

The University of Alabama in Huntsville

Sexual Misconduct Policy

Number 01.04.02

Division Office of the President - Compliance

Date

Purpose To prohibit and define particular acts of sexual discrimination and misconduct and to outline resolution procedures for providing prompt and fair resolution to complaints of sexual discrimination and misconduct.

Policy The University of Alabama in Huntsville (the “University” or “UAH”) is committed to providing a safe and non-discriminatory educational and working environment for its students, trainees, faculty, staff, post-doctoral fellows, and other members of the University community. The University is committed to providing an environment for its members that is free from sexual harassment, sexual assault, relationship violence, stalking, discrimination based on sex, sexual orientation, gender identity, gender expression, and related retaliation (collectively referred to as “Prohibited Conduct.”). The University expects individuals who live, work, teach, study, or visit within this community to contribute positively to the environment and to refrain from behaviors that deprive community members of equal access to the University’s programs and activities. Individuals found to be in violation of 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, to correct and address its effects and, when necessary, to issue discipline for violations of this Policy.

I. SCOPE (To Whom and Where Policy Applies)

This Policy applies to:

- All students and employees regardless of sex, gender identity, gender expression, or sexual orientation and regardless of where the alleged violation occurred (on or off-campus, if it affects the campus or the access to education of a student);
- All acts of Prohibited Conduct, including those involving non-students or non-employees, that occur on campus or at any location involving a University-sponsored activity or event; and,
- Online behavior, social media, and inappropriate use of technology that may affect the educational experience and violate this Policy.

II. PROHIBITED CONDUCT

For the purpose of this Policy, conduct that is deemed, by preponderance of the evidence (which means more likely than not the alleged conduct occurred) to be gender-based and meet the definition of any of the types of prohibited conduct identified below or in Appendix 1 of this policy (whether defined by UAH, or by State (AL) or Federal (FED) criminal laws, as amended from time to time) constitutes a violation of this Policy.

Prohibited Conduct Offenses include, but are not limited to:

1. **Sex Discrimination.** Sex Discrimination is conduct that is based upon an individual's sex, pregnancy, gender identity, or gender expression that adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University activity.
2. **Sexual Harassment:** Sexual Harassment is defined as
 - A. Unwelcomed, sexual, sex based and/or gender based verbal, written, online and/or physical conduct when such conduct creates a hostile environment by being sufficiently severe or pervasive or objectively offensive that it interferes with, limits or denies the ability to participate in or benefit from the University's educational programs, activities, or employment or
 - B. Unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another when
 - i. Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational or employment progress, development, or performance or
 - ii. When submission to such conduct would be a condition for access to or receiving the benefits of any educational or employment program.
3. **Nonconsensual Sexual Contact:** Nonconsensual Sexual Contact is any intentional sexual touching, however slight, with an animate or inanimate object, by a person upon another person that is without consent.
 - A. Sexual Contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts or
 - B. Any other intentional bodily contact in a sexual manner
4. **Nonconsensual Sexual Intercourse:** Nonconsensual Sexual Intercourse is any sexual intercourse, however slight, with any object, by a person upon another person that is without consent.
 - A. Intercourse includes: Vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.
5. **Sexual Exploitation:** Sexual exploitation occurs when one person takes nonconsensual or abusive sexual advantage of another person for their own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited and the behavior does not constitute any other form of

sexual misconduct. Examples of sexual exploitation include, but are not limited to, the following activities done without the consent of all participants:

- A. Invasion of sexual privacy;
 - B. Prostituting another person
 - C. Taping or recording of sexual activity;
 - D. Going beyond the boundaries of consent to sexual activity (e.g., letting friends hide to watch personal sexual engagement or activity);
 - E. Engaging in voyeurism;
 - F. Knowingly transmitting an STI, STD, venereal disease or HIV to another person;
 - G. Inducing another to expose their genitals;
 - H. Nonconsensual distribution of intimate images;
 - I. Use or distribution of drugs or alcohol with intent to facilitate sexual contact without consent (i.e., predatory drugs or alcohol).
6. **Intimate Partner Violence:** Violence, threats of violence, intimidation and acts of coercion committed by a person who is or has been in a social relationship of a romantic or intimate nature with the recipient of the violent behavior.
 7. **Stalking on the Basis of Sex/Gender:** Following or engaging in a course of conduct with no legitimate purpose that makes another person reasonably concerned for their safety or would cause a reasonable person under the circumstances to be frightened, intimidated or emotionally distressed.
 8. **Bullying on the Basis of Sex/Gender:** Repeated and/or severe aggressive behavior likely to intimidate intentionally hurt, control, or diminish another person, physically or mentally.

II. **RELEVANT DEFINITIONS**

1. **Consent-** The term “consent” used when describing different types of prohibited acts of sexual misconduct under UAH’s Sexual Misconduct Policy (such as sexual assault) means a clear willingness to participate in the sexual act (e.g., clear communication through words or actions). Consent to a sexual act is not freely given if the individual is not able to give proper consent, or if consent is obtained by force, threats, deception, coercion, or positional authority. A lack of 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 may include, but is not limited to, situations where an individual is:
 - A. Incapacitated due to alcohol, drugs, or other substances including, but not limited to, prescription medication.
 - i. Determining consent when alcohol or other drugs are involved: In incidents involving alcohol, drugs, or other substances, the totality of the circumstances are analyzed to determine whether the use of alcohol, drugs, or other substances caused an inability to give consent. Whether a Respondent knew or reasonably should have known of the Complainant’s ability to give consent will be considered. Some factors considered to determine whether an individual is incapacitated due to alcohol, drugs, or other substances and therefore not able to give

consent include, but are not limited to: the use of force or threat of force, whether the parties were conscious or unconscious, whether the parties became sick due to intoxication, the parties' ability to communicate and/or slurred speech, the parties' coordination (e.g., ability to walk, dress/undress, perform simple tasks), and any other action that would be indicative of a level of cognitive functioning. The mere presence of alcohol, drugs, or other substances does not equate to an inability to give consent.

- B. Unconscious, asleep, or in a state of shock.
 - C. 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.
 - D. Mentally or physically impaired and not reasonably able to give consent.
2. **Force** is the use of physical violence and/ or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistances of that produces consent.
 3. **Complainant**—An individual who is reported to be or alleges that they were the victim of an offense that violates this Policy.
 4. **Respondent**—An individual who has been accused of an offense under this Policy or is reported to have violated this Policy.
 5. **Student** is anyone admitted to the University and registered for, taking, or pursuing undergraduate, graduate, or professional studies or courses at the University, both full-time and part-time, as well as persons attending classes on campus or off-campus. Persons who are not officially enrolled for a particular term but who have a continuing relationship with the University as well as persons participating in orientation are considered “students.”
 6. **Employee**—An employee is an individual who receives compensation for work or services for which the University has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the result of the work or service. For purposes of this Policy, University faculty and staff are considered “employees.” Volunteers and independent contractors are not considered “employees.”

III. TITLE IX COORDINATOR AND DEPUTY TITLE IX COORDINATORS

Title IX Coordinator: The University has a designated Title IX Coordinator who shall oversee implementation and enforcement of this Policy, compliance with applicable rules and regulations, and coordination of communications between campus and community partners. The Title IX Coordinator may be reached at (256) 824-6899. The Title IX Coordinator's office is currently located in the Student Services Building, SSB 300F.

