

05.01.02 Non-Discrimination and Harassment Complaint Resolution Policy (Interim)

Number 05.01.02

Division Office of Diversity, Equity, and Inclusion

Date March 14, 2013, reviewed and revised June 23, 2022

Purpose The University of Alabama in Huntsville (“UAH” or “University”) is committed to fostering a positive campus environment that is free from unlawful discrimination and harassment.

This Policy serves to demonstrate UAH’s commitment by outlining how to (1) make Reports about unlawful discrimination and harassment (other than those related to sex discrimination, sexual harassment, and sexual violence which are handled by the University’s Title IX Sex Discrimination, Sexual Exploitation, Sexual Harassment, and Sexual Violence Policy (“Title IX Policy”)); (2) conduct prompt, impartial, and equitable investigations of Formal Complaints; and (3) hold individuals who violate this Policy accountable.

Scope

Reports of unlawful discrimination or harassment may be made by anyone against a student, faculty member, staff member, or third party who is on campus and/or over whom the University has some control (“UAH Members”).

Policy Unlawful discrimination and harassment based on a person’s race, color, national origin, religion, sex (including all forms of sex discrimination, sexual harassment, and sexual violence), disability, age, veteran status, or genetic information are prohibited at UAH. In some cases, such unlawful discrimination and harassment also violates federal and state laws and may lead to personal liability for the results of such behavior. UAH will take appropriate action to prevent, correct, and, where warranted, discipline behavior that violates this Policy.

Any retaliatory action taken against an individual making a Report or Formal Complaint, or participating in an investigation, is in violation of this Policy.

Definitions

Bad Faith – Knowingly making a statement that is misleading, false, or deceptive, or willfully ignoring facts that would disprove a belief that Prohibited Conduct has occurred.

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Cognizant Supervisor – 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 appropriate Supervisor(s).

Complainant – An individual making an allegation of Prohibited Conduct.

Designated Receiving Official – Individual designated to receive, assess, and refer Reports of Prohibited Conduct and oversee Informal Voluntary Resolution and/or Formal Resolution.

Good Faith – An honest, reasonable belief that Prohibited Conduct has occurred or is occurring. A belief does not have to be proven true to be Good Faith.

Formal Complaint – A written document signed by a Complainant alleging Prohibited Conduct by a Respondent and requesting that the University investigate the alleged Prohibited Conduct.

Investigator(s) – Individual(s) appointed by a Designated Receiving Official to investigate the alleged Prohibited Conduct and to draft Investigative Findings that, using a preponderance of the evidence standard, indicate whether the allegations of Prohibited Conduct are substantiated or unsubstantiated.

Preponderance of the Evidence Standard – Whether a reasonable individual would conclude it is more likely than not that Prohibited Conduct occurred.

Prohibited Conduct – Conduct covered under applicable UAH policies and/or federal or state law concerning discrimination or harassment based on a person’s race, color, religion, sex (including all forms of sex discrimination, sexual harassment, and sexual violence as defined in the Title IX Policy), national origin, disability, age, veteran status, or genetic information. Also includes any retaliatory action taken against an individual making a Report or Formal Complaint or participating in an investigation.

Report – An allegation of Prohibited Conduct made verbally or in writing by a person. The person making a Report of Prohibited Conduct need not be the alleged victim of the Prohibited Conduct.

Respondent – A UAH Member who has been reported to be the perpetrator of Prohibited Conduct.

Retaliation – Adverse action(s) taken against an individual who makes a Report or Formal Complaint regarding Prohibited Conduct or who participates in an investigation.

UAH Member – Any student, faculty member, staff member, or third party who is on campus and/or over whom the University has some control.

Prompt Reporting to Designated Receiving Officials

Persons who believe they have been targets of, or who have information about, Prohibited Conduct or related Retaliation, should make a Report of the incident(s) immediately to the appropriate Designated Receiving Official as set forth below. Furthermore, any UAH Member receiving a Report is encouraged to forward the Report to the proper Designated Receiving Official.

Delays in reporting may make investigating allegations of prohibited conduct more difficult and/or limit the abilities of Investigators to perform an adequate investigation. Delays may also lead to the repetition or escalation of offensive behavior. Prompt reporting is encouraged.

