to record Panopto it starts to make noise and will not work. We are in critical need of IT people.
  - Rhonda – ETL just hired two new people. Hopefully they will be able to make headway in classroom support. We have been spending money on contract support. We are also having a meeting with people on campus about student employment. We are looking to see what we can do to help.
  - Ron – I just saw a news story about Auburn getting a new research lab facility here in Huntsville.
  - Interim Provost – We found out about it through the grapevine. They will have a campus on research park, since they bought the LogiCore building. The problem is that can cause us problems. We have quality people here and we know what we are doing, but it is a threat.

➤ **Officer/Committee Reports**

- Carmen Scholz, President
  - I am the representative for UAH to the Federal Demonstration Partnership. I just wanted to give you the key points. I have talked about foreign influence in research.

It is still high on the list. We had a keynote speaker from MIT where she is the VPR. She talked about the future of academia and microacademics. That was frightening. The suggestions made: going away from traditional degrees to certificates. I know that we have had this discussion before at my end of the campus. I think this is dangerous for universities of our size. Smaller schools like us will be belittled or diminished further while the MIT's of the world will survive. NSF was discussed. A new directorate was established. NSF has chosen to neglect basic research. Who pays for the first step?

- Joey Taylor, President-Elect
  - I did attend the virtual board meeting. The most interesting was the financial committee meeting. We have performed some bond restructuring. They are continuing to pay off debt, \$10M a year.
  - Mike – The building bond debt?
  - Joey – Yes.
- Mike Banish, Parliamentarian
  - Have being President and Past President a couple of times. I am on the Lobbying Organization by Colleges at the individual level, the Higher Education Partnership. While we have had a couple of people attend in my place, it typically is the President or President-Elect. Joey would you like to take over for me?
    - Joey -Yes.
    - Angela – Are they basically buying the legislature with a beach trip?
    - Laird – No. Auburn has turned this into a science.
    - Ron – The system helped all three schools renegotiate. They are all still separate.
    - Carmen – Ron was made aware of that.
- Andrei Gandila, Governance and Operations Committee Chair
  - No report.
- Laird Burns, Finance and Resources Committee Chair
  - On the budget side, we have spent some time with Todd. We have a salary increases coming. We did go through the RCEU. We have upper 20's in candidates. We funded everyone that has applied, we have more money than applicants.
- Andrea Word, Personnel Committee Chair
  - We will go over Bills 458 and 469. I did want to raise what Joey asked Ron Gray. From the Personnel side, on the HB 312. The bill authorizes institutions to take punitive action against professor in the classroom. I think it is important for the institution to say they will not fire someone from teaching their content.
  - Joey – That is why I asked what leeway there was.
  - Carmen – I would like to urge us to come up with a resolution. We should and must speak. This is a southern state, very conservative. We have to draw a line in the sand.
  - Andrea – I don't think K12 is the goal. They are already what they are. Culturally, I think higher ed is the goal.
  - Joey- There are multiple bills circulating right now.
  - Andrea – There are several bills tied together. There are forces at work on how we deliver.
  - Carmen – I think it is necessary for us to speak.



- Mike – We have a meeting with Chih Loo on the 24<sup>th</sup>. I will send out a note to the faculty. We will find out why we can't see the numbers. If you want more transparency, you need to show up.
    - Tim – Is it a one o'clock?
    - Carmen – It clashes with the Provost presentations.
    - Joey – They are recording the presentations.
    - Tim – It would be in poor form to not be at the presentation at 2.
    - Laird- I would encourage you to come to these presentations. Before there have only been about two or three in attendance.
  - Carolyn Sanders, Ombudsperson
    - No report.
- Carmen Scholz, President
  - I sent you a notification from ETL that states Panopto stores these BETA and then they delete them according to the schedule. ETL wants to know if there are any issues with this schedule? After they realized how much storage they needed, permanent is not an option. It doesn't keep you from keeping the recordings on your computer. Is anyone opposed to this? I take this as an agreement.
  - Second, you heard the Provost mention about doing away with mask. By a show of hands and speak for your colleagues, who is in favor of doing away with mask? Then I ask who wants to keep mask. Who is in favor of following Tuscaloosa after Spring Break?
    - Miranda – There has been a decrease in COVID rates. I work in the Huntsville ER. We are swabbing 5-6 a day. Those I swabbed were flu. I don't wear N95 all the time. My husband had it about a month ago. I did not take precaution in my home. I am vaccinated with booster and did not get it.
    - Angela – We are still at a 35% positivity rate for Madison County. That is assuming people are testing at the right place or just at home. What criteria needs to be in place?
    - Carmen – You want to say the decision needs to be made on the positivity rate?
    - Harry – I have been following numbers since March 2020. ADPH has clear guidance that Tuscaloosa is ignoring. Madison County is 21% today. If you meet both thresholds, you move down. We are about 7-10 days away from getting the second highest level. If we got down to the moderate level for two weeks, we could release the mask requirement. I am comfortable using that data.
    - Carmen – I need to have a sense of the faculty on how it is perceived. I understand your argument.
    - Harry – I would be fine doing away with mask. Solely due to the fact that most have either been vaccinated or gotten COVID and have immunity.
    - Jeff – How many are sensing that their faculty are adamant about dropping mask.
    - Member – I wanted to say it is a difficult decision to make. What is the push to do away with mask?
    - Carmen – The students are pushing for it to go away.
    - Member – Why not ride it out until the end of the semester, then start fresh in fall.
    - Andrea – If we establish a policy, why can't we point to it and follow it. Why do we have to question a policy in place? My feelings don't matter. What's the point of having a policy? Let it play out. Harry is right in a couple of weeks we can probably drop it.
    - Carmen – I was told to just get a sense.
    - Harry – I would be happy to poll my faculty.

➤ **Motion to adjourn 2:25 PM.**

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**FACULTY SENATE EXECUTIVE COMMITTEE MEETING**

**March 3, 2022**

**12:50 PM to 2:20 PM**

**MSB 109**

***Present: Tim Newman, Joey Taylor, Carmen Scholz, Mike Banish, Andrea Word, Andrei Gandila, Carolyn Sanders, Gang Wang***

***Absent: Azita Amiri, Laird Burns, Elizabeth Barnby***

***Ex-Officio and Guest: President Dr. Karr, Dr. Jon Hakkila***

- **Faculty Senate President Carmen Scholz called the meeting to order at 12:50 PM.**
- **Meeting Review:**
- **Administrative Reports**
  - President Karr
    - I wanted to check in with you on mask. A switch got tripped when Tuscaloosa decided to get rid of mask. I really wanted to get feedback on that. The students were about 75% in favor of dropping. Staff were about 60% in favor of keeping mask. Faculty Senate were in favor of getting rid of them. Huntsville City School is dropping mask. I don't want to do anything right now but look at numbers through the CDC. We are still in orange. When we slip down to yellow, I will strongly consider dropping mask.
    - I want to tell you how much I appreciate your attendance with the Provost interactions. I was disappointed there wasn't more faculty in attendance. I would really appreciate you to encourage the faculty to view those and complete the assessment online. I can work with these candidates, but I need the faculty onboard as well. I think you told me, Carmen, that someone said they didn't want us to settle for the sixth best candidate. I think once I receive the assessment back, I will be able to get the top three. Then we may bring them all back to campus. The next step is fuzzy but depends on the feedback.
      - Andrea – Can you tell us where we are right now in regard to response?
      - President – I am not engaged in that. Bob may be able to give you that. I think the last time I spoke with him that we had received about 50 faculty surveys on Provost candidates so far.
      - Carmen – That is only 50 total. The deadline is being worked on to be extended. I want to speak to the fact that so few attended and responded. It is in regard to how thin the faculty are stretched. It is an indication of what is going on campus. I do want that on record.
      - Mike – I am going to piggyback on what Carmen said. In your case, when you tell me that you are looking for faculty feedback, I believe you. I think

you are fighting an uphill battle right now. I will encourage my faculty to watch the videos.

- President – Thank you. It is an important decision, an important person. I want someone that the faculty believes is the best. I commit to you that I will look at it. It isn't a popularity vote but we want someone who people feel good about.
  - Carolyn – I think the extension of deadline for these surveys will make everyone feel good. The end of February was very tough for faculty attendance.
  - President – If we have a solid pool of candidates, we aren't the only game in town. We do have spring break coming up. We don't want to wait to make an offer and then the candidate is off the market. I am not saying that we pushing a vote but we don't want to push this out.
  - Carolyn – I appreciate that. Before (with previous searches) we haven't been heard.
  - President – I need people to do serious evaluations. I want someone that everyone can work well with.
  - Tim – I was on the other part of campus and saw all the fences (for construction of the Altenkirch Greenway; do you know how long they will be up?
  - President – I have no idea. I think they are splitting the greenway around the library. It should be the final phase. I think they are putting recognition plates in behind my office. I have to leave today to speak with the Retirement Association. I will be attending an alumni event this evening. We need to work to get the alumni involvement growing.
  - Tim – We took all the sports hall of fame photos down in Spragins Hall. Apparently, they are aware that happened. I spoke to Dr. Dawson and they were found in a box in a closet.
  - President- I will get on that. Those are important.
  - Carolyn – College of Business does very well in acknowledging alumni. That is the best model for every college and department.
  - President – I agree to that. It is very important. I don't see how you ever lose when you acknowledge achievements of people. It is important even at the student level. It makes a difference.
- Dr. Hakkila
    - Last semester we found out that no one is following through with any deadlines. We were in crisis mode. The Library Dean pulled us aside and said that thesis and dissertations were missing. Susan Knight was on board with helping us find them. We found some dated back to 2013 in the queue. We are working to get those uploaded. I was receiving forms to sign without the theses and dissertations. There were huge mistakes on these. We rebooted the copy-editing process. We realized people were waiting on these students to graduate. Spring is our trial run on some changes. It has been even more difficult because the person who had taken this on decided to retire. I will do it if I have to. There is enough time to copy edit these by end of semester. We can't make any promises if they miss deadline. Students need to know that if they submit late it will be up to the registrar, not us. It will be awarded next semester. The deadlines as published are: Defense is March 11<sup>th</sup>.

Submission to College Dean is March 28<sup>th</sup>. Realistically, the draft needs to be to the committee before the defense. There is another date, April 6<sup>th</sup>, for our office. The copy editing is a process with the student. I have had a couple that were good at first run but most take about three times. This should give us enough time before graduation. There is another dates in here. The Registrar has a deadline that she wants the name of student, dissertation, and name of advisor.

- Carmen – I am living this now with a student. We understand your deadlines. The actual process to us is unclear. My student was not allowed to bring his thesis to the Dean for his signature. Only the staff assistant can sign the form without seeing the thesis. The staff assistant, not the student, submits to you for signature without the thesis. I have not figured out how to insert the signature on the pdf. It needs to come from your office that the Dean shouldn't sign off without the thesis. You can see the frustration among the students.
- Joey – Is there something that we can put out to all Deans? Like a blanket message so that the deans are on the same page with process? In our college we have no issues with this.
- Jon – I was under the impression that when it was submitted to the Dean the thesis went with it.
- Mike – That is how we do it.
- Carmen – It could not even be a Dean issue. We do have staff assistants involved. The student could be told they are not allowed to communicate.
- Jon – I read every dissertation at College of Charleston in my role there. I feel like this is a responsibility we have to our students. This isn't just a hand waving exercise. This is what I am doing when I am copy editing. This will sit with them for the rest of their lives.
- Mike – There was a period of time that the library made hard copies and binds them. I think one thing that happens there is we don't do that anymore. Why is it important to have one-inch margins if it will never be published?
- Jon – Someone agreed that it would be nice to have these printed in the library.
- Joey- Carmen and I talked with David Moore (Library Dean) about this.
- Carmen – It started to go bad when ProQuest started going down. Some of the missing ones are from my students because I told them that we do not go with ProQuest.
- Carolyn – Thank you for working this. You said it was a priority and I appreciate it.
- Jon – The formal process is it goes through Grad Council. I would really like to see great relationships with Grad Council and Faculty Senate. I want everyone to be informed with processes and give feedback. We want the institution to go the way you want it to. If you don't hear from your Grad Counselors you need to get in touch with them.
- Joey – When you talk about copy editing what does that entail?
- Jon – It is formatting as well.

- Carmen – We want you to know where all the problems are. We appreciate all your efforts to turn this around. We know this isn't a simple fix. If you give us guidance on the deadlines.
- Tim – I think there has been a lot of confusion about online submission. My student usually asks a student before. No one on campus really knows how to help them.
- Carmen – There is no formal mechanism where the thesis is being uploaded and transferred to you.
- Jon – That is good to know.
- This now is the biggest problem. It took months for me to figure this out. The university does not have a Graduate Student dismissal policy. There is no way to get rid of a student once they are on the system. I had to walk through this with a bunch of folks. This chart shows the layout of what is actually happening. If nothing bad happens and they keep their GPA up, they move across to graduate.
- What happens if the GPA drops below 3.0? The Registrar sends a list of students that are no longer in good standing. The total was 150 students. That is horrifying to me. The reason there are two list is because the College of Education need a 2.5 to stay in good standing. We are supposed to send out a notification once we receive the list. This notifies they are on probation. We haven't done that because we didn't know that we needed to. If the Grad School notifies the department, an action plan is created and approved by advisor then sent back to Grad School. There is usually a well-defined process of what happens when a student goes on the list. It has become an overwhelming job with 150 students with our number of staff. If the student raises their GPA, they roll back up to good standing. If they don't raise their GPA, dismissal would usually kick in. However, we don't have dismissal. You then go to the orange back. This is the most frightening thing to me. After three semesters of non-registration, the Registrar inactivates student and cancels email. Student is inactive not dismissed. They can reapply. They still exist. No one ever gets dismissal. If an international student falls into this, then they are inactivated and sent back to their country but still a student. If a student raises their GPA and doesn't satisfy their plan, we aren't following on that. In the grad catalog, it says if the student doesn't perform well, they may be dismissed. Last year, a student was dismissed because they found out it was academically impossible for them to graduate. There are a bunch of problems here. We never know how many students each program has. I found a student that recently reapplied that was in this category.
  - Mike – The problem here in some of the programs is the clientele we are dealing with. This was probably put in place to be kind to that clientele.
  - Jon – I agree.
  - Mike – We all have these students that get involved in big new programs on the Arsenal and have no time for this.
  - Jon – These rules are set up for long-term part-time students. The full-time students are not being protected by these rules.
- I have a sketch of a skeleton of what are best practices. This is what other institutions practice. I am not saying use this, I am just giving an example that can be edited. This gives the student a letter saying that you have "n" semesters to figure this out and recover. If they do recover, they go back up. If they don't, then

they can go for an appeal. If they student doesn't meet the conditions, they get dismissed. You will then either have to reapply. The program can decide if they will let them back in with caveats. It isn't a free ride, it will be stricter. The other possibility is then the student can apply to a new program. We could then waive all grades and start from scratch. There are lots of ways to do this. There is a direct path from dismissal to good standing.

- Andrea- Do we already have the ability to replace one grade?
- Jon – Yes.
- Mike – With the arsenal and contractors, one thing I would like to see is a layout of the student getting the email, the Chair and Dean, and the Program Coordinator. The main thing is that it really is reported. Who really is interacting with the student?
- Jon – That is part of the path. At my last institution, it was copied to all these. Once the student was readmitted, we made the student come into the office in person and sign. We made is serious they knew what conditions they are being readmitted.
- Carmen – How can my students be failing these classes and I not know about it? You have a lot of grad students that are part-time. They are not physically on campus and being monitored. Who has the time to sit and monitor these?
- Jon – I first looked at who are the Program Directors? It isn't consistent across campus.
- Carmen – We don't even respond to applications because we do not see it.
- Jon – I don't see this as being punitive. We are trying to help the student. How are going to know? We need these triggers built into the system. Of the 150 listed, there were GPA's 0.06. This is someone who has been here a long time. Why is that student here?
- Mike – We have an issue with undergraduate too. They stop coming to class, most are for a seemingly good reason. If they let me know, most of the time they don't, we could see about getting a withdrawal. In terms of these F's. We need to be proactive before it is an dismissal.
- Jon – All of this is negotiable. I am here because I want you to know that you are in influential places to talk with your colleagues. I will come to your departments; I will talk with the full senate. We all know there is a problem. I want as much agreement across campus as I can get.
- Andrea – Would it be possible to send us a draft to take to our department? Would you want that much feedback?
- Jon - I would filter it through your Grad Counsel representative.
- Andrea – They have already looked at this?
- Jon – Yes.

➤ **Officer/Committee Report**

- Tim Newman, Past President
  - No Report.
- Mike Banish, Parliamentarian
  - No report.
- Carolyn Sanders, Ombudsperson
  - No report.

