

**THE UNIVERSITY OF ALABAMA IN HUNTSVILLE**

**TITLE IX SEX DISCRIMINATION, SEXUAL EXPLOITATION, SEXUAL HARASSMENT,  
AND SEXUAL VIOLENCE POLICY**

**INTERIM**

<b>Number</b>	01.03.01
<b>Division</b>	Office of the President – Title IX/EEO
<b>Date</b>	September 9, 2014; Revised July 9, 2018; Revised September 8, 2021; Revised October 17, 2022
<b>Purpose</b>	<p>The University of Alabama in Huntsville (“UAH” or “the University”) has developed this Title IX Sex Discrimination, Sexual Exploitation, Sexual Harassment, and Sexual Violence Policy (the “Policy”) pursuant to and in compliance with Title IX of the Education Amendments of 1972 and its implementing regulations (collectively referred to as “Title IX”). UAH is committed to providing an environment that respects the dignity of its students, faculty, and staff and is free from all forms of sex discrimination, sexual harassment, and sexual violence, which, among other things identified in Section III and Appendix 1 to this Policy, includes gender-based assault, harassment, sexual exploitation, dating and domestic violence, and stalking, as well as discrimination based on sex, gender, sexual orientation, gender identity, gender expression, pregnancy, and related retaliation (collectively referred to as “Prohibited Conduct”).</p> <p>The University expects individuals who live, work, teach, study within, or visit our University community to contribute positively to the environment and refrain from behaviors that threaten the freedom or respect that every member of our community deserves. Individuals who violate this Policy will be subject to corrective action up to and including termination from employment or expulsion from the University. The University will respond promptly and effectively to Reports of Prohibited Conduct and will take appropriate action to prevent its occurrence, correct and address its effects, provide Supportive Measures, and, when warranted, issue discipline for violations of this Policy.</p>
<b>Policy</b>	<p>It is the responsibility of every member of the University community to foster an environment free of Prohibited Conduct. All members of the University community are encouraged to take reasonable and prudent actions to prevent or stop an act of Prohibited Conduct. The University will support and assist community members who take such actions. Retaliating against an individual for making a claim of Prohibited Conduct or participating in the reporting, investigation, or resolution of a claim of Prohibited Conduct is also a violation of this Policy and constitutes Prohibited Conduct.</p> <p>So that the University may continue to foster a safe and respectful climate on campus as it relates to preventing and responding to acts of Prohibited Conduct, this Policy and related procedures have been created and serve to demonstrate</p>

the University's commitment to:

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

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

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

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

## **I. RELEVANT DEFINITIONS**

Actual Knowledge: UAH obtains "actual knowledge" of Prohibited Conduct when the Title IX Coordinator or a Deputy Title IX Coordinator receives a Report of Prohibited Conduct. For purposes of this Policy and its related procedures, the Title IX Coordinator and Deputy Title IX

Coordinators are the only University officials who have authority to institute corrective measures under this Policy.

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

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

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

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

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

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

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

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

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

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

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

- Any person who is not officially enrolled for a particular term, but has a continuing relationship with the University;
- Any person who is admitted and participating in orientation;
- Any person who has completed an academic term and can be reasonably expected to enroll the following term; and/or

- Any person who attended the University during a previous academic term and who committed an alleged violation of the Code of Student Conduct during the time of enrollment.

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

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

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

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

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

The University has jurisdiction under Title IX to address, investigate, and adjudicate Reports and Formal Complaints of Prohibited Conduct when the University has control over the Respondent and the conduct occurs in the course of a UAH educational program or activity. This Policy

applies to all UAH students, residents, employees, and post-doctoral researchers, and to others, as appropriate, with respect to education programs and activities occurring on University premises or property and/or in University-related activities occurring off-campus (but does not apply to University programs or conduct occurring outside the United States). This Policy also applies to the activities of University-recognized student organizations, including, but not limited to, fraternities, sororities, social clubs, and organizations including any building owned or controlled by a recognized student organization. It also applies to persons conducting business with or visiting the University, even though such persons are not directly affiliated with the University.

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

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

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

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

### **III. PROHIBITED CONDUCT**

Under this Policy, Prohibited Conduct is defined as conduct that is

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

#### **A. SEXUAL DISCRIMINATION**

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

#### **B. SEXUAL EXPLOITATION**

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

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

#### **C. SEXUAL HARASSMENT**

Sexual harassment prohibited by this Policy is defined as conduct

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

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

#### **D. SEXUAL VIOLENCE**

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

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

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

The frequency, nature, and severity of the conduct;  
Whether the conduct was physically threatening;  
The effect of the conduct on the Complainant's mental or emotional state;  
Whether the conduct was directed at more than one person;  
Whether the conduct arose in the context of other discriminatory conduct;  
Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or University programs or activities; and  
Whether the conduct implicates concerns related to academic freedom or protected speech



person for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental capacity. For purposes of this definition, “private body parts” include an individual’s genitalia, breasts, groin, or buttocks.

3. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. The age of consent is determined by the applicable age of consent for the jurisdiction where the alleged sexual intercourse occurred. In Alabama, the age of consent is 16 years old.
5. Intimate partner violence – Dating violence: Violence committed by a person who is or has been in a social or “dating” relationship of a romantic, intimate, and/or sexual nature with the victim. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
6. Intimate partner violence – Domestic violence: Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Alabama, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Alabama.
7. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.

## **E. FAILURE TO COMPLY**

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

## **F. RETALIATION**

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

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

## **G. RELATED TERMS**

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

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

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

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

professional treatment or counseling.

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

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

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

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

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<sup>2</sup> In incidents involving the use of alcohol, drugs, or other mind-altering substances, the totality of the circumstances shall be analyzed to determine whether the use of those substances caused a party to be unable to consent to sexual activity. Factors the University will consider include, but are not limited to, the following:

Whether a party was conscious or unconscious;

Whether a party became sick due to intoxication;

Whether a party exhibited signs of intoxication, including inability to communicate, slurred speech, lack of coordination in walking or performing simple tasks, or any other evidence indicative of impaired cognitive functioning; or

Whether a Respondent knew or reasonably should have known of a Complainant's ability or inability to give consent due to the use of alcohol, drugs, or other mind-altering substances.

The existence of any one of these factors may support a finding that a party was unable to consent to sexual activity. The mere fact that an individual was under the influence of alcohol, drugs, or other mind-altering substances, however, does not create a presumption that the individual was unable to consent. Also, an individual's use of alcohol, drugs, or other mind-altering substances does not diminish that individual's responsibility to obtain consent if that individual is the one who initiates sexual activity.

financial harm, among others.

#### **IV. REPORTING INCIDENTS OF PROHIBITED CONDUCT**

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

##### **A. TIMELINESS OF A REPORT OR FORMAL COMPLAINT OF PROHIBITED CONDUCT**

All individuals, including a Complainant or witness, are encouraged to report Prohibited Conduct regardless of when or where it occurred, as soon as possible to maximize the University's ability to respond promptly and effectively. The University may also initiate a Formal Complaint of Prohibited Conduct under certain circumstances. The University does not, however, limit the time frame for making a Report or filing a Formal Complaint.

If the Respondent is no longer a student or employee at the time of the Report or Formal Complaint, or the alleged Prohibited Conduct occurred outside the United States, or if the alleged Prohibited Conduct did not occur on campus, in the context of a University education program or activity, or have continuing adverse effects on campus or in an off-campus education program or activity, the University may not be able to fully investigate nor take disciplinary action against the Respondent. In each instance, the University will still provide Supportive Measures to a Complainant designed to end the Prohibited Conduct, prevent its recurrence, and address its effects.

##### **B. HOW TO MAKE A REPORT OR FILE A FORMAL COMPLAINT**

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

- Title IX Coordinator:

Laterrica Shelton

The University of Alabama in Huntsville

SSB 320

256-824-6899

[lks0020@uah.edu](mailto:lks0020@uah.edu)

- Deputy Title IX Coordinator for Students:  
  
Scott Royce  
  
Title IX Coordinator  
  
CGU 223  
  
256.824.6235  
  
[scott.royce@uah.edu](mailto:scott.royce@uah.edu)
- Deputy Title IX Coordinator for Employees & Third Parties:  
  
Laurel Long  
  
The University of Alabama in Huntsville  
  
SKH 116  
  
256.824.2285  
  
[laurel.long@uah.edu](mailto:laurel.long@uah.edu)
- Education and Resource Specialist:  
  
Katie Greene  
  
256.824.4611  
  
SSB 320E  
  
[katie.greene@uah.edu](mailto:katie.greene@uah.edu)

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

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

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

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

### **C. EMERGENCY/IMMEDIATE ASSISTANCE**

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

### **D. AMNESTY FOR PERSONAL INGESTION OF ALCOHOL OR OTHER DRUGS**

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

### **E. FALSE ALLEGATIONS OR FALSE STATEMENTS**

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

true and relate to a potential violation of University policy.