Reports of sex discrimination, sexual harassment, and sexual violence

Reports of sex discrimination, sexual harassment, and sexual violence, which include 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 are addressed and handled under the University's Title IX Policy found here: <https://www.uah.edu/policies/06-09-02-sexual-misconduct-policy-interim>.

All other Reports of discrimination or harassment

All other Reports of discrimination or harassment based on a person's race, color, national origin, religion, disability, age, veteran status, or genetic information should be directed to the following Designated Receiving Official:

If the Respondent is Faculty

Associate Provost for International Services/Dean of the Graduate School/Faculty EO Coordinator (or designee)
Student Services Building, Suite 303G
256-824-6339

If the Respondent is Staff or a Third Party

**Associate Vice President for Human Resources/Staff EO Coordinator
(or designee)**

Shelbie King Hall, Room 102
256-824-6545

If the Respondent is a Student

Dean of Students/Student EO Coordinator (or designee)

Charger Union, Suite 223
256-824-6700

Additional Reporting Mechanisms

Anonymous Ethics Hotline. In situations where an individual prefers to place an anonymous report, the individual is encouraged to use the UAH Ethics hotline, hosted by a third-party provider. The hotline reporting tool is found here: <https://www.uah.edu/compliance/ethics>

However, UAH encourages anyone reporting Prohibited Conduct to identify themselves when making a report and/or provide a means of contact for Investigators to help facilitate the investigation

Charger 360. This tool provides a centralized way for UAH community members to report concerns and incidents, or address observed difficulties that may impede a person's success at UAH. The Charger 360 reporting tool can be found here: <https://www.uah.edu/charger360>

In the event that the Designated Receiving Official is the alleged perpetrator, or a Complainant is not comfortable reporting to the Designated Receiving Official, a Complainant may make a Report to:

Coordinator of Compliance and Risk Management

Office of Risk Management and Compliance
Shelbie King Hall, Room 229
256-824-6899

riskmanagement@uah.edu

Anti-Retaliation

Adverse action taken against an individual who makes a Good Faith Report of Prohibited Conduct or who participates in an investigation is prohibited and addressed in the Duty to Report and Protection from Retaliation policy found here: <https://www.uah.edu/policies/06-09-03-duty-to-report-and-protection-from-retaliation-interim>.

UAH Members receiving information related to possible Retaliation must promptly send notification to the Office of Risk Management and Compliance. Such

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notification must be done prior to initiating an investigation or taking action, unless such action is immediately needed to protect employees, visitors, students, patients, public health or safety, animal welfare, environment, or property.

Office of Risk Management and Compliance

Shelbie King Hall, Room 229

256-824-6899

riskmanagement@uah.edu

Bad Faith Report/Formal Complaint

This Policy shall not be used to bring a frivolous or malicious Report or Formal Complaint against UAH Members. If a Report or Formal Complaint has been made in Bad Faith, disciplinary action may be taken against the person bringing the Report or Formal Complaint.

Confidentiality

The University will make reasonable efforts in accordance with applicable law to protect the privacy of the individuals involved and to ensure that the Complainant and Respondent are treated fairly. The University will balance the need for fairness against the need to gather information to assess the Report and/or Formal Complaint and take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. To protect individual privacy, the University will share information related to a Report or Formal Complaint only with University employees who "need to know" to assist in the assessment, investigation, and resolution of same.

Procedures

Reports of Sexual Discrimination, Sexual Harassment, and Sexual Violence

Reports of sex discrimination, sexual harassment, and sexual violence, which include 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 are addressed and handled under the University's Title IX Policy found here: <https://www.uah.edu/policies/06-09-02-sexual-misconduct-policy-interim>.

All Other Reports of Unlawful Harassment or Discrimination

The procedures set forth below have been developed to ensure impartial and equitable handling of Reports and Formal Complaints related to unlawful discrimination and harassment. While it is anticipated that these procedures will generally be followed, the University reserves the right to modify or depart from them when, in its sole discretion, it is appropriate or prudent to do so.

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Furthermore, all time frames set forth in this Policy may be extended when necessary to ensure the integrity and completeness of the assessment and investigation, 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. Faculty members with nine-month appointments should expect that during academic breaks some responsibilities might arise with respect to this Policy that require communication with others at UAH or require their presence on campus. Such responsibilities should either be agreed to in advance or be relatively infrequent and of an urgent nature.