- Joey Taylor, President-Elect
  - No report.
- Andrei Gandila, Governance and Operations Committee Chair
  - It is election season. We are in the process of electing new senators.
- Gang Wang, Undergraduate Scholastic Affairs Committee Chair
  - No report.
- Andrea Word, Personnel Committee Chair
  - No report.
- Carmen Scholz, President
  - No report.
    - Carolyn – Especially in light of lecturers being represented in the senate, how much latitude does governance have in regards to elections.
    - Tim – We have to follow bylaws as written.
    - Carolyn – So they cannot participate next year?
    - Laird is not here. I want to point out the RCEU has money for 35 and we only have 26 participants. The application process has gotten so complicated. I pulled out of the program because of the process. The process this year started too late. If we don't improve money will vanish. I would like to urge the Finance Committee Chair to simplify this.
    - Andrea – Susan Alexander sent an email on February 24<sup>th</sup>. They were going to contact those who in the past had done it. We were going to try and simplify this but we were late this year.
    - Carmen – I want to make it clear that it is urgent to simplify this process.
    - Andrea – There was a proposition that we do this through a survey.
    - Carmen – At what point?
    - Andrea – That is your proposal.
    - Carmen – As long as it isn't longer than one page.
    - Joey – There was so much work that Dave Cook and Bernhard Vogler were doing on their own on the back end. I felt like Dave figured out how to do a google form for the student and that would populate spreadsheets so that Bernhard wasn't having to do everything manually. They did a lot of work on the back end of the proposal process and I think some of this process was aimed at trying to more efficiently get that info together so they didn't have to do so much themselves. I don't know if it has gotten more complicated.
    - Carmen – Whatever it is it needs to be more workable next year. Andrea you are working on a resolution on House Bill 312. We make a stand as UAH Senators. I do not want a lengthy discussion on the wording. It is important we speak to the fact.
  - Where is Title IX?
    - Andrea – It is on the agenda for this time. We split the documents with Beth.
  - Who has the Credit Hour Contact Hour Policy review?
    - Joey – It was here in February. That is all I have?
    - Tim – It went to Curriculum.
  - The President spoke to the mask and we must accept where we are.
  - Is there an interest to bring Kristi Motter to full senate?
    - Joey – Would it be productive?



- Carmen – Do I sense to wait and place it on the next senate?
- Andrea – I think that we can table it.
- Carmen – Doing it in the fall will show the importance to the new Provost.
- Mike – We still don't have budget transparency. I want to see the numbers for this category.
- Carmen – Ok, we push this back until fall.
- Lecturer Bill will be back to the senate on the 31<sup>st</sup>. Can I get an unofficial feeling from you about if we have reached the finish line?
  - Andrea – I think we will have a discussion. Personnel had discussions that I pushed to the senate.
  - Carolyn – What are the discussions in regard to?
  - Mike- There are two departments in two different colleges that have heavy lecturer concentration, Math and English. Both of those departments have more lecturers than Education, Nursing, Business, and Engineering. If you take those two department out of the college, they have more lecturers than the rest of the college. Are we talking about the college not having the adequate representation or are we talking about the lecturers needing representation? I think that is something we haven't addressed yet. Is it departmental representation or lecturer representation? There are some cases that we could run into that you actually have to combine colleges to get to the seven (regarding Carolyn's proposed amendment to Bill 458).
  - Andrei – The document you sent today. It looks here we aren't even able to change much. We need to have consistency across the campus. Is all the discussion and effort being for nothing?
  - Tim – I've passed around the message that Bob Lindquist received from Office of Counsel's Mike Huff. Huff's position would be a profound change to business at UAH. When the Policy on Policies was instituted, the President stated it was for policies only--that that was a new, parallel track to the track for the Handbook. Only the numbered policies, not the Handbook, was to be covered under the Policy on Policies. When Carmen and I talked with the Chief Counsel for the System and Mike Huff in 2021, they said that the Senate can change its bylaws without Administrative involvement as long as it is in line Board Rule 108. So, this message from Mike Huff is a step back from that statement in 2021. For policies, the President can suspend any policy at any time. If the Handbook is covered by that, then what does that mean about your tenure? Chapter 7 of the Handbook can be suspended at any time? What does that say about House Bill 312? What prevents administration from doing away with Chapter 7? It seems like this sets up the potential for strong man politics. Rules are then only as good as whoever we have at the top. We have no protection anymore. This is really something. We need to address this as a Senate body.
  - Mike- One thing you have to make perfectly clear is that we understand that anything we do goes through an approval process. Yes, it will go to the Provost, President, Legal, and BOT. The handbook cannot be suspended as the Policy on Policies states. The President has pointed out that the

handbook was not a part of that policy. The fact is what was left off was not necessary as we were told.

- Carmen – In this letter, Huff demands the lecturers be given Senate membership like UA and UAB. It is not his responsibility.
- Andrei – It sounds like Tuscaloosa and UAB want us to join in so that we are consistent?
- Carolyn – When do we bring the President in on these discussions? I am sure the letter is warranted but when does he step in and go back?
- Tim – I think a letter is warranted. It will be on record.
- Joey – Who does this go to?
- Carmen – President/Provost and copy Huff?
- Mike – Once we get the letter laid out, I think you need to talk with Ron Gray.
- Carmen – The letter will need to be needed before April 8<sup>th</sup>.
- Mike- I don't think it will be needed for that meeting. I think you need to have a conversation with them letting them know where it is going. This is such a far reach for conducting normal business?
- Joey- I think this interpretation of our by-laws is intentionally antagonistic.
- Mike – We have never done anything to them that would be considered hostile.
- Carmen- We have an agreement that a letter needs to be written.
- If I could ask everyone as we bring back the Lecturer Bill, we take a responsible discussion from the FSEC and not derive a new discussion.

➤ Meeting adjourned at 2:20 PM.

## **TITLE IX SEX DISCRIMINATION, SEXUAL EXPLOITATION, SEXUAL HARASSMENT, AND SEXUAL VIOLENCE POLICY**

### **PURPOSE**

The University of Alabama in Huntsville (“UAH” or “the University”) has developed this Title IX Sex Discrimination, Sexual Exploitation, Sexual Harassment, and Sexual Violence Policy (the “Policy”) pursuant to and in compliance with Title IX of the Education Amendments of 1972 and its implementing regulations (collectively referred to as “Title IX”). UAH is committed to providing an environment that respects the dignity of its students, faculty, and staff and is free from all forms of sex discrimination, sexual harassment, and sexual violence, which, among other things identified in Section III and Appendix 1 to this Policy, includes gender-based assault, harassment, sexual exploitation, dating and domestic violence, and stalking, as well as discrimination based on sex, gender, sexual orientation, gender identity, gender expression, pregnancy, and related retaliation (collectively referred to as “Prohibited Conduct”).

The University expects individuals who live, work, teach, study within, or visit our University community to contribute positively to the environment and refrain from behaviors that threaten the freedom or respect that every member of our community deserves. Individuals who violate this Policy will be subject to corrective action up to and including termination from employment or expulsion from the University. The University will respond promptly and effectively to Reports of Prohibited Conduct and will take appropriate action to prevent its occurrence, correct and address its effects, provide Supportive Measures, and, when warranted, issue discipline for violations of this Policy.

### **POLICY**

It is the responsibility of every member of the University community to foster an environment free of Prohibited Conduct. All members of the University community are encouraged to take reasonable and prudent actions to prevent or stop an act of Prohibited Conduct. The University will support and assist community members who take such actions. Retaliating against an individual for making a claim of Prohibited Conduct or participating in the reporting, investigation, or resolution of a claim of Prohibited Conduct is also a violation of this Policy and constitutes Prohibited Conduct.

So that the University may continue to foster a safe and respectful climate on campus as it relates to preventing and responding to acts of Prohibited Conduct, this Policy and related procedures have been created and serve to demonstrate the University’s commitment to:

- Prohibiting acts of sex discrimination, sexual exploitation, sexual harassment, and sexual violence;
- Disseminating clear policies and procedures for responding to Prohibited Conduct of which the University has actual knowledge and jurisdiction as defined by Title IX;

- Delivering primary prevention and awareness programs and ongoing training and education campaigns to students and employees so they may identify Prohibited Conduct; understand how to report Prohibited Conduct; recognize warning signs of potentially abusive behavior and ways to reduce risks; and learn about safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of Prohibited Conduct;
- Conducting prompt, fair, and equitable investigations of Reports of Prohibited Conduct;
- Supporting and providing assistance to both Complainants and Respondents;
- Holding individuals who violate this Policy accountable; and
- Providing a written explanation of the rights and options available to every UAH student or employee that has been the victim of Prohibited Conduct.

It is the intent of this Policy and its related procedures to accomplish the following:

- Identify the Title IX Coordinator and Deputy Title IX Coordinators and describe their roles;
- Outline how Reports of Prohibited Conduct can be made to the University and what Supportive Measures and resources are available both on and off campus to aid them, including the right of students and employees to report (or decline to report) Prohibited Conduct that potentially constitutes a crime to local law enforcement authorities;
- Provide information about how Reports of Prohibited Conduct are received, assessed, investigated, and resolved; and
- Remedy the discriminatory effects of Prohibited Conduct on Complainants and others as appropriate.

Any conduct that does not rise to the level of Prohibited Conduct (as defined in Section III) and/or falls outside the jurisdiction of this Policy (as described in Section II) may be investigated and addressed pursuant to other applicable policies, including, but not limited to, UAH's Equal Opportunity and Affirmative Action Policy, Code of Student Conduct, Discrimination Complaint/Grievance Procedures, Faculty Handbook, and Staff Handbook.

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## **I. RELEVANT DEFINITIONS**

Actual Knowledge: UAH obtains “actual knowledge” of Prohibited Conduct when the Title IX Coordinator or a Deputy Title IX Coordinator receives a Report of Prohibited Conduct. For purposes of this Policy and its related procedures, the Title IX Coordinator and Deputy Title IX Coordinators are the only University officials who have authority to institute corrective measures under this Policy.

Complainant: An individual who is alleged to be the victim of Prohibited Conduct and is participating in, or attempting to participate in, UAH's education programs or activities or is employed by UAH.

Confidential Employee: (1) Any University employee who is a licensed medical, clinical, or mental health professional (e.g., physicians, nurse practitioners, nurses, professional counselors, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient ("health care provider"), and (2) any University employee providing administrative, operational, and/or related support to such health care providers in the performance of such services. Confidential Employees may not report any information about an incident to the Title IX Coordinator without obtaining written permission to do so by the person who disclosed the information. Confidential Employees may have reporting obligations under state or federal law. For instance, healthcare providers are required to notify law enforcement when a victim seeks treatment for injuries related to a violent crime, including sexual assault. Similarly, all University employees are required to notify law enforcement when they receive a report of sexual abuse of a minor.

Deputy Title IX Coordinators: The University has designated Deputy Title IX Coordinators who are trained to work with the Title IX Coordinator in assisting students and employees with concerns, Reports, and/or Formal Complaints of Prohibited Conduct, and directing them to needed resources. They notify the Title IX Coordinator of all concerns, Reports, and/or Formal Complaints of Prohibited Conduct they receive, and work closely with the Title IX Coordinator in investigating and promptly responding to all such concerns, Reports, and/or Formal Complaints. The Deputy Title IX Coordinators assist with identifying and providing Supportive Measures that a party may need during the investigation of a Report or Formal Complaint. The Deputy Title IX Coordinators may serve as a designee for the Title IX Coordinator in any case where a conflict of interest exists that may prohibit the Title IX Coordinator from providing fair and impartial oversight.

Formal Complaint: An official document filed by a Complainant with the Title IX Coordinator or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting that the University investigate and resolve the alleged Prohibited Conduct. To file a Formal Complaint, a Complainant must be participating in, or attempting to participate in, UAH's education programs or activities or employed by UAH. Formal Complaints cannot be made anonymously except for Formal Complaints filed by the Title IX Coordinator when the Title IX Coordinator believes that with or without the Complainant's willingness to participate in a grievance process, it would be clearly unreasonable in light of known circumstances not to address the Formal Complaint.

Preponderance of the Evidence Standard: The standard of proof used to adjudicate Formal Complaints of Prohibited Conduct. This standard requires that "it is more likely than not" that the Prohibited Conduct occurred.

Report of Prohibited Conduct: An allegation made verbally or in writing by any person alleging Prohibited Conduct against a Respondent. The person making a Report of Prohibited

Conduct need not be the alleged victim of the Prohibited Conduct. Reports may be made anonymously as outlined in Section IV.B. of this Policy.

**Respondent:** An individual who has been reported to be the perpetrator of Prohibited Conduct.

**Responsible Reporting Officials:** Designated employees who are required to notify the Title IX Coordinator if, in the course of their employment, they receive a Report of Prohibited Conduct. Responsible Reporting Officials include any individual employed by the University in one of the following identified departments or roles:

- Housing and Residential Life
- Dean of Students Office
- Office of Student Life
- VPs, AVPs, and Directors
- UAH Police
- UAH Human Resources
- Office of Diversity, Equity and Inclusion
- Department of Athletics:
  - Director of Athletics
  - Senior Associate Athletic Directors
  - Head Coaches
  - Assistant/Associate Coaches
- Deans, Assistant Deans, Department Chairs, and Associate Chairs

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Responsible Reporting Officials do not have official authority to receive Formal Complaints of Prohibited Conduct or official authority to take corrective action on behalf of the University under this Policy.

**Student:** Any person who has applied for admission to, been admitted to, or is enrolled at the University, and is pursuing undergraduate, graduate, or professional studies, whether in a full-time or part-time status, as well as any person attending classes on campus, online, or off campus. A student is also:

- Any person who is not officially enrolled for a particular term, but has a continuing relationship with the University;
- Any person who is admitted and participating in orientation;
- Any person who has completed an academic term and can be reasonably expected to enroll the following term; and/or
- Any person who attended the University during a previous academic term and who committed an alleged violation of the Code of Student Conduct during the time of enrollment.

Student organization: Any group of students that has complied with the University's requirements for registration as a student organization.

Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint of Prohibited Conduct or where a Report has been made but no Formal Complaint has been filed. Supportive Measures are designed to restore or preserve equal access to UAH's educational programs or activities for a Complainant or a Respondent without unreasonably burdening the other party, including measures designed to protect the safety of all parties or UAH's educational or employment environment or deter Prohibited Conduct. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus and other similar measures.

Title IX Coordinator: The University has a designated Title IX Coordinator who oversees the implementation and enforcement of this Policy, including the implementation of Supportive Measures, compliance with applicable rules and regulations, and coordination of communications between campus and community partners. The Title IX Coordinator will meet with any person, including a Complainant, Respondent, or third party, to discuss Supportive Measures, available resources, and procedural options for on-campus and off-campus reporting. Any student, faculty, or staff member who has concerns about Prohibited Conduct is encouraged to seek the assistance of the Title IX Coordinator.

Title IX Investigator: A Title IX investigator is the Title IX Coordinator, a Deputy Title IX Coordinator, or other individual designated by the Title IX Coordinator who conducts the investigation of a Formal Complaint involving a potential violation of this Policy. One or more investigators may be assigned to conduct the investigation. Investigations involving students may include assistance from the Office of Student Ethics and Education. Investigations involving employees may include assistance from UAH Human Resources.

## II. JURISDICTION (TO WHOM; WHERE THIS POLICY APPLIES)

The University has jurisdiction under Title IX to address, investigate, and adjudicate Reports and Formal Complaints of Prohibited Conduct when the University has control over the Respondent and the conduct occurs in the course of a UAH educational program or activity. This Policy applies to all UAH students, residents, employees, and post-doctoral researchers, and to others, as appropriate, with respect to education programs and activities occurring on University premises or property and/or in University-related activities occurring off-campus (but does not apply to University programs or conduct occurring outside the United States). This Policy also applies to the activities of University-recognized student organizations, including, but not limited to, fraternities, sororities, social clubs, and organizations including any building owned or controlled by a recognized student organization. It also applies to persons conducting business with or visiting the University, even though such persons are not directly affiliated with the University.

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This Policy applies to acts of Prohibited Conduct committed by or against students, employees, and third parties of which the University has Actual Knowledge and when:

- The conduct occurs on campus or property owned or controlled by the University;
- The conduct occurs in the context of the University's employment or education programs or activities, including, but not limited to, research, on-line, academic or professional conferences, or internship programs; or
- The conduct occurs outside the context of the University's employment or education programs or activities, but the Complainant has to interact with the Respondent while on campus or property owned or controlled by the University, or in any employment or education program or activity, or where the effects of the underlying Prohibited Conduct creates a hostile environment in the Complainant's workplace or educational environment.

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Even if this Policy does not apply to the Prohibited Conduct because of its location, the University will (1) provide Supportive Measures and when possible take prompt action to provide for the safety and well-being of the Complainant and the broader campus community; and (2) —as noted, may investigate and address the Prohibited Conduct pursuant to other applicable policies.

The University recognizes Prohibited Conduct under this Policy may also involve discrimination and/or harassment related to an individual's race, color, ethnicity, national origin, religion, age, disability, or other protected class. Such discrimination or harassment, while not encompassed within this Policy, may violate state and federal laws other than Title IX, as well as University policy. Under these circumstances, the University will endeavor to coordinate the investigation and resolution of the Prohibited Conduct complaint with the investigation and resolution of the complaint of discrimination or harassment based on other protected classes.

