**PROCEDURES FOR THE RESOLUTION OF TITLE IX SEX DISCRIMINATION REPORTS (NON-HARASSMENT) AGAINST**

**FACULTY, STAFF, AFFILIATES, AND NON-AFFILIATES**

## **OVERVIEW AND APPLICABILITY**

The University of Alabama in Huntsville (“UAH” or the “University”) has developed these Procedures for the Resolution of Title IX Sex Discrimination (Non-Harassment) Reports Against Faculty, Staff, Affiliates, and Non-Affiliates (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 Harassment, and Sexual Violence Policy (the “Title IX Policy”), Faculty Handbook, and Staff Handbook, which include additional information regarding applicable definitions, key terms, reporting options, available resources and other relevant topics.

These Procedures will be used to assess, investigate and/or resolve Reports of sex discrimination covered under Title IX brought against UAH faculty, staff, affiliates[[1]](#footnote-1), and non-affiliates[[2]](#footnote-2) but which do not fall within the category of Sexual Harassment or Sexual Violence as defined in UAH’s Title IX Policy. Sex discrimination prohibited by the Title IX 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.

Formal Complaints of Sexual Harassment and Sexual Violence against UAH faculty and staff members will be assessed, investigated and/or resolved using the Procedures for the Resolution of Title IX Sexual Harassment and Sexual Violence Complaints. Formal Complaints of Sexual Harassment or Sexual Violence that include allegations of both sexual harassment and sex discrimination (non-harassment) will be addressed pursuant to the Procedures for the Resolution of Title IX Sexual Harassment and Sexual Violence Complaints.

All other Reports of discrimination against faculty and staff, including but not limited to those based on race, color, religion, ethnic origin, age, and disability, will be resolved using UAH’s Discrimination Complaint/Grievance Procedure. Additionally, any sex discrimination that does not rise to the level of Prohibited Conduct and/or falls outside the jurisdiction of the Title IX policy and these Procedures may be investigated and addressed pursuant to other applicable policies, including, but not limited to, UAH’s Equal Opportunity and Affirmative Action Policy, Faculty Handbook Disciplinary Policies and Procedures, and Staff Handbook.

UAH is fully committed to promoting a safe and healthy educational and work environment. All community members are strongly encouraged to report to the University any incident of sex discrimination.

1. **RIGHTS OF THE COMPLAINANTS AND RESPONDENTS**
	1. **Right to an Advisor**

Complainants and Respondents may be accompanied by one advisor throughout the investigation. That advisor, however, cannot be someone who may be considered a witness during the investigation. An advisor can be present to provide support to a Complainant or Respondent throughout an investigation. An advisor may not speak, write, or otherwise communicate with an Investigator, or any other UAH employee that is part of the investigation process, on behalf of the Complainant or Respondent. An advisor who does not abide by these guidelines may be excluded from the process. The advisor may be legal counsel, but participation will be limited as stated herein. An advisor’s failure to comply with the participation limitations outlined in these Procedures and the Title IX Policy may result in the advisor being dismissed from any meeting, or other proceeding. Any fees charged by the advisor are the sole responsibility of the requesting party. Consistent with UAH’s obligations to promptly resolve sex discrimination Reports, UAH reserves the right to proceed with any meeting or interview, regardless of the availability of the party’s selected advisor.

**B. Additional Rights of Both Complainants and Respondents**

 Throughout these investigations, adjudications, and resolution of sex discrimination Reports, both Complainants and Respondents have the following rights:

* + - To be informed of available options for making a Report;
		- To receive a notice of the allegations, an opportunity to respond to allegations, and access to policy statements regarding the investigation process and possible sanctions/disciplinary action;
		- To be advised of UAH’s prohibition on retaliation against an individual who exercises their rights under the Title IX Policy;
		- To receive information regarding Supportive Measures and community support resources (including, but not limited to, modification of academic, a no contact or limited no-contact directive; living, transportation, or working situations; available health and mental health counseling; and, if applicable, disability accommodations);
		- To receive Supportive Measures;
		- To a thorough and impartial investigation;
		- To be notified in writing when final results become available;
		- To have access to published policies regarding sex discrimination and UAH’s disciplinary procedures, including the possible range of sanctions/disciplinary action;
		- To be notified that information and materials UAH obtains during its investigation into allegations of sex discrimination may be disclosed in response to a valid subpoena; and
		- To be notified that Respondent is not required to make a statement or otherwise provide information relevant to the investigation.

**III. Supportive Measures**

Supportive Measures are available upon receipt of a Report of sex discrimination and prior to the resolution thereof, as appropriate. The issuance of Supportive Measures is not disciplinary in nature and should not be construed as a determination by that the Respondent has engaged in sex discrimination. Supportive Measures are available for the Complainant, Respondent, and/or the campus community while the University is investigating an allegation of sex discrimination. Both the Complainant and Respondent (or someone on behalf of the Complainant or Respondent) may request Supportive Measures from the Title IX Coordinator or a Deputy Title IX Coordinator. The Title IX Coordinator will work with the appropriate University office(s), including Human Resources, to ensure that any necessary Supportive Measures are promptly provided. Available Supportive Measures may include, but are not limited to the following:

* Change in work schedule or job assignment;
* Limiting access to certain University facilities or activities pending resolution of the matter;
* Voluntary leave of absence;
* University-imposed leave, suspension, or separation for the Respondent;
* Access to on-campus counseling services and referral to off campus counseling resources;
* Institutional resources pertaining to visa/immigrant status;
* Rescheduling of exams and assignments;
* Providing alternative course completion options;
* Change in class schedule, including the ability to drop a course without penalty or to transfer;
* Change in student’s campus housing;
* Assistance from University support staff in completing housing relocation;
* Providing academic support services, such as tutoring; and
* Any other measure that can be tailored to the involved individuals to achieve the goals of the Title IX Policy, Equal Opportunity/ Affirmative Action Policy, and Discrimination Complaint/Grievance Procedure.

The University will maintain the privacy of any Supportive Measure provided under the Title IX Policy to the extent practicable and permitted by law.

An individual’s failure to comply with restrictions imposed by Supportive Measures is a violation of the Title IX Policy and a basis for disciplinary action.

## **IV. INVESTIGATION PROCEDURES AND SANCTIONS**

## **Time Frame for Resolution**

The University seeks to resolve Reports of sex discrimination 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, 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.

UAH will disclose information about its investigation and resolution of sex discrimination Reports only to those who need to know the information to carry out their duties and responsibilities. It will inform all UAH 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.

1. **Initial Assessment**

When a Report of sex discrimination is made, the Title IX Coordinator[[3]](#footnote-3), in collaboration with Human Resources, will conduct an Initial Assessment. The assessment will determine whether the alleged conduct presents a potential violation of the Title IX Policy and whether further action is warranted based on the alleged conduct.

The Initial Assessment normally begins with a preliminary meeting between the Complainant and the Title IX Coordinator or designee, in collaboration with Human Resources. The purpose of the preliminary meeting is to gather facts that will enable the Title IX Coordinator and Human Resources, 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;
* Address the rights of the parties as outlined in Section II above;
* Discuss available Supportive Measures as outlined in Section III above;
* Discuss the Complainant’s expressed preference for the manner of resolution and any barriers to proceeding;
* Explain UAH’s policy prohibiting retaliation; and
* Explain the right and role of an advisor.

If a Complainant wants to make a Report of sex discrimination but also wants to maintain anonymity and/or request that no investigative or disciplinary measures be taken, the Title IX Coordinator 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 will 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 sex discrimination 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 Title IX Coordinator, in collaboration with Human Resources, will determine the appropriate resolution route. Resolution may include: (1) no further action; (2) Informal Voluntary Resolution; (3) the initiation of an investigation which may lead to disciplinary action; or (4) referral to Human Resources, the Provost, Dean, Supervisor, or other appropriate office for further inquiry, review, or assessment.

## **C. Informal Voluntary Resolution**

Informal Voluntary Resolution, when selected by the Complainant and deemed appropriate by the Title IX Coordinator, 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 the Title IX Policy. The time frame for completion of Informal Voluntary Resolution may vary, but UAH will seek to complete the process within sixty (60) business days of the Complainant’s request.

UAH retains the discretion to determine, when selected by the Complainant, which cases are appropriate for Informal Voluntary Resolution. A Complainant may request and decide to pursue Informal Voluntary Resolution at any time. In those cases in which Informal Voluntary Resolution involves either the notification to, or participation by, the Respondent, it is the Respondent’s decision whether to accept Informal Voluntary Resolution.

Informal Voluntary Resolution may include: establishing Supportive Measures; 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 goals of the Title IX Policy. 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 other forms of Informal Voluntary Resolution, the Respondent may agree to participate. Depending on the type of remedy used, it may be possible for a Complainant to maintain anonymity.

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. In addition, either party may request Supportive Measures regardless of whether any particular course of action is sought.

Facilitators cannot be used as a witness during a subsequent investigation or adjudication hearing.

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.

**D. Investigation Procedures**

If deemed appropriate based on the Initial Assessment, UAH will initiate a prompt, thorough, and impartial investigation of conduct that the Title IX Coordinator, in collaboration with Human Resources, determines involves matters covered by these Procedures (i.e., Reports of non-harassment sex discrimination brought against UAH faculty and staff members, affiliates, and non-affiliates under Title IX). The Title IX Coordinator, in collaboration with Human Resources and/or Provost, will designate one or more Investigators who have training and experience investigating allegations of matters covered by these Procedures. The Investigator will coordinate the gathering of information to determine whether the preponderance of the evidence establishes that the alleged conduct constitutes a violation of the Title IX Policy. A preponderance of the evidence means that it is more likely than not that the conduct occurred based on a totality of the circumstances.

The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator concludes that it is more likely than not that the Respondent violated 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 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 conduct a thorough investigation.

1. **Notice of Investigation**

The Title IX Coordinator, in collaboration with the Deputy Title IX Coordinator for Human Resources, will send the Complainant and the Respondent and, if applicable, the Respondent’s appropriate supervisor(s), a written Notice of Investigation, which constitutes the formal charge of a violation of the Title IX Policy. The Notice of Investigation will contain a summary of the allegation or conduct at issue (which may generally include the identities of the parties involved, the specific section of the Title IX Policy allegedly violated, and the date and location of the incident), the range of potential violations under the Title IX Policy, and the range of potential sanctions. Once the Notice of Investigation has been delivered to the parties, the investigation phase begins.

**2. Conducting the Investigation**

The Title IX Coordinator, in collaboration with Deputy Title IX Coordinator for Human Resources, will oversee 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 law and University policy.

During the investigation, the Complainant and Respondent will have an equal 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 determination of responsibility. 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.

**3. Timing of the Investigation**

UAH 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 as set forth herein above. 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. Cooperation in the Investigation**

All community members, including students, faculty and other UAH employees, who may have relevant information and/or be a witness, are strongly encouraged and expected to cooperate with the Title IX Coordinator, the Deputy Title IX Coordinator for Human Resources, and/or Investigator in the investigation, as well as any adjudication, of any Report. The Title IX Coordinator, Deputy Title IX Coordinator for Human Resources, and/or Investigator 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 Title IX Policy. The Title IX Coordinator, in collaboration with Deputy Title IX Coordinator for Human Resources, will determine whether the investigation will proceed without the Complainant pursuant to the factors set out in the Initial Assessment as described in Section IV.B. above.

# **5. Submission of Additional Evidence**

At the conclusion of the investigation and prior to preparing the Final Investigation Report, the Investigator will notify the Complainant and Respondent of the completion of the investigation and provide them with the opportunity to submit any additional evidence, such as witness identities, documents, or other information not previously submitted. The parties will have ten (10) business days from the date the notification is sent to submit any such additional evidence in writing. In the absence of good cause, evidence discoverable through the exercise of due diligence that is not provided to the Investigator will not be considered by the Investigator.

**6. Investigation Findings and Sanctions**

After receipt and consideration of any additional evidence from the Complainant or Respondent, or after the ten (10) business days have lapsed without the submission of additional evidence, the Investigator will make a determination, by a preponderance of the evidence standard, regarding whether a Title IX Policy violation occurred. In reaching this determination, the Investigator may consult with the Title IX Coordinator and the Deputy Title IX Coordinator for Human Resources (or designee). The Investigator will prepare an outcome letter (“Notice of Outcome letter”) that summarizes the findings. The Title IX Coordinator or designee will provide the Notice of Outcome letter, including the basis for the determination, in writing to the Complainant and the Respondent simultaneously. When the Respondent is determined not to have violated the Title IX Policy, the matter will be closed. When the Respondent is determined to have violated the Title IX Policy, the determination will also be forwarded to the appropriate person, as indicated below.

In the event of a determination that the Title IX Policy was violated, the Notice of Outcome letter will then 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(s) (if the Respondent is a staff member or third-party). The Dean, Provost, or relevant Vice President, or Supervisor, will consult with Human Resources or any other appropriate office, and make a final determination as to the appropriate disciplinary sanction for the Respondent’s violation of the Title IX Policy. The Title IX Coordinator will inform the Complainant that appropriate corrective action has been taken, but cannot reveal the specifics of the action if it is a confidential personnel action.

1. **Faculty**

Faculty Respondents have the right to appeal the determination in the Notice of Outcome Letter and the sanction imposed by the Respondent’s Dean to the Provost. Any appeal must be in writing and must be filed with the Provost within ten (10) business days of the date of the Dean’s final decision was sent.

In any request for an appeal, the burden of proof lies with the faculty Respondent because the University’s determination as to whether the faculty Respondent’s conduct violated the [Title IX Policy](http://www.bu.edu/safety/sexual-misconduct/title-ix-bu-policies/sexual-misconducttitle-ix-policy/) will be presumed to have been reached reasonably and appropriately, by a preponderance of the evidence. Therefore, an appeal is available only on the following grounds:

* The existence of a procedural irregularity that materially affected the decision and/or recommended sanctions;
* The existence of new evidence that was not reasonably available at the time the determination regarding responsibility or sanctions was made that could affect the outcome;
* The Title IX Coordinator and/or investigator(s) had a conflict of interest or bias that affected the outcome; and/or
* The recommended sanctions are too severe or too lenient.

Appeals are not intended to be a re-investigation 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 pertinent documentation regarding the grounds for appeal. The appeal must be in writing, be submitted to the Provost, and contain the names of the Complainant and the Respondent, as well as a detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of the requested action. The Provost have exclusive discretion to accept an untimely appeal in the event of extenuating circumstances. The Provost may speak to the Investigator or the parties, as appropriate. The Provost will defer to the original findings, making changes only where there is clear error.

The Provost will endeavor to make a final decision within twenty-one (21) business days of receipt of the appeal. The Provost has discretion to take any and all actions that the Provost determines to be in the interest of a fair and just decision. The Provost shall issue a written statement of the resolution of the appeal, including any changes made, to the Title IX Coordinator, the Deputy Title IX Coordinator for Human Resources, the Complainant, and the Respondent. If the Provost determines that the Respondent has not violated the Title IX Policy, the matter will be closed. If there is a final determination that there was a Title IX policy violation, a faculty Respondent will be subject to disciplinary action. A faculty respondent may have additional rights pursuant to the UAH Faculty Handbook.

1. **Staff**

A determination that a violation of the Title IX Policy has occurred shall subject a staff member to appropriate disciplinary action reasonably calculated to the end the Title IX Policy violation. UAH has adopted a philosophy of progressive discipline. However, one violation of the Title IX Policy could result in termination of employment. See the Staff Handbook to review the applicable disciplinary and/or grievance/appeal process.

1. **Community Member / Third-Party / Affiliate / Non-Affiliate / Campus Visitor**

If the Title IX Investigator determines that a third-party, visitor, affiliate, or non-affiliate (i.e., an individual not affiliated with UAH) violated the Title IX policy, the Title IX Investigator will notify the relevant Vice President. After reviewing the determination and in consultation with any other appropriate office, sanctions will be determined.

In determining appropriate sanctions, the disciplinary sanction must be reasonably calculated to end the Title IX Policy violation.

**e. Acceptance of Responsibility**

The Respondent may, at any time, request to resolve the investigation process or resolve specific allegation(s) by accepting responsibility for the alleged sex discrimination. 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 Human Resources and/or the Provost will determine the appropriate sanction(s). A faculty or staff respondent may have additional rights pursuant to the UAH Faculty Handbook Disciplinary Policy and Procedures and the Staff Handbook Problem Resolution Procedures.

**V. INTERSECTION WITH OTHER PROCEDURES**

These Procedures are the exclusive means of resolving Reports of alleged violations of Title IX involving sex discrimination (non-harassment) brought against UAH faculty, staff, affiliates, and non-affiliates. To the extent there are any inconsistencies between these Procedures and other University grievance, complaint, or discipline procedures, these Procedures will control the resolution of complaints alleging violations of Title IX involving complaints of sex discrimination (non-harassment) brought against UAH faculty, staff, affiliates, and non-affiliates.

UAH recognizes that conduct that implicates the Title IX Policy can occur in connection with misconduct related to a person’s race, color, ethnicity, national origin, religion, age, disability, pregnancy, or other protected class. This conduct may also be a violation of state and federal law and University Policy. Under these circumstances, UAH will endeavor to coordinate the investigation and resolution efforts of matters covered by these Procedures (i.e., all Reports of sex discrimination (non-harassment) brought against UAH faculty, staff, affiliates, and non-affiliates) with the investigation and resolution of complaints of other discrimination or harassment.

1. For purposes of 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. [↑](#footnote-ref-1)
2. A “non-affiliate” is someone not associated with UAH. [↑](#footnote-ref-2)
3. The Title IX Coordinator includes any selected Deputy Title IX Coordinator(s) and is hereinafter referred to as “Title IX Coordinator.” [↑](#footnote-ref-3)