**TITLE IX SEX DISCRIMINATION,** **SEXUAL EXPLOITATION,**

**SEXUAL HARASSMENT, AND SEXUAL VIOLENCE POLICY**

**PURPOSE**

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

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

**POLICY**

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

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

* Prohibiting acts of sex discrimination, sexual exploitation, sexual harassment, and sexual violence;
* Disseminating clear policies and procedures for responding to Prohibited Conduct of which the University has actual knowledge and jurisdiction as defined by Title IX;
* Delivering primary prevention and awareness programs and ongoing training and education campaigns to students and employees so they may identify Prohibited Conduct; understand how to report Prohibited Conduct; recognize warning signs of potentially abusive behavior and ways to reduce risks; and learn about safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of Prohibited Conduct;
* Conducting prompt, fair, and equitable investigations of Reports of Prohibited Conduct;
* Supporting and providing assistance to both Complainants and Respondents;
* Holding individuals who violate this Policy accountable; and
* Providing a written explanation of the rights and options available to every UAH student or employee that has been the victim of Prohibited Conduct.

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

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

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

# RELEVANT DEFINITIONS

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

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

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

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

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

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

Report of Prohibited Conduct:  An allegation made verbally or in writing by any person alleging Prohibited Conduct against a Respondent. The person making a Report of Prohibited Conduct need not be the alleged victim of the Prohibited Conduct.  Reports may be made anonymously as outlined in Section IV.B. of this Policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# PROHIBITED CONDUCT

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

## **A. SEXUAL DISCRIMINATION:**

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

**B.** **SEXUAL EXPLOITATION:**

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

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

## **C. SEXUAL HARASSMENT:**

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

1. A University employee makes submission to or rejection of unwelcome sexual conduct, either explicitly or implicitly, as a term or condition of a person’s employment, academic standing, or participation in any University programs and/or activities or as the basis for University decisions affecting the individual (often referred to as “quid pro quo” harassment); or
2. Unwelcome conduct based on sex, gender, sexual orientation, gender identity or gender expression that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s educational programs or activities or creates a hostile working environment[[1]](#footnote-1); or
3. Sexual assault, dating violence, domestic violence, or stalking as those terms are defined below.

## **D. SEXUAL VIOLENCE:**

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

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

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

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

1. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. The age of consent is determined by the applicable age of consent for the jurisdiction where the alleged sexual intercourse occurred. In Alabama, the age of consent is 16 years old.

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

6. Intimate partner violence – Domestic violence: Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Alabama, or by any other person against an adult or [youth](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=34-USC-115168979-1259336254&term_occur=999&term_src=title:34:subtitle:I:chapter:121:subchapter:III:section:12291)victim who is protected from that person’s acts under the domestic or family violence laws of Alabama.

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

**E. Failure to Comply**

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

**F. Retaliation**

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

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

**G. Related Terms**

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

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

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

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

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

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

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

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

# REPORTING INCIDENTS OF PROHIBITED CONDUCT

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

## **Timeliness of Report or Formal Complaint of Prohibited Conduct**

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

## **How to Make a Report or File a Formal Complaint**

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

* + **Title IX Coordinator:**

 Laterrica Shelton

 The University of Alabama in Huntsville
 SSB 320
 256-824-6899

 lks0020@uah.edu

* + Deputy Title IX Coordinator for Students:

 Scott Royce

 Title IX Coordinator

 CGU 223

 256.824.6235

 scott.royce@uah.edu

* + Deputy Title IX Coordinator for Employees & Third Parties:

 Laurel Long

 SKH 116
 256.824.2285
 laurel.long@uah.edu

* + Education and Resource Specialist:

 Katie Greene

 256.824.4611
 SSB 320E
 Katie.greene@uah.edu

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

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

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

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

* 1. **Emergency/ Immediate Assistance**

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

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

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

## **False Allegations or False Statements**

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

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

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

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

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

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

## **Reporting of Crimes and Disciplinary Statistics**

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

## **Mandatory Reporting of Child Abuse**

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

## **Responsible Reporting Officials**

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

## **PROCEDURES FOR RESPONDING TO PROHIBITED CONDUCT**

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

## **Which Procedures Apply?**

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

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

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

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

The University’s ability to take appropriate action against a Third-Party will be determined by the nature of the relationship of the Third-Party to the University. The Title IX Coordinator will determine the appropriate manner of resolution consistent with the University’s commitment to a prompt and equitable process consistent with federal law, federal guidance, and this Policy.[[3]](#footnote-3)

## **Advisors**

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

## **Conflict of Interest**

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

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

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

If the objection as to a conflict or bias is made with respect to a Hearing Officer, or the chair of the panel or a member of a hearing panel, such objection must occur before the scheduled hearing. If the Title IX Coordinator (or designee) determines that the objection is reasonable, the challenged person will be replaced. The decision of the Title IX Coordinator, Deputy Title IX Coordinator, or designee regarding a challenge will be final.

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

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

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

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

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

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

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

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

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

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

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

## **VIII. Supportive Measures**

The term “Supportive Measures” refers to non-disciplinary, non-punitive individualized services offered by the University as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.  Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment, or deter Prohibited Conduct. Supportive measures cannot punish or discipline the Respondent.