### III. PROHIBITED CONDUCT

Under this Policy, Prohibited Conduct is defined as conduct that is deemed, by a preponderance of the evidence standard, to meet the definitions of Sex Discrimination, Sexual Exploitation, Sexual Harassment, or Sexual Violence as described below and in Appendix 1 to this Policy (whether defined by University Policy, or by state or federal laws). Additionally, to the extent that federal or state laws addressing gender-based conduct that could be deemed Prohibited Conduct are created or amended, engaging in such conduct (as proven by a preponderance of the evidence) shall be considered a violation of this Policy even if the definitions below have not been updated to reflect the most recent additions to or changes in the law.

#### A. SEXUAL DISCRIMINATION:

Sex discrimination prohibited by this Policy is defined as the exclusion from participation in, denial of benefits from, or subjection to unfavorable treatment in any University educational or employment-related program or activity on the basis of gender, sexual orientation, gender identity, or gender expression.



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## **B. SEXUAL EXPLOITATION:**

Taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit or to benefit a person other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- Causing or attempting to cause the incapacitation of another individual for sexual purposes;
- Electronically recording, videoing, photographing, or transmitting sexual sounds or images of another individual against that person's will or without their consent;
- Allowing a third-party to observe sexual acts without all parties' consent;
- Prostituting another individual;
- Exposing one's genitals without consent for the purpose of sexual gratification;
- Intentionally exposing another's genitals or intimate body parts without their consent;
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy);
- Possessing and/or disseminating child pornography; or
- Knowingly exposing another individual to a sexually transmitted disease/infection or HIV without their consent.

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## **C. SEXUAL HARASSMENT:**

Sexual harassment prohibited by this Policy is defined as conduct based on gender, sexual orientation, gender identity or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, that satisfy one or more of the following:

1. A University employee makes submission to or rejection of unwelcome sexual conduct, either explicitly or implicitly, as a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities or ~~is used~~ as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment); or

2. Unwelcome conduct based on sex, gender, sexual orientation, gender identity or gender expression that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's educational programs or activities or creates a hostile working environment<sup>1</sup>; or

3. Sexual assault, dating violence, domestic violence, or stalking as those terms are defined below.

3.

#### **D. SEXUAL VIOLENCE:**

Sexual Violence (which also constitutes sexual harassment under this Policy) is defined to include sexual assault/rape, sexual assault/fondling, incest, statutory rape, ~~sexual exploitation~~, intimate partner violence (composed of dating violence and domestic violence), and stalking.

1. **Sexual Assault/Rape (non-consensual sexual penetration):** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant. Attempts to assault or commit sexual assault are also included; however, statutory rape and incest are excluded.

2. **Sexual Assault/Fondling (non-consensual sexual contact):** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental capacity. For purposes of this definition, "private body parts" include an individual's genitalia, breasts, groin, or buttocks.

3. **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

4. **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent. The age of consent is determined by the applicable age of consent for the

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<sup>1</sup> A "hostile environment" exists when the conduct is sufficiently severe, pervasive and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University's education or employment programs and/or activities. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the Complainant's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or University programs or activities; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

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jurisdiction where the alleged sexual intercourse occurred. In Alabama, the age of consent is 16 years old.

~~5. Sexual Exploitation: Taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit or to benefit a person other than the one being exploited. Examples of sexual exploitation include, but are not limited to:~~

- ~~● Causing or attempting to cause the incapacitation of another individual for sexual purposes;~~
- ~~● Electronically recording, videoing, photographing, or transmitting sexual sounds or images of another individual against that person's will or without their consent;~~
- ~~● Allowing a third party to observe sexual acts without all parties' consent;~~
- ~~● Prostituting another individual;~~
- ~~● Exposing one's genitals without consent for the purpose of sexual gratification;~~
- ~~● Intentionally exposing another's genitals or intimate body parts without their consent;~~
- ~~● Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy);~~
- ~~● Possessing and/or disseminating child pornography; or~~
- ~~● Knowingly exposing another individual to a sexually transmitted disease/infection or HIV without their consent.~~

~~56. Intimate partner violence – Dating violence: Violence committed by a person who is or has been in a social or “dating” relationship of a romantic, intimate, and/or sexual nature with the victim. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.~~

~~67. Intimate partner violence – Domestic violence: Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Alabama, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Alabama.~~

**78. Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.

**E. Failure to Comply**

Failure to comply means failure to comply with directions of the University officials, who include, but are not limited to, an employee of the Title IX Office or the Office of Student Ethics and Education, or law enforcement officers acting in performance of their duties. For purposes of this Policy, failure to comply includes a failure to comply with a No Contact Order or other directives by the Title IX Office or the Office of Student Ethics and Education in response to a Report of alleged Prohibited Conduct where an individual’s failure to comply directly impacts the other party or parties to the No Contact Order.

**EE. Retaliation**

Retaliation is any action that has the effect of punishing a person for engaging in a legally protected activity under Title IX, such as alleging Prohibited Conduct, filing a Formal Complaint, assisting or participating in an investigation, proceeding or hearing of such a Formal Complaint, refusing to participate in any manner in an investigation, proceeding or hearing under this Policy or advocating for others’ Title IX rights. Examples of retaliatory actions include suspension, demotion, or termination in the employment context; lowering a grade or dismissing a student from a program; or maliciously and purposefully interfering with, threatening, or damaging the academic or professional career of another individual before, during, or after the investigation and resolution of a Report or Formal Complaint of Prohibited Conduct. This Policy prohibits retaliation in the form of harassment, intimidation, threats, or coercion, or in the form of any materially adverse harm that would dissuade a reasonable student, employee, or third party from filing a complaint or participating in a Prohibited Conduct related investigation or hearing.

Intimidation, threats, coercion, or discrimination, including bringing charges against an individual for violating other UAH policies that do not involve sex discrimination, sexual exploitation, or sexual harassment but arise out of the same facts or circumstances as a Report or Formal Complaint of sexual harassment, for the purposes of interfering with any right or privilege secured by Title IX constitutes retaliation.

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**FG. Related Terms**

Course of Conduct: The term “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. Examples of such acts include, but are not limited to: following another person; lying in wait; engaging in excess communications, including any attempt to intentionally and repeatedly make contact with a person over their stated objections for the purpose of harassing or alarming them; or threatening a person or a person’s family, friends, or property.

Stalking: Stalking includes “cyber-stalking,” a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, phones, texts, or other similar devices or forms of contact.

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Reasonable Person: A person under similar circumstances and with similar identities to the Complainant.

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Substantial Emotional Stress: Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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Consent: The term “consent” when describing different types of Prohibited Conduct (such as sexual assault) means a clear willingness to participate in the sexual act (e.g., clear communication through words or actions). While consent may be expressed by words or by actions, it is highly recommended that consent be expressed and obtained verbally. Non-verbal consent expressed through actions may lead to confusion and potential for misunderstandings, which may lead to a violation of this Policy. It is the responsibility of the initiator of any sexual activity to obtain consent.

Consent to any sexual activity must be freely given. Consent to a sexual act is not freely given if an individual is not capable of consenting, or if consent is obtained by force, threats, deception, or coercion. A lack of verbal or physical resistance does not grant consent. Previous consent does not grant consent to future sexual acts. Consent can be withdrawn at any time during a sexual act. Inability to give consent includes situations where an individual is:

- Incapacitated due to alcohol, drugs, or other substances including, but not limited to, prescription medication.<sup>2</sup>
- Unconscious, asleep, or in a state of shock.
- Under the age of consent as defined by the jurisdiction in which the act occurred, which, in Alabama, is less than 16 years of age.
- Mentally or physically impaired and not reasonably able to give consent.

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<sup>2</sup> In incidents involving the use of alcohol, drugs, or other mind-altering substances, the totality of the circumstances shall be analyzed to determine whether the use of those substances caused a party to be unable to consent to sexual activity. Factors the University will consider include, but are not limited to, the following:

- Whether a party was conscious or unconscious;
- Whether a party became sick due to intoxication;
- Whether a party exhibited signs of intoxication, including inability to communicate, slurred speech, lack of coordination in walking or performing simple tasks, or any other evidence indicative of impaired cognitive functioning; or
- Whether a Respondent knew or reasonably should have known of a Complainant’s ability or inability to give consent due to the use of alcohol, drugs, or other mind-altering substances.

The existence of any one of these factors may support a finding that a party was unable to consent to sexual activity. The mere fact that an individual was under the influence of alcohol, drugs, or other mind-altering substances, however, does not create a presumption that the individual was unable to consent. Also, an individual’s use of alcohol, drugs, or other mind-altering substances does not diminish that individual’s responsibility to obtain consent if that individual is the one who initiates sexual activity.

The terms “coercion” means the use of expressed or implied threats or intimidation that would place a reasonable person in fear of immediate harm for the purpose of obtaining sexual favors. Threatening or intimidating behavior may include emotional abuse, threats to reputation, public humiliation, threats to others and possessions (including pets), or financial harm, among others.

#### IV. REPORTING INCIDENTS OF PROHIBITED CONDUCT

This section provides instructions on how, when, and to whom to make a Report or file a Formal Complaint of Prohibited Conduct, as well as matters related to such reports.

##### A. Timeliness of Report or Formal Complaint of Prohibited Conduct

All individuals, including a Complainant or witness, are encouraged to report Prohibited Conduct regardless of when or where it occurred, as soon as possible to maximize the University’s ability to respond promptly and effectively. The University may also initiate a Formal Complaint of Prohibited Conduct under certain circumstances. The University does not, however, limit the time frame for making a Report or filing a Formal Complaint. If the Respondent is no longer a student or employee at the time of the Report or Formal Complaint, or the alleged Prohibited Conduct occurred outside the United States, or if the alleged Prohibited Conduct did not occur on campus, in the context of a University education program or activity, or have continuing adverse effects on campus or in an off-campus education program or activity, the University may not be able to fully investigate nor take disciplinary action against the Respondent. In each instance, the University will still provide Supportive Measures to a Complainant designed to end the Prohibited Conduct, prevent its recurrence, and address its effects.

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##### B. How to Make a Report or File a Formal Complaint

Any person (whether the person reporting is the person alleged to be the victim of Prohibited Conduct) may make a Report, including anonymously, of Prohibited Conduct to the persons below in person (during business hours) or by mail, by telephone, or by email using the contact information below at any time, including during non-business hours:

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- **Title IX Coordinator:**  
Laterrica Shelton  
The University of Alabama in Huntsville  
SSB 320  
256-824-6899  
[lks0020@uah.edu](mailto:lks0020@uah.edu)
- Deputy Title IX Coordinator for Students:  
Scott Royce  
Title IX Coordinator  
CGU 223  
256.824.6235

[scott.royce@uah.edu](mailto:scott.royce@uah.edu)

- Deputy Title IX Coordinator for Employees & Third Parties:  
Laurel Long  
SKH 116  
256.824.2285  
[laurel.long@uah.edu](mailto:laurel.long@uah.edu)
- ~~Equity Intake Officer~~ Education and Resource Specialist:  
~~Brandie Roberts~~ [Katie Greene](mailto:Katie.Greene@uah.edu)  
256.824.4611  
SSB 320E  
[Katie.greene@uah.edu](mailto:Katie.greene@uah.edu) [brandie.roberts@uah.edu](mailto:brandie.roberts@uah.edu)

Reports can also be made to any Responsible Reporting Official listed in Section I above, who shall forward them to the Title IX Coordinator. If the person to whom a Report normally would be made is the Respondent, the Report may be made to another Responsible Reporting Official.

Anonymous Reports may be submitted online at: <https://www.uah.edu/Charger360>.

In cases where the Report was made anonymously or by a third party (such as a family member, friend, roommate, advisor, or faculty member), ~~the Title IX~~ this Policy will apply in the same manner as if the Complainant had made the initial Report. The University's ability to respond to an anonymous Report may be limited and may only include the ability to provide Supportive Measures. The Title IX Coordinator or designee will make every effort to meet with the Complainant to discuss available options and on-campus and off-campus resources.

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All Formal Complaints must be filed with the Title IX Coordinator. A Complainant can submit a Formal Complaint by mail or by email using the contact information above at any time, including during non-business hours. A Formal Complaint cannot be anonymous except for Formal Complaints filed by the Title IX Coordinator.

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### C. Emergency/ Immediate Assistance

The University encourages all community members affected by Prohibited Conduct to seek immediate assistance. Doing so promptly may be important to ensure physical safety or obtain medical care or other support. It may also be necessary to preserve evidence, which can assist the University or law enforcement in responding effectively. Assistance is available from the UAH Police (UAHPD) 24 hours a day, seven days a week at 256.824.6596. The UAHPD will investigate every incident reported to them to determine if a crime has been committed. The UAHPD will also inform the Title IX Coordinator of the incident. Any criminal investigation by UAHPD or other law enforcement agency is independent from any investigation undertaken by the Title IX Coordinator under ~~the Title IX~~ this Policy. Victims of Prohibited Conduct are not required to report to law enforcement to receive assistance from or pursue any options provided by UAH under this or other applicable policies.

#### **D. Amnesty for Personal Ingestion of Alcohol or Other Drugs**

The University community views the safety of our students as a top priority. A student who is under the influence of alcohol or drugs at the time of an incident should not be reluctant to seek assistance for that reason. The University will not pursue disciplinary violations against a student or against a witness for being under the influence of alcohol or drugs (e.g., underage drinking) if the student is making a good faith Report of Prohibited Conduct or participating in an investigation of Prohibited Conduct. The Title IX Coordinator (or designee) may, however, refer a student to substance abuse assessment and counseling depending on the circumstances of the individual situation. Thus, for purposes of this Policy, students who report potential Prohibited Conduct or participate in an investigation of Prohibited Conduct and reveal a potential violation of UAH policy relating to drug or alcohol use may not be sanctioned for such drug or alcohol violations.

#### **E. False Allegations or False Statements**

A Report or Formal Complaint of alleged Prohibited Conduct may not be substantiated, but a lack of corroborating evidence should not discourage a person from reporting an alleged incident and seeking relief under this Policy. All Reports and Formal Complaints should be made in good faith, meaning the individual making the Report or Formal Complaint has a reasonable belief that the allegations are true and relate to a potential violation of University policy.

A Report or Formal Complaint made in bad faith is one that is intentionally dishonest, frivolous, or malicious. When a Report or Formal Complaint is made in bad faith, it may deter other individuals from filing good faith Reports, unnecessarily expend University and law enforcement resources, distract University and law enforcement officials from investigating good faith Reports, and cause harm to the alleged Respondent and the community. It is a violation of this Policy to report intentionally dishonest, frivolous, or malicious allegations of Prohibited Conduct or make a materially false statement in bad faith in the course of an investigation or adjudication of a Formal Complaint. If a Report or Formal Complaint is brought in bad faith, as demonstrated by a preponderance of the evidence, disciplinary action may be taken against the person making the Report or Formal Complaint. In addition to violating this Policy, a person filing a bad faith Report or Formal Complaint may be in violation of other University policies or state law.

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#### **F. Preservation of Information and Tangible Material**

Preservation of information and tangible materials related to Prohibited Conduct is important for both law enforcement investigators and campus investigations. Therefore, Complainants, Respondents, witnesses, or others reporting possible violations of this Policy are encouraged to preserve all information and tangible materials relating to the incident. Examples include electronic information (e.g., emails, text messages, etc.), photographs, clothing, bedding, and medical information. In the case of medical information, prompt examination can be critical.

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#### **G. Public Awareness Events and IRB Research**



Responsible Reporting Officials are not required to report information disclosed (1) at public awareness events (e.g., Take Back the Night, protests) or (2) during participation in an Institutional Review Board-approved human subject research protocol (“IRB Research”). The University may provide information about Title IX rights and about available University and community resources and support at Public Awareness Events. Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all subjects of IRB Research.

#### H. Reporting of Crimes and Disciplinary Statistics

The University has certain reporting obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Statistics Act (Clery Act), with regard to incidences of sexual misconduct and violence, including issuing timely warnings as necessary. A copy of the University’s annual Clery report can be found at <https://www.uah.edu/safety>. Reports of Prohibited Conduct made to the Title IX Coordinator may also prompt a limited disclosure to UAHPD. Such disclosures will not contain the identity of the reporting party except in situations where the reporting party has consented to release their name and/or where there is an imminent threat to health or safety.

#### I. Mandatory Reporting of Child Abuse

For child protection purposes, a child is any person under 18 years of age. A freshman student, a “dual enrolled” high school student, or a summer camp participant, among others, may fall into the category of a “child.” Alabama law imposes a mandatory reporting duty of known or suspected child abuse on certain individuals, including all University employees, who must report to The University of Alabama in Huntsville Police Department (UAHPD). University policy implementing the law also encourages students, volunteers, and representatives as well as third-party vendors and their employees, representatives, or volunteers that contract for use of University facilities with responsibilities that involve interaction with childrens to report (orally and then in written form) known or suspected child abuse to UAHPD. Sexual abuse, which is one element of the more comprehensive term “abuse” under Alabama law, includes actual or attempted rape, molestation, sexual exploitation, etc. To review a complete copy of the University’s policy and procedures relating to reporting potential child abuse, including how to report to UAHPD, please review the Child Abuse Reporting Policy and Procedures [at this link: https://www.uah.edu/compliance/child-protection-policy](https://www.uah.edu/compliance/child-protection-policy).