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

#### **F. PRESERVATION OF INFORMATION AND TANGIBLE MATERIAL**

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

#### **G. PUBLIC AWARENESS EVENTS AND IRB RESEARCH**

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

#### **H. REPORTING OF CRIMES AND DISCIPLINARY STATISTICS**

The University has certain reporting obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Statistics Act (Clery Act), with regard to incidences of sexual misconduct and violence, including issuing timely warnings as necessary. A copy of the University's annual Clery report can be found at <https://www.uah.edu/safety>. Reports of Prohibited Conduct made to

the Title IX Coordinator may also prompt a limited disclosure to UAHPD. Such disclosures will not contain the identity of the reporting party except in situations where the reporting party has consented to release their name and/or where there is an imminent threat to health or safety.

## **I. MANDATORY REPORTING OF CHILD ABUSE**

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

## **J. RESPONSIBLE REPORTING OFFICIALS**

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

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

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

### **A. WHICH PROCEDURES APPLY?**

The specific set of procedures used to respond to Reports and



Formal Complaints of Prohibited Conduct is determined by the status of the Respondent's relationship with the University, as well as the nature of the alleged Prohibited Conduct:

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

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

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

The University's ability to take appropriate action against a Third-Party will be determined by the nature of the relationship of the Third-Party to the University. The Title IX Coordinator will determine the appropriate manner of resolution consistent with the University's

commitment to a prompt and equitable process consistent with federal law, federal guidance, and this Policy<sup>3</sup>.

## **B. ADVISORS**

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

## **C. CONFLICT OF INTEREST**

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

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

If the Complainant or the Respondent believes the Title IX Coordinator has a conflict of interest or bias, such objection should be made to a Deputy Title IX Coordinator (or designee). Regardless

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<sup>3</sup> The policy, including definition of Prohibited Conduct contained therein, and applicable procedures in effect on the date of the alleged incident will be applied, regardless of when a Report is made, unless clearly established law requires use of the current applicable policy and procedures. If more than one incident is at issue, the policy in effect during the latest incident will be applied. For the policies and procedures in effect before August 14, 2020, please refer to the archived policies at <https://www.uah.edu/images/administrative/policies/sexual-misconduct-policy-archived.pdf>

of the time period, such objection must occur before the Title IX Coordinator (or designee) makes a final determination as to responsibility under the Policy.

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

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

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

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

#### **D. FILING A CRIMINAL COMPLAINT AND COORDINATION WITH LAW ENFORCEMENT**

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

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

criminal prosecution is determinative of whether Prohibited Conduct occurred under the Policy.

#### **E. REQUEST THAT PROHIBITED CONDUCT NOT BE INVESTIGATED**

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

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

The presence of one or more of these factors may lead the University to investigate and, if appropriate, pursue corrective action, including issuance of a Formal Complaint. The ultimate decision as to whether the request for anonymity will be honored will be made by the Title IX Coordinator. If the University determines that it cannot maintain the anonymity of the Complainant, the University will inform the Complainant prior to taking any action that would result in a disclosure of the

Complainant's identity. Any such disclosures will be made on a need-to-know basis, and the Complainant will be informed as to which offices and individuals will receive the information.

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

## **VI. SUPPORTIVE MEASURES**

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

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

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

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

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

necessary to provide Supportive Measures for the Complainant.

The range of potential supportive measures include:

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

Additional resources the University may offer include:

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

Upon the receipt of a Report of Prohibited Conduct, the University may provide reasonable Supportive Measures, as appropriate, to provide a safe educational and work environment and to prevent additional acts of Prohibited Conduct, even when there is no specific request for such Supportive Measures. The University may impose any measure that

can be tailored to the individuals involved to achieve the goals of this Policy. An individual's failure to comply with restrictions imposed by Supportive Measures is a violation of this Policy and basis for disciplinary action.

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

## **VII. CONFIDENTIALITY AND PRIVACY**

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

### **A. PRIVACY**

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

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

### **B. CONFIDENTIALITY**

Confidentiality exists in the context of laws that protect certain relationships, including those with medical and clinical care providers (and those who provide administrative services related to the

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

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

## **VIII. IMPOSITION OF SANCTIONS**

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

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

## **IX. REMEDIES**

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

The remedies provided may be additional, or the continuation of, any Supportive Measures. The Title IX Coordinator may impose or extend a No-Contact Directive and impose or extend academic, University housing and/or University employment modifications, as may be appropriate; impose or extend increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; arrange for conducting targeted or broad-based educational programming or training for relevant persons



or groups; impose one or more restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); and/or impose any other remedial or protective measures that are tailored to achieve the goals of this Policy.

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

## **X. STUDENT AND EMPLOYEE TRAINING AND PREVENTION EDUCATION PROGRAMS**

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

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

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

## **XI. FREE SPEECH AND ACADEMIC FREEDOM**

The University is committed to free and open inquiry and expression for members of its community. The University is dedicated to the promotion of lively and fearless freedom of debate and deliberation, but also to the

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

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

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

## **XII. RESOURCES AND OPTIONS**

Below are links to available resources and options:

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

### **Review**

The Office of the President and the Title IX/EEO Coordinator are responsible for the review of this policy every five (5) years, or as circumstances warrant.

## **APPENDIX 1**

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

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

#### **Federal Law:**

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

- 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.
- II. For the purposes of this definition —
  - A. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - B. Dating violence does not include acts covered under the definition of domestic violence. 34 C.F.R. § 668.46(a)

#### **Alabama Law:** n/a

- a. Intimate Partner Violence: Domestic Violence

#### **Federal Law:**

- I. A felony or misdemeanor crime of violence committed —
  - a. By a current or former spouse or intimate partner of the victim;
  - b. By a person with whom the victim shares a child in common;
  - c. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - 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
  - 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)

#### **Alabama Law:**

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

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

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

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

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

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

#### b. Stalking

#### **federal Law:**

### **STALKING**

- I. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to —
  - A. Fear for the person's safety or the safety of others; or
  - B. Suffer substantial emotional distress.
- II. For the purposes of this definition -
  - A. *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  - B. *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.

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

**Alabama Law:**

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

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

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

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

**SEXUAL ASSAULT & OTHER SEXUAL OFFENSES**

**Federal Law:**

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

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

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

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

**Alabama Law:**

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

1. **FORCIBLE COMPULSION.** Use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include, but are not limited to, the respective ages and sizes of the victim and the accused; the respective mental and physical conditions of the victim and the accused; the atmosphere and physical setting in which the incident was alleged to have taken place; the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim; or whether the victim was under duress. Forcible compulsion does not require proof of resistance by the victim.
2. **INCAPACITATED.** The term includes any of the following:
  - A. A person who suffers from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct.
  - B. A person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender.
  - C. A person who is unable to give consent or who is unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate.
3. **SEXUAL CONTACT.** Any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party. The term does not require skin to skin contact.
4. **SEXUAL INTERCOURSE.** Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.
5. **SODOMY.** Any sexual act involving the genitals of one person and the mouth or anus of another person. Ala. Code § 13A-6- 60.

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

1. Engages in sexual intercourse with another person by forcible compulsion.
2. Engages in sexual intercourse with another person who is incapable of consent by reason of being incapacitated.
3. Being 16 years old or older, engages in sexual intercourse with another person who is less than 12 years old.

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

**First Degree Sexual Abuse** - Ala. Code § 13A-6-66(a). A person commits the crime of sexual abuse in the first degree if he or she does either of the following:(1) Subjects another person to sexual contact by forcible compulsion. (2) Subjects another person to sexual contact who is incapable of consent by reason of being incapacitated.

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

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

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

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

1. Engages in sodomy with another person by forcible compulsion.
2. Engages in sodomy with another person who is incapable of consent by reason of being incapacitated.
3. Being 16 years old or older, engages in sodomy with a person who is less than 12 years old.

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

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

1. Penetrates the vagina, anus, or mouth of another person with an inanimate object, by forcible compulsion, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.
2. Penetrates the vagina, anus, or mouth of a person who is incapable of consent by reason of being incapacitated, with an inanimate object, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.
3. Penetrates the vagina, anus, or mouth of a person who is less than 12 years old, with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.
4. By inflicting physical injury, including, but not limited to, burning, crushing, wounding, mutilating, or assaulting the sex organs or intimate parts of another person, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

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

**Incest** - Ala. Code § 13A-13-3.

- c. A person commits incest if he marries or engages in sexual intercourse with a person he knows to be, either legitimately or illegitimately:
  1. His ancestor or descendant by blood or adoption; or
  2. His brother or sister of the whole or half-blood or by adoption; or
  3. His stepchild or stepparent, while the marriage creating the relationship exists; or
  4. His aunt, uncle, nephew or niece of the whole or half-blood.
- d. A person shall not be convicted of incest or of an attempt to commit incest upon the uncorroborated testimony of the person with whom the offense is alleged to have been committed.

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

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

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

- A. A person commits the crime of a school employee having sexual contact with a student under the age of 19 years if he or she is a school employee and engages in sexual contact, as defined by Section 13A-6-60, with a student, regardless of whether the student is male or female. Consent is not a defense to a charge under this section. The crime of a school employee having sexual contact with a student is a Class C felony.
- B. A person commits the crime of a school employee soliciting a sex act with a student under the age of 19 years if he or she is a school employee and solicits, persuades, encourages, harasses, or entices a student to engage in a sex act including, but not limited to, sexual intercourse, sodomy, or sexual contact, as defined by Section 13A-6-60. The crime of soliciting a student to perform a sex act is a Class A misdemeanor.