Deputy Title IX Coordinators: Individuals located in Student Affairs (Dean of Students), Human Resources (Associate Vice President for Human Resources), and the Office of Diversity and Multicultural Affairs (Vice President for Diversity and Multicultural Affairs), who are trained to assist students and employees with complaints or concerns about sexual misconduct, and direct individuals to resources they need. Deputy Title IX Coordinators report all complaints and concerns to the Title IX

Coordinator, and work closely with the Title IX Coordinator in promptly responding to a person's concerns. The Deputy Coordinators can help with interim measures that a complainant may need during the investigation of a complaint. The Deputy Title IX Coordinators may serve as designees for the Title IX Coordinator in any case where there is a conflict of interest that would prohibit the Title IX Coordinator from providing fair and impartial oversight.

IV. AMNESTY FOR PERSONAL INGESTION OF ALCOHOL OR OTHER DRUGS

The University of Alabama in Huntsville 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 their improper use of alcohol or drugs (e.g., underage drinking) if the student is making a good faith report of Prohibited Conduct and complies with any subsequent directives. The Title IX Coordinator (or designee) may, however, refer a student to substance abuse counseling depending on the circumstances of the individual situation.

V. RETALIATION

The University of Alabama in Huntsville prohibits retaliation by its employees, students, or agents against an individual who exercises their rights pursuant to any provision of Title IX, Title VII, the Campus SaVE Act, or this Policy. The University encourages students, faculty, and staff to express freely, responsibly, and in an orderly, opinions and feelings about any problem or complaint.

1. Retaliation against persons who in good faith oppose or complain about Prohibited Conduct, illegal discrimination or harassment is prohibited.
2. Retaliation is any action that has the effect of punishing a person for engaging in a legally protected activity, such as alleging Prohibited Conduct, harassment, or illegal discrimination, filing a complaint, assisting or participating in an investigation of such complaint, or advocating for on behalf of others' Title IX or Title VII rights.

Examples of retaliatory actions could 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 of conduct prohibited by this Policy.

3. 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.

VI. REPORTING PROCEDURES, CONFIDENTIALITY, AND RIGHTS

The University of Alabama in Huntsville takes allegations of Prohibited Conduct very seriously and is committed to taking immediate action to combat Prohibited Conduct, prevent its recurrence, and remedy its effects. The University will address all allegations

of Prohibited Conduct with a prompt, thorough, and impartial inquiry to determine what occurred and to take appropriate steps to resolve the situation and determine an equitable resolution.

Students, employees, volunteers, and visitors of the University who have experienced any form of sex discrimination, sexual harassment or sexual misconduct, are strongly encouraged to report the incident promptly to the Title IX Coordinator and/or appropriate Deputy Title IX Coordinator. In addition, students, volunteers, and visitors of the University who have witnessed such conduct are encouraged to report the incident promptly. There is no time limit on reporting or filing complaints of violations of this Policy; however, prompt reporting is encouraged. Unreasonable delays in reporting may affect the investigation and evaluation of the report.

In order to foster reporting and participation, the University may provide amnesty to Complainants and witnesses for minor student conduct violations ancillary to the incident.

Mandatory Reporters: Any employee of the University, except as noted below, who becomes aware of sex discrimination as defined in this policy (including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation) is a Mandated Reporter, regardless of whether the recipient of the behavior is a student, employee, volunteer, child, or visitor of the University.

A mandated Reporter is required to report the information promptly to the Title IX Coordinator or appropriate Deputy Title IX Coordinator. The Mandated Report must be made regardless of whether the person reporting the information to the Mandated Reporter requests confidentiality and regardless of how the Mandated Reporter becomes aware of the offensive behavior (personal observation, direct information from the subject of the behavior, indirect information from a third party, etc.). If the Complainant requests confidentiality or that the charges not be pursued, the Mandated Reporter should warn the Complainant that, at this stage in the process, the Mandated Reporter must report all known information to the Title IX Coordinator.

Employees with a Legal Obligation or Privilege of Confidentiality: Employees with a legal obligation or privilege of confidentiality (including health care providers, counselors, lawyers, and their associated staff) are not considered Mandated Reporters and are not required to report when the information is learned in the course of a confidential communication. If the information is not learned in the course of confidential communication (for example, behavior is observed in class) then the employee has the same obligation as a Mandated Reporter.

Designated Confidential Employees: Consistent with the law and upon approval from the University Office of Counsel, the University may also designate non-professional counselors or advocates as confidential employees for purposes of this policy and, therefore, excluded from the definition of Mandated Reporters. However, these

individuals are required once per month to report to the Title IX Coordinator aggregate, non-personally identifiable information regarding incidents of sex discrimination reported to them. The aggregate data report should contain general information about individual incidents of sexual violence such as the nature, date, time, and general location of the incident. Confidentiality in this context is not the same as privilege under the law.

The University is not deemed to have notice of alleged Prohibited Conduct based on a report to these offices. A Complainant who wishes to receive accommodations and support measures, but who desires strict confidentiality should contact the University Counseling Center.

Contact Information for UAHPD and Title IX Coordinator/Deputy Coordinators:

Contact information for the Title IX Coordinator, Deputy Title IX Coordinators, and UAHPD for students, employees, and campus visitors can be found below and on the Title IX website at <http://www.uah.edu/title-ix>.

1. Reporting to Law Enforcement: The University encourages individuals to report immediately acts or threats of sexual assault, intimate partner (dating/domestic) violence, sexual exploitation, stalking, or any dangerous behavior to The University of Alabama in Huntsville Police Department (UAHPD) or local police authorities. Law enforcement agencies can be contacted by calling Emergency 911. UAHPD may be contacted at the Intermodal Facility (IMF), Room 123, 501 John Wright Drive Huntsville, AL 35899; <http://www.uah.edu/police>; (256) 824-6596 (nonemergency)

The Title IX Coordinator/Deputy Title IX Coordinators are available to assist a Complainant with reporting to UAHPD or local law enforcement; however, a Complainant is not required to report to law enforcement. The University may not in all cases receive notice of an alleged incident following a report to local law enforcement (e.g., the Huntsville Police Department, Madison County Sheriff's Office, etc.). Therefore, to enable the University to assist a Complainant with interim accommodations/measures and support services, individuals who have contacted law enforcement are encouraged also to report to the Title IX Coordinator/ Deputy Title IX Coordinators.

2. Reporting to Title IX Coordinator/ Deputy Title IX Coordinators: In addition to the Title IX website identified above, contact information for Title IX Coordinator/ Deputy Title IX Coordinators is listed below:
 - Title IX Coordinator:
(256) 824-6899
 - Deputy Title IX Coordinator (Students)
Dean of Students
(256) 824-6700
 - Deputy Title IX Coordinator (Faculty)
Vice President for Diversity and Multicultural Affairs
(256) 824-4600

- Deputy Title IX Coordinator (Staff)
Associate Vice President for Human Resources
(256) 824-6545

Confidentiality/Privacy: Conversations with Mandated Reporters are kept as confidential as possible and shared only on a need to know basis in order to assist in the active review, investigation, or resolution of the report and related issues. This confidentiality extends to the Complainant, Respondent, and other necessary parties. The University will maintain confidentiality as much as possible any in the provision of accommodations or interim protective measures provided to the Complainant, Respondent, and other necessary parties if maintaining such confidentiality will not impair the ability of the University to provide accommodations or protective measures.

University employees assisting with a Title IX matter are expected to safeguard private information in accordance with applicable laws (including, but not limited to, FERPA, HIPAA, and other privacy laws).

Complainants are advised that requests for confidentiality may limit the University's efforts to end the inappropriate conduct, prevent its recurrence, and remediate its effects. However, information about incidents of alleged Prohibited Conduct must be shared with relevant administrators if the Title IX Coordinator determines that the University needs to take action to provide a safe and non-discriminatory environment for the entire campus community. Relevant factors that will be considered include, but are not limited to, credible evidence of Respondent's prior Prohibited Conduct, risk of additional misconduct, and the use of a weapon. In all cases, the request for confidentiality by the person initiating the conversation is given full consideration.

All verified and unverified confidential reports of sexual offenses that meet the Clery reporting criteria as determined by UAHPD and that are made to the University Counseling and Health Center are included in UAH campus crime statistics. Crimes reported to professional counselors, physicians, mental health professionals, or others to whom a confidentiality privilege applies by law are not included unless the Complainant has chosen to report separately to a Campus Security Authority as defined by federal law.

Anonymous reports may be made via Charger 360 <http://www.uah.edu/Charger360> . Any investigation of an anonymous report will depend, in part, on the extent of the information provided.

Rights of Complainants and Respondents: In addition to all other rights conferred by this Policy, the parties have the following rights:

1. Complainant's Rights

Students or employees reporting potential sexual assault, domestic violence, dating violence, or stalking have the following rights:

- To be informed of available options for making a report;

- To be advised of the Complainant's right to file a criminal complaint and a Title IX complaint with UAH simultaneously 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 this Policy;
- To decline to notify law enforcement authorities in cases of domestic violence, dating violence, sexual assault, and stalking cases;
- To be assisted by campus authorities, if requested, when reporting a crime to law enforcement;
- To have equal access to educational programs and activities and interim protective measures, as appropriate.
- To receive information regarding University and community support resources (including, but not limited to, 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). If the Complainant requests such accommodations or protective measures and if they are reasonably available, they will be provided regardless of whether the Complainant chooses to report the crime to campus police or local law enforcement;
- To request from the Title IX Coordinator that the University issue and enforce a no contact directive;
- To a timely, thorough, and impartial investigation;
- If a student, to be accompanied by a support person/adviser at all University proceedings relevant to the investigation and hearing process, subject to the limitations outlined in this policy;
- Subject to the limitations outlined in this policy, to be notified of significant actions and proceedings relevant to the University investigation and hearing process;
- To be notified of the appeal process;
- To be notified in writing when final results become available (in crimes of violence or Title IX Prohibited Conduct cases);
- To have access to published policies regarding Prohibited Conduct and University disciplinary procedures, including the possible range of sanctions; and
- To be notified that information and materials the University obtains during its investigation into allegations of Prohibited Conduct may be disclosed to law enforcement in response to a valid subpoena.

2. Respondent's Rights

- To a general notice of the allegations, or Code of Conduct charges (if applicable), and an opportunity to respond to allegations, and access to policy statements regarding the investigation process and possible sanctions;
- To receive information regarding University and community support resources (including but not limited to modification of academic, living,

transportation, or working situations to avoid a hostile environment, and available health and mental health counseling, information about possible legal assistance, advocacy, safety planning, visa and immigration assistance, student financial aid, and, if applicable disability accommodations);

- To request from the Title IX Coordinator that the University issue and enforce a no contact directive;
- To a timely, thorough, and impartial investigation;
- If a student, to be accompanied by a support person/adviser at all University proceedings relevant to the investigation and hearing process, subject to the limitations outlined in this policy;
- Subject to the limitations outlined in this policy, to be notified of significant actions and proceedings relevant to the University investigation and hearing process;
- To be notified of the appeal process and whether an appeal is available;
- To be notified in writing when final results become available (in crimes of violence or Title IX Prohibited Conduct cases);
- To have access to published policies regarding Prohibited Conduct and University disciplinary procedures, including the possible range of sanctions;
- To be notified that the Respondent is not required to make a statement or otherwise provide information relevant to the investigation. However, the investigation will continue and a decision regarding responsibility may be made based on the available statements and evidence; and
- To be notified that information and materials the University obtains during its investigation into allegations of Prohibited Conduct may be disclosed to law enforcement in response to a valid subpoena

VII. PROCESSING OF A COMPLAINT

Complaints of Prohibited Conduct will receive prompt attention according to the timeline outlined in this policy. Complaints may be resolved through the informal or formal procedures described below, and appropriate action will be taken. The choice of an informal or formal resolution rests with the Complainant. However, if the Title IX Coordinator in consultation with the Deputy Title IX Coordinator determines that the matter is sufficiently grave because it seems to be part of a persistent pattern, due to the nature of the alleged offense, or because the Complainant seeks to have a sanction imposed, then the Title IX Coordinator may initiate a formal procedure, or take other appropriate action.

If a complaint is filed with the Title IX Coordinator that is not subject to this Policy, the Title IX Coordinator may refer the complaint to the appropriate University official. A determination by the Title IX Coordinator, in consultation with the Deputy Title IX Coordinator, that a complaint is not subject to this Policy is not open for appeal.

1. Preliminary Inquiry: The Title IX Coordinator or appropriate Deputy Title IX Coordinator may conduct a preliminary inquiry to determine if the allegations fall under this Policy or if a formal investigation is warranted. The Title IX Coordinator

or appropriate Deputy Title IX Coordinator may speak with parties, witnesses, and/or gather other information to make a determination regarding whether to proceed with an investigation. If there is insufficient information to move forward with an investigation, the Title IX Coordinator, in consultation with the appropriate Deputy Title IX Coordinator, will close the investigation and will not issue a finding. The Title IX Coordinator or appropriate Deputy Title IX Coordinator may offer resources and/or interim measures as it deems appropriate based on the information learned in the preliminary inquiry. The University reserves the right to reopen an inquiry or conduct a full investigation at any time.

2. Informal/ Voluntary Resolution: If the complaint is resolved informally, no record of the complaint will be entered in the Respondent's personnel file or Office of Student Conduct record. However, the Title IX Coordinator's Office will record the facts of the complaint and the resolution achieved. Options for informal resolution of a complaint include:

- The Complainant is not required to, but may, if they deem it appropriate and no safety risk is posed, attempt to resolve the matter directly with the Respondent and report back to the Title IX Coordinator/ Deputy Title IX Coordinators;
- The Title IX Coordinator/ Deputy Title IX Coordinators may notify the Respondent of the complaint, paying appropriate attention to the need to maintain confidentiality. Title IX Coordinator/ Deputy Title IX Coordinators may take whatever steps short of disciplinary sanctions that they deem appropriate to effect an informal resolution acceptable to both parties; or
- The Complainant and Respondent may participate in a mediation. Mediation is not an option for allegations of sexual assault or intimate partner (dating/domestic) violence;
- A party may end an informal proceeding at any time and move to the formal process outlined below.

3. Formal Investigation and Resolution Procedures: For allegations of Prohibited Conduct covered by this Policy, the University is committed to providing an investigation and resolution process that is prompt, fair, impartial, sensitive, supportive, and respectful to the rights and needs of all parties involved from the initial investigation to the final result. All meetings, discussions, and/or hearings that may occur as part of this formal process are closed to the general public.

A. Time Frames

Reasonable efforts will be made to arrive at an initial investigative finding as outlined herein (excluding hearings and appeals) within 60 University business days following the receipt of a formal complaint, unless the University determines, in its sole discretion, that additional time is required. The University will provide the parties with periodic updates as it deems appropriate and with timely notice of meetings at which either or both the Complainant and Respondent may be present, and will provide

both parties with timely and equal access to any information that is utilized in the decision-making process.

Extenuating circumstances could require the process to extend beyond the time frames described above, and the University will determine in its discretion if such circumstances exist and will notify the Complainant and Respondent of the delay and the reason for the delay. Potential reasons for requiring additional time for resolution of the process include, but are not limited to, the complexity of the investigation, the severity and extent of the alleged conduct, University closings, breaks, holidays, summer terms, lack of access to witnesses, and factors outside the University's control.

B. Equal Opportunity and Access

To the extent not already provided for by existing disciplinary procedures, the Complainant and the Respondent are entitled to the same opportunities to be heard, to present evidence, and to access pertinent information during the investigation and resolution process as appropriate. Both the Complainant and Respondent will be updated on the status of the investigation and the outcome of any proceeding in an equitable manner. Accommodations and protective measures may be taken to help protect the health and/or safety of the Complainant, Respondent, and/or witnesses.

C. Standard of Proof

The standard used to determine whether the Respondent is responsible for a Prohibited Conduct allegation is preponderance of the evidence, which means more likely than not the alleged conduct occurred and said conduct is in violation of this Policy.

D. Investigation Procedure

If, following the preliminary inquiry, a Complainant or the University wants to pursue a formal investigation and there is sufficient information to move forward, then the Title IX Coordinator will send the Complainant and the Respondent a written Notice of Investigation, which constitutes the formal charge. The Notice of Investigation will contain a summary of the allegation or conduct at issue, the range of potential violations under the Title IX Policy, and the range of potential sanctions according to Faculty, Staff, or Student Policy. Once the Notice of Investigation has been delivered to the parties, the Investigation phase begins.

The investigation procedure followed for a formal complaint covered by this Policy is determined by the role(s) of the Respondent's association with the University:

i. Complaint against student Respondent

Complaints wherein a student is the Respondent are investigated by the Deputy Title IX Coordinator for Students in conjunction with the Office of Student Ethics & Education. All matters involving allegations of Prohibited Conduct by a student will be handled under the Code of Student Conduct in a manner consistent with the requirements, accommodations,

procedures, and processes outlined in this Policy. Hearings and appeals for complaints against a student involving Prohibited Conduct are discussed in detail below.

ii. Complaint against faculty Respondent

Complaints wherein a faculty member is the Respondent are investigated by the Deputy Title IX Coordinator for Faculty. Following the investigation, the Deputy Title IX Coordinator for Faculty will provide a report to the applicable decision-making official. A conclusion by the applicable decision-making official that Prohibited Conduct has occurred shall subject the Respondent to appropriate disciplinary sanctions. A conclusion that Prohibited Conduct has not occurred will in most cases end the process, unless the Complainant has the right to appeal, which only exists if the Respondent has an appeal right.

iii. Complaint against staff Respondent

Complaints wherein a staff member is the Respondent are investigated by the Deputy Title IX Coordinator for Staff alone or in conjunction with human resource partners. Following the investigation, the Deputy Title IX Coordinator for Staff will provide a report to the applicable decision-making official. A conclusion by the applicable decision-making official that Prohibited Conduct has occurred shall subject the Respondent to appropriate disciplinary sanctions. A conclusion that that Prohibited Conduct has not occurred will in most cases end the process, unless the Complainant has the right to appeal, which only exists if the Respondent has an appeal right.

iv. Complaint against community member/third party/campus visitor Respondent

Consistent with the jurisdiction of this Policy, in instances where a complaint is received against a community member/third party/campus visitor (not student or employee) related to alleged Prohibited Conduct occurring on campus or at any location involving a University-sponsored activity or event, the Title IX Coordinator (or a designated investigator) may conduct an investigation and make a determination regarding whether the conduct in question is in violation of University policy or law. A conclusion by the Title IX Coordinator that Prohibited Conduct in violation of University policy or the law has occurred may subject the community member/third party/campus visitor to disciplinary action. A conclusion by the Title IX Coordinator that Prohibited Conduct has not occurred will in most cases end the process, as no appeal right exists for the community member/third party/campus visitor, and therefore does not exist for the Complainant in this situation.

E. Investigation Process

When initiated, the investigation process will be thorough and impartial, as well as equitable with regard to the rights of the Complainant and Respondent. The goal of the investigation is to determine if conduct occurred in violation of University policy and, if so, to end the specific misconduct, prevent its recurrence, and remedy the effects on the Complainant and the University community.

Discussion with Complainant: The assigned investigator will conduct an initial meeting with the Complainant. The investigator will obtain as much information as possible during the initial meeting about the alleged incident, including witness names and any available evidence. The Complainant may, at any time during the investigation process, request that the investigation end and the University will try to accommodate this request, which may result in a finding that the Respondent is not responsible for the alleged conduct. However, if the alleged conduct presents an issue of overall campus safety, the Title IX Coordinator in consultation with the appropriate Deputy Title IX Coordinator may continue with the investigation without the Complainant's consent.

Discussion with Respondent: The allegations, subject to confidentiality concerns, will be discussed with the Respondent. The assigned investigator and the Respondent will discuss a Respondent's rights as well as available University resources for support while the investigation is pending. The Respondent will be given the opportunity to respond to the allegations and offer evidence and/or potential witnesses. The Respondent is not required to make a statement or otherwise provide information relevant to the investigation. However, the investigation will continue and a decision regarding responsibility may be made based on the available statements and evidence. Further, information and materials the University obtains during its investigation into allegations of Prohibited Conduct may be disclosed to law enforcement in response to a valid subpoena.

Other Evidence: The assigned investigator will make reasonable attempts to contact and interview individuals who are identified as witnesses with information relevant to the allegations of Prohibited Conduct. The investigator may elect not to interview witnesses whose sole purpose is to provide character information. The investigator will make reasonable attempts to obtain other relevant evidence available from the parties, witnesses, or other University departments.

At the conclusion of the investigation, the investigator will prepare a report (the "Investigative Report") summarizing and analyzing the relevant facts determined through the investigation, with reference to any supporting documentation or statements. The final Investigative Report will provide a summary of the Investigator's impressions, including context for the evidence. However, before the report is finalized, the Complainant and Respondent will be given the opportunity to review a draft Investigation Report, which will not include the Investigative Finding, and may be presented in redacted format. The parties will not receive an electronic or printed copy, nor may they photograph or copy the draft Investigative Report, but they will be permitted to take notes on the content.

At the conclusion of the investigation, the investigator will prepare a report (the "Investigative Report") summarizing and analyzing the relevant facts determined

through the investigation, with reference to any supporting documentation or statements. The final Investigative Report will provide a summary of the Investigator's impressions, including context for the evidence. However, before the report is finalized, the Complainant and Respondent will be given the opportunity to review a draft Investigation Report, which will not include the Investigative Finding, and may be presented in redacted format. The parties will not receive an electronic or printed copy, nor may they photograph or copy the draft Investigative Report, but they will be permitted to take notes on the content.

A Complainant and Respondent may submit any additional comment or information to the investigator within five (5) business days of the date of the notice of the opportunity to review the draft Investigation Report. This is the final opportunity for the parties to identify any additional information or witnesses. In the absence of good cause, information reasonably discoverable that is not provided to the investigator at this stage will not be considered by the investigator or any other reviewing party.

The investigator will provide a copy of the final Investigative Report to the Title IX Coordinator and appropriate decision making official. The Title IX Coordinator and/or appropriate decision making official may request that the Investigator conduct additional interviews and/or gather additional information

VIII. RESOLUTION PROCEDURES FOR STUDENTS

Upon the conclusion of the investigation, the Dean of Students/ Deputy Title IX Coordinator for Students will meet with the accused student and determine responsibility. If the student accepts responsibility, the Dean of Students will assign sanctions deemed appropriate.

1. Acceptance of Responsibility
The acceptance of responsibility shall constitute the charged student's waiver of a formal hearing and right of appeal. The student retains the right only to appeal the severity of the sanction
2. Formal Disposition by Hearing
When a charged student denies responsibility and the case has not been previously dismissed, a hearing shall be scheduled no fewer than 10 University Business days after the date of the Initial Review. In cases of sexual misconduct, the Formal Hearing will be heard by the Student Conduct Board.
 - a) Notice of Hearing. The notification of hearing shall be in writing and include:
 - i. The date, time, and location of the Student Conduct Board hearing;
 - ii. Reference to policies/procedures, his/her rights and the hearing procedures
 - iii. A reasonable date, time, and location for a Pre-Hearing Meeting with the Dean of Students (or Designee), during which the student may review a potential witness list and all materials to be used by the University in his or her case, which shall be no fewer than three academic days prior to the hearing. If the student chooses to review the materials provided at the Pre-Hearing Meeting, the charged student shall allow the University also

to review all of his or her materials and witnesses to be used in the case. Any materials or witnesses not provided at the Pre-Hearing Meeting by either the University or the student may not be used at any time thereafter during the student disciplinary proceedings;

- iv. The charged student shall have the opportunity to challenge the impartiality of a Student Conduct Board member within three academic days of notification. In the event that a student has opted not to challenge the impartiality of a Student Conduct Board member prior to the allotted three academic days, the assigned Student Conduct Board member shall remain as scheduled. The student shall state in writing the basis for such challenge.

b) Structure of the Student Conduct Board

The Student Conduct Board shall consist of the following persons: four faculty members/staff members, and one hearing panel chair who shall be a faculty member/staff member. Faculty members/staff members are appointed by the University President for a two-year term.

c) Hearing Procedures

- i. The hearing is not a legal proceeding. Formal rules of process, procedure, and evidence do not apply.
- ii. Objectives of the Hearing. Requisite levels of due process and fairness will be provided to all participants during these proceedings. The hearing shall have the following objectives
 - Inform the student of the charges
 - Give the accused student an opportunity to respond to the charges
 - Review the facts of the case
 - Determine if any violation of the Student Code of Conduct was committed
 - Recommend any sanction(s) to be imposed based upon the facts, as determined at the hearing.
- iii. Witnesses. Witnesses at hearings will not be sworn in. Each witness will be admonished that he or she is required to tell the truth. A student giving untrue testimony at a hearing is subject to disciplinary charges.
- iv. Information. Pertinent records, exhibits, and written statements may be accepted as information for consideration by the Hearing Officer or the Student Conduct Board at the discretion of the Chair.
- v. Burdens of Proof. The Student Conduct Board shall determine whether it is more likely than not that the accused student violated the Student Code of Conduct by a preponderance of evidence.
- vi. Advisor. The charged student may choose one advisor to be present at the hearing. The advisor can be chosen from a group of faculty or staff members who have been specifically trained to serve in the advisor role. The student may also choose any university or non-university person as his/her own advisor. The student may select, at

his or her own expense, an attorney to serve as his/her advisor. The advisor or attorney cannot present statements, arguments, or question witnesses or participate directly in any Student Conduct Board Hearing or the Initial Review.

- Members of the Student Conduct Board may not serve as a student's advisor at the hearing.
- The charged student must name his/her advisor during the Pre-Hearing Meeting with the Dean of Students (or Designee).

vii. Hearings

- All hearings before the Student Conduct Board will be digitally recorded by the University. That recording will serve as the only official record of these proceedings and shall be the property of the University. No other recordings are permitted. Deliberations shall not be recorded.
- The following is a guide to the format of events for hearings. The Board may change the order if necessary. The Board may question any party or witness directly
 - Review of Hearing procedure
 - Reading of Charges by the Dean of Students.
 - Deliberation by the Board (not taped).

viii. The Student Conduct Board or Hearing Officer will find the student "Responsible" or "Not Responsible" for each of the alleged violations listed on the Notice of Charges.

ix. If the charged student fails to appear at the scheduled hearing (after proper notice), the Student Conduct Board will review the case and make a decision without the charged student present. Consideration will be given for nonappearance due to extenuating circumstances. The charged student relinquishes the right to appeal the decision of the Student Conduct Board or Hearing Officer and retains the right only to appeal the severity of the sanction if the charged student fails to appear at the scheduled hearing.

x. The Deputy Title IX Coordinator for Students shall send a notification in writing (Notice of Decision and Sanction) to the student of the decision of the Student Conduct Board or Hearing Office and the sanction(s) imposed within five academic days of the conclusion of the hearing.

d) Appeals

The accused student may appeal the finding of the Student Conduct Board or Hearing Officer (Responsible/Not responsible) or the sanctions imposed to the Vice President for Student Affairs

i. Standards for Appeal

- Failure to receive the due process required by law.
- Severity of the sanction.
- New material or information that could not be discovered at the time of the hearing.

- ii. All appeals must be submitted electronically or in printed format within five academic days of the date of the Notice of Decision/Sanction to the Vice President for Student Affairs for consideration. All appeals must specify the basis for the appeal.
 - iii. The burden of proof for the appeal rests with the charged student.
 - iv. The student's pre-decision status will remain unchanged pending the appeal determination by the Vice President for Student Affairs, except where the Vice President for Student Affairs, determines that the safety, health or general welfare of the student or the university community is involved.
 - v. After considering the appeal, the Vice President for Student Affairs may reopen the hearing, order a new hearing with a new Conduct Board, uphold the prior decision and/or revise the sanction. The Vice President for Academic Affairs shall provide the student written notice of his/her decision within five academic days.
 - vi. The appeal determination of Vice President for Student Affairs is final and binding on all parties. There are no further appeals within the University except in cases where the sanction of suspension or expulsion has been imposed, in which case, a final appeal can be heard by the University President.
- e) Sanctions
- Sanctions imposed against students are dictated by the Code of Student Conduct. A student found responsible for violation of this Policy is subject to sanctions up to and including expulsion from the University. Lesser disciplinary sanctions include warning, probation, loss of privileges, no contact order, campus ban/no trespass warning from UAHPD, residence hall suspension or transfer/expulsion, educational discretionary sanction(s) as deemed appropriate.

IX. RESOLUTION PROCEDURES FOR FACULTY

Upon the conclusion of the investigation, the Deputy Title IX Coordinator for Faculty/ assigned Investigator will prepare a report (the "Investigative Report") summarizing and analyzing the relevant facts determined through the investigation, with reference to any supporting documentation or statements.

The Deputy Title IX Coordinator will provide an Investigative Report to the Provost (or Designee) and Title IX Coordinator. This report may include the Deputy Title IX Coordinator's/ Investigator's observations regarding the credibility of the Complainant, the Respondent, and any witnesses interviewed.

The Provost (or Designee) and/ or Title IX Coordinator may request that the Deputy Title IX Coordinator conduct additional interviews and/or gather additional information. The Provost (or Designee) can, but is not required to, meet with and question the Deputy Title IX Coordinator for Faculty to clarify information in the Investigative Report. The Respondent may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If the Respondent admits responsibility, in whole

or in part, the Provost (or Designee) will render a finding that the individual is in violation of University policy for the admitted conduct.

For any disputed violations, the Provost (or Designee) will render a finding utilizing the preponderance of the evidence standard. The findings and recommended sanctions are subject to appeal.

The Provost (or Designee) will inform the Respondent and the Complainant of the finding of each of the alleged policy violations and the finding on sanctions. The notifications will be made in writing and will be timely delivered either by email to the Party's University-issued email account or other delivery means without significant time delay between notifications.

A determination as set forth above that a violation of this policy has occurred shall subject a faculty member to appropriate disciplinary action subject to the current Faculty Handbook Section 7.14 Disciplinary Policies and Procedures. Appropriate sanctions will be based on factors such as

1. The nature, severity of, and circumstances surrounding the violation;
2. The disciplinary history of the Respondent;
3. The need for sanctions/remedial actions to bring an end to the discrimination, harassment and/or retaliation;
4. The need for sanctions/remedial actions to prevent the future recurrence of discrimination, harassment and/or retaliation; and
5. The need to remedy the effects of the discrimination, harassment and/or retaliation on the Complainant and the University community.

Possible sanctions may include, but are not limited to, a no contact order, verbal counseling, written counseling or warning, official reprimand, mandatory counseling, mandatory attendance at the Employee Assistance Program, educational assignment, fines, restitution, paid or unpaid administrative leave, release from teaching duties, reassignment of responsibilities, loss of ability to travel abroad or apply for sabbatical leaves, ineligibility to receive promotion, suspension of annual merit increase, decrease in salary, suspension, demotion, transfer and/or reassignment of duties, revocation of tenure, termination of employment, campus ban/no trespass warning from UAHPD, prohibition on further employment or volunteer activity at the University, loss of University benefits for retirees and referral to proper law enforcement authorities for prosecution.

In cases involving Faculty respondents, the parties have the right to appeal the Provost's determination and the sanctions imposed by the Provost to the President. The University's determination as to whether the respondent's conduct violated the Title IX Policy will be presumed to have been reached reasonably and appropriately, by a preponderance of the evidence. Therefore, an appeal is available only on the following grounds:

1. Materially insufficient evidence to support the Investigator's findings.

2. The disciplinary sanction imposed is materially disproportionate to the violation of the Title IX Policy.
3. The discovery of new, relevant evidence, that was unavailable to the appealing party during the investigation that could reasonably affect the outcome of the complaint.
4. Significant prejudicial bias on the part of the Investigator.

Any appeal must be in writing and should be filed with the Title IX Coordinator within ten (10) calendar days of the date of receipt of the Provost's final decision. The appeal must be in writing and contain the following:

- Name of the Complainant
- Name of the Respondent
- A statement of the determination of the Complaint, including corrective action if any
- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it
- Requested action, if any

The Title IX Coordinator may accept a late submission under extenuating circumstances. The President will make a final decision within 30 University business days of receipt of the appeal by the Title IX Coordinator and may take any and all actions that the President determines to be in the interest of a fair and just decision. The decision of the President will be final. The President shall issue a written statement of the resolution of the appeal, including any changes made to the Provost's previous written determination. The written statement shall be provided to the Complainant, Respondent, and the Title IX Coordinator within ten (10) days of the resolution.

X. RESOLUTION PROCEDURES FOR STAFF

Upon the conclusion of the investigation, the assigned investigator will prepare a report (the "Investigative Report") summarizing and analyzing the relevant facts determined through the investigation, with reference to any supporting documentation or statements.

The Investigator will provide an Investigative Report to the Deputy Title IX Coordinator for Staff, Title IX Coordinator, and Cognizant Vice President. This report may include the Investigators' observations regarding the credibility of the Complainant, the Respondent, and any witnesses interviewed.

The Deputy Title IX Coordinator in consultation with the Cognizant Vice President can, but is not required to, meet with and question the Investigator to clarify information in the investigation report. The Respondent may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If the Respondent admits responsibility, in whole or in part, the Deputy Title IX Coordinator in consultation with the Cognizant Vice President will render a finding that the individual is in violation of University policy for the admitted conduct.

For any disputed violations, the Deputy Title IX Coordinator for Staff in consultation with the Cognizant Vice President will render a finding utilizing the preponderance of the evidence standard. The findings and recommended sanctions are subject to appeal.

The Deputy Title IX Coordinator for Staff will inform the Respondent and the Complainant of the finding of each of the alleged policy violations and the finding on sanctions, without significant time delay between notifications. The Notification will be made in writing and will be delivered by email to the Party's University-issued email account.

A determination as set forth above that a violation of this Policy has occurred shall subject a staff member to appropriate disciplinary action pursuant to the current Staff/Employee Handbook. The University has adopted a philosophy of progressive discipline. However, one violation of this Policy could result in termination of employment. Appropriate sanctions will be based on such factors as severity, frequency, and degree of deviation from expectations in this Policy.

Possible sanctions may include, but are not limited to, a no contact order, verbal counseling, written counseling or warning, official reprimand, mandatory counseling, mandatory attendance at the Employee Assistance Program, educational assignment, fines, restitution, paid or unpaid administrative leave, reassignment of responsibilities, ineligibility to receive raise or promotion, suspension of annual merit increase, decrease in salary, suspension, demotion, transfer, termination of employment, 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.

The University's determination as to whether the respondent's conduct violated the Title IX Policy will be presumed to have been reached reasonably and appropriately, by a preponderance of the evidence standard. Therefore, an appeal is available only on the following grounds:

1. Materially insufficient evidence to support the Investigator's findings.
2. The disciplinary sanction imposed is materially disproportionate to the violation of the Title IX Policy.
3. The discovery of new, relevant evidence, that was unavailable to the appealing party during the investigation that could reasonably affect the outcome of the complaint
4. Significant prejudicial bias on the part of the Investigator.

Any appeal must be in writing and should be filed with the Title IX Coordinator within ten (10) calendar days of the date of receipt of the Deputy Title IX Coordinator for Staff and Cognizant Vice President's decision. The appeal must be in writing and contain the following:

- Name of the complainant
- Name of the respondent

- A statement of the determination of the complaint, including corrective action if any
- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it
- Requested action, if any

The Title IX Coordinator may accept a late submission under extenuating circumstances. The President (or President Designee) will make a final decision within 30 business days of receipt of the appeal and may take any and all actions that the President determines to be in the interest of a fair and just decision. The decision of the President will be final. The President shall issue a written statement of the resolution of the appeal, including any changes made to the Deputy Title IX Coordinator for Staff and Cognizant Vice President's previous written determination. The written statement shall be provided to the Complainant, Respondent, and the Title IX Coordinator within ten (10) days of the resolution.

XI. ACCOMMODATIONS, INTERIM PROTECTIVE MEASURES, AND SUPPORT SERVICES

For all reports of Prohibited Conduct, the University will take prompt and reasonable action to provide support to all parties involved. A Complainant is not required to file a formal complaint, report the incident to law enforcement, or pursue criminal charges to receive assistance and University resources, which includes assistance with interim protective measures from either the Title IX Coordinator or, if the Complainant desires strict confidentiality, from University Counseling.

The need for University resources varies based on the facts of the specific incident and the individual's needs. The Title IX Coordinator may take protective action, including accommodations for the Complainant and/or Respondent upon request and if such action is reasonably available. In addition to what is set forth in this Section, other interim protective measures may be available based on specific circumstances. Moreover, the University may take action without a request from either party if the University determines doing so is in the best interest of a student, employee, or the University community. Accommodations and/or support services may be limited or unavailable if interim sanctions or measures are put in place that restrict an individual's access to areas of campus. The Title IX Coordinator should be contacted for additional information. Examples of potential interim protective measures and resources that may be available are generally outlined below:

- Access to counseling services and assistance in setting up initial appointments
- Imposition of a "No-Contact Order";
- Change in work schedule or job assignment;
- Change in student's campus housing or assistance with safe housing;
- Emergency numbers for on and off campus law enforcement, and how the University can assist in notifying law enforcement if desired;
- Limiting access to certain University facilities or activities pending resolution of the matter;

- Voluntary leave of absence;
- Providing academic support services, such as tutoring, change in class schedule, rescheduling exams and assignments, and/or alternative course completion options.
- Any other measure that may be reasonably tailored to the involved individuals to achieve the goals of this Policy.

XII. POST- RESOLUTION FOLLOWUP

After a sanction or remedy is issued, the Title IX Coordinator will periodically contact the Complainant to ensure the Prohibited Conduct has ended and to determine if additional remedies are necessary and will contact the Respondent to assure compliance with any sanctions that have been imposed. The Complainant may decline future contact. Any violation by a Respondent of a sanction or protective measure imposed under the Title IX Policy or a failure by a University employee to provide a specified remedy should be reported to the Title IX Coordinator.

The Complainant and Respondent are encouraged to provide the Title IX Coordinator with feedback about their experience with the process and recommendations regarding ways to improve the effectiveness of the campus' implementation of the Sexual Misconduct Policy.

XIII. DISHONEST, MALICIOUS, OR FRIVOLOUS ACCUSATIONS

All reports should be made in good faith, meaning the individual making the report has a reasonable belief that the reported statements are true and relate to a potential violation of University policy. A bad faith report is one that is intentionally dishonest, frivolous, or malicious. When a report is made in bad faith, the bad faith report 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 accused and the community. It is a violation of this Policy to report intentionally dishonest, frivolous, or malicious allegations of Prohibited Conduct. If a complaint is brought in bad faith as demonstrated by a preponderance of the evidence, disciplinary action may be taken against the person making the complaint. In addition to violating this Policy, a person filing a bad faith report of Prohibited Conduct may be in violation of other University policies, state law, or federal law.

XIV. CRIMINAL INVESTIGATIONS

University disciplinary proceedings may be instituted against a student, faculty, or staff cited for a violation of a law that is also a violation of this Policy, the Code of Student Conduct, or other campus policies if both violations result from the same factual situation, without regard to the pendency of civil litigation in court or criminal arrest and prosecution. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

In addition to being forbidden by this Policy, Prohibited Conduct may be a violation of federal or state criminal law. The University encourages individuals to report criminal

activity immediately to UAHPD or local law enforcement. Immediate reporting of crimes greatly enhances law enforcement's ability to collect and maintain evidence. For information about pursuing a criminal complaint, please contact UAHPD at (256) 824-6596. The Title IX Coordinator may provide assistance or support to an individual voluntarily choosing to file a criminal complaint.

XV. PREVENTION, EDUCATION, AND AWARENESS

The University of Alabama in Huntsville is committed to providing preventive, informative, and supportive programming for all members of the University community. Among other things, the University's comprehensive education and awareness plan consists of the following: implementation of this Policy; educational programming that addresses all aspects of Prohibited Conduct; the University's response to allegations of Prohibited Conduct; and University-provided support systems to remediate the effects of Prohibited Conduct.

XVI. ACADEMIC FREEDOM AND SEXUAL HARASSMENT/HOSTILE ENVIRONMENT

In cases of alleged sexual misconduct, the protections of the First Amendment must be considered if issues of speech or artistic expression are involved. Free speech rights apply in the classroom and in all other educational programs and activities of public institutions, and First Amendment rights apply to the speech of students and employees. Great care must be taken not to inhibit open discussion, academic debate, and expression of personal opinion, 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 sexual misconduct 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.

In the event of any conflict, the Sexual Misconduct Policy will govern: The Sexual Misconduct Policy does not create a contract or quasi-contract between the University or any University employee and any individual that may be affected by the Policy.

XVII. OTHER RELEVANT INFORMATION

Past Sexual Histories/Evidence of Other Sexual Misconduct or Harassing Conduct

In general, a Complainant's prior sexual history, character, or reputation is not relevant and will not be considered as evidence during any stage of the process. Where there was a relationship between the Complainant and the Respondent and consent is at issue, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties or to explain physical evidence. However, the mere fact of a current or previous dating relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is not relevant and will not be permitted, except to explain injury or mistaken identity.

Evidence of Other Sexual Misconduct or Harassing Conduct by a Respondent

The following types of evidence may be considered: (a) evidence of conduct similar in nature to the alleged misconduct by the respondent; (b) evidence of a pattern or to be considered together with the alleged misconduct in determining whether a hostile environment was created; (c) evidence relevant to proving intent, state of mind or identity. Such evidence may be considered regardless of whether there has been a finding of responsibility as to the other conduct subject to the general determinations of admissibility of evidence described below in the Rules of Evidence.

Rules of Evidence.

University proceedings are not judicial or policy procedures designed to enforce laws. They are internal, administrative procedures designed to address reported violations of University policy. The University does not conduct judicial proceedings and is not required to follow the rules of evidence employed by courts of law. Information that does not come from a first-hand source (hearsay) may be considered. Except as specifically provided in these Procedures, the University is not required to consider evidence to exclude or consider.

Adviser

Complainants and Respondents may be accompanied by one adviser throughout the investigation and any hearing process. An adviser is a support person who is present to provide support to a complainant or respondent throughout an investigation and/or hearing. An adviser may not speak, write, or otherwise communicate with an investigator, hearing officer or panel on behalf of the Complainant or Respondent. The Complainant or Respondent must answer the investigator or hearing panel questions. The adviser may confer with the Complainant/ Respondent before the Complainant/ Respondent responds to questions or statements. Advisers who do not abide by these guidelines may be excluded from the process.

Preservation of Records

A confidential record of all complaints, including their disposition, will be maintained by the Title IX Coordinator and Human Resources in accordance with UAH's document retention policy.

Intersection with Other Procedures

These complaint resolution procedures are the exclusive means of resolving complaints alleging violations of the Sexual Misconduct Policy. To the extent there are any inconsistencies between these complaint resolution procedures and other University grievance, complaint, or discipline procedures, these complaint resolution procedures will control the resolution of complaints alleging violations of the Sexual Misconduct Policy

Appendix 1

Prohibited Conduct Defined (UAH, State, and Federal Definitions)

For purposes of the Sexual Misconduct 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 the chart below (whether defined by UAH, or by state (AL) or federal (FED) criminal 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 added or amended, it will be considered a violation of this Policy if an individual engages in such conduct (as proven by a preponderance of the evidence), even if the definitions below have not been updated to reflect the most recent federal or state language.

INTIMATE PARTNER VIOLENCE: DATING VIOLENCE	
FED	<p>Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.</p> <p>(i) The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.</p> <p>(ii) For the purposes of this definition—</p> <p style="padding-left: 20px;">(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.</p> <p style="padding-left: 20px;">(B) Dating violence does not include acts covered under the definition of domestic violence. 34 C.F.R. § 668.46(a)</p>
AL	n/a
INTIMATE PARTNER VIOLENCE: DOMESTIC VIOLENCE	
FED	<p>(i) A felony or misdemeanor crime of violence committed—</p> <p style="padding-left: 20px;">(A) By a current or former spouse or intimate partner of the victim;</p> <p style="padding-left: 20px;">(B) By a person with whom the victim shares a child in common;</p> <p style="padding-left: 20px;">(C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;</p> <p style="padding-left: 20px;">(D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or</p> <p style="padding-left: 20px;">(E) By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred. 34 C.F.R. § 668.46(a)</p>
AL	<p>First Degree Domestic Violence – ALA. CODE § 13A-6-130(a)</p> <p>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 or</p>

	aggravated stalking pursuant to Section 13A-6-91, and the victim is a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant.
	Second Degree Domestic Violence – ALA. CODE § 13A-6-131(a) 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, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant.
	Third Degree Domestic Violence – ALA. CODE § 13A-6-132(a) 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, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant.

STALKING	
FED	<p>Stalking is: (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—</p> <ul style="list-style-type: none"> (A) Fear for the person’s safety or the safety of others; or (B) Suffer substantial emotional distress. <p>(ii) For the purposes of this definition—</p> <ul style="list-style-type: none"> (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)
AL	<p>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.</p> <p>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.</p>
SEXUAL ASSAULT OFFENSES –SEXUAL ASSAULT & SEXUAL EXPLOITATION, FONDLING, INCEST, RAPE & STATUTORY RAPE	
SEXUAL ASSAULT/SEXUAL CONTACT/SEXUAL EXPLOITATION	
UAH	
FED	Sexual Assault is an offense that meets the definition of rape, fondling, incest, or statutory rape (see FED definitions below) 34 C.F.R. § 668.46(a)
AL	<p>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. Refer to AL definitions below for those.</p> <p>First Degree Sexual Abuse – ALA. CODE § 13A-6-66 (a) A person commits the crime of sexual abuse in the first degree if: (1) He subjects another person to sexual contact by forcible compulsion; or (2) He subjects another person to sexual contact who is <i>incapable of consent</i> by reason of being physically helpless or mentally incapacitated.</p> <p>Second Degree Sexual Abuse – ALA. CODE § 13A-6-67 (a) A person commits the crime of sexual abuse in the second degree if: (1) He subjects another person to sexual contact who is <i>incapable of consent</i> by reason of some factor other than being less than 16 years old; or (2) He, 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.</p> <p>First Degree Sodomy – ALA. CODE § 13A-6-63 (a) A person commits the crime of sodomy in the first degree if: (1) He engages in deviate sexual intercourse with another person by forcible compulsion; or (2) He engages in deviate sexual intercourse with a person who is <i>incapable of consent</i> by reason of being physically helpless or mentally incapacitated; or (3) He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.</p>

<p>Second Degree Sodomy – ALA. CODE § 13A-6-64 (a) A person commits the crime of sodomy in the second degree if: (1) He, being 16 years old or older, engages in deviate sexual intercourse with another person less than 16 and more than 12 years old. (2) He engages in deviate sexual intercourse with a person who is <i>incapable of consent</i> by reason of being mentally defective.</p>
<p>Sexual Torture – ALA. CODE § 13A-6-65.1 (a) A person commits the crime of sexual torture: (1) By penetrating the vagina or anus or mouth of another person with an inanimate object by forcible compulsion with the intent to sexually torture or to sexually abuse. (2) By penetrating the vagina or anus or mouth of a person who is <i>incapable of consent</i> by reason of physical helplessness or mental incapacity with an inanimate object, with the intent to sexually torture or to sexually abuse. (3) By penetrating the vagina or 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 or to sexually abuse.</p>
<p>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 of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm in any public place or on the private premises of another or so near thereto as to be seen from such private premises.</p>
<p>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.</p>
<p>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.</p>
<p>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 <i>sexual contact</i> with a student under the age of 19 years if he or she is a school employee and engaging in sexual contact with a student, regardless of whether the student is male or female. Consent is not a defense to a charge under this section. (b) As used in this section, <i>sexual contact</i> means any touching of the sexual or other intimate parts of a student, done for the purpose of gratifying the sexual</p>

	desire of either party. The term includes soliciting or harassing a student to perform a sex act.
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FONDLING	
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FED	The touching of the private body parts of another person for the purpose of sexual gratification, <i>without the consent</i> 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
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AL	n/a
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INCEST	
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AL	<p>(a) A person commits incest if he marries or engages in sexual intercourse with a person he knows to be, either legitimately or illegitimately:</p> <ol style="list-style-type: none"> (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. <p>(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. Ala. Code § 13A-13-3</p>
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FED	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
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RAPE	
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FED	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, <i>without the consent</i> of the victim. 34 C.F.R. § 668.46 Appendix A
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AL	<p>First Degree Rape – ALA. CODE § 13A-6-61</p> <p>(a) A person commits the crime of rape in the first degree if:</p> <ol style="list-style-type: none"> (1) He or she engages in sexual intercourse with a member of the opposite sex by forcible compulsion; or (2) He or she engages in sexual intercourse with a member of the opposite sex who is <i>incapable of consent</i> by reason of being physically helpless or mentally incapacitated; or (3) He or she, being 16 years or older, engages in sexual intercourse with a member of the opposite sex who is less than 12 years old.
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	<p>Second Degree Rape – ALA. CODE § 13A-6-62</p> <p>(a) A person commits the crime of rape in the second degree if:</p> <ol style="list-style-type: none"> (1) Being 16 years old or older, he or she engages in sexual intercourse with a member of the opposite sex less than 16 and more than 12 years old; provided, however, the actor is at least two years older than the member of the opposite sex. (2) He or she engages in sexual intercourse with a member of the opposite sex who is <i>incapable of consent</i> by reason of being mentally defective.
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STATUTORY RAPE	
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FED	Sexual intercourse with a person who is under the statutory age of consent. 34 C.F.R. § 668.46 Appendix A
AL	In Alabama, it is illegal for an adult (someone 18 or older) to have sex with a minor (someone younger than 16), even if the sex is consensual. See AL definition of consent.
HARASSMENT & SEXUAL HARASSMENT	
AL	n/a
FED	n/a

Review The Office of the Director of Compliance and Title IX Coordinator is responsible for the review of this policy every five years (or whenever circumstances require).

APPROVAL:

Chief University Counsel Date

Director of Compliance and Title IX Coordinator Date

Provost and Executive Vice President for
Academic Affairs Date

Vice President for Finance & Administration Date

Vice President for University Advancement Date

Vice President for Student Affairs Date

Vice President for Research and Economic Development Date

Vice President for Diversity and Multicultural Affairs Date

APPROVED:

President

Date