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#### J. Responsible Reporting Officials

All Responsible Reporting Officials as defined in Section I are required to notify the Title IX Coordinator if, in the course of their employment, they receive a Report of Prohibited Conduct. The Responsible Reporting Official must report all relevant available details about the alleged policy violation, including the name of the Complainant, the Respondent, any witnesses, and any other relevant facts, including the date, time, and specific location of the incident forming the basis of the alleged violation.

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### VII. PROCEDURES FOR RESPONDING TO PROHIBITED CONDUCT

This section provides an overview of the procedures the University uses to respond to Reports and Formal Complaints of Prohibited Conduct. While the Title IX Coordinator has general responsibility for oversight of the investigation and resolution of all Reports and Formal Complaints, Deputy Title IX Coordinators and other departments (Student Affairs, Provost's Office, Human Resources, etc.) may be involved and consulted as necessary.

**A. Which Procedures Apply?**

The specific set of procedures used to respond to Reports and Formal Complaints of Prohibited Conduct is determined by the status of the Respondent's relationship with the University, as well as the nature of the alleged Prohibited Conduct:

- Formal Complaints of Sexual Harassment or Sexual Violence will be addressed pursuant to the Procedures for Resolution of Title IX Sexual Harassment and Sexual Violence complaints.
- Report and Complaints of Sex Discrimination (non-harassment), Sexual Exploitation, allegations of Failure to Comply, and allegations of Retaliation against student respondents will be addressed pursuant to the Procedures for the Resolution of Title IX Sexual Discrimination Complaints (non-harassment) Against Students ("Student Procedures").
- Reports and Complaints of Sex Discrimination (non-harassment), Sexual Exploitation, allegations of Failure to Comply, and allegations of Retaliation against faculty and staff respondents, as well as non-affiliates, will be addressed pursuant to the Procedures for the Resolution of Title IX Sex Discrimination Complaints (non-harassment) Against Faculty, Staff, Affiliates, and Non-Affiliates ("Faculty and Staff Procedures").
- Formal Complaints that include allegations of both (1) sexual harassment and (2) sex discrimination (non-harassment) or sexual exploitation will be addressed pursuant to the Procedures for Resolution of Title IX Sexual Harassment and Sexual Violence complaints.

These procedures provide for a prompt and equitable response to Reports and Formal Complaints of Prohibited Conduct, including allegations of Retaliation. Resources are available for both students and employees, whether as Complainants or Respondents, to provide guidance throughout the investigation, at any adjudication hearing, and regarding ultimate resolution of Reports and/or a Formal Complaint of Prohibited Conduct.

In instances where the Respondent is both a student and an employee, the Title IX Coordinator will determine which of the procedures will apply based on facts and circumstances of a particular incident, such as which role predominates and which the role is most applicable in the incident and the context in which the alleged conduct occurred.

The University's ability to take appropriate action against a Third-Party will be determined by the nature of the relationship of the Third-Party to the University. The Title IX Coordinator will

determine the appropriate manner of resolution consistent with the University's commitment to a prompt and equitable process consistent with federal law, federal guidance, and this Policy.<sup>3</sup>

**B. Advisors**

Complainants and Respondents are entitled to be accompanied and assisted by an advisor of their choice in all interactions involving the Title IX Office, including the investigation interviews, and, if applicable, a subsequent Title IX hearing. Advisors may not actively participate in the process or speak on behalf of the Complainant or Respondent except as set forth in the applicable resolution procedures. Complainants and Respondents may choose but are not required to have an attorney serve as their advisor.

**C. Conflict of Interest**

The Title IX Coordinator, Deputy Title IX Coordinators, Title IX Investigators, and Hearing Officers must not have a conflict of interest or bias for or against Complainants or Respondents generally or against an individual Complainant or Respondent. Whether bias exists requires examination of the particular facts of a situation. A determination of bias must be based on an objective evaluation of the available facts (i.e., whether a reasonable person would believe bias exists).

Any person exercising investigative or decision-making authority under this Policy who believes they may have a conflict of interest or bias that would prevent them from impartially exercising their authority, shall disclose the potential conflict/bias to the Title IX Coordinator (or designee) as soon as practicable after it is discovered. Arrangements will then be made to designate a conflict/bias-free alternative investigator or decision-maker in the case at issue. Furthermore, if the Complainant or the Respondent believes a person exercising investigative or decision-making authority under this Policy has a conflict of interest or bias relating to the Complainant or Respondent that would prevent the person from exercising their authority impartially, the Complainant or Respondent may make a prompt objection to the Title IX Coordinator (or designee) within five (5) business days of becoming aware of the potential conflict or bias.

**Commented [16]:** Can we have a timeframe defined here, as below for Complainant and Respondent?

If the Complainant or the Respondent believes the Title IX Coordinator has a conflict of interest or bias, such objection should be made to a Deputy Title IX Coordinator (or designee). Regardless of the time period, such objection must occur before the Title IX Coordinator (or designee) makes a final determination as to responsibility under the Policy.

**Commented [17]:** Might this be better placed under the initial para above - regarding Title IX Coordinator bias?

If the objection as to a conflict or bias is made with respect to a Hearing Officer, or the chair of the panel or a member of a hearing panel, such objection must occur before the scheduled

<sup>3</sup> ~~For complaints of Prohibited Conduct under investigation prior to the August 14, 2020, the effective date of this Policy, the prior Title IX Policy and procedures shall continue to apply. The policy, including definition of Prohibited Conduct contained therein, and applicable procedures in effect on the date of the alleged incident will be applied, regardless of when a Report is made, unless clearly established law requires use of the current applicable policy and procedures. If more than one incident is at issue, the policy in effect during the latest incident will be applied. For the policies and procedures in effect before August 14, 2020, please refer to the archived policies at <https://www.uah.edu/images/administrative/policies/sexual-misconduct-policy-archived.pdf>~~

hearing. If the Title IX Coordinator (or designee) determines that the objection is reasonable, the challenged person will be replaced. The decision of the Title IX Coordinator, Deputy Title IX Coordinator, or designee regarding a challenge will be final.

Knowledge of or acquaintance with the Complainant, Respondent, or witnesses in a matter; awareness of a matter; participation as a consequence of one's official role in events surrounding a matter; and/or participation in the investigation process prior to the formal disciplinary process does not automatically result in the finding of a disqualifying conflict; however, such factors may be considered in determining whether a conflict exists.

When a Title IX Coordinator signs a Formal Complaint, that action does not place the Title IX Coordinator in a position adverse to the Respondent. In that instance, the Title IX Coordinator is initiating an investigation based on allegations of which the Title IX Coordinator has been made aware. Likewise, deciding that allegations warrant an investigation does not necessarily show bias or prejudgment of the facts for or against the Complainant or Respondent.

The mere fact that a certain number of findings under this Policy result in determinations of responsibility, or non-responsibility, does not necessarily indicate or imply bias on the part of Title IX personnel.

#### **D. Filing a Criminal Complaint and Coordination with Law Enforcement**

The University encourages Complainants to pursue criminal action for incidents of Prohibited Conduct that may also be crimes under applicable state laws. The University will assist a Complainant in making a criminal report and will cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.

The filing and processing of a Formal Complaint of Prohibited Conduct is separate from and independent of any criminal investigation or proceeding. The University will not wait for the conclusion of any criminal investigation or proceedings to begin its own investigation although the University may delay temporarily the fact-finding component of the investigation while the police are gathering evidence. Neither law enforcement's determination as to whether or not to prosecute a Respondent nor the outcome of any criminal prosecution is determinative of whether Prohibited Conduct occurred under the ~~University's~~ Policy.

#### **E. Request That Prohibited Conduct Not Be Investigated**

If a Complainant makes a Report of Prohibited Conduct, but requests anonymity and/or that no investigative or disciplinary measures be taken, the Title IX Coordinator will advise the Complainant that the University will consider but cannot guarantee to honor such request if the Title IX Coordinator determines it would be clearly unreasonable in light of known circumstances not to investigate the allegations. The University will conduct an intentional and thoughtful assessment and will weigh such request(s) against the University's obligation to provide a safe, non-discriminatory environment. In determining whether it can honor a request for anonymity, the Title IX Coordinator will evaluate several factors, including, but not limited to, the following:

- The nature and scope of the alleged Prohibited Conduct, including whether it involved the use of a weapon;
- The actual or perceived difference in authority between parties (for example, a Complainant's status as a student or employee);
- The risk posed to any individual or to the campus community by not proceeding with an investigation, including the risk of additional Prohibited Conduct;
- Whether there have been other Reports of Prohibited Conduct against the Respondent;
- Whether the Report reveals a pattern of Prohibited Conduct (e.g., via illicit use of alcohol or drugs) at a given location or by a particular group;
- The Complainant's desire to pursue investigation of the Report;
- The Complainant's willingness to participate in a hearing;
- Whether the University possesses other means to obtain relevant evidence;
- Considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent; and
- The University's obligation to investigate and to provide a safe and non-discriminatory environment.

The presence of one or more of these factors may lead the University to investigate and, if appropriate, pursue corrective action, including issuance of a Formal Complaint. The ultimate decision as to whether the request for anonymity will be honored will be made by the Title IX Coordinator. If the University determines that it cannot maintain the anonymity of the Complainant, the University will inform the Complainant prior to taking any action that would result in a disclosure of the Complainant's identity. Any such disclosures will be made on a need-to-know basis, and the Complainant will be informed as to which offices and individuals will receive the information.

If the University honors a request for anonymity, or the Complainant chooses not to respond to communications from the Title IX office, the University's ability to meaningfully investigate a Report of Prohibited Conduct or take corrective action may be limited.

### **VIII. Supportive Measures**

The term "Supportive Measures" refers to non-disciplinary, non-punitive individualized services offered by the University as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational

environment, or deter Prohibited Conduct. Supportive measures cannot punish or discipline the Respondent.

Supportive Measures are available to involved parties including Complainant(s), Respondent(s), and witnesses while the University is addressing, investigating, adjudicating and responding to an allegation of Prohibited Conduct. Requests for Supportive Measures should be made to the Title IX Coordinator or a Deputy Title IX Coordinator, who serves as the point of contact for Supportive Measures and will work with the appropriate office(s) to ensure that any necessary Supportive Measures are provided.

When a Complainant makes a Report of Prohibited Conduct, the Title IX Coordinator and/or a Deputy Title IX Coordinator will contact the Complainant, if the Complainant's identity is known, to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

The Title IX Coordinator and/or a Deputy Title IX Coordinator will discuss with the Complainant which Supportive Measures may restore or preserve equal access to UAH's educational program or activity or employment without unreasonably burdening the Respondent, including measures designed to protect the safety of all parties or UAH's educational and employment environment or deter Prohibited Conduct.

If a Complainant desires Supportive Measures, UAH will make reasonable efforts to protect the Complainant's identity (including from the Respondent) unless disclosing the Complainant's identity is necessary to provide Supportive Measures for the Complainant.

The range of potential supportive measures include:

- Imposition of a mutual "No-Contact Order";
- Extensions of deadlines;
- Rescheduling of exams and assignments;
- Providing alternative course completion options;
- Modification or change in class schedule, including the ability to drop a course without penalty or to transfer;
- Change in work schedule or job assignment;
- Change in student's campus housing;
- Leaves of absence;
- Assistance from University support staff in completing housing relocation;
- Limiting access to certain University facilities or activities pending resolution of the matter;
- Voluntary leave of absence;
- Providing academic support services, such as tutoring;
- Institutional resources pertaining to visa/immigrant status;
- Escort services;
- Increased security and monitoring of certain areas of the campus or similar measures;

- University-imposed leave, emergency removal, or separation for the Respondent; and
- Any other measure that can be tailored to the involved individuals to achieve the goals of this Policy.

Additional resources the University may offer include:

- Referral to counseling services;
- Assistance in identifying advocacy support to obtain orders of protection within the criminal justice system;
- Emergency numbers for on and off campus law enforcement, and, if desired, assistance with notifying law enforcement;
- Seeking care for injuries, STI testing, etc.;
- Importance of and explanation of how to preserve evidence in case the alleged Prohibited Conduct is also a potential criminal act;
- Information about where to get a rape kit/SANE exam; and
- Encouragement of prompt reporting of all crimes to the appropriate law enforcement agency, paired with a commitment from UAH that appropriate support will be offered in every case.

Upon the receipt of a Report of Prohibited Conduct, the University may provide reasonable Supportive Measures, as appropriate, to provide a safe educational and work environment and to prevent additional acts of Prohibited Conduct, even when there is no specific request for such Supportive Measures. The University may impose any measure that can be tailored to the individuals involved to achieve the goals of this Policy. An individual's failure to comply with restrictions imposed by Supportive Measures is a violation of this Policy and basis for disciplinary action.

The Title IX Coordinator will document the basis for the decision that the University's response to a Report of Prohibited Conduct was not unreasonable in light of known circumstances and document that the University has taken measures to restore or preserve equal access to UAH's educational program or activity or employment. If Supportive Measures are not provided, the Title IX Coordinator will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

**Commented [18]:** The phrasing is difficult to parse - is it possible to rephrase with fewer negatives? not following the 'document the reasons why such a response was not clearly unreasonable'

## **IX. Confidentiality and Privacy**

The University is committed to protecting the privacy of all individuals involved in the investigation and resolution of a Report or Formal Complaint of Prohibited Conduct under this Policy. The University is also committed to providing assistance to help students, employees, third parties, and visitors make informed choices. With respect to any Report or Formal Complaint of Prohibited Conduct under this Policy, the University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the Report and Formal Complaint and take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

### **A. Privacy**

To protect individual privacy, the University will only share information related to a Report or Formal Complaint of Prohibited Conduct with a limited circle of University employees who “need to know” to assist in the assessment, investigation, and resolution of the Report or Formal Complaint, as well as the implementation of Supportive Measures.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the University’s Student Records (FERPA) Policy. The privacy of an individual’s medical and related records generally is protected by the Health Insurance Portability and Accountability Act (“HIPAA”), excepting health records protected by FERPA.

## **B. Confidentiality**

Confidentiality exists in the context of laws that protect certain relationships, including those with medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, counselors, attorneys, and ordained clergy, all of whom may engage in confidential communications under Alabama law. The University has designated individuals who have the ability to have privileged communications as “Confidential Employees.” When information is shared by an individual with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee (and/or such community professional) cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information.

For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

## **X. IMPOSITION OF SANCTIONS**

A student, employee, or faculty determined to have engaged in Prohibited Conduct shall be in violation of this Policy. The specific procedures for imposing discipline depend upon the nature of the Respondent’s relationship to the University. A student, staff, or faculty member determined by the University to have committed an act of Prohibited Conduct is subject to disciplinary action, up to and including separation from the University. Third Parties or Guests who violate this Policy may have their relationship with the University terminated and/or their privileges and access to the University’s premises revoked.

Complainants and Respondents shall be treated equitably, which for a Respondent means following a grievance process before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures.

## **XI. REMEDIES**



After a final determination of a finding of responsibility, the Title IX Coordinator will determine what remedies may need to be implemented to restore or preserve equal access to the University's education program or activity or employment. The Title IX Coordinator will also identify any appropriate remedies/measures to address any effects of substantiated Prohibited Conduct on the University community.

The remedies provided may be additional, or the continuation of, any Supportive Measures. The Title IX Coordinator may impose or extend a No-Contact Directive and impose or extend academic, University housing and/or University employment modifications, as may be appropriate; impose or extend increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; arrange for conducting targeted or broad-based educational programming or training for relevant persons or groups; impose one or more restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); and/or impose any other remedial or protective measures that are tailored to achieve the goals of ~~the Title IX~~this Policy.

Remedies that do not impact the Respondent will not be disclosed to the Respondent unless implementation of the remedy requires notification to the Respondent (e.g., disciplinary action).

## **XII. STUDENT AND EMPLOYEE TRAINING AND PREVENTION EDUCATION PROGRAMS**

The University engages in comprehensive educational programming to prevent Prohibited Conduct, consisting of primary prevention and awareness programs for all incoming students and new employees, and ongoing awareness and prevention campaigns for students, faculty, and staff that include, but are not limited to the following topics:

- Identifying domestic violence, dating violence, sexual assault, ~~and~~stalking, and sexual exploitation as Prohibited Conduct;
- Defining what behavior constitutes domestic violence, dating violence, sexual assault, ~~and~~stalking, and sexual exploitation;
- Defining what behavior and actions constitute consent to sexual activity in the State of Alabama;
- Providing safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, ~~or~~stalking, or sexual exploitation against a person other than the bystander;
- Providing information on risk reduction so that students and employees may recognize warning signs of abusive behavior and how to avoid potential attacks; and
- Providing an overview of information contained in the Annual Security Report in compliance with the Clery Act.

The University also provides training to students and employees to ensure they understand this Policy and the topics and issues related to maintaining an education and employment environment free from sex discrimination, sexual exploitation, sexual harassment, and sexual violence.

### **XIII. FREE SPEECH AND ACADEMIC FREEDOM**

The University is committed to free and open inquiry and expression for members of its community. The University is dedicated to the promotion of lively and fearless freedom of debate and deliberation, but also to the protection of that freedom when others attempt to restrict it.

