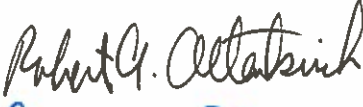



MEMORANDUM

To: Carmen Scholz
President, Faculty Senate

From: Robert A. Altenkirch 
President

Christine W. Curtis 
Provost and Executive Vice president for Academic Affairs

Subject: Response to Faculty Senate Sexual Misconduct Policy

Date: June 25, 2018

The Faculty Senate in its April 19, 2018 letter expressed several concerns regarding the new Sexual Misconduct Policy. These concerns include:

- The policy protects The University of Alabama System and does not have “protection of the faculty at its core.”
- Questions regarding how the “policy would be used in the case of false allegations” and dissatisfaction with the statement “disciplinary action may be taken against the person making the complaint” in Chapter XIII of the policy, which the Faculty Senate considers “not sufficiently strong to deter false accusations.”
- Questions about whether mandatory reporting for individuals who witness off-campus violations of the Sexual Misconduct Policy can be imposed.
- Objections to the “itemization” and specificity of “forbidden contacts” in Chapter II,” which the Faculty Senate believes is detrimental to the overall enforcement of the policy because it does not include some objectionable actions. Moreover, the Faculty Senate finds the specificity of the language offensive.

The purpose of the Sexual Misconduct Policy is “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.” This policy replaces the current interim policy 05.04.01 Sexual Misconduct Policy.

This past year, there have been many discussions concerning this policy and its impact. These discussions have involved The University of Alabama System (UAS) Office, the UAH Office of Counsel, the Presidents of the UAS campuses, the UAH Deans, Provost, and Vice Presidents, the UAH Faculty Senate, Staff Senate, and SGA as well as others. In addition, national best practices, evolving national norms, and new case law have been consulted and continue to be reviewed. The resulting policy is current in its language and safeguards for all involved. The Sexual Misconduct Policy has currency for now and will have to be kept up to date as the national legal norms and best practices change.

The new Sexual Misconduct Policy is intended to protect faculty, students, staff, post-doctoral fellows, and other members of the University community from sexual discrimination and misconduct. In addition, the Sexual Misconduct Policy specifically prohibits dishonest, malicious, or frivolous accusations, and such accusations may result in disciplinary proceedings, as discussed below.

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination based on sex in education programs and activities in federally funded schools at all levels. Title IX protects students, faculty, staff, and all other employees, applicants for admission and employment, and other persons from all forms of sex discrimination. Under Title IX, UAH is required to adopt and publish grievance procedures providing for the prompt and equitable resolution of student, faculty, staff and all other employee complainants under Title IX. UAH’s policy recognizes the need to protect all members of the University community against sex discrimination and misconduct and also to ensure due process for those accused of discrimination and misconduct. As a result, our grievance procedures are written in the policy to ensure that students, faculty, staff and all other employees have the appropriate level of due process. The Prohibited Conduct definitions, and grievance procedures are consistent with The University of Alabama System (UAS) sister campuses and with the national standards.

It is a violation of the Sexual Misconduct Policy to report intentionally dishonest, frivolous, or malicious allegations of Prohibited Conduct. Also, the processing of a complainant under UAH’s Sexual Misconduct Policy allows the Title IX Coordinator or appropriate Deputy Title IX Coordinator to conduct a preliminary inquiry to determine if the allegations fall under this policy or if a formal investigation is warranted. This step helps to guard against possible false reporting or frivolous claims. Trained, unbiased

Title IX Coordinator or Deputy Coordinators are required to examine the facts of the case and determine the best way to proceed. It is important to remember that faculty, staff, other employees, and students have grievance procedures at their disposal to provide them additional recourse in the unlikely event of false accusations not being recognized during the investigation of Title IX cases.

The Clery Act, Title VII of the Civil Rights Act of 1964, and Title IX are three federal laws that establish responsibilities for University employees to report sexual misconduct and discrimination. Title IX imposes obligations for a “prompt and effective remedy” on colleges and universities when a responsible employee (mandatory reporter) knew, or in the exercise of reasonable care should have known, about the sexual misconduct or harassment. The Scope (To Whom and Where the Policy Applies) is used to determine what conduct is required to be reported. If the reported incident happened to a UAH student or employee whether it is on campus or off campus, if it is a prohibited conduct involving non-students or non-employees that occurred on our campus or a University Sponsored event, or if it is online behavior that affected the education experience, then employees are required to report the incident.

Because Title IX prohibits discrimination in all aspects of a University’s education program and activities, the scope of the Sexual Misconduct Policy must also include off-campus activities that affect campus education or employment. A fact-specific inquiry by the Title IX Coordinator in consultation with appropriate campus officials is used to determine if an off campus event affects the campus or access to education.

We understand the Faculty Senate’s concern and discomfort regarding the specific language that is used in the Sexual Misconduct Policy. After consultation with the UAS Office and the UAH Office of Counsel, we are convinced that the explicit language used in our policy is required for the current state of law regarding sexual misconduct. We believe that the general definitions given in Chapter II for the following items, (2) Sexual Harassment; (3) Nonconsensual Sexual Contact; (4) Nonconsensual Sexual Intercourse; and (5) Sexual Exploitation are sufficient to cover all behavior prohibited but not explicitly delineated under this policy.

Thank you for expressing your concerns regarding the Sexual Misconduct Policy. Please let us know if you have any further questions or concerns. The Sexual Misconduct Policy will go into effect immediately and will be posted on the UAH Policies and Procedures website, replacing the Interim Sexual Misconduct Policy. On-campus training for Title IX Compliance occurs annually and will be scheduled again for fall semester 2018. If you have any specific questions regarding compliance with the Sexual Misconduct Policy, the obligations of the “responsible employee” (mandatory reporter), or any other aspects of this policy, please contact Laterrica Simmons, Director

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of Compliance and Title IX Coordinator and Interim Vice President for Diversity, Equity, and Inclusion.

cc: Laterrica Simmons, Director of Compliance and Title IX Coordinator and Interim Vice President for Diversity, Equity, and Inclusion.