## **SEXUAL EXPLOITATION**

**Federal Law:** n/a

**Alabama Law:**

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

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



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

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

**SEXUAL HARASSMENT OR GENDER BASED HARASSMENT**

**Federal Law:**

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

- 1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- 3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). 34 C.F.R. § 106.30(a).

**Alabama Law:** n/a

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

**I. OVERVIEW AND APPLICABILITY**

The University of Alabama in Huntsville (“UAH” or “University”) developed these Procedures for the Resolution of Title IX Sex Discrimination (Non-Harassment) Reports Against Students (the “Procedures”) pursuant to and in compliance with Title IX of the Education Amendments of 1972 and its implementing regulations (collectively referred to as “Title IX”). These Procedures should be read in conjunction with the Title IX Sex Discrimination, Sexual Exploitation, Sexual Harassment, and Sexual Violence Policy (the “Title IX Policy”) and the Code of Student Conduct, which includes additional information regarding applicable definitions, key terms, reporting options, available resources and other relevant topics.

These Procedures will be used to assess, investigate and/or resolve Reports of Prohibited Conduct prohibited by the Title IX Policy brought against UAH students (undergraduate, graduate, full- time, and part-time) that do not fall within the category of Sexual Harassment or Sexual Violence as defined in UAH's Title IX Policy. Sex discrimination prohibited by the Title IX Policy is defined as the exclusion from participation in, denial of benefits from, or subjection to unfavorable treatment in any University educational or employment-related program or activity on the basis of gender, sexual orientation, gender identity, or gender expression.

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

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

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

## **II. RIGHTS OF THE COMPLAINANTS AND RESPONDENTS**

### **A. Right to an Advisor**

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

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

These Procedures for the investigation and resolution of Reports of sex discrimination and/or sexual exploitation against students are designed to be accessible, prompt, fair, and impartial. Throughout the investigation, adjudication, and resolution of sex discrimination Reports, both complainant(s) and Respondent(s) have the following rights:

- To be informed of available options for making a Report of sex discrimination and/or sexual exploitation;
- To receive a notice of the allegations, an opportunity to respond to allegations, and access to policy statements regarding the investigation process and possible sanctions/disciplinary action;
- To be advised of the University's prohibition on retaliation against an individual who exercises their rights under Title IX or the Title IX Policy;
- To receive information regarding University and community support resources (including, but not limited to, modification of academic, living, transportation, or working situations; 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). A request for such accommodations or Supportive Measures, if they are reasonably available, will be provided;
- To a thorough and impartial investigation;
- To be accompanied by an Advisor at all University proceedings relevant to the investigation and Hearing process, subject to the limitations outlined herein;
- Subject to the limitations set forth herein, 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;
- To have access to published policies regarding Title IX and University disciplinary procedures, including the possible range of sanctions;
- To be notified that information and materials the University obtains during its investigation into allegations of sex discrimination and/or sexual exploitation may be disclosed in response to a valid subpoena; and
- To be notified that Respondent is not required to make a statement or otherwise provide information relevant to the investigation.

## **III. SUPPORTIVE MEASURES**

Supportive Measures are available upon receipt of a Report of sex discrimination and/or sexual exploitation and prior to the resolution thereof, as appropriate. The issuance of Supportive Measures is not disciplinary in nature and should not be construed as a determination by the University that the Respondent has engaged in sex discrimination and/or sexual exploitation. Supportive Measures are available for the Complainant, Respondent, and/or the campus community while the University is investigating an allegation of sex discrimination and/or sexual exploitation. Both the Complainant and

Respondent (or someone on behalf of the Complainant or Respondent) may request Supportive Measures from the University Title IX Coordinator or a Deputy Title IX Coordinator. The Title IX Coordinator will work with the appropriate office(s) to ensure that any necessary supportive measures are promptly provided. The range of Supportive Measures may include, but are not limited to the following:

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

UAH will maintain the privacy of any Supportive Measures provided under the Title IX Policy to the extent practicable.

An individual's failure to comply with restrictions imposed by Supportive Measures is a violation of the Title IX Policy and Code of Student Conduct and may be a basis for conduct action.

## **IV. INVESTIGATION PROCEDURES**

### **A. Time Frame for Resolution**

The University seeks to resolve all Reports of sex discrimination and/or sexual exploitation as promptly as reasonably possible. Best efforts will be made to follow the time frames discussed below.

In calculating time periods, "business days" do not include weekends or UAH holidays. All time frames may be extended when necessary to ensure the integrity and completeness of the investigation, accommodate the availability of witnesses, accommodate delays by the parties, account for University breaks or vacations, or address other legitimate reasons, including the complexity of the investigation (including the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged conduct. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing.

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

University personnel participating in an investigation, proceeding, or Hearing that they are expected to maintain the privacy of the process. This does not prohibit either a Complainant or Respondent from obtaining the assistance of family members, counselors, therapists, clergy, doctors, attorneys, or other resources.

## **B. Initial Assessment**

When a Report of sex discrimination and/or sexual exploitation is made, the Title IX<sup>4</sup> Coordinator will conduct an Initial Assessment. This assessment will determine whether the alleged conduct could present a potential violation of the Title IX Policy and whether further action is warranted based on the alleged conduct.

The Initial Assessment normally begins with a preliminary meeting between the Complainant and the Title IX Coordinator or designee. The purpose of the preliminary meeting is to gather facts that will enable the Title IX Coordinator, in consultation with other offices as appropriate, to:

- Assess the nature and circumstances of the allegation(s);
- Address any immediate concerns about the emotional well-being of the parties;
- Notify the Complainant of the availability of medical treatment to address any mental and emotional health concerns and to preserve evidence;
  - On and off campus resources;
  - The available range of Supportive Measures;
  - An explanation of the procedural options, including Voluntary Resolution, Investigation, and Adjudication; and
  - The Complainant's rights during the process;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Explain the University's policy prohibiting Retaliation; and
- Explain the role of an advisor.

If a Complainant wants to make a Report of sex discrimination and/or sexual exploitation but also wants to maintain anonymity and/or request that no investigative or disciplinary measures be taken, the Title IX Coordinator will advise the Complainant that the University will consider the request but cannot guarantee it will be able to honor the request. The University will weigh such a request in light of the University's obligation to provide a non-discriminatory environment. There will be times when the University may not be able to honor a request so as to comply with this obligation. In determining whether it can honor a request for confidentiality, some or all of the following factors may be considered:

- The nature and scope of the alleged conduct;
- The respective ages and roles of the Complainant and Respondent;
- The risk posed to any individual or to the campus community by not proceeding;

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<sup>4</sup> The Title IX Coordinator includes the Deputy Title IX Coordinator for Students and is hereinafter referred to as "Title IX Coordinator."

- Whether there have been other Reports of sex discrimination and/or sexual exploitation involving the Respondent;
- The Complainant's wish to pursue disciplinary action;
- Whether the University possesses other means to pursue the investigation and obtain relevant evidence without participation from the Complainant;
- Considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent; and
- The University's obligation to investigate and to provide a non-discriminatory environment.

The University's ability to fully investigate and respond to a Report may be limited if the Complainant requests that their name not be disclosed to the Respondent or declines to participate in an investigation.

At the conclusion of the Initial Assessment, the Title IX Coordinator will determine the appropriate resolution route. Resolution may include: (1) no further action; (2) Informal Voluntary Resolution; or (3) the initiation of an investigation that may lead to sanctions/disciplinary action. The Respondent will be notified when UAH takes action that would impact a Respondent, such as the initiation of an investigation or the Complainant's decision to seek Informal Voluntary Resolution.

### **C. Informal Voluntary Resolution**

Informal Voluntary Resolution, when selected by the Complainant and deemed appropriate by the Title IX Coordinator, is a path designed to eliminate the discriminatory conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the Complainant and preserves the safety and welfare of the campus community. Informal Voluntary Resolution does not involve an investigation or disciplinary action against a Respondent and is not appropriate for all forms of conduct under the Title IX Policy. The time frame for completion of Informal Voluntary Resolution may vary, but the University will seek to complete the process within sixty (60) business days of the Complainant's request.

A Complainant may request and decide to pursue Informal Voluntary Resolution at any time; however, the University retains the discretion to determine which cases are appropriate for Informal Voluntary Resolution, for example, when the matter is sufficiently serious because it appears to be part of a persistent pattern, the nature of the alleged offense, or because the Complainant seeks to have a sanction imposed. In those cases in which Informal Voluntary Resolution involves either the notification to, or participation by, the Respondent, it is the Respondent's decision whether to accept Informal Voluntary Resolution.

Informal Voluntary Resolution may include: establishing Supportive Measures; conducting targeted or broad-based educational programming or training for relevant individuals or groups; facilitating a meeting with the Respondent and

with the Complainant in appropriate cases; and any other remedy that can be tailored to the involved individuals to achieve the goals of the Title IX Policy. In some forms of Informal Voluntary Resolution, the remedies imposed will focus on supporting the Complainant with no participation or involvement by the Respondent. In other forms of Informal Voluntary Resolution, the Respondent may agree to participate. Depending on the type of remedy used, it may be possible for a Complainant to maintain anonymity. Informal Voluntary Resolution may also include restorative principles that are designed to allow a Respondent to accept responsibility for discrimination and acknowledge responsibility to the Complainant or to the University community. Restorative models will be used only with the consent of both parties, under the supervision of University-approved trained professionals, and following a determination by the University that the matter is appropriate for a restorative approach.