In cases of Prohibited Conduct, the protections of the First Amendment and applicable state law must be considered if issues of speech or expression are involved. Free speech rights apply in the classroom (e.g., classroom lectures and discussions) and in all other education programs and activities (e.g., speakers on campus; campus debates, school plays and other cultural events; and student newspapers, journals, and other publications). In addition, free speech rights apply to the speech of students, faculty and staff. Title IX is intended to protect students and employees from sex discrimination, not to regulate the content of speech. To establish a violation of Title IX, the harassment must be sufficiently severe, pervasive, and objectively offensive that it effectively denies a person equal access to participate in or benefit from an education program or activity or employment.

Moreover, in regulating the conduct of its students, faculty, and staff to prevent or redress discrimination prohibited by Title IX, great care must be taken not to inhibit open discussion, academic debate, and expression of personal opinions, particularly in the classroom. Nonetheless, speech or conduct of a harassing, sexual, or hostile nature that occurs in the context of educational instruction may exceed the protections of academic freedom and constitute prohibited harassment if it meets the definition of Prohibited Conduct and (1) is reasonably regarded as non-professorial speech (i.e., advances a personal interest of the student or faculty member as opposed to furthering the learning process or legitimate objectives of the course), or (2) lacks an accepted pedagogical purpose or is not germane to the academic subject matter.

This Policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.

### **XIV. RESOURCES AND OPTIONS**

Below are links to available resources and options:

- <https://www.uah.edu/counseling-center>
- <https://www.uah.edu/health-and-wellness/student-health-center>
- <https://www.uah.edu/clinic>
- <https://www.uah.edu/hr/benefits/work-life/eap>

### **APPENDIX 1**

For purposes of the Title IX Sex Discrimination, Sexual Exploitation, Sexual Harassment, and Sexual Violence Policy, conduct that is deemed, by a preponderance of the evidence (which

means more likely than not the alleged conduct occurred) to be gender-based and meet the definitions of any of the types of Prohibited Conduct identified in Section III above and in the legal definitions set forth below (whether defined federal or by state laws, as amended from time to time), constitutes a violation of this Policy. A person whose gender-based conduct violates the federal or state criminal statutes as established by a preponderance of the evidence need not be criminally charged or convicted for their conduct to be deemed a violation of this Policy. Additionally, to the extent that federal or state criminal laws addressing gender-based conduct that could be deemed Prohibited Conduct are created or amended, engaging in such conduct (as proven by a preponderance of the evidence) shall be considered a violation of this Policy even if the definitions below have not been updated to reflect the most recent additions to or changes in the law.

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### **INTIMATE PARTNER VIOLENCE: DATING OR DOMESTIC VIOLENCE**

#### **Federal Law:**

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- (i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (ii) For the purposes of this definition—
  - (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - (B) Dating violence does not include acts covered under the definition of domestic violence. 34 C.F.R. § 668.46(a)

**Alabama Law:** n/a

### **INTIMATE PARTNER VIOLENCE: DOMESTIC VIOLENCE**

#### **Federal Law:**

- (i) A felony or misdemeanor crime of violence committed—
  - (A) By a current or former spouse or intimate partner of the victim;
  - (B) By a person with whom the victim shares a child in common;
  - (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
  - (E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred. 34 C.F.R. § 668.46(a)

**Alabama Law:**

**First Degree Domestic Violence** – Ala. Code § 13A-6-130(a)(1)

A person commits the crime of domestic violence in the first degree if the person commits the crime of assault in the first degree pursuant to Section 13A-6-20; aggravated stalking pursuant to Section 13A-6-91; or burglary in the first degree pursuant to Section 13A-7-5 and the victim is a current or former spouse, parent, step-parent, child, step-child, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.

**Second Degree Domestic Violence** – Ala. Code § 13A-6-131(a)(1)

A person commits the crime of domestic violence in the second degree if the person commits the crime of assault in the second degree pursuant to Section 13A-6-21; the crime of intimidating a witness pursuant to Section 13A-10-123; the crime of stalking pursuant to Section 13A-6-90; the crime of burglary in the second or third degree pursuant to Sections 13A-7-6 and 13A-7-7; or the crime of criminal mischief in the first degree pursuant to Section 13A-7-21 and the victim is a current or former spouse, parent, step-parent, child, step-child, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.

**Third Degree Domestic Violence** – Ala. Code § 13A-6-132(a)(1)

A person commits domestic violence in the third degree if the person commits the crime of assault in the third degree pursuant to Section 13A-6-22; the crime of menacing pursuant to Section 13A-6-23; the crime of reckless endangerment pursuant to Section 13A-6-24; the crime of criminal coercion pursuant to Section 13A-6-25; the crime of harassment pursuant to subsection (a) of Section 13A-11-8; the crime of criminal surveillance pursuant to Section 13A-11-32; the crime of harassing communications pursuant to subsection (b) of Section 13A-11-8; the crime of criminal trespass in the third degree pursuant to Section 13A-7-4; the crime of criminal mischief in the second or third degree pursuant to Sections 13A-7-22 and 13A-7-23; or the crime of arson in the third degree pursuant to Section 13A-7-43; and the victim is a current or former spouse, parent, step-parent, child, step-child, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.

**STALKING**

**Federal Law:**

Stalking.

(i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) Fear for the person's safety or the safety of others; or
- (B) Suffer substantial emotional distress.

(ii) For the purposes of this definition—

- (A) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or

means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.

(C) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. 34 C.F.R. § 668.46(a)

#### **Alabama Law:**

##### **First Degree Stalking** – Ala. Code § 13A-6-90(a)

A person who intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking in the first degree.

##### **Second Degree Stalking** – Ala. Code § 13A-6-90.1(a)

A person who, acting with an improper purpose, intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's immediate family, or any third party with whom the other person is acquainted, and causes material harm to the mental or emotional health of the other person, or causes such person to reasonably fear that his or her employment, business, or career is threatened, and the perpetrator was previously informed to cease that conduct is guilty of the crime of stalking in the second degree.

### **SEXUAL ASSAULT & OTHER SEXUAL OFFENSES**

#### **Federal Law:**

Sexual assault. An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in 34 C.F.R. § 668.46, Appendix A. 34 C.F.R. § 668.46

Sexual assault/Rape. Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. 34 C.F.R. § 668.46, Appendix A

Sexual assault/Fondling. Sexual assault/fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. 34 C.F.R. § 668.46, Appendix A

Incest. Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. 34 C.F.R. § 668.46, Appendix A

Statutory rape. Statutory rape is sexual intercourse with a person who is under the statutory age of consent. 34 C.F.R. § 668.46, Appendix A

## **Alabama Law:**

Alabama law includes definitions of the following in its sexual offenses category: rape, sodomy, sexual misconduct, sexual torture, sexual abuse, indecent exposure, enticing a child to enter vehicle, house, etc. for immoral purposes, sexual abuse of a child less than 12 years old. The following are definitions that apply to the Alabama sexual offense statutes (some of which are set forth below):

(1) **FORCIBLE COMPULSION.** Use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include, but are not limited to, the respective ages and sizes of the victim and the accused; the respective mental and physical conditions of the victim and the accused; the atmosphere and physical setting in which the incident was alleged to have taken place; the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim; or whether the victim was under duress. Forcible compulsion does not require proof of resistance by the victim.

(2) **INCAPACITATED.** The term includes any of the following:

a. A person who suffers from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct.

b. A person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender.

c. A person who is unable to give consent or who is unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate.

(3) **SEXUAL CONTACT.** Any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party. The term does not require skin to skin contact.

(4) **SEXUAL INTERCOURSE.** Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

(5) **SODOMY.** Any sexual act involving the genitals of one person and the mouth or anus of another person. Ala. Code § 13A-6-60.

**First Degree Rape** – Ala. Code § 13A-6-61(a). A person commits the crime of rape in the first degree if he or she does any of the following:

(1) Engages in sexual intercourse with another person by forcible compulsion.

(2) Engages in sexual intercourse with another person who is incapable of consent by reason of being incapacitated.

(3) Being 16 years old or older, engages in sexual intercourse with another person who is less than 12 years old.

**Second Degree Rape** – Ala. Code § 13A-6-62(a). A person commits the crime of rape in the second degree if, being 16 years old or older, he or she engages in sexual intercourse with another person who is 12 years old or older, but less than 16 years old; provided, however, the actor is at least two years older than the other person.

**First Degree Sexual Abuse** – Ala. Code § 13A-6-66(a). A person commits the crime of sexual abuse in the first degree if he or she does either of the following:

- (1) Subjects another person to sexual contact by forcible compulsion.
- (2) Subjects another person to sexual contact who is incapable of consent by reason of being incapacitated.

**Second Degree Sexual Abuse** – Ala. Code § 13A-6-67(a). A person commits the crime of sexual abuse in the second degree if he or she does either of the following:

- (1) Subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old.
- (2) Being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.

**First Degree Sodomy** – Ala. Code § 13A-6-63(a). A person commits the crime of sodomy in the first degree if he or she does any of the following:

- (1) Engages in sodomy with another person by forcible compulsion.
- (2) Engages in sodomy with another person who is incapable of consent by reason of being incapacitated.
- (3) Being 16 years old or older, engages in sodomy with a person who is less than 12 years old.

**Second Degree Sodomy** – Ala. Code § 13A-6-64(a). A person commits the crime of sodomy in the second degree if, being 16 years old or older, he or she engages in sodomy with another person 12 years old or older, but less than 16 years old; provided, however, the actor is at least two years older than the other person.

**Sexual Torture** – Ala. Code § 13A-6-65.1(a). A person commits the crime of sexual torture if he or she does any of the following:

- (1) Penetrates the vagina, anus, or mouth of another person with an inanimate object, by forcible compulsion, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.
- (2) Penetrates the vagina, anus, or mouth of a person who is incapable of consent by reason of being incapacitated, with an inanimate object, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.
- (3) Penetrates the vagina, anus, or mouth of a person who is less than 12 years old, with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

(4) By inflicting physical injury, including, but not limited to, burning, crushing, wounding, mutilating, or assaulting the sex organs or intimate parts of another person, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

**Indecent Exposure** – Ala. Code § 13A-6-68(a). A person commits the crime of indecent exposure if, with intent to arouse or gratify sexual desire of himself or herself, or of any person other than his or her spouse, he or she exposes his or her genitals under circumstances in which he or she knows the conduct is likely to cause affront or alarm.

**Incest** – Ala. Code § 13A-13-3.

(a) A person commits incest if he marries or engages in sexual intercourse with a person he knows to be, either legitimately or illegitimately:

- (1) His ancestor or descendant by blood or adoption; or
- (2) His brother or sister of the whole or half-blood or by adoption; or
- (3) His stepchild or stepparent, while the marriage creating the relationship exists; or
- (4) His aunt, uncle, nephew or niece of the whole or half-blood.

(b) A person shall not be convicted of incest or of an attempt to commit incest upon the uncorroborated testimony of the person with whom the offense is alleged to have been committed.

**Enticing Child to Enter Vehicle, House, Etc., for Immoral Purposes** – Ala. Code § 13A-6-69(a). It shall be unlawful for any person with lascivious intent to entice, allure, persuade, or invite, or attempt to entice, allure, persuade, or invite, any child under 16 years of age to enter any vehicle, room, house, office, or other place for the purpose of proposing to such child the performance of an act of sexual intercourse or an act which constitutes the offense of sodomy or for the purpose of proposing the fondling or feeling of the sexual or genital parts of such child or the breast of such child, or for the purpose of committing an aggravated assault on such child, or for the purpose of proposing that such child fondle or feel the sexual or genital parts of such person.

**Sexual Abuse of a Child Less than 12 Years Old** – Ala. Code § 13A-6-69.1(a). A person commits the crime of sexual abuse of a child less than 12 years old if he or she, being 16 years old or older, subjects another person who is less than 12 years old to sexual contact.

**School Employee Having Sexual Contact With a Student Under the Age of 19 Years** – Ala. Code § 13A-6-82.

(a) A person commits the crime of a school employee having sexual contact with a student under the age of 19 years if he or she is a school employee and engages in sexual contact, as defined by Section 13A-6-60, with a student, regardless of whether the student is male or female. Consent is not a defense to a charge under this section. The crime of a school employee having sexual contact with a student is a Class C felony.

(b) A person commits the crime of a school employee soliciting a sex act with a student under the age of 19 years if he or she is a school employee and solicits, persuades, encourages, harasses, or entices a student to engage in a sex act including, but not limited to, sexual intercourse, sodomy,



or sexual contact, as defined by Section 13A-6-60. The crime of soliciting a student to perform a sex act is a Class A misdemeanor.

### **SEXUAL EXPLOITATION**

**Federal Law:** n/a

**Alabama Law:**

**Distributing a Private Image with Intent to Harass, Threaten, Coerce, or Intimidate the Person Depicted** – Ala. Code § 13A-6-240(a). A person commits the crime of distributing a private image if he or she knowingly posts, emails, texts, transmits, or otherwise distributes a private image with the intent to harass, threaten, coerce, or intimidate the person depicted when the depicted person has not consented to the transmission and the depicted person had a reasonable expectation of privacy against transmission of the private image.

**Sexual Extortion** – Ala. Code § 13A-6-241(a). A person commits the crime of sexual extortion if he or she knowingly causes or attempts to cause another person to engage in sexual intercourse, sodomy, sexual contact, or in a sexual act or to produce any photograph, digital image, video, film, or other recording of any person, whether recognizable or not, engaged in any act of sadomasochistic abuse, sexual intercourse, sodomy, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct by communicating any threat to injure the body, property, or reputation of any person.

**Possession and Possession with Intent to Disseminate Obscene Matter Containing Visual Depiction of Persons Under 17 Years of Age Involved in Obscene Acts** – Ala. Code § 13A-12-192.

(a) Any person who knowingly possesses with intent to disseminate any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony. Any transfer of the visual depiction from any electronic device to any other device, program, application, or any other place with storage capability which can be made available or is accessible by other users, is prima facie evidence of possession with intent to disseminate.

(b) Any person who knowingly possesses any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class C felony.

### **SEXUAL HARASSMENT OR GENDER-BASED HARASSMENT**

**Federal Law:**

Sexual harassment under Title IX means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). 34 C.F.R. § 106.30(a).

**Alabama Law:** n/a

## PROCEDURES FOR THE RESOLUTION OF TITLE IX SEXUAL HARASSMENT AND SEXUAL VIOLENCE COMPLAINTS

### I. OVERVIEW AND APPLICABILITY

The University of Alabama in Huntsville (“UAH” or “the University”) has developed these Procedures for the Resolution of Title IX Sexual Harassment and Sexual Violence Complaints (the “Procedures”) pursuant to and in compliance with Title IX of the Education Amendments of 1972 and its implementing regulations (collectively referred to as “Title IX”). These Procedures should be read in conjunction with the Title IX Sex Discrimination, [Sexual Exploitation](#), Sexual Harassment, and Sexual Violence Policy (the “Title IX Policy”), which includes additional information regarding applicable definitions, key terms, reporting options, available resources and other relevant topics.

These Procedures will be used to investigate and resolve all Reports and Formal Complaints of Sexual Harassment/Sexual Violence, as described within the definition of Prohibited Conduct in the Title IX Policy, brought against UAH students, faculty and staff members, affiliates, and non-affiliates (i.e., someone not associated with UAH), as appropriate.<sup>1</sup> All Reports or complaints covered by Title IX alleging sexual discrimination that do not fall within the category of Sexual Harassment or Sexual Violence, as defined in the Title IX Policy, will be investigated and resolved through the Procedures for the Resolution of Title IX Sex Discrimination Complaints (non-harassment) Against Students or the Procedures for the Resolution of Title IX Sex Discrimination Complaints (non-harassment) Against Faculty, Staff, Affiliates, Non-Affiliates.

All other reports or complaints of discrimination against students, faculty and staff members, including but not limited to those based on race, color, religion, national origin, and age will be resolved using the Discrimination Complaint/Grievance Procedure and/or the Student Conduct Code.

Any conduct that does not rise to the level of Prohibited Conduct as defined in the Title IX Policy and/or falls outside the jurisdiction of the Title IX Policy may be investigated and addressed pursuant to other applicable policies, including but not limited to: the Discrimination Complaint/Grievance Procedure, the Student Conduct Code, the Faculty Handbook, and/or the Staff Handbook.

All community members are strongly encouraged to report to the University any incident of Prohibited Conduct as defined in the Title IX Policy. Many University administrators are specifically trained to support individuals affected by Prohibited Conduct, and the University is fully committed to promoting a safe and healthy educational and work environment.

### II. RIGHTS OF THE COMPLAINANTS AND RESPONDENTS

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<sup>1</sup> For purposes of UAH’s Title IX ~~policy~~-Policy and these Procedures, an “affiliate” includes, but is not limited to, visiting scholars and post-doctoral fellows who are not otherwise classified as UAH faculty, staff, or students.