Extension of time frames set forth in this Policy and the cause for the extension will be shared with the parties in writing.

Initial Assessment

When a Report of unlawful harassment or discrimination is made, the Designated Receiving Official will conduct an Initial Assessment. The Designated Receiving Official will seek to conduct the Initial Assessment within fourteen (14) days.

The Initial Assessment will determine whether the alleged conduct presents a potential violation of this Policy and whether further action is warranted. The Initial Assessment normally begins with a preliminary meeting between the Complainant and the Designated Receiving Official.

The purpose of the Initial Assessment is to gather facts that will enable the Designated Receiving Official, in consultation with other offices as appropriate, to:

- Assess the nature and circumstances of the allegation(s);
- Address any immediate concerns about the emotional well-being of the parties;
- Discuss the Complainant's expressed preference for the manner of resolution and any barriers to proceeding;
- If applicable, inform the Complainant about the Employee Assistance Program or UAH Counseling Center; and
- Explain UAH's policy prohibiting retaliation.

If a Complainant wants to make a Report of unlawful discrimination or harassment but also wants to maintain anonymity and/or request that no investigative or disciplinary measures be taken, the Designated Receiving Official will advise the Complainant that UAH will consider the request but cannot guarantee it will be able to honor the request. UAH will weigh such a request against its obligation to provide a non-discriminatory environment.

In determining whether it can honor a request for confidentiality, the following factors may be considered:

- The nature and scope of the alleged conduct;
- The risk posed to any individual or to the campus community by not proceeding;
- Whether there have been other Reports of discrimination and/or harassment by the Respondent;
- The Complainant's wish to pursue disciplinary action;
- Whether UAH possesses other means to pursue the investigation and obtain relevant evidence without participation from the Complainant;
- Considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent; and
- UAH's obligation to investigate and to provide a non-discriminatory environment.

UAH'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.

At the conclusion of the Initial Assessment, the Designated Receiving Official will determine the appropriate resolution route. Resolution may include: (1) no further action; (2) Informal Voluntary Resolution; (3) the initiation of Formal Resolution, which will include a written, signed Formal Complaint and investigation that may lead to disciplinary action; or (4) referral to an appropriate office for further inquiry, review, or assessment.

Informal Voluntary Resolution

A Complainant may request and decide to pursue Informal Voluntary Resolution at any time. Informal Voluntary Resolution, when selected by the Complainant and deemed appropriate by the Designated Receiving Official, 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 or disciplinary action against a Respondent, and is not appropriate for all forms of conduct under this Policy. UAH retains the discretion to determine, when selected by the Complainant, which cases are appropriate for Informal Voluntary Resolution. The time frame for completion of Informal Voluntary Resolution may vary, but UAH will seek to complete the process within sixty (60) days of the Complainant's request.

Depending on the type of remedy used, it may be possible for a Complainant to maintain anonymity. In some forms of Informal Voluntary Resolution, the remedies

imposed will focus on supporting the Complainant with no participation or involvement by the Respondent.

In those cases in which Informal Voluntary Resolution involves either notification to, or participation by, the Respondent, it is the Respondent's decision whether to accept Informal Voluntary Resolution.

Informal Voluntary Resolution may include: conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring and/or supervision; facilitating a meeting with the Respondent (with the Complainant present in appropriate cases); and any other remedy that can be tailored to the involved individuals to achieve the University's non-discrimination and harassment goals.

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 UAH community. Restorative models will be used only with the consent of both parties, under the supervision of University-sanctioned trained professionals, and following a determination by UAH that the matter is appropriate for a restorative approach.

As the title implies, 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 can request to end an investigation and pursue Informal Voluntary Resolution 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.

Formal Resolution

If deemed appropriate based on the Initial Assessment and the Complainant desires to proceed with a Formal Resolution, the Complainant cannot remain anonymous or prevent their identity from being disclosed to the Respondent and must sign a Formal Complaint.

The Complainant may ask to withdraw a request for Formal Resolution at any time. The University reserves the right to determine whether to approve or deny this request, but will strongly consider the Complainant's wishes.

After the Formal Complaint is signed, UAH will initiate a prompt, thorough, and impartial investigation of the Formal Complaint through the appointment of a trained Investigator.

The Investigator will coordinate the gathering of information to determine whether the preponderance of the evidence substantiates the allegations made in the Formal Complaint.

Notice of Investigation

Within seven (7) days of the Complainant signing the Formal Complaint, the Designated Receiving Official will send the Complainant and the Respondent a written Notice of Investigation.

The Notice of Investigation will contain a summary of the allegations or conduct at issue (which may generally include the identities of the parties involved, and the date and location of the Prohibited Conduct) and the range of potential sanctions.

Once the Notice of Investigation has been delivered to the parties, the investigation phase begins.

Conducting the Investigation

The investigation is designed to provide a fair and reliable gathering of the facts by an impartial Investigator. 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 or state law and University policy.

During the investigation, the Complainant and Respondent will each have an opportunity to be heard, submit information, and identify witnesses who may have relevant information. The Investigator will speak separately with the Complainant, the Respondent, and other individuals who are willing to participate and have information relevant to the allegations of Prohibited Conduct.

As part of the investigation, the Investigator may 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 will also endeavor to gather any available evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media materials, text messages, audio or video recordings, and other records as appropriate, available, and feasible.

The Investigator 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 determines that the information is irrelevant. The Investigator may also exclude statements of personal opinion by witnesses and statements as to general reputation for any character trait, including honesty.

Timing of the Investigation

UAH will seek to conclude the investigation within sixty (60) days from the issuance of the Notice of Investigation. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

Cooperation in the Investigation

All UAH Members who have relevant information pertaining to Prohibited Conduct are expected to cooperate with an investigation, understanding that they are protected from doing so in Good Faith. Retaliation against a UAH Member who witnesses Prohibited Conduct or cooperates with an investigation is prohibited.

Investigation Findings

The Investigator will prepare Investigation Findings using the preponderance of the evidence standard to determine whether the factual allegations in the Formal Complaint are substantiated or unsubstantiated.

The Designated Receiving Official will provide the Investigation Findings in writing to the Complainant and the Respondent through email.

Referral of Investigation Findings

The Designated Receiving Official will also forward the Investigation Findings submitted by the Investigator to the Cognizant Supervisor (for faculty, staff, or third parties over which UAH has some control) or Conduct Administrator (for students).

For faculty, staff, and third parties

Upon receipt and review of the Investigation Findings, the Cognizant Supervisor may:

- Dismiss the Complaint. The Cognizant Supervisor may, after consulting with Human Resources, determine that the Formal Complaint should be dismissed, or dismissed and referred to another office or process.
- Impose Disciplinary Sanctions or Remedial Measures. The Cognizant Supervisor may, after consulting with Human Resources, find that the Formal Complaint (or parts of the Formal Complaint) were substantiated and impose upon the faculty or staff Respondent any disciplinary sanction or remedial measures described in the Faculty Handbook or the Staff Handbook. Sanctions for third parties are not limited to those in the Faculty or Staff Handbooks. Sanctions imposed will be determined on the basis of the facts of each case and the extent of harm to the University's interests.

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- The Complainant will be notified whether sanctions or remedial measures were imposed; however, that information should be treated by both the Complainant and Respondent as confidential and private.
- Appeal of disciplinary sanctions may be made through existing procedures set forth in the Faculty Handbook or Staff Handbook. Third parties have no right to appeal.

For students

The Investigation Findings will be forwarded to the Conduct Administrator for the Code of Student Conduct and adjudicated in accordance with the Code of Student Conduct. Appeal of any imposed disciplinary sanctions may be made through existing procedures set forth in the Code of Student Conduct.

Free Speech and Academic Freedom

In cases of Prohibited Conduct, the protections of the First Amendment and applicable state law must be considered if issues of speech or artistic 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 faculty, staff, and students. This Policy is intended to protect UAH Members from unlawful discrimination and harassment, not to regulate the content of speech. In regulating the conduct of UAH Members to prevent or redress unlawful discrimination and harassment prohibited by law, 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.

NOTICE

This Policy supersedes all other University policies designed to address reports and complaints of unlawful discrimination and harassment (other than those related to sex discrimination, sexual harassment, and sexual violence, which are handled by the University's Title IX Policy) and, in the event of a conflict, this Policy will prevail.

Review

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The Office of Diversity, Equity, and Inclusion and the Office of Human Resources are responsible for the review of this policy every five years (or whenever circumstances require.)