As the title implies, participation in Informal Voluntary Resolution is a choice, and either party can request to end this manner of resolution and pursue an investigation at any time, including if Informal Voluntary Resolution is unsuccessful at resolving the Report. Similarly, a Complainant can request to end an investigation and pursue Informal Voluntary Resolution at any time. In addition, either party may request Supportive Measures regardless of whether any particular course of action is sought.

Facilitators of Informal Voluntary Resolution cannot be used as a witness during a subsequent investigation or adjudication hearing. Because the outcome of Informal Voluntary Resolution process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted.

#### **D. Acceptance of Responsibility**

The Respondent may, at any time, request to resolve the investigation process or resolve specific allegation(s) by accepting responsibility for the alleged sex discrimination and/or sexual exploitation. The Title IX Coordinator will complete a summary report of the information gathered. The Title IX Coordinator will consider the request; if the request is granted, the Title IX Coordinator, in consultation with the Director of Student Conduct will determine the appropriate sanction(s).

When a Respondent accepts responsibility for the sex discrimination and/or sexual exploitation, both the Complainant and Respondent may only appeal the determination on the basis that the sanction(s) is either too severe or too lenient. The appeal process is detailed in Section IX of these procedures.

#### **E. Investigation Procedures**

If deemed appropriate based on the Initial Assessment, the University will initiate a prompt, thorough, and impartial investigation of conduct that the Title IX Coordinator determines involves matters covered by these Procedures (i.e., all Reports of non-harassment sex discrimination and/or sexual exploitation falling within the jurisdiction of Title IX brought against a student). The Title IX Coordinator will designate an Investigator(s) who has training and experience investigating allegations of sex discrimination and sexual exploitation. The Investigator may be a University employee or an outside investigator. The

Investigator will coordinate the gathering of information to determine whether the preponderance of the evidence establishes that the alleged conduct constitutes a violation of the Title IX Policy. A preponderance of the evidence means that it is more likely than not that the alleged conduct occurred based on a totality of the circumstances.

The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator concludes that it is more likely than not that the Respondent violated the Title IX Policy. Neither party is required to participate in the investigation nor any form of resolution under these Procedures. The Investigator will not draw an adverse inference against a party merely because that party elects not to participate in the investigation.

The University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to conduct a thorough investigation.

#### 1. Notice of Investigation

The Title IX Coordinator will send the Complainant and the Respondent a written Notice of Investigation, which constitutes the formal notice of the alleged policy violation(s). The Notice of Investigation will contain the following:

- A summary of the allegations of Prohibited Conduct at issue, which will generally include the identities of the parties involved, the specific section of the Title IX Policy allegedly violated, and the date and location of the incident;
- The range of potential violations under the Title IX Policy;
- On and off campus resources;
- Rights of the Respondent;
- The range of potential sanctions; and
- Notification that expulsion is a potential sanction and that expulsion precludes matriculation (where appropriate).

Once the Notice of Investigation has been delivered to the parties, the investigation phase begins.

#### 2. Conducting the Investigation

The Title IX Coordinator will oversee the investigation. The investigation is designed to provide a fair and reliable gathering of the facts by a trained and impartial Investigator. All individuals, including the Complainant, the Respondent, and any third-party witnesses will be treated with appropriate sensitivity and respect throughout the investigation. The investigation will safeguard the privacy of the individuals involved in a manner consistent with federal law and University policy.

During the investigation, the Complainant and Respondent will have an opportunity to be heard, submit information, and identify witnesses who



may have relevant information. The Investigator will speak separately with the Complainant, the Respondent, and any other individuals who are willing to participate and have information relevant to the determination of responsibility. As part of the investigation, the Investigator may gather or receive information that is relevant to the determination of an appropriate sanction or remedy, including information about the impact of the alleged conduct on the parties. The Investigator will also endeavor to gather all available evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media materials, text messages, audio or video recordings, and other records as appropriate, available, and feasible.

The Investigator has the discretion to determine the relevance of any witness or other evidence to the finding of responsibility and may exclude information if the Investigator determines that the information is irrelevant. The Investigator may also exclude statements of personal opinion by witnesses and statements as to general reputation for any character trait, including honesty.

3. Timing of the Investigation

The University will seek to conclude the investigation within sixty (60) business days from the issuance of the Notice of Investigation. The time frame for completion of the investigation, or any designated time frames of steps in the investigation, may be extended as set forth herein above. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

4. Cooperation in the Investigation

All community members, including students, faculty, and staff are strongly encouraged and expected to cooperate with the Title IX Coordinator in the investigation, as well as any adjudication, of any allegations of Prohibited Conduct. The Title IX Coordinator may request to meet with individuals from the University community identified as having relevant evidence. Both a Complainant and a Respondent may decline to participate in proceedings under the Title IX Policy. The Title IX Coordinator will determine whether the investigation and any adjudication will proceed without the Complainant(s) pursuant to the factors set out in the Initial Assessment as described in Section IV above.

5. Submission of Additional Evidence

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

good cause, evidence discoverable through the exercise of due diligence that is not provided to the Investigator will not be considered by the Investigator or a Hearing Panel.

6. Final Investigation Report

After receipt and consideration of any additional evidence from the Complainant or Respondent, or after the ten (10) business days have lapsed without the submission of additional evidence, the Investigator will complete a Final Investigation Report. The Final Investigation Report shall summarize and analyze the relevant facts determined through the investigation, with reference to any supporting documentation or statements. The Final Investigation Report shall also include a determination, using the preponderance of the evidence standard, regarding whether the Respondent is responsible for violating the Title IX Policy. In reaching this determination, the Investigator will consult with the Title IX Coordinator. If it is determined that the evidence supports a finding of responsibility, the Final Investigation Report will also include recommended sanctions as set forth herein and/or the Student Conduct Code. All such recommended sanctions identified by the Investigator shall be approved in advance by the Title IX Coordinator. Additional information regarding sanctions is set forth below in Section VII.

The Title IX Coordinator or Designee shall provide a copy of the Final Investigation Report in electronic format to both parties simultaneously, as well as a notice of the right of both parties to request adjudication by a Hearing Panel in accordance with Section V below. The Title IX Coordinator or Designee may, in his/her sole discretion, redact portions of the Final Investigation Report to protect privacy interests, comply with applicable federal, state, or local law, or address other considerations. As a precondition of receiving a copy of the Final Investigation Report, all parties and their respective advisors (if any) must sign and agree to abide by a non-disclosure agreement.

Upon the conclusion of the investigation, the Title IX Coordinator or Designee will meet with the accused student and discuss whether the student accepts or contests the findings in the Final Investigation Report. If the student accepts responsibility, the Deputy Title IX Coordinator for Students will assign sanctions deemed appropriate.

If the Respondent timely contests one or more of the finding(s) of responsibility, the Respondent may submit a written statement to the Title IX Coordinator or Designee explaining why the Respondent contests such finding(s). The Title IX Coordinator or Designee will allow the Complainant to review such statement and respond in writing within five (5) business days from the date of review.

When the Investigator determines the preponderance of the evidence does not support a finding of responsibility on one or more of the allegations, the Complainant may accept or contest the recommended

finding(s) by so notifying the Title IX Coordinator or Designee, in writing. If the Complainant accepts the recommended finding(s) of no responsibility, the investigation will be closed and documented in accordance with applicable University policies. If the Complainant timely contests one or more of the recommended finding(s), the Complainant may submit a written statement to the Title IX Coordinator or Designee explaining why the Complainant contests such finding(s). Title IX Coordinator or Designee will allow the Respondent to review such statement and respond in writing within five (5) business days from the date of review.

Where both the Complainant and the Respondent agree with the determination and any recommended sanction detailed in the Final Investigation Report, or where neither party requests further review within the timelines discussed below, the determination and sanction(s) become final. The Title IX Coordinator will notify both parties concurrently in writing that the determination is final and not subject to further appeal or review.

For both Complainants and Respondents, a request for adjudication by a Hearing Panel is timely when it is delivered in writing to the Title IX Coordinator within five (5) business days after meeting with the Title IX Coordinator/ or Designee to review the findings in the Final Investigation Report.

## **V. ADJUDICATION BY A HEARING PANEL**

### **A. Review of a Determination that a Title IX Policy Violation Occurred**

If the Respondent or Complainant challenges the determination, the Title IX Coordinator will issue a Notice of Hearing to the Complainant and the Respondent and convene a Hearing Panel in accordance with the procedures outlined below. The Hearing Panel's role is twofold: (i) determine whether the preponderance of the evidence establishes a Title IX Policy occurred, and if so, (ii) determine what sanction(s), if any, is warranted.