## A. Rights of Complainants and Respondents

Both Complainants and Respondents have the following rights:

- To receive information about available Supportive Measures and community support resources (including, but not limited to, a mutual no-contact order, modification of academic, living, transportation, or working situations to avoid a hostile environment; and available health and mental health counseling, victim advocacy, safety planning, information about possible legal assistance, visa and immigration assistance, student financial aid, and, if applicable, disability accommodations)<sup>2</sup>;
- To receive Supportive Measures;
- To a thorough and impartial investigation if and when one is initiated;
- To receive a written notice of the date, time, location, participants and purposes of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate;
- To receive an objective evaluation of all relevant evidence – including both inculpatory evidence (evidence that may support a finding or conclusion that Respondent engaged in Prohibited Conduct) and exculpatory evidence (evidence that may support a finding or conclusion that a Respondent did not engage in Prohibited Conduct);
- To be provided an opportunity to inspect and review and receive a copy of any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source; and a right to respond to this evidence;
- To review and receive review, receive, and respond to a copy of the draft and Final Investigation Report that summarizes relevant evidence;
- To participate in a live grievance hearing except as outlined herein;
- To be accompanied by an advisor, who may be, but is not required to be, an attorney, at all University proceedings relevant to the investigation and hearing process, subject to the limitations outlined herein;
- If a party does not have an advisor at a live hearing, to receive an advisor (to conduct cross-examination at the live hearing) of the University's choice, who may be, but is

**Commented [1]:** If both parties have the right to receive supportive measures, how does this interact with the information contained in footnote 2, which appears to qualify access to supportive measures - at least for the complainant?

**Commented [2]:** To be provided ...  
To receive...

**Commented [3]:** Can/should this be unbundled from inspection/review/receipt of evidence?

**Commented [4]:** Are university-provided advisors constrained in their activity when compared with the party-selected advisor immediately above? Why and how so?

**Commented [5]:** Who is 'the University' in this section? Is it a condition of provision of an advisor that the advisor be chosen by the University? Is the crux that you have the choice to choose (and pay for) an advisor or to have one provided for you by the institution (and chosen by the institution)? At that point, are those who have fewer resources going to be placed at a disadvantage in terms of potential for representation/support during proceedings?

<sup>2</sup> If the Complainant requests such Supportive Measures and if they are reasonably available and do not unreasonably burden the Respondent, they will be provided regardless of whether the Complainant chooses to file a Formal Complaint or refuses to report the crime to campus police or local law enforcement.

not required to be, an attorney, provided without fee or charge;

- To inspect and review the recording of the live grievance hearing;
- To be notified of the appeal process and whether an appeal is available;
- To receive a statement of, and rationale for, the Hearing Officer's decision as to each allegation, including a determination regarding responsibility, whether any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant;
- To have access to published policies regarding Prohibited Conduct and University disciplinary procedures, including the possible range of sanctions;
- To be notified that information and materials the University obtains during its investigation into allegations of Prohibited Conduct may be disclosed to law enforcement or others in response to a valid subpoena; and
- To be notified that ~~he or she is not required~~ **there is no requirement** to make a statement or otherwise provide information relevant to the investigation. However, the investigation may continue and a decision regarding responsibility will be made based on the available statements and evidence.

#### B. Additional Rights of Complainants

- To be informed of available options for making a Report;
- To be provided an explanation of the grievance process, including any informal resolution process, for resolving complaints of sexual harassment;
- To be advised of the right to simultaneously file a criminal complaint and a Title IX complaint with UAH and to be advised of the University's prohibition on retaliation against an individual who exercises their rights under Title IX, Title VII, the Campus SaVE Act, or the Title IX Policy;
- To decline to notify law enforcement authorities in cases of sexual assault, domestic violence, dating violence, and stalking cases; and
- To be assisted by campus authorities, if requested, when reporting a crime to law enforcement.

#### C. Additional Rights of Respondents

**Commented [6]:** Should this move lower in the list (as it would come later in the process, presumably, after decisions on the allegations, notifications about investigation, etc.)?

**Commented [7]:** Two steps?

To be notified of whether an appeal is available and the rationale therein, including explanation in the case that an appeal is not available.

To be notified of the appeal process itself.

**Commented [8]:** Does this belong at the front of the list?

**Commented [9]:** Should this be moved up to the front? This would happen early on in the process. Also, isn't there a presumption that such information will be provided under a subpoena? Is it possible for the University (or anyone) to refuse a valid subpoena? It is an interesting statement of a 'right' to be notified, and I'm just curious about the reasoning for including something that would be presumed to happen - learning as I read...

**Commented [10]:** This belongs really early, also, for clear reasons. It is possible just to make a list of rights, of course, but sequencing can help people also get a framing of the process, and that can be productive across the board.

**Commented [11]:** Merits a separate bullet point?

- Upon receipt of a Formal Complaint, to receive written notice of the Title IX grievance process including any informal resolution process, and notice of the allegations of sexual harassment including sufficient details known at the time and with sufficient time to prepare a response before any initial interview; and
- To be advised of a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### III. COMPLAINT PROCEDURES

#### A. Time Frame for Resolution

The Title IX Coordinator seeks to resolve all Reports as promptly as reasonably possible. Best efforts will be made to follow the time frames discussed below.

In calculating time periods, “business days” do not include weekends or UAH holidays. All time frames may be extended when necessary to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, accommodate delays by the parties, account for University breaks or vacations, or address other legitimate reasons, including the complexity of the investigation (including the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged conduct. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing.

**Commented [12]:** Are there parameters defined for the accommodations and legitimacy of reasons?

**Commented [13]:** It would be helpful to specify a time by which such notifications will be shared with the parties in writing (perhaps it is below)...

#### B. Initial Assessment and Dismissal Process

##### 1. Responses to a Report of Prohibited Conduct

When a Report of Prohibited Conduct is made, the Title IX Coordinator and/or Designee will promptly contact the Complainant for a preliminary discussion of the availability of Supportive Measures, consider the Complainant’s wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain the process for filing a Formal Complaint.

During the preliminary discussion with the Complainant, the Title IX Coordinator and/or Designee will gather facts that will enable the Title IX Investigator(s), in consultation with other offices as appropriate, to:

- Assess the nature and circumstances of the allegation(s);
- Address any immediate concerns about the physical safety and emotional well-being of the parties;

- If the conduct is criminal in nature, notify the Complainant of the option to notify law enforcement and to be assisted in doing so, as well as the option to decline to notify law enforcement;
- Notify the Complainant of the availability of medical treatment to address any physical and mental health concerns and to preserve evidence;
- Provide the Complainant with written information about:
  - On and off campus resources;
  - The available range of Supportive Measures;
  - ~~An explanation of the~~ procedural options, including Informal Voluntary Resolution and investigation and adjudication;
  - The Complainant's Rights during the process;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Explain the University's policy prohibiting Retaliation;
- Explain the right to and role of an advisor; and
- Assess the reported conduct for the need for a timely warning or entry in the crime log under federal law.

If a Complainant wants to maintain anonymity and/or requests that no investigative or disciplinary measures be taken, the Title IX Coordinator and/or Deputy Title IX Coordinator will advise the Complainant that the University will consider the request but cannot guarantee that the University will be able to honor the request if the Title IX Coordinator determines it would be clearly unreasonable in light of known circumstances not to investigate the allegations. The University will conduct a thoughtful and intentional assessment and will weigh such a request in light of the University's obligation to provide a safe, non-discriminatory environment. In determining whether it can honor a request for confidentiality, the following factors will be considered:

- The nature and scope of the alleged conduct, including whether the reported misconduct involves the use of a weapon;
- The respective ages and roles of the Complainant and Respondent;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of violence;
- Whether there have been other Reports of misconduct involving the Respondent;
- Whether the Report reveals a pattern of misconduct (e.g., via illicit use of drugs or

**Commented [14]:** It is in parallel with 'wants to maintain' as a full phrase. Consider, alternately, "If a Complainant requests anonymity and/or that no investigative or disciplinary measures be taken..."

**Commented [15]:** There are a couple of things going on here. Is 'confidentiality' to be understood as synonymous with 'anonymity'? The bullets appear to address the question of confidentiality - and possibly also the question of non-pursuit of investigative or disciplinary measures, but the factors are listed as relevant only in determining potential for confidentiality. Could that be clarified? Can (some measure of) confidentiality be maintained if investigation occurs? Are they inextricably tied? It seems clear in the following section (Filing a Formal Complaint) that a Formal Complaint negates the option for anonymity...

alcohol) at a given location or by a particular group;

- The Complainant’s wish to pursue disciplinary action;
- Whether the University possesses other means to pursue the investigation and obtain relevant evidence without participation from the Complainant; and
- Considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent.

The University’s ability to fully investigate and respond to a Report may be limited if the Complainant requests that their name not be disclosed to the Respondent or declines to participate in an investigation.

**Commented [16]:** This statement may need to be earlier in the document since it qualifies scope of response on the part of the institution.

## 2. The Initial Assessment

An investigation and initial assessment will not be initiated unless and until a Formal Complaint is filed. A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting that UAH investigate the allegation of Prohibited Conduct. To file a Formal Complaint, a Complainant must be participating in, or attempting to participate in UAH’s education programs or activities or employed by UAH. Formal Complaints cannot be anonymous except for Formal Complaints filed by the Title IX Coordinator when the Title IX Coordinator believes that with or without the Complainant’s desire to participate in a grievance process, it would be clearly unreasonable in light of known circumstances not to investigate the allegations.

**Commented [17]:** If an individual who is not connected to the institution in any way comes on campus for a party and is assaulted by a member of the UAH community, where does that fall in terms of the process? If an individual in similar circumstances comes on campus for a university event and is assaulted by a member of the UAH community, where does that fall in terms of the process?

The assessment will determine whether the alleged conduct could present a potential violation of the Title IX Policy and whether further action is warranted based on the alleged conduct, including whether the Formal Complaint must be or may be dismissed.

## 3. Filing a Formal Complaint

Where a Complainant desires to file a Formal Complaint to initiate a grievance process, the Complainant cannot remain anonymous or prevent their identity from being disclosed to the Respondent. The Complainant may request to withdraw a Formal Complaint at any time. The University reserves the right to make a determination whether to approve or deny this request, but will strongly consider the Complainant’s wishes.

The Title IX Coordinator may consolidate Formal Complaints against more than one Respondent or by more than one Complainant against one or more Respondents or by one party against the other party where the allegations of Prohibited Conduct arise out of the same facts or circumstances. Arising out of the same fact and circumstances means that the multiple Complainants’ allegations are so intertwined that their allegations directly relate to all the parties.

### a. Mandatory Dismissal of Formal Complaints



The Title IX Coordinator must dismiss a Formal Complaint based on the following grounds:

- The Prohibited Conduct would not constitute sexual harassment even if proved;
- The Prohibited Conduct did not occur in UAH's education program or activity (as defined in Section II (Jurisdiction)) of the Title IX Policy; or
- The Prohibited Conduct did not occur against a person in the United States.

Commented [18]: a UAH

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**b. Permissive Dismissal of Formal Complaints**

The Title IX Coordinator may dismiss a Formal Complaint based on the following grounds:

- If at any time during the investigation or hearing, a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by UAH; or
- Specific circumstances prevent UAH from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Commented [19]: enrolled at

Commented [20]: Does this allow a Respondent an avenue of escape via quitting (classes/job) or resigning? Is there a bar to future connection to the institution as a result? Is there a policy precluding withdrawal from class in a semester only to return in a future semester, for example? Or a period after which the Complaint has timed out?

Commented [21]: Can a timeframe be specified?

Upon a mandatory or permissive dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the reason(s) for the dismissal simultaneously to the parties. A mandatory or permissive dismissal does not preclude UAH from investigating and addressing the alleged conduct pursuant to other applicable policies, including, but not limited to, UAH's Discrimination Complaint/Grievance Procedure, Code of Student Conduct, Staff Handbook, Faculty Handbook.

Either party may appeal the dismissal of a Formal Complaint in accordance with Section VI of these Procedures.

### C. Acceptance of Responsibility

The Respondent may, at any time before a determination of responsibility has been made, request to resolve the investigation process or resolve specific allegation(s) by accepting responsibility for the Prohibited Conduct. ~~The Title IX Coordinator will complete a summary report of the information gathered. The Title IX Coordinator will consider the request; if the request is granted, the Title IX Coordinator, in consultation with the Deputy Title IX Coordinator for Students (if a student Respondent) or Human Resources and/or the Provost (if a non-student Respondent), will determine the appropriate sanction(s). A request to accept responsibility for the Prohibited Conduct will be treated as a request to engage in the Informal Voluntary Resolution process outlined in Section D of these Procedures. The Complainant must consent to engage in Informal Voluntary Resolution with the Respondent, and either party can request to end this manner of resolution and pursue an investigation at any time. Because the outcome of the Informal Voluntary Resolution process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted.~~

~~When a Respondent accepts responsibility for the Prohibited Conduct, both the Complainant and Respondent may appeal the sanction decision on the basis that the sanction(s) is either too severe or too lenient. The appeal process is detailed in the Appeals Process (see Section VI) of these Procedures.~~

### D. Informal Voluntary Resolution

Informal Voluntary Resolution is a path designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the Complainant and preserves the safety and welfare of the campus community. Informal Voluntary Resolution does not involve an investigation, adjudication hearing, or disciplinary action against a Respondent and is not appropriate for all forms of conduct under the Title IX Policy. Informal Voluntary Resolution is available only if a Formal Complaint is filed and both parties voluntarily agree in writing to participate.

Factors the University will consider when determining whether a Report of Prohibited Conduct is suitable for alternative resolution include, but are not limited to, the following:

- The nature of the alleged offense;
- The dynamics of power or control commonly associated with the alleged offense and/or with the parties involved;
- The Respondent's prior known conduct;
- Whether there would be a continuing safety threat to the campus community after resolution of the specific report of Prohibited Conduct;
- Whether multiple parties are involved;

- Whether the resolution proposed is designed to eliminate, prevent, and address the reported Prohibited Conduct;
- Any other factor deemed relevant by the Title IX Coordinator in the interest of overall campus safety or safety of the parties involved.

To proceed with Informal Voluntary Resolution, the Title IX Coordinator must provide the parties with written notice that includes the following information: (1) a description of the allegations in the Formal Complaint; (2) the requirements of the Informal Voluntary Resolution process, including the circumstances under which UAH precludes the parties from resuming a Formal Complaint arising from the same allegations; (3) any consequences resulting from participating in the Informal Voluntary Resolution process, including the records that will be shared and maintained; and (4) any party's right to, at any time prior to agreeing to a resolution, withdraw from the Informal Voluntary Resolution process and resume the grievance process with respect to the Formal Complaint.

Informal Voluntary Resolution will be facilitated by University-sanctioned trained professionals. The time frame for completion of Informal Voluntary Resolution may vary, but the University will seek to complete the process within sixty (60) business days of the Complainant's request.

Informal Voluntary Resolution will not be used in cases involving allegations that an employee sexually harassed or committed sexual violence (sexual assault, domestic violence, dating violence, or stalking) against a student.

Informal Voluntary Resolution may result in the following remedies: establishing Supportive Measures; conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; and any other remedy that can be tailored to the involved individuals to achieve the goals of the Title IX Policy.

Informal Voluntary Resolution may also include restorative principles that are designed to allow a Respondent to accept responsibility for misconduct and acknowledge harm to the Complainant or to the University community. Informal Voluntary Resolution may also include mediation.

Participation in Informal Voluntary Resolution is a choice, and either party can request to end this manner of resolution and pursue an investigation at any time, including if Informal Voluntary Resolution is unsuccessful at resolving the Report. Similarly, a Complainant may request to end an investigation and pursue Informal Voluntary Resolution at any time if the Respondent also consents to Informal Voluntary Resolution. In addition, either party may request Supportive Measures regardless of whether any particular course of action is sought.

Facilitators of Informal Voluntary Resolution cannot be used as a witness during a subsequent investigation or adjudication hearing.

If a Report of Prohibited Conduct is resolved by Informal Voluntary Resolution, resolution will be deemed final. Because the outcome of Informal Voluntary Resolution process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted. Should the resolution result in terms or conditions being imposed on one or both parties, a failure to subsequently adhere to those terms or conditions as written may subject the offending party to a Failure to Comply Charge as defined in Section III (Prohibited Conduct) of the Title IX Policy.

**E. Emergency Removal Process for Student Respondents and Administrative Leave**

The Title IX Coordinator in consultation with the Behavioral Evaluation and Threat Assessment team may impose an emergency removal to remove a student Respondent from the University's educational program or activity on an emergency basis prior to a determination regarding responsibility. This removal shall be undertaken once an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct justifies removal.

Emergency removals may include, but are not limited to, a full or limited emergency removal from campus activities, removal from University housing, removal from University sponsored events, and/or restriction on access to University facilities and programs.

The Dean of Students will provide notice to the student Respondent of the emergency removal, and the student Respondent may request a review of the emergency removal in writing within two (2) business days of the issuance of any emergency removal. Such request should be submitted to the Dean of Students. Reasonable efforts will be made to hold such a review of the emergency removal within five (5) business days of the receipt of the request for review to determine if the removal should continue, as issued, through the remainder of the conduct process. If the student Respondent submits a timely review request, the review may be held beyond this five (5) calendar day period if scheduling issues exist.

At any requested review, information will be presented in support of any challenged removal. The student Respondent may offer statements or other information to rebut any grounds offered in support of the emergency removal.

Except as limited herein, the student Respondent has the right to be assisted during the review process by any advisor they may choose, at their own expense. The advisor may be an attorney. An advisor has no right to speak or participate directly in any aspect of the emergency removal review process. The Respondent must speak on their own behalf. An advisor's failure to comply with these participation limitations may cause the advisor to be removed from the proceeding.

The decision following the review of the emergency removal will be final.

**F. Administrative Leave for Faculty/Staff Respondents**

In certain circumstances, the University may place a faculty or staff Respondent on administrative leave (with or without pay) during the pendency of a formal investigation prior to a determination regarding responsibility.

For additional information regarding the processes and procedures applicable to administrative leave, please refer to the Faculty Handbook for faculty Respondents and the Staff Handbook for staff Respondents.

#### **IV. INVESTIGATION PROCEDURES**

If deemed appropriate based on the Initial Assessment, the Title IX Coordinator shall initiate a prompt, thorough, and impartial investigation of Prohibited Conduct in accordance with these Procedures. The Title IX Coordinator (or Designee) will designate an Investigator(s) who has training and experience investigating allegations of Prohibited Conduct. The Investigator may be a University employee or an outside Investigator. For Formal Complaints involving allegations against faculty, staff, or non-student third-parties, the Title IX Coordinator (or Designee) will collaborate with Human Resources (Deputy Title IX Coordinator). The Investigator(s) will coordinate the gathering of information, which may be later used to determine whether the alleged Prohibited Conduct constitutes a violation of the Title IX Policy.

The investigation is a neutral fact-gathering process. The Respondent is presumed not to have violated the Title IX Policy until a determination regarding responsibility is made at the conclusion of the grievance process. This presumption may be overcome only where the preponderance of the evidence supports a finding that the Respondent is responsible for violating the Title IX Policy.

Neither party is required to participate in the investigation nor any form of resolution under these Procedures. The Investigator will not draw an adverse inference merely because either of the parties elected not to participate.

UAH will disclose information about its investigation and resolution of Formal Complaints only to those who need to know the information in order to carry out their duties and responsibilities. It will inform all University personnel participating in an investigation, proceeding, or hearing that they are expected to maintain the privacy of the process. This does not prohibit either a Complainant or Respondent from obtaining the assistance of family members, counselors, therapists, clergy, doctors, attorneys, or other resources or discussing the allegations under investigation, or gathering and presenting evidence, including communicating with witnesses or potential witnesses.

##### **A. The Investigative Process**

###### **1. Notice of Investigation**

The Title IX Coordinator or Deputy Title IX Coordinator will send the Complainant and the Respondent and, if applicable, the Respondent's appropriate supervisor, a written Notice of

Investigation, which constitutes the formal charge. The Notice of Investigation will contain the following information:

- Notice of the alleged conduct at issue, including the identities of the parties involved when a Formal Complaint is filed by a Complainant and the identities of the parties (if known) when the Formal Complaint is filed by the Title IX Coordinator;
- Notice of the specific section of the Title IX Policy allegedly violated, and the date and location of the incident;
- Notice of the grievance process, including information about Voluntary Informal Resolution;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Notification of the provision of the Title IX ~~policy~~ Policy prohibiting knowingly making false statements or knowingly submitting false information during the grievance process as defined in Section IV.E. of the Title IX Policy;
- Range of potential violations under the Title IX Policy;
- On and off campus resources;
- Right to an advisor of their choice who may be, but is not required to be, an attorney;
- Range of potential sanctions; and
- Notification that expulsion is a potential sanction and that expulsion precludes matriculation (where appropriate).

The Notice of Investigation must allow the Respondent sufficient time to prepare a response before any initial interview. Upon receipt of the Notice of Investigation, or at any stage in the process, the Respondent may choose to accept responsibility for the Title IX Policy violation(s). Once the Notice of Investigation has been delivered to the parties, the investigation phase begins.

If, in the course of an investigation, the Title IX Investigator decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Investigation, the Title IX Coordinator or Deputy Title IX Coordinator will provide notice of the additional allegations to the parties whose identity is known.

## **2. Conducting the Investigation**

The Title IX Coordinator and/ or Designee will oversee the investigation. The investigation

is designed to provide a fair and reliable gathering of the facts by a trained and impartial Investigator(s). All individuals, including the Complainant, the Respondent, and any third-party witnesses will be treated with appropriate sensitivity and respect throughout the investigation. The investigation will safeguard the privacy of the individuals involved in a manner consistent with federal law and University policy.

During the investigation, the Complainant and Respondent will have an opportunity to be heard, to submit information, and to identify witnesses who may have relevant information, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The Investigator(s) will speak separately with the Complainant, the Respondent, and any other individuals who are willing to participate and have information relevant to the determination of responsibility. As part of the investigation, the Investigator(s) will gather or receive information that is relevant to the determination of an appropriate sanction or remedy, including information about the impact of the alleged incident on parties.

The Investigator(s) will also endeavor to gather any available physical or documentary evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media materials, text messages, and other records as appropriate, available, and feasible. The Investigator(s) has the discretion to determine the relevance of any witness or other evidence to the finding of responsibility and may exclude information if the Investigator(s) determines that the information is irrelevant.

The Investigator(s) may not access, consider, disclose or otherwise use a party's records maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional which are made and maintained in connection with the provision of treatment to the party unless the party holding such privilege has waived the privilege. Additionally, evidence of the Complainant's sexual history or behavior is not relevant if it is offered to prove that the Complainant engaged in other sexual behavior or to prove the Complainant's sexual predisposition. Such evidence may be offered to show:

- Prior or subsequent sexual encounters between the Complainant and the Respondent offered to prove consent; or
- That a person other than the Respondent was the source of semen, injury, or other physical evidence.

### **3. Timing of the Investigation**

The University will seek to conclude the investigation within sixty (60) business days from the issuance of the Notice of Investigation. The time frame for completion of the investigation, or any designated time frames of steps in the investigation, may be extended for good cause as necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case (including the number of witnesses and volume of information provided by the parties), or to address other legitimate reasons. Any extension of the timeframes, and the reason for the extension, will be shared with the

parties in writing. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

#### **4. Relationship to Criminal Proceeding**

The filing and processing of a Formal Complaint is separate from and independent of any criminal investigation or proceeding. Where the University is made aware that there is a concurrent criminal investigation, the Title IX Coordinator or Deputy Title IX Coordinator will coordinate with law enforcement so that any University processes do not interfere with the integrity or the timing of the law enforcement investigation. At the request of law enforcement, the University may agree to defer its investigation until after the initial stages of a criminal investigation. The Title IX Coordinator or Deputy Title IX Coordinator will nevertheless communicate with the parties regarding Supportive Measures and accommodations, procedural options, anticipated timing, and the implementation of any necessary Supportive Measures for the safety and well-being of all affected individuals. The identity of the Complainant will remain confidential unless disclosing the Complainant's identity is necessary to provide the Supportive Measures for the Complainant.

If the University defers the Title IX investigation, the Investigator(s) will promptly resume fact gathering as soon as law enforcement has released the case for review following the initial criminal investigation. Neither law enforcement's determination as to whether to prosecute a Respondent nor the outcome of any criminal prosecution is determinative of whether sexual misconduct occurred under the Title IX Policy. If, however, a Respondent is later convicted of a crime, that Respondent could be subject to other policies and procedures that could result in discipline up to and including dismissal.

#### **5. Cooperation in the Investigation**

All community members, including students, faculty and staff, are strongly encouraged and expected to cooperate with the Title IX Coordinator or Deputy Title IX Coordinator in the investigation, as well as any adjudication, of any Report or Formal Complaint of Prohibited Conduct. The Title IX Coordinator or Deputy Title IX Coordinator may request the appearance of persons from the University community who can provide relevant evidence. Both a Complainant and a Respondent may decline to participate in proceedings under the Policy. The Title IX Coordinator or Deputy Title IX Coordinator will determine whether the investigation and any adjudication will proceed without any Complainant(s) pursuant to the factors set out in Section III.B. above.

##### **B. Standard of Proof**

At all stages of the process, UAH will apply the preponderance of the evidence standard of proof (more likely than not) when determining whether the Title IX Policy has been violated.

##### **C. Right to Discuss Allegations versus Witness Tampering**

The Complainant and Respondent have the right to discuss or write about the allegations



under investigation and to gather and present evidence. While a party has a right to communicate with witnesses or potential witnesses, witness tampering and intimidation is prohibited. If a Respondent reacts to a written notice of allegations by intimidating witnesses, such conduct constitutes Retaliation and will be investigated and adjudicated pursuant to these Procedures.

#### **D. Review of the Evidence and Submission of Additional Evidence**

At the conclusion of the investigation, the Investigator(s) will provide the Complainant and Respondent and their advisors, if any, a copy of the evidence that has been obtained as part of the investigation that is directly related to the allegations in the Formal Complaint, including inculpatory and exculpatory evidence whether obtained from a party or another source, as well as evidence that the University does not intend to rely in reaching a determination of responsibility. The evidence will be provided with any redactions if required by applicable federal and/or state law and/or information that is not directly related to the allegations. The parties will receive a copy of the evidence electronically but as a precondition of receiving a copy of the evidence, all parties, and their respective advisors (if any) must sign and agree to abide by a non-disclosure agreement.

A Complainant and Respondent may submit any additional evidence, comment, or information to the Investigator(s) within ten (10) business days of the date upon which the University makes the evidence available. This is typically the final opportunity for the parties to identify any additional information or witnesses for the Investigator's consideration in drafting the Final Investigation Report. In the absence of good cause shown, information discoverable through the exercise of due diligence that is not provided to the Investigator within ten (10) business days of the date upon which the University makes the evidence available will not be considered by the Investigator(s) or Hearing Officer.

#### **E. Final Investigation Report**

Upon receipt and consideration of any additional information from the Complainant or Respondent, or after the ten (10) business day comment period provided for in Section IV.D. has lapsed without comment, the Investigator(s) will complete a Final Investigation Report that objectively summarizes the relevant evidence. The parties and their advisors will simultaneously receive a copy of the Final Investigation Report (which is also subject to the non-disclosure agreement) at least ten (10) business days before an adjudication hearing. The Complainant and Respondent will each have an opportunity to review and respond in writing to the Final Investigation Report. Any such response by the parties must be submitted to the Title IX Coordinator within five (5) business days of transmission of the Final Investigation Report. The Title IX Coordinator will provide any statement(s) submitted by the parties with the Final Investigation Report to the Hearing Officer.

#### **V. Adjudication by a Hearing Officer**

##### **A. Initiation of the Hearing**

The Title IX Coordinator (or Designee) will appoint a Hearing Officer who has received appropriate training.

## **B. Hearing Requirements**

The Hearing Officer's role is to conduct an independent and objective review of all of the evidence, including inculpatory and exculpatory evidence, directly related to the allegations, and determine if the Respondent violated the Title IX ~~policy~~ Policy based on a preponderance of the evidence standard (and, if yes, to determine an appropriate sanction).

The hearing will be scheduled and will proceed according to the guidelines set forth below:

### **1. Notice and Timing of Hearing**

The Title IX Coordinator (or Designee) will issue a written Notice of Hearing to the parties and their advisors with information regarding the hearing including the date, time, and location of the hearing; the name of the Hearing Officer; and how to challenge the Hearing Officer for bias or conflict of interest. The Title IX Coordinator (or Designee) will have sole discretion to determine whether the Hearing Officer has bias or conflict of interest, and if so, the responsibility to appoint another Hearing Officer.

The hearing will usually be scheduled within twenty-five (25) business days from the date of the Notice of Hearing, subject to extension for good cause at the discretion of the Hearing Officer. Good cause for extension may include the unavailability of the parties, the schedule of the Hearing Officer, the timing of semester breaks or University holidays, concurrent law enforcement activity, or other extenuating circumstances. Any extension, including the reason for the extension, will be shared with the Complainant and Respondent and their advisors in writing.

If, despite being notified of the date, time, and location of the hearing— and in the absence of good cause—a party or an advisor does not attend the hearing, the hearing may proceed subject to the limitations set forth herein.

### **2. Administration of the Hearing Process**

The Hearing Officer is responsible for the administration of the hearing process, including procedural matters and decisions leading up to the hearing, determinations about information that will be considered or not, appropriate and inappropriate lines of questioning, and the overall decorum and conduct of the proceedings. The Hearing Officer is not bound by strict rules of legal evidence and may admit evidence that is of probative value (evidence that is useful in proving or disproving a fact) in determining the issues involved.

The Hearing Officer will apply the preponderance of the evidence standard (more likely than not) when determining whether the Title IX ~~P~~policy has been violated.

An audio-visual recording of the hearing will be available to the parties for inspection and review within twenty-one (21) business days after the conclusion of the hearing.

### **3. Hearing Format**

The hearing is an opportunity for the Complainant and Respondent to address the Hearing Officer in person. The parties may address any information in the Final Investigation Report and supplemental statements submitted in response to the Final Investigation Report. The Complainant and the Respondent have the right to make an opening and a closing statement. The Complainant shall give the first opening statement. The Respondent shall give the final closing statement. The Complainant and the Respondent may each include a statement of the impact of the alleged offense as part of their respective closing statements.

Each party must notify the Title IX Coordinator (or Designee) at least ten (10) business days prior to the hearing if they will be accompanied by an advisor. If a party does not have an advisor, UAH will assign the party an advisor of the University's choice (who may be, but is not required to be, an attorney) provided without fee or charge. Each party has the opportunity to be heard and to identify and secure witnesses, including expert witnesses, for the Hearing Officer's consideration. At least four (4) business days prior to the hearing, each party must submit to the Title IX Coordinator (or Designee): (1) the name of any advisor accompanying the party; (2) if applicable, notification that the party and/or advisor will not attend the hearing; (3) a list of potential hearing witnesses; and (4) all materials that the Complainant or Respondent want the Hearing Officer to consider. All evidence each party wishes to be considered by the Hearing Officer should be presented to the Investigator(s) during the investigation process. If a party does not provide some piece of evidence to the Investigator during the investigation process, that party may only present such evidence during the hearing if the Hearing Officer permits the party to do so ~~at~~ the Hearing Officer's sole discretion. Generally, evidence not presented during the investigation process will only be allowed in the hearing if it is new information not known and not available during the investigation process.

The Title IX Coordinator (or Designee) will provide the witness lists and submitted materials to the Hearing Officer and make copies available to the Complainant and Respondent at least three (3) business days prior to the hearing, consistent with FERPA or other laws and regulations governing the disclosure of education records. Any materials submitted and/or discovered fewer than four (4) business days before the hearing may only be considered at the sole discretion of the Hearing Officer.

All participants in the hearing are expected to behave with decorum and may be asked to leave if they do not.

At the request of either party, the University will conduct the entire hearing (including cross-examination) with the parties located in separate rooms, utilizing technology enabling the parties to see and hear each other.

### **4. Questioning of Parties/Witnesses and Relevancy Determination**

With the exception of cross-examination, all questioning of parties is conducted through the Hearing Officer. A party may recommend direct questions to be asked of a party's own witness or non-party witnesses by submitting them in writing to the Hearing Officer prior to the hearing.

During the hearing, a party may also submit suggested questions, in writing, to the Hearing Officer, which are based on information presented during the hearing.

The Hearing Officer may also independently question the parties, witnesses, and/or Investigator to elicit relevant information. The Hearing Officer is barred from drawing any inference about the determination of responsibility based solely on a party's refusal to answer the Hearing Officer's questions.

All admissible relevant evidence will be evaluated for weight or credibility (the quality of being reliable, trusted and believed in). Evidence that is deemed duplicative of other evidence is not relevant.

Each party and all witnesses are subject to cross-examination by the opposing party's respective advisors. The party's advisor may ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility. Such questioning must be conducted directly, orally, and in real time by the party's advisor and never by the parties personally. The parties and advisors are prohibited from questioning parties and witnesses in an abusive, intimidating, or disrespectful manner.

The party's advisor may otherwise not make statements, challenge relevancy determinations, or otherwise directly participate in the proceedings. The Hearing Officer may remove or dismiss an advisor who becomes disruptive or who does not abide by the limitations on their participation and require the party to use a different advisor.

Neither party is required to participate in the hearing in order for the hearing to proceed. ~~If a party or witness who does not submit to cross-examination at the live hearing, however, the Hearing Officer may not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the~~ The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

A party's advisor may appear and conduct cross-examination even when the party whom they are advising does not appear. Similarly, ~~where~~ when one party does not appear and that party's advisor of choice does not appear, a UAH-provided advisor ~~must still~~ will cross-examine the other, appearing party "on behalf of" the non-appearing party, ~~resulting in consideration of the appearing party's statements but not the non-appearing party's statements (without any inference being drawn based on the non-appearance).~~<sup>3</sup>

~~Where a party refuses to answer cross-examination questions but video evidence exists showing the underlying incident, the Hearing Officer may still consider the available evidence to make a determination.~~

The Hearing Officer, in his or her sole discretion, will determine the relevance of all cross-examination questions presented. If the Hearing Officer deems the question irrelevant, the Hearing

<sup>3</sup> The University reserves the right to delay the hearing, for good cause, if it has less than four (4) business days' notice that a party and that party's advisor will not be present at the hearing.

Officer must explain the basis for such a decision. A question is relevant if it tends to prove or disprove the issue of responsibility. The Hearing Officer's relevancy decision may not be challenged during the hearing by the parties or their advisors.

~~Documents and records may not be relied on to the extent they contain the statements of a party or witness who has not submitted to cross-examination. This rule, however, does not apply to a situation where the evidence involves intertwined statements of both parties (e.g., a text message or e-mail thread) and one party refuses to submit to cross-examination.~~

~~In cases that do not depend on a party's or witnesses' statements but rather on other evidence (e.g., video evidence that does not consist of statements or to the extent that the video contains non-statement evidence), the Hearing Officer may still consider this other evidence to reach a determination and must do so without drawing any inference about the determination based on lack of party or witness testimony.~~

Where a cross-examination question or piece of evidence is relevant but concerns a party's character or prior bad acts, the Hearing Officer cannot exclude or refuse to consider the relevant evidence but may objectively evaluate that relevant evidence by analyzing whether that evidence warrants a high or low level of weight or credibility.

The Hearing Officer will not make credibility determinations based on a person's status as a Complainant, Respondent or witness. Additionally, credibility determinations shall not be based solely on observations of the demeanor of a party or witness when questioned but also on other factors including, but not limited to, specific details, inherent plausibility, internal inconsistency, and corroborating evidence. A party's answers to cross-examination questions must be evaluated in context, including taking into account that a party may experience stress while trying to answer questions.

## **5. Medical Records**

The Hearing Officer may not access, consider, disclose, or otherwise use a party's records maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional which are made and maintained in connection with the provision of treatment to the party unless the party holding such privilege has waived the privilege.

## **6. Sexual History or Behavior**

Evidence of the Complainant's sexual history or behavior is not relevant if it is offered to prove that the Complainant engaged in other sexual behavior or to prove the Complainant's sexual predisposition. Such evidence may be offered to show:

- Prior or subsequent sexual encounters between the Complainant and the Respondent that are offered to prove consent; or
- That a person other than the Respondent was the source of semen, injury, or other physical evidence

## **C. Sanctions**

### **1. General Considerations**

If the Hearing Officer determines that the preponderance of the evidence supports a finding of responsibility under the Title IX Policy, any one or more sanctions may be imposed. In determining appropriate sanction(s), the Hearing Officer may consult the Title IX Coordinator for the purpose of ensuring a particular sanction is feasible, consistent with past practice, and reasonably calculated to end the Title IX Policy violation. As part of this determination, the Hearing Officer will be guided by a number of considerations, including, but not limited to:

- Whether the circumstances suggest an increased risk exists that the Respondent will commit additional acts of Prohibited Conduct (e.g., whether there have been other Prohibited Conduct complaints about the same Respondent, whether the Respondent has a history of violent behavior, whether the Respondent threatened sexual violence or other violence against the Complainant or others);
- Whether the circumstances suggest an increased risk exists of the occurrence of future acts of Prohibited Conduct under similar circumstances (e.g., whether the circumstances reveal a pattern of perpetration via illicit use of drugs or alcohol, at a given location, or by a particular group);
- Whether the Prohibited Conduct was perpetrated with a weapon or involved other aggravating considerations;
- Whether the Respondent upon return to campus would be likely to pose a threat to the safety and/or well-being of the Complainant and/or the UAH community generally and, if so, the nature and extent of the threat and the availability of steps to effectively mitigate the impact;
- The impact of the Prohibited Conduct on the Complainant;
- The impact of the Prohibited Conduct on the University community;
- The need for any sanctions or remedies to eliminate, prevent, or address the existence of a hostile environment within the University community or to maintain a safe and respectful environment conducive to learning, working and living;
- Whether the Respondent accepted responsibility for the Prohibited Conduct; and
- Whether there are any other mitigating, aggravating, or compelling circumstances warranting a sanction or remedy to reach a just and appropriate resolution of the matter.

### **2. Student Respondent Sanctions**

One or more of the following sanctions actions may be imposed on a student Respondent found responsible for a violation(s) of the Title IX Policy:

- **Formal Written Warning** – Formal written warning that the student’s behavior violated Title IX.
- **Probation** – A status in which the student is deemed not to be in good conduct standing with the University for a specified period of time. Probation does not affect the student’s academic standing (i.e., the student may continue attending the University), is not shared with instructors, and is not notated on the student’s permanent academic record. If the student is subsequently found responsible for a violation(s) of the Title IX Policy while on probation, more severe sanctions, including suspension or expulsion, may result. Conditions restricting the student’s participation in University activities may also be imposed.
- **Suspension** – Separation of the student from the University for a specified period of time. During the suspension period, the student is administratively banned from the University and may not be present on University premises; attend or participate in classes; access various University electronic systems; or participate in student organizations or any University-sponsored activity. Violation of the terms of suspension may subject the student to additional sanctions or criminal action. The student will be automatically withdrawn from registered courses based upon the effective date of the suspension. The student will be responsible for any financial obligations to the University but may be eligible for a refund of tuition and fees based upon the effective date of the suspension and the University’s institutional refund policy. Notation of the suspension will appear on the student’s permanent academic record and will remain until the end of the suspension period.
- **Expulsion** – Permanent separation of the student from the University. The student is administratively banned from the University and may not be present on University premises, attend or participate in classes; access various University electronic systems; or participate in student organizations or any University-sponsored activity. Violation of the terms of expulsion may subject the student to criminal action. The student will be automatically withdrawn from registered courses based upon the effective date of the expulsion. The student will be responsible for any financial obligations to the University but may be eligible for a refund of tuition and fees based upon the effective date of the suspension and the University’s institutional refund policy. Notation of the expulsion will appear on the student’s permanent academic record.
- **Housing Reassignment or Removal from University Housing** – Reassignment to another University housing facility and/or loss of the privilege of living in University housing. Removal may be for a definite period of time not less than the remainder of the semester in which the removal is imposed or for an indefinite period of time. If the removal is for an indefinite period, the student may petition the Director of Residence Life and the Title IX Coordinator in writing for restoration of University housing privileges, but not earlier than one (1) calendar year from the effective date of the removal. The student will

be responsible for any financial obligations to the University as set forth in the student housing contract between the University and the student.

- **Additional Sanctions** – The following sanctions may also be imposed: exclusion and/or administrative ban from all or a portion of any University premises or any University-sponsored activity, as specified in the sanction, for a definite or indefinite period of time; an administrative no-contact order with an individual(s); alcohol/substance use assessment and education; anger management assessment and education; essay/reflection or research paper; mandatory assessment with a licensed counselor; community service and/or participation in educational programs; removal from intercollegiate athletic team and loss of athletic scholarship.

### **3. Faculty, Staff, Affiliates, and Non-Affiliates (non-students) Respondents Sanctions**

Sanctions for non-student Respondents may include, but are not limited to, formal written warning, suspension without pay (vacation, holiday, or sick time benefits will be paid by UAH during suspension), imposed probation, reassignment of job responsibilities or duties, mandatory counseling, mandatory attendance at the Employee Assistance Program, demotion, ineligibility to receive raise or promotion, suspension of annual merit increase, decrease in salary, transfer, revocation of tenure, termination (including termination of tenured faculty), campus ban/no trespass warning from UAHPD, prohibition on further employment at the University, loss of University benefits for retirees, and referral to proper law enforcement authorities for prosecution.

**Commented [22]:** Do these need to be detailed as they are in the section above, regarding sanctions for students?

#### **D. Notice of Hearing Outcome Letter**

The Hearing Officer will provide the parties with the final hearing decision (“Hearing Outcome Letter”) no later than seven (7) business days after the conclusion of the hearing. The Hearing Outcome Letter must include the following information:

- Identification of the allegations potentially constituting sexual harassment as defined in the Title IX Policy;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of UAH’s Title IX Policy to the facts;
- A statement of and rationale for the result as to each allegation in the Formal Complaint, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the Complainant; and



- UAH’s procedures for the Complainant and Respondent to appeal.

The Hearing Officer will simultaneously issue the “Hearing Outcome Letter” to both the Complainant and the Respondent within seven (7) business days following the hearing (or such longer time as the Title IX Coordinator (or Designee) may for good cause determine). The Hearing Outcome Letter may also identify protective measures implemented with respect to the Respondent or the broader University community. The Hearing Outcome Letter will not disclose any remedial measures provided to the Complainant.

Commented [23]: How much longer and on what basis?

The hearing decision will not be final and, if the Respondent is found responsible, sanctions will not be imposed until the appeal process is completed or the deadline to file an appeal has passed and no appeal was filed.

**VI. APPEALS PROCESS**

**~~A. Appeal of Sanctions when Respondent Accepts Responsibility~~**

~~For cases of Acceptance of Responsibility, the Complainant and/or Respondent can only appeal based on the grounds that the sanction(s) imposed are either too severe or too lenient. Appeals must be submitted to the appropriate Appeals Officer as outlined below:~~

- ~~• Student Appeals are submitted to the Vice President of Student Affairs or his or her Designee.~~
- ~~• Staff Appeals are submitted to the relevant Vice President or his or her Designee.~~
- ~~• Faculty Appeals are submitted to the Provost or his or her Designee.~~

~~Each party may respond in writing to any appeal submitted by the other party. Written responses must be submitted within five (5) business days following delivery of the notice of the written appeal. Written requests for appeal submitted by one party will be shared with the other party. The sanction review will ordinarily be a review of the Title IX summary report and any information submitted by the parties to the Appeals Officer. The Appeals Officer has the ability to sustain or modify the sanctions. The Appeals Officer will simultaneously notify the parties of the appeal decision within fifteen (15) business days of receipt of all written responses. The appeal decision is final.~~

**~~B. Appeal of Dismissal of Formal Complaint~~**

~~Both the Complainant and the Respondent may seek a review of a dismissal of a Formal Complaint or the Hearing Officer’s decision with regard to a finding of responsibility or non-responsibility and/or imposed sanctions. Appeals must be submitted to the appropriate Appeals Officer as outlined below:~~

- ~~• Student Appeals are submitted to the VP of Student Affairs or his or her designee.~~

- Staff Appeals are submitted to the relevant Vice President or his or her designee.
- Faculty Appeals are submitted to the Provost or his or her designee.

Commented [24]: To whom do VPs appeal?

The Complainant and Respondent have the right to appeal under the Title IX process based solely on the following grounds:

- The existence of a procedural irregularity that materially affected the outcome of the matter~~Procedural irregularity that affected the outcome of the matter;~~
- The existence of new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome; ~~or~~
- The Title IX Coordinator or designee, Investigator, or Hearing Officer had a conflict of interest or bias that affected the outcome of the matter; and/or
- The recommended sanction(s) is too severe or lenient.

~~Each party may respond in writing to any appeal submitted by the other party. Written responses must be submitted within three (3) business days following delivery of the notice of the written appeal. Written requests for appeal submitted by one party will be shared with the other party. The Appeals Officer will simultaneously notify the parties of the appeal decision within fifteen (15) business days of receipt of all written responses. The appeal decision is final.~~

### **C. — Appeal of Hearing Officer's Decision**

~~Both the Complainant and Respondent have a right to seek a review of the Hearing Officer's decision with regard to a finding of responsibility or non responsibility and/or the imposed sanctions. Appeals must be submitted to the appropriate Appeals Officer as outlined below:~~

- ~~Student Appeals are submitted to the VP of Student Affairs or his or her designee.~~
- ~~Staff Appeals are submitted to the relevant Vice President or his or her designee.~~
- ~~Faculty Appeals are submitted to the Provost or his or her designee.~~

~~The Complainant and Respondent have the right to appeal the Hearing Officer's final determination of responsibility and/or the resulting disciplinary sanction(s) solely on the following grounds:~~

- ~~The existence of a procedural irregularity that materially affected the Hearing Officer's decision and/or recommended sanctions;~~

- ~~The existence of new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome;~~
- ~~The Title IX Coordinator, Investigator, or Hearing Officer had a conflict of interest or bias that affected the outcome; and/or~~
- ~~The recommended sanction(s) is too severe or too lenient.~~

In any request for an appeal, the burden of proof lies with the party requesting the appeal, because the ~~decision by the Title IX Coordinator or designee and/or the Hearing Officer's decision~~ will be presumed to have been ~~made~~ decided reasonably and appropriately. Appeals are not intended to be a rehearing of the matter. The scope of the appeal will be limited only to the permissible grounds outlined above that have been accepted for review. In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. The Appeals Officer may speak to the Title IX Coordinator or designee, Investigator, the Hearing Officer, or the parties, as appropriate. The Appeals Officer will defer to the original decision by the Title IX Coordinator or designee or Hearing Officer's decision, making changes to the ~~Hearing Officer's~~ findings only where there is clear error.

Written requests for appeal must be submitted within three (3) business days following delivery of the notice of the dismissal and/or outcome. Each party may respond in writing to any appeal submitted by the other party. Written responses must be submitted within three (3) business days following delivery of the notice of the written appeal. Written requests for appeal submitted by one party will be shared with the other party.

**Commented [25]:** The timeframe for this process might be helpful earlier in this section.

~~If an~~ the appeal of a Formal Complaint is granted, the Formal Complaint will be reinstated and the Title IX Coordinator will initiate a prompt, thorough, and impartial investigation of Prohibited Conduct in accordance with the Investigation Procedure outlined in Section IV of these Procedures. The decision of the Appeals Officer will be final and not subject to further appeal under the Title IX Policy.

If the appeal of a Formal Complaint is denied, the matter is closed, and the Title IX Coordinator's decision stands as final. The Appeals Officer will issue a written decision describing the result of the appeal and the rationale for the result. The appeal decision will be provided simultaneously to both parties no later than fifteen (15) business days after all written responses are received.

If an appeal of a determination of responsibility and/or imposed disciplinary sanction(s) is granted, the Appeals Officer may remand the case to the Hearing Officer and provide instructions regarding the nature and extent of its reconsideration. The Hearing Officer will act promptly to reconsider the matter consistent with those instructions. Following reconsideration, the finding of the Hearing Officer or the sanction imposed by the Hearing Officer will be final and not subject to further appeal under the Title IX Policy.

Alternatively, the Appeals Officer may modify the Hearing Officer's decision and/or sanction in accordance with the Title IX Policy and these Procedures.

**Commented [26]:** What are the grounds for whether it goes back to the Hearing Officer - or stays with the Appeals Officer?

If the appeal of a determination of responsibility and/or imposed sanction(s) is denied, the matter is closed, and the Hearing Officer's decision stands as final.<sup>4</sup> The Appeals Officer will issue a written decision describing the result of the appeal and the rationale for the result. The appeal decision will be provided simultaneously to both parties no later than fifteen (15) business days after all written responses are received.

In the event of a determination that the Title IX Policy was violated by an employee, the Hearing Outcome Letter and appeal decision will be provided to the Dean of the Respondent's School or College and/or Department Chair (if the Respondent is a faculty member), the Provost (if the Respondent is a Dean), or relevant Vice President and/or appropriate Supervisor (if the Respondent is a staff member or third-party).

**Commented [27]:** Are Assistant/Associate Deans treated as faculty members here? How are Chairs treated? Should this also reference Director (Library, for example)? And, not sure how Research Centers are handled - are they woven in under the VPR, for example, across the board?

## VII. REMEDIES

After a final determination of a finding of responsibility, in addition to the imposition of sanctions, the Title IX Coordinator will determine what remedies may need to be implemented to restore or preserve equal access to the University's education program or activity or employment as set forth in the Title IX Policy. The Title IX Coordinator will also identify any appropriate remedies/measures to address any effects of substantiated Prohibited Conduct on the University community.

## VIII. OTHER RELEVANT INFORMATION

### A. External Agreements

The University will not recognize or enforce agreements between the parties outside of these Procedures. The University will recognize, however, a lawfully issued protective order under Alabama law.

### B. Withdrawal and Readmission

If a student Respondent voluntarily withdraws from the University, fails to re-enroll for a subsequent semester, is no longer employed by the University or is no longer associated with the University while a Formal Complaint against him or her is pending, permission for readmission will be considered only after the charges have been resolved. For student Respondents, a hold will be placed on the Respondent's record that prevents them from registering or enrolling at the University in the future. The Respondent may be prohibited from entering campus or attending campus-sponsored events. The Respondent's conduct record/ personnel file may indicate that they disassociated from the University after a complaint was asserted and pending disciplinary review. Resolution of the case and permission from the Title IX Coordinator or designee will be required

<sup>4</sup> The appeal is final pursuant to the Title IX Policy and these Procedures but a Respondent may have additional rights under separate policies and procedures.

before a Respondent is permitted to return to the University.

**C. Preservation of Records**

The Title IX Coordinator and/or the Human Resources Department/ Provost Office will maintain for a period of seven (7) years all records related to the following: all Formal Complaints, including the investigation and disposition, any disciplinary sanctions imposed, any remedies provided to the Complainant, any audio or audiovisual recording or transcript of the live hearing, any appeal and results, any informal resolution and the results therefrom, and all materials used to train Title IX Coordinators, Deputy Title IX Coordinators, Title IX Investigators, Hearing Officers, and any person who facilitates a voluntary informal resolution process.

The date of the record's creation begins the seven (7) year period. All records maintained pursuant to this provision are considered confidential and subject to applicable state and federal privacy laws.