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

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

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

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

The range of potential supportive measures include:

* Imposition of a mutual “No-Contact Order”;
* Extensions of deadlines;
* Rescheduling of exams and assignments;
* Providing alternative course completion options;
* Modification or change in class schedule, including the ability to drop a course without penalty or to transfer;
* Change in work schedule or job assignment;
* Change in student’s campus housing;
* Leaves of absence;
* Assistance from University support staff in completing housing relocation;
* Limiting access to certain University facilities or activities pending resolution of the matter;
* Voluntary leave of absence;
* Providing academic support services, such as tutoring;
* Institutional resources pertaining to visa/immigrant status;
* Escort services;
* Increased security and monitoring of certain areas of the campus or similar measures;
* University-imposed leave, emergency removal, or separation for the Respondent; and
* Any other measure that can be tailored to the involved individuals to achieve the goals of this Policy.

Additional resources the University may offer include:

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

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

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

**IX. Confidentiality and Privacy**

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

1. **Privacy**

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

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

1. **Confidentiality**

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

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

* 1. **IMPOSITION OF SANCTIONS**

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

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

**XI. REMEDIES**

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

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

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

* 1. **STUDENT AND EMPLOYEE TRAINING AND PREVENTION EDUCATION PROGRAMS**

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

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

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

**XIII. FREE SPEECH AND ACADEMIC FREEDOM**

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

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

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

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

**XIV. RESOURCES AND OPTIONS**

Below are links to available resources and options:

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

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# APPENDIX 1

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

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

**Federal Law:**

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

* + 1. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
		2. For the purposes of this definition—
			1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
			2. Dating violence does not include acts covered under the definition of domestic violence. 34 C.F.R. § 668.46(a)

**Alabama Law:** n/a

#### INTIMATE PARTNER VIOLENCE: DOMESTIC VIOLENCE

**Federal Law:**

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

**Alabama Law:**

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

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

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

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

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

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

**STALKING**

**Federal Law:**

Stalking.

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

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

(ii) For the purposes of this definition—

(A) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

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

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

**Alabama Law:**

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

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

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

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

**SEXUAL ASSAULT & OTHER SEXUAL OFFENSES**

**Federal Law:**

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

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

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

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

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

**Alabama Law:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Subjects another person to sexual contact by forcible compulsion.

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

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

(1) Subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old.

(2) Being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.

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

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

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

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

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

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

(1) Penetrates the vagina, anus, or mouth of another person with an inanimate object, by forcible compulsion, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

(2) Penetrates the vagina, anus, or mouth of a person who is incapable of consent by reason of being incapacitated, with an inanimate object, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

(3) Penetrates the vagina, anus, or mouth of a person who is less than 12 years old, with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

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

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

**Incest** – Ala. Code § 13A-13-3.

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

(1) His ancestor or descendant by blood or adoption; or

(2) His brother or sister of the whole or half-blood or by adoption; or

(3) His stepchild or stepparent, while the marriage creating the relationship exists; or

(4) His aunt, uncle, nephew or niece of the whole or half-blood.

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

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

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

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

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

(b) A person commits the crime of a school employee soliciting a sex act with a student under the age of 19 years if he or she is a school employee and solicits, persuades, encourages, harasses, or entices a student to engage in a sex act including, but not limited to, sexual intercourse, sodomy, or sexual contact, as defined by Section 13A-6-60. The crime of soliciting a student to perform a sex act is a Class A misdemeanor.

**SEXUAL EXPLOITATION**

**Federal Law:** n/a

**Alabama Law:**

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

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

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

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

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

**SEXUAL HARASSMENT OR GENDER-BASED HARASSMENT**

**Federal Law:**

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

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or

(3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30). 34 C.F.R. § 106.30(a).

**Alabama Law:** n/a

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

	* The frequency, nature, and severity of the conduct;
	* Whether the conduct was physically threatening;
	* The effect of the conduct on the Complainant’s mental or emotional state;
	* Whether the conduct was directed at more than one person;
	* Whether the conduct arose in the context of other discriminatory conduct;
	* Whether the conduct unreasonably interfered with the Complainant’s educational or work performance and/or University programs or activities; and
	* Whether the conduct implicates concerns related to academic freedom or protected speech. [↑](#footnote-ref-1)
2. In incidents involving the use of alcohol, drugs, or other mind-altering substances, the totality of the circumstances shall be analyzed to determine whether the use of those substances caused a party to be unable to consent to sexual activity. Factors the University will consider include, but are not limited to, the following:

	* Whether a party was conscious or unconscious;
	* Whether a party became sick due to intoxication;
	* Whether a party exhibited signs of intoxication, including inability to communicate, slurred speech, lack of coordination in walking or performing simple tasks, or any other evidence indicative of impaired cognitive functioning; or
	* Whether a Respondent knew or reasonably should have known of a Complainant’s ability or inability to give consent due to the use of alcohol, drugs, or other mind-altering substances.The existence of any one of these factors may support a finding that a party was unable to consent to sexual activity. The mere fact that an individual was under the influence of alcohol, drugs, or other mind-altering substances, however, does not create a presumption that the individual was unable to consent. Also, an individual’s use of alcohol, drugs, or other mind-altering substances does not diminish that individual’s responsibility to obtain consent if that individual is the one who initiates sexual activity. [↑](#footnote-ref-2)
3. The policy, including definition of Prohibited Conduct contained therein, and applicable procedures in effect on the date of the alleged incident will be applied, regardless of when a Report is made, unless clearly established law requires use of the current applicable policy and procedures.  If more than one incident is at issue, the policy in effect during the latest incident will be applied. For the policies and procedures in effect before August 14, 2020, please refer to the archived policies at https://www.uah.edu/images/administrative/policies/sexual-misconduct-policy-archived.pdf [↑](#footnote-ref-3)