### **B. Hearing Process**

After issuing a Notice of Hearing, the Title IX Coordinator will designate a Hearing Panel to review the determination in the Final Investigation Report. A Hearing Panel is composed of the following three (3) members selected from a pool of trained individuals: a Hearing Chair, and two (2) additional individuals. Any individual designated by the Title IX Coordinator/ Dean of Student (or Designee) to serve on a Hearing Panel must have sufficient training or experience to serve in this capacity. A Hearing Panel member may decline to participate based on a conflict of interest, bias, or lack of impartiality. The Hearing Chair will conduct and preside over the hearing and is also a voting member of the Hearing Panel. The Hearing Chair's role is to maintain consistency in the hearing process by providing the Hearing Panel with guidance on all applicable Title IX Policy and procedures, the preponderance of the evidence standard, and the range of available sanctions. The Hearing Chair will also draft the Hearing Panel's determination.

Both parties will be notified at least five (5) business days prior to the pre-hearing meeting with a date, time, location, and the names of the members of the Hearing Panel. The parties may not contact any member of the Hearing Panel prior to the pre-hearing meeting or hearing.

1. Pre-Hearing Meeting

As the first step in the Hearing Process, the Hearing Chair will meet separately with the Investigator and each party to resolve any pre-hearing concerns. At this pre-hearing meeting, the parties will each have the opportunity to identify the witnesses (who have already been identified and interviewed by the Investigator) they wish to call at the hearing; raise any challenge to the composition of the Hearing Panel based on bias, conflict of interest, or lack of impartiality; and identify any evolving or new information not previously identified through the investigation or available through the exercise of due diligence. The parties will also have the opportunity to address questions about the process. If the Complainant is not participating in the hearing, he/she is not required to attend this meeting.

Both parties have the ability to challenge a Hearing Panel member on the basis of an actual conflict of interest, bias, or lack of impartiality. The request must be submitted in writing, raised no later than the date of the pre-hearing meeting, and clearly state the grounds to support a claim of bias, conflict of interest, or an inability to be fair and impartial. Failure to object prior to the date of the pre-hearing meeting eliminates the possibility of appealing the outcome of the hearing based on the assertion that a member of the Hearing Panel had a conflict of interest, was biased, or lacked impartiality.

2. Hearing Procedures

The Hearing will be scheduled and conducted in accordance with the procedures outlined herein. The Hearing will take place in a closed session. The Hearing Panel will determine whether the preponderance of the evidence establishes a Title IX Policy violation occurred. In reaching a determination, the Hearing Panel will solicit information from the Investigator, the Complainant, the Respondent, and any witnesses as appropriate to ensure a full assessment of the relevant facts. This information shall be provided in the presence of the parties, unless a party waives their right to participate.

Subject to the limitations stated in the Title IX Policy or these Procedures, both the Complainant and the Respondent have the same opportunity to have an advisor of their choice present during the hearing, at their own expense. The advisor, who may be an attorney, may privately consult with and advise the party but may not question witnesses, make statements, or otherwise directly participate in the proceedings. The Hearing Chair may remove or dismiss an advisor who becomes disruptive or who does not abide by the limitations on their participation.

All evidence each party wishes to be considered by the Hearing Panel should have been presented to the Investigator during the investigation process. If evidence was not provided to the Investigator during the investigation process, then presentation of such evidence during the hearing is at the discretion of the Hearing Chair, but generally will only be allowed based on new information not known during the investigation process. Further, all materials that the Investigator, Complainant, or Respondent want the Hearing Panel to consider must be submitted to the Title IX Coordinator (or designee) at least four (4) business days prior to the hearing. The Title IX Coordinator (or designee) will provide the submitted materials to the Hearing Panel and make copies available for inspection by the Complainant and Respondent at least three (3) business days prior to the hearing, consistent with FERPA or other regulation governing the disclosure of education records. Any materials submitted and/or discovered fewer than four (4) business days before the hearing may only be considered at the sole discretion of the Hearing Chair.

The Complainant and the Respondent have the right to present witnesses, subject to the discretion of the Hearing Chair. Each party must provide a list of potential hearing witnesses to the Title IX Coordinator (or designee) at least four (4) business days prior to the hearing. The Title IX Coordinator (or designee) will provide the witness list(s) to the Hearing Panel.

All questioning of parties is conducted through the Hearing Panel. A party does not have a right to question or cross examine another party directly. A party may recommend direct questions to be asked of another party by submitting them in writing to the Title IX Coordinator (or designee) three (3) calendar days prior to the hearing. The Title IX Coordinator (or designee) will provide them to the Hearing Panel. During the hearing, a party may also submit, in writing, questions to the Hearing Panel based on information presented during the hearing. The Hearing Chair, in his/her sole discretion, will determine the relevancy of all questions presented, and, if they are deemed relevant, the Hearing Panel may pose those questions to the other party. The Hearing Chair has discretion to alter the exact wording of any proposed question. Parties (but not advisors) may directly question non-party witnesses or provide proposed questions to the Hearing Panel. The Hearing Panel may also independently question the parties, witnesses, and/or Investigator to elicit relevant information.

The Complainant and Respondent may appear before the Hearing Panel if they wish and make an oral statement regarding the facts. Upon request, a party or witness may participate by telephone or videoconference from a different physical location or may request that a visual barrier be placed to limit the individual's exposure to other hearing participants. The Complainant and Respondent will not be in the hearing room together, unless both parties agree in writing. The party who is not before the Hearing Panel may have audio access to the hearing via telephone when the other party appears.

A Respondent, Complainant, advisor, and/or witness may not bring electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) into a hearing room. The Title IX Coordinator will make an audio recording of the hearing to be kept on file in accordance with UAH's document retention policy. Reasonable care will be taken to create a quality audio recording and minimize technical problems; however, technical problems that result in no recording or an inaudible one will not be a valid argument for appeal.

At the conclusion of the hearing, the Hearing Chair will explain that the panel will deliberate to make a decision of responsibility based on preponderance of the evidence standard and sanctions, if warranted.

## **VI. NOTICE OF HEARING OUTCOME**

Within five (5) business days of the conclusion of the Hearing, the University will provide a written Notice of Hearing Outcome to the Complainant and the Respondent concurrently. The Notice of Hearing Outcome will include the finding by the Hearing Panel as to whether there is a Title IX Policy violation, the rationale for the result, and a brief summary of the evidence on which the decision is based, as appropriate. Where there is a finding of a Title IX Policy violation, the Respondent will be informed of any sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. The Complainant will be informed of any sanctions and remedies that directly relate to the Respondent, including information about the Respondent's presence on campus (or in a shared class or residence hall), that may help a Complainant make informed decisions or work with the University to eliminate Prohibited Conduct and prevent its recurrence.

The Notice of Hearing Outcome will also include information about the appeal process, including the available grounds for an appeal, the time frame for submitting an appeal, and the name of the VP for Student Affairs who will be assigned to review any appeal filed. If neither party seeks an appeal within five (5) business days of the issuance of the Notice of Outcome, any sanction(s) imposed by the Hearing Panel will take effect immediately.

## **VII. IMPOSITION OF SANCTIONS**

The Title IX Policy prohibits a broad range of behaviors, which are serious in nature. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free of Prohibited Conduct, the Title IX Policy provides the Investigator and Hearing Panel with wide latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the alleged Prohibited Conduct on the Complainant and surrounding community, and accountability for the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct under the Title IX Policy, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and federal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some behavior, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational process that it requires severe sanctions, including suspension from the University.

In cases where neither party challenges the Investigator's determination of responsibility or recommended sanctions as outlined in the Final Investigation Report, the sanctions set forth therein will stand. In cases that are resolved through a Hearing Panel, the Hearing Panel is responsible for determining the appropriate sanction(s). In determining appropriate sanctions, both the Investigator or Hearing Panel may solicit information from the Complainant, the Respondent, and any other individual who can provide information relevant to a determination regarding potential sanctions.

In addition, the Investigator and the Hearing Panel shall consider the following factors:

- the nature of the conduct at issue;
- the impact of the conduct on the Complainant;
- the impact or implications of the conduct on the community or the University;
- prior misconduct by the Respondent, including the Respondent's relevant prior discipline history;
- maintenance of a safe and respectful environment conducive to learning; and
- any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

The Investigator and the Hearing Panel may also consider restorative outcomes that allow a Respondent to develop insight about their responsibility for the behavior, learn about the impact of the behavior on the Complainant, and identify how to prevent or change the behavior.

## **VIII. REMEDIES**

The Title IX Coordinator (or Designee) will identify long-term or permanent remedies to address the effects of the conduct on the Complainant, restore the Complainant's well-being, and maximize the Complainant's educational and employment opportunities. Such remedies should seek to restore to the Complainant, to the extent possible, all benefits and opportunities lost as a result of the Prohibited Conduct. The Title IX Coordinator will also identify remedies to address the effects of the conduct on the University community.

The Title IX Coordinator will consider the appropriateness of remedies, including Supportive Measures, on an ongoing basis to assure the well-being of the parties throughout the process. Long-term remedies may include extending or making permanent any Supportive Measures or implementing additional measures tailored to achieve the goals of the Title IX Policy. Many of the remedies that a Complainant might need after a finding of responsibility will have already been provided as Supportive Measures, including, but not limited to, academic accommodations, short term counseling, and housing arrangements. The Title IX Coordinator will, in all cases, consider whether there is a need for additional remedies. Additional remedies or supports may be included in the sanctions, such as reassignment or removal of the Respondent from a class or a dormitory.

## **IX. APPEALS PROCESS**

### **A. Appeal of the Notice of Hearing Outcome**

Following a hearing, both the Complainant and Respondent have a right to seek a review of the Notice of Hearing Outcome with regard to a finding of responsibility or non- responsibility and/or the imposed sanctions.

Mere dissatisfaction with the Notice of Hearing Outcome is not a valid basis for appeal. The Complainant's and Respondent's right to appeal the Notice of Hearing Outcome regarding a final determination of responsibility and/or the resulting sanction(s) are limited to:

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

The appeal must be submitted in writing to the VP for Student Affairs within five (5) business days of the issuance of the Notice of Hearing Outcome. The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.

Each party will be given the opportunity to review the written appeal and respond to it in writing to the VP for Student Affairs. Any response by the opposing party must be submitted to the VP for Student Affairs within three (3) business days from being provided the appeal for review. If both parties file an appeal, the appeal documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, because the Notice of Hearing Outcome will be presumed to have been decided reasonably and appropriately. Appeals are not intended to be a rehearing of the matter. The scope of the appeal will be limited only to the permissible grounds outlined above that have been accepted for review. In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. The VP for Student Affairs may speak to the Investigator, the Hearing Chair, or the parties, as appropriate. The VP for Student Affairs will defer to the original Hearing Panel, making changes to Hearing Panel's findings only where there is clear error.

If an appeal is granted, the VP for Student Affairs may remand the case to the Hearing Panel and provide instructions regarding the nature and extent of its reconsideration. The Hearing Panel will act promptly to reconsider the matter consistent with those instructions. Following reconsideration, the finding of the Hearing Panel or the sanction(s) imposed by the Hearing Panel will be final and not subject to further appeal under the Title IX Policy.



Alternatively, the VP for Student Affairs may modify the Hearing Panel's decision and/or sanction in accordance with the Title IX Policy and these Procedures.

If the appeal is denied, the matter is closed, and the Hearing Panel's decision stands as final. The VP for Student Affairs will issue a written decision describing the result of the appeal and the rationale for the result. The appeal decision will be provided simultaneously to both parties no later than fifteen (15) business days after all written responses are received.

The imposition of sanctions pursuant to a Notice of Hearing Outcome shall be stayed during an appeal under this Section.

#### B. Appeal of Sanctions when Respondent Accepts Responsibility

For cases of Acceptance of Responsibility, the Complainant and/or Respondent can only appeal based on the grounds that the sanction(s) imposed are either too severe or too lenient. Appeals must be submitted to the VP of Student Affairs or his or her designee.

Each party may respond in writing to any appeal submitted by the other party. Written responses must be submitted within three (3) business days following email delivery of the notice of the written appeal. Written requests for appeal submitted by one party will be shared with the other party. The sanction review will ordinarily be a review of the Title IX summary report and any information submitted by the parties to the VP for Student Affairs. The VP for Student Affairs has the ability to sustain or modify the sanctions. The VP for Student Affairs will simultaneously notify the parties of the Appeal decision within fifteen (15) days of receipt of all written responses. The appeal decision is final.

### I. APPEALS PROCESS

These resolution procedures are the exclusive means of resolving Reports alleging sex discrimination (non-harassment) and/or sexual exploitation by UAH students in violation of the Title IX Policy. To the extent there are any inconsistencies between these resolution procedures and other University grievance, complaint, or discipline procedures, these resolution procedures will control the resolution of Reports alleging sex discrimination (non-harassment) and/or sexual exploitation by UAH students in violation of the Title IX Policy.

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# PROCEDURES FOR THE RESOLUTION OF TITLE IX SEX DISCRIMINATION AND SEXUAL EXPLOITATION REPORTS (NON-HARASSMENT) AGAINST FACULTY, STAFF, AFFILIATES, AND NON-AFFILIATES

## I. OVERVIEW AND APPLICABILITY

The University of Alabama in Huntsville (“UAH” or the “University”) has developed these Procedures for the Resolution of Title IX Sex Discrimination (Non-Harassment) Reports Against Faculty, Staff, Affiliates, and Non-Affiliates (the “Procedures”) pursuant to and in compliance with Title IX of the Education Amendments of 1972 and its implementing regulations (collectively referred to as “Title IX”). These Procedures should be read in conjunction with the Title IX Sex Discrimination, Sexual Exploitation, Sexual Harassment, and Sexual Violence Policy (the “Title IX Policy”), Faculty Handbook, and Staff Handbook, which include additional information regarding applicable definitions, key terms, reporting options, available resources and other relevant topics.

These Procedures will be used to assess, investigate and/or resolve Reports of sex discrimination and/or sexual exploitation covered under Title IX brought against UAH faculty, staff, affiliates<sup>5</sup>, and non-affiliates<sup>6</sup> but which do not fall within the category of Sexual Harassment or Sexual Violence as defined in UAH’s Title IX Policy. Sex discrimination prohibited by the Title IX Policy is defined as the exclusion from participation in, denial of benefits from, or subjection to unfavorable treatment in any University educational or employment-related program or activity on the basis of gender, sexual orientation, gender identity, or gender expression.

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

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

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

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<sup>5</sup> For purposes of these Procedures, an "affiliate" includes, but is not limited to, visiting scholars and post-doctoral fellows who are not otherwise classified as UAH faculty, staff, or students.

<sup>6</sup> A "non-affiliate" is someone not associated with UAH.

## **II. RIGHTS OF THE COMPLAINANTS AND RESPONDENTS**

### **A. Right to an Advisor**

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

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

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

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

### **III. SUPPORTIVE MEASURES**

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

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

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

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

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

#### **A. Time Frame for Resolution**

The University seeks to resolve Reports of sex discrimination and/or sexual exploitation as promptly as reasonably possible. Best efforts will be made to follow the time frames discussed below.

In calculating time periods, "business days" do not include weekends or UAH holidays. All time frames may be extended when necessary to ensure the

integrity and completeness of the investigation, accommodate the availability of witnesses, accommodate delays by the parties, account for University breaks or vacations, or address other legitimate reasons, including the complexity of the investigation (including the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged conduct. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing.

UAH will disclose information about its investigation and resolution of Reports of sex discrimination and/or sexual exploitation only to those who need to know the information to carry out their duties and responsibilities. It will inform all UAH personnel participating in an investigation, proceeding, or Hearing that they are expected to maintain the privacy of the process. This does not prohibit either a Complainant or Respondent from obtaining the assistance of family members, counselors, therapists, clergy, doctors, attorneys, or other resources.

## **B. Initial Assessment**

When a Report of sex discrimination and/or sexual exploitation is made, the Title IX Coordinator<sup>7</sup>, in collaboration with Human Resources, will conduct an Initial Assessment. The assessment will determine whether the alleged conduct presents a potential violation of the Title IX Policy and whether further action is warranted based on the alleged conduct.

The Initial Assessment normally begins with a preliminary meeting between the Complainant and the Title IX Coordinator or designee, in collaboration with Human Resources. The purpose of the preliminary meeting is to gather facts that will enable the Title IX Coordinator and Human Resources, in consultation with other offices as appropriate, to:

- Assess the nature and circumstances of the allegation(s);
- Address any immediate concerns about the emotional well-being of the parties;
- Address the rights of the parties as outlined in Section II above;
- Discuss available Supportive Measures as outlined in Section III above;
- Discuss the Complainant's expressed preference for the manner of resolution and any barriers to proceeding;
- Explain UAH's policy prohibiting retaliation; and
- Explain the right and role of an advisor.

If a Complainant wants to make a Report of sex discrimination and/or sexual exploitation but also wants to maintain anonymity and/or request that no investigative or disciplinary measures be taken, the Title IX Coordinator will advise the Complainant that UAH will consider the request but cannot guarantee it will be able to honor the request. UAH will weigh such a request against its obligation to provide a non-discriminatory environment. In determining whether it can honor a request for confidentiality, the following factors will be considered:

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<sup>7</sup> The Title IX Coordinator includes any selected Deputy Title IX Coordinator(s) and is hereinafter referred to as "Title IX Coordinator."

- The nature and scope of the alleged conduct;
- The risk posed to any individual or to the campus community by not proceeding;
- Whether there have been other Reports of sex discrimination and/or sexual exploitation by the Respondent;
- The Complainant's wish to pursue disciplinary action;
- Whether UAH possesses other means to pursue the investigation and obtain relevant evidence without participation from the Complainant;
- Considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent; and
- UAH's obligation to investigate and to provide a non-discriminatory environment.

UAH's ability to fully investigate and respond to a Report may be limited if the Complainant requests that their name not be disclosed to the Respondent or declines to participate in an investigation.

At the conclusion of the Initial Assessment, the Title IX Coordinator, in collaboration with Human Resources, will determine the appropriate resolution route. Resolution may include: (1) no further action; (2) Informal Voluntary Resolution; (3) the initiation of an investigation which may lead to disciplinary action; or (4) referral to Human Resources, the Provost, Dean, Supervisor, or other appropriate office for further inquiry, review, or assessment.

### **C. Informal Voluntary Resolution**

Informal Voluntary Resolution, when selected by the Complainant and deemed appropriate by the Title IX Coordinator, is a path designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the Complainant and preserves the safety and welfare of the campus community. Informal Voluntary Resolution does not involve an investigation or disciplinary action against a Respondent, and is not appropriate for all forms of conduct under the Title IX Policy. The time frame for completion of Informal Voluntary Resolution may vary, but UAH will seek to complete the process within sixty (60) business days of the Complainant's request.

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

Informal Voluntary Resolution may include: establishing Supportive Measures; conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring and/or supervision; facilitating a meeting with the Respondent with the Complainant present in appropriate cases; and any other remedy that can be tailored to the involved individuals to achieve the goals of the Title IX Policy. In some forms of Informal

Voluntary Resolution, the remedies imposed will focus on supporting the Complainant with no participation or involvement by the Respondent. In other forms of Informal Voluntary Resolution, the Respondent may agree to participate. Depending on the type of remedy used, it may be possible for a Complainant to maintain anonymity.

Informal Voluntary Resolution may also include restorative principles that are designed to allow a Respondent to accept responsibility for misconduct and acknowledge harm to the Complainant or to the UAH community. Restorative models will be used only with the consent of both parties, under the supervision of University-sanctioned trained professionals, and following a determination by UAH that the matter is appropriate for a restorative approach.

As the title implies, participation in Informal Voluntary Resolution is a choice, and either party can request to end this manner of resolution and pursue an investigation at any time, including if Informal Voluntary Resolution is unsuccessful at resolving the Report. Similarly, a Complainant can request to end an investigation and pursue Informal Voluntary Resolution at any time. In addition, either party may request Supportive Measures regardless of whether any particular course of action is sought.

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

Because the outcome of the Informal Voluntary Resolution process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted.

#### **D. Investigation Procedures**

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

The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator concludes that it is more likely than not that the Respondent violated the Title IX Policy. Neither party is required to participate in the investigation nor any form of resolution under these Procedures. The Investigator will not draw an adverse inference merely because either of the parties elected not to participate.



UAH will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to conduct a thorough investigation.

## **1. Notice of Investigation**

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

## **2. Conducting the Investigation**

The Title IX Coordinator, in collaboration with Deputy Title IX Coordinator for Human Resources, will oversee the investigation. The investigation is designed to provide a fair and reliable gathering of the facts by an impartial investigator. All individuals, including the Complainant, the Respondent, and any third-party witnesses, will be treated with appropriate sensitivity and respect throughout the investigation. The investigation will safeguard the privacy of the individuals involved in a manner consistent with federal law and University policy.

During the investigation, the Complainant and Respondent will have an equal opportunity to be heard, submit information, and identify witnesses who may have relevant information. The Investigator will speak separately with the Complainant, the Respondent, and other individuals who are willing to participate and have information relevant to the determination of responsibility. As part of the investigation, the Investigator may gather or receive information that is relevant to the determination of an appropriate sanction or remedy, including information about the impact of the alleged incident on parties. The Investigator will also endeavor to gather any available evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media materials, text messages, audio or video recordings, and other records as appropriate, available, and feasible.

The Investigator has the discretion to determine the relevance of any witness or other evidence to the finding of responsibility and may exclude information if the Investigator determines that the information is irrelevant. The Investigator may also exclude statements of personal opinion by

witnesses and statements as to general reputation for any character trait, including honesty.

### **3. Timing of the Investigation**

UAH will seek to conclude the investigation within sixty (60) business days from the issuance of the Notice of Investigation. The time frame for completion of the investigation, or any designated time frames of steps in the investigation, may be extended as set forth herein above. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

### **4. Cooperation in the Investigation**

All community members, including students, faculty and other UAH employees, who may have relevant information and/or be a witness, are strongly encouraged and expected to cooperate with the Title IX Coordinator, the Deputy Title IX Coordinator for Human Resources, and/or Investigator in the investigation, as well as any adjudication, of any Report. The Title IX Coordinator, Deputy Title IX Coordinator for Human Resources, and/or Investigator may request the appearance of persons from the University community who can provide relevant evidence.

Both a Complainant and a Respondent may decline to participate in proceedings under the Title IX Policy. The Title IX Coordinator, in collaboration with Deputy Title IX Coordinator for Human Resources, will determine whether the investigation will proceed without the Complainant pursuant to the factors set out in the Initial Assessment as described in Section IV.B. above.

### **5. Submission of Additional Evidence**

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

### **6. Investigation Findings and Sanctions**

After receipt and consideration of any additional evidence from the Complainant or Respondent, or after the ten (10) business days have lapsed without the submission of additional evidence, the Investigator

will make a determination, by a preponderance of the evidence standard, regarding whether a Title IX Policy violation occurred. In reaching this determination, the Investigator may consult with the Title IX Coordinator and the Deputy Title IX Coordinator for Human Resources (or designee). The Investigator will prepare an outcome letter (“Notice of Outcome letter”) that summarizes the findings. The Title IX Coordinator or designee will provide the Notice of Outcome letter, including the basis for the determination, in writing to the Complainant and the Respondent simultaneously. When the Respondent is determined not to have violated the Title IX Policy, the matter will be closed. When the Respondent is determined to have violated the Title IX Policy, the determination will also be forwarded to the appropriate person, as indicated below.

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

#### **a. Faculty**

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

In any request for an appeal, the burden of proof lies with the faculty Respondent because the University’s determination as to whether the faculty Respondent’s conduct violated the Title IX Policy will be presumed to have been reached reasonably and appropriately, by a preponderance of the evidence. Therefore, an appeal is available only on the following grounds:

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

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

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

**b. Staff**

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

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

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

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

## **E. ACCEPTANCE OF RESPONSIBILITY**

The Respondent may, at any time, request to resolve the investigation process or resolve specific allegation(s) by accepting responsibility for the alleged sex discrimination and/or sexual exploitation. The Title IX Coordinator will complete a summary report of the information gathered. The Title IX Coordinator will consider the request; if the request is granted, the Title IX Coordinator, in consultation with Human Resources and/or the Provost will determine the appropriate sanction(s). A faculty or staff respondent may have additional rights pursuant to the UAH Faculty Handbook Disciplinary Policy and Procedures and the Staff Handbook Problem Resolution Procedures

## **V. INTERSECTION WITH OTHER PROCEDURES**

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

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

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# PROCEDURES FOR THE RESOLUTION OF TITLE IX SEXUAL HARASSMENT AND SEXUAL VIOLENCE COMPLAINTS

## I. OVERVIEW AND APPLICABILITY

The University of Alabama in Huntsville ("UAH" or "the University") has developed these Procedures for the Resolution of Title IX Sexual Harassment and Sexual Violence Complaints (the "Procedures") pursuant to and in compliance with Title IX of the Education Amendments of 1972 and its implementing regulations (collectively referred to as "Title IX"). These Procedures should be read in conjunction with the Title IX Sex Discrimination, Sexual Exploitation, Sexual Harassment, and Sexual Violence Policy (the "Title IX Policy"), which includes additional information regarding applicable definitions, key terms, reporting options, available resources and other relevant topics.

These Procedures will be used to investigate and resolve all Reports and Formal Complaints of Sexual Harassment/Sexual Violence, as described within the definition of Prohibited Conduct in the Title IX Policy, brought against UAH students, faculty and staff members, affiliates, and non-affiliates (i.e., someone not associated with UAH), as appropriate.<sup>8</sup> All Reports or complaints covered by Title IX alleging sexual discrimination that do not fall within the category of Sexual Harassment or Sexual Violence, as defined in the Title IX Policy, will be investigated and resolved through the Procedures for the Resolution of Title IX Sex Discrimination Complaints (non-harassment) Against Students or the Procedures for the Resolution of Title IX Sex Discrimination Complaints (non-harassment) Against Faculty, Staff, Affiliates, Non-Affiliates.

All other reports or complaints of discrimination against students, faculty and staff members, including but not limited to those based on race, color, religion, national origin, and age will be resolved using the Discrimination Complaint/Grievance Procedure and/or the Student Conduct Code.

Any conduct that does not rise to the level of Prohibited Conduct as defined in the Title IX Policy and/or falls outside the jurisdiction of the Title IX policy may be investigated and addressed pursuant to other applicable policies, including but not limited to: the Discrimination Complaint/Grievance Procedure, the Student Conduct Code, the Faculty Handbook, and/or the Staff Handbook.

All community members are strongly encouraged to report to the University any incident of Prohibited Conduct as defined in the Title IX Policy. Many University administrators are specifically trained to support individuals affected by Prohibited Conduct, and the University is fully committed to promoting a safe and healthy educational and work environment.

## II. RIGHTS OF THE COMPLAINANTS AND RESPONDENTS

### A. Rights of the Complainants and Respondents

Both Complainants and Respondents have the following rights:

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<sup>8</sup> For purposes of UAH's Title IX Policy and these Procedures, an "affiliate" includes, but is not limited to, visiting scholars and post-doctoral fellows who are not otherwise classified as UAH faculty, staff, or students.

- To receive information about available Supportive Measures and community support resources (including, but not limited to, a mutual no-contact order, modification of academic, living, transportation, or working situations to avoid a hostile environment; and available health and mental health counseling, victim advocacy, safety planning, information about possible legal assistance, visa and immigration assistance, student financial aid, and, if applicable, disability accommodations<sup>9</sup>);
- To receive Supportive Measures;
- To a thorough and impartial investigation if and when one is initiated;
- To written notice of the date, time, location, participants and purposes of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate;
- To receive an objective evaluation of all relevant evidence – including both inculpatory evidence (evidence that may support a finding or conclusion that Respondent engaged in Prohibited Conduct) and exculpatory evidence (evidence that may support a finding or conclusion that a Respondent did not engage in Prohibited Conduct);
- To an opportunity to inspect and review and receive a copy of any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source; and a right to respond to this evidence;
- To review, receive, and respond to a copy of the draft and Final Investigation Report that summarizes relevant evidence;
- To participate in a live grievance hearing except as outlined herein;
- To be accompanied by an advisor, who may be, but is not required to be, an attorney at all University proceedings relevant to the investigation and hearing process, subject to the limitations outlined herein;
- If a party does not have an advisor at a live hearing, to receive an advisor (to conduct cross-examination at the live hearing) of the University's choice, who may be, but is not required to be, an attorney, provided without fee or charge;
- To inspect and review the recording of the live grievance hearing;
- To be notified of the appeal process and whether an appeal is available;
- To receive a statement of, and rationale for, the Hearing Officer's decision as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant;
- To have access to published policies regarding Prohibited Conduct and University disciplinary procedures, including the possible range of sanctions;

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<sup>9</sup> If the Complainant requests such Supportive Measures and if they are reasonably available and do not unreasonably burden the Respondent, they will be provided regardless of whether the Complainant chooses to file a Formal Complaint or refuses to report the crime to campus police or local law enforcement.

- To be notified that information and materials the University obtains during its investigation into allegations of Prohibited Conduct may be disclosed to law enforcement or others in response to a valid subpoena; and
- To be notified that there is no requirement to make a statement or otherwise provide information relevant to the investigation. However, the investigation may continue and a decision regarding responsibility will be made based on the available statements and evidence.

#### **B. Additional Rights of Complainants**

- To be informed of available options for making a Report;
- To an explanation of the grievance process, including any informal resolution process, for resolving complaints of sexual harassment;
- To be advised of the right to simultaneously file a criminal complaint and a Title IX complaint with UAH and to be advised of the University's prohibition on retaliation against an individual who exercises their rights under Title IX, Title VII, the Campus SaVE Act, or the Title IX Policy;
- To decline to notify law enforcement authorities in cases of sexual assault, domestic violence, dating violence, and stalking cases; and
- To be assisted by campus authorities, if requested, when reporting a crime to law enforcement.

#### **C. Additional Rights of Respondents**

- Upon receipt of a Formal Complaint, to receive written notice of the Title IX grievance process including any informal resolution process, and notice of the allegations of sexual harassment including sufficient details known at the time and with sufficient time to prepare a response before any initial interview; and
- To a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### **III. COMPLAINT PROCEDURES**

#### **A. Time Frame for Resolution**

The Title IX Coordinator seeks to resolve all Reports as promptly as reasonably possible. Best efforts will be made to follow the time frames discussed below.

In calculating time periods, "business days" do not include weekends or UAH holidays. All time frames may be extended when necessary to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, accommodate delays by the parties, account for University breaks or vacations, or address other legitimate reasons, including the complexity of the investigation (including the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged conduct. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing.

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



## 1. Responses to a Report of Prohibited Conduct

When a Report of Prohibited Conduct is made, the Title IX Coordinator and/or Designee will promptly contact the Complainant for a preliminary discussion of the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain the process for filing a Formal Complaint.

During the preliminary discussion with the Complainant, the Title IX Coordinator and/or Designee will gather facts that will enable the Title IX Investigator(s), in consultation with other offices as appropriate, to:

- Assess the nature and circumstances of the allegation(s);
- Address any immediate concerns about the physical safety and emotional well-being of the parties;
- If the conduct is criminal in nature, notify the Complainant of the option to notify law enforcement and to be assisted in doing so, as well as the option to decline to notify law enforcement;
- Notify the Complainant of the availability of medical treatment to address any physical and mental health concerns and to preserve evidence;
- Provide the Complainant with written information about:
  - On and off campus resources;
  - The available range of Supportive Measures;
  - An explanation of the procedural options, including Informal Voluntary Resolution and investigation and adjudication;
  - The Complainant's Rights during the process;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Explain the University's policy prohibiting Retaliation;
- Explain the right to and role of an advisor; and
- Assess the reported conduct for the need for a timely warning or entry in the crime log under federal law.

If a Complainant wants to maintain anonymity and/or request that no investigative or disciplinary measures be taken, the Title IX Coordinator and/or Deputy Title IX Coordinator will advise the Complainant that the University will consider the request but cannot guarantee that the University will be able to honor the request if the Title IX Coordinator determines it would be clearly unreasonable in light of known circumstances not to investigate the allegations. The University will conduct a thoughtful and intentional assessment and will weigh such a request in light of the University's obligation to provide a safe, non-discriminatory environment. In determining whether it can honor a request for confidentiality, the following factors will be considered:

- The nature and scope of the alleged conduct, including whether the reported misconduct involves the use of a weapon;
- The respective ages and roles of the Complainant and Respondent;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of violence;
- Whether there have been other Reports of misconduct involving the Respondent;
- Whether the Report reveals a pattern of misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- The Complainant's wish to pursue disciplinary action;
- Whether the University possesses other means to pursue the investigation and obtain relevant evidence without participation from the Complainant; and
- Considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent.

The University's ability to fully investigate and respond to a Report may be limited if the Complainant requests that their name not be disclosed to the Respondent or declines to participate in an investigation

## **2. The Initial Assessment**

An investigation and initial assessment will not be initiated unless and until a Formal Complaint is filed. A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting that UAH investigate the allegation of Prohibited Conduct. To file a Formal Complaint, a Complainant must be participating in, or attempting to participate in UAH's education programs or activities or employed by UAH. Formal Complaints cannot be anonymous except for Formal Complaints filed by the Title IX Coordinator when the Title IX Coordinator believes that with or without the Complainant's desire to participate in a grievance process, it would be clearly unreasonable in light of known circumstances not to investigate the allegations.

The assessment will determine whether the alleged conduct could present a potential violation of the Title IX Policy and whether further action is warranted based on the alleged conduct, including whether the Formal Complaint must be or may be dismissed.

## **3. Filing a Formal Complaint**

Where a Complainant desires to file a Formal Complaint to initiate a grievance process, the Complainant cannot remain anonymous or prevent their identity from being disclosed to the Respondent. The Complainant may request to withdraw a Formal Complaint at any time. The University reserves the right to make a determination whether to

approve or deny this request, but will strongly consider the Complainant's wishes.

The Title IX Coordinator may consolidate Formal Complaints against more than one Respondent or by more than one Complainant against one or more Respondents or by one party against the other party where the allegations of Prohibited Conduct arise out of the same facts or circumstances. Arising out of the same fact and circumstances means that the multiple Complainants' allegations are so intertwined that their allegations directly relate to all the parties.

**a. Mandatory Dismissal of Formal Complaints**

The Title IX Coordinator must dismiss a Formal Complaint based on the following grounds:

- The Prohibited Conduct would not constitute sexual harassment even if proved;
- The Prohibited Conduct did not occur in UAH's education program or activity (as defined in Section II (Jurisdiction)) of the Title IX Policy; or
- The Prohibited Conduct did not occur against a person in the United States.

**b. Permissive Dismissal of Formal Complaints**

The Title IX Coordinator may dismiss a Formal Complaint based on the following grounds:

- If at any time during the investigation or hearing, a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by UAH; or
- Specific circumstances prevent UAH from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon a mandatory or permissive dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the reason(s) for the dismissal simultaneously to the parties. A mandatory or permissive dismissal does not preclude UAH from investigating and addressing the alleged conduct pursuant to other applicable policies, including, but not limited to, UAH's Discrimination Complaint/Grievance Procedure, Code of Student Conduct, Staff Handbook, Faculty Handbook.

Either party may appeal the dismissal of a Formal Complaint in accordance with Section VI of these Procedures.

### **C. Acceptance of Responsibility**

The Respondent may, at any time before a determination of responsibility has been made, request to resolve the investigation process or resolve specific allegation(s) by accepting responsibility for the Prohibited Conduct. A request to accept responsibility for the Prohibited Conduct will be treated as a request to engage in the Informal Voluntary Resolution process outlined in Section D of these Procedures. The Complainant must consent to engage in Informal Voluntary Resolution with the Respondent, and either party can request to end this manner of resolution and pursue an investigation at any time. Because the outcome of the Informal Voluntary Resolution process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted.

### **D. Informal Voluntary Resolution**

Informal Voluntary Resolution is a path designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the Complainant and preserves the safety and welfare of the campus community. Informal Voluntary Resolution does not involve an investigation, adjudication hearing, or disciplinary action against a Respondent and is not appropriate for all forms of conduct under the Title IX Policy. Informal Voluntary Resolution is available only if a Formal Complaint is filed and both parties voluntarily agree in writing to participate.

Factors the University will consider when determining whether a Report of Prohibited Conduct is suitable for alternative resolution include, but are not limited to, the following:

- The nature of the alleged offense;
- The dynamics of power or control commonly associated with the alleged offense and/or with the parties involved;
- The Respondent's prior known conduct;
- Whