**PROCEDURES FOR THE RESOLUTION OF TITLE IX SEXUAL HARASSMENT**

**AND SEXUAL VIOLENCE COMPLAINTS**

1. 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.[[1]](#footnote-1) 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 Compliant/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.

1. RIGHTS OF THE COMPLAINANTS AND RESPONDENTS

**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)[[2]](#footnote-2);
* 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, 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 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 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**

* 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.

1. 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.

**B.** **Initial Assessment and Dismissal Process**

## 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;
  + 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 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.

## 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.

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.

## 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.

### 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.

### 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.

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

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### 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.  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.

### 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.

# 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 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.

## 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.

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## 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 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 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. 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, when one party does not appear and that party’s advisor of choice does not appear, a UAH-provided advisor will cross-examine the other, appearing party “on behalf of” the non-appearing party.[[3]](#footnote-3)

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 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.

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 intercollege athletic team and loss of athletic scholarship.

#### **3. Faculty, Staff, Affiliates, and Non-Affiliates (non-student) 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.

### 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.

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**

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.

The Complainant and Respondent have the right to appeal solely on the following grounds:

* The existence of a procedural irregularity that materially 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;
* 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.

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 will be presumed to have been made 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, making changes to the 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.

If 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.

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.[[4]](#footnote-4) 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).

**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 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 facilities 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.

1. For purposes of UAH’s Title IX 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. [↑](#footnote-ref-1)
2. 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. [↑](#footnote-ref-2)
3. 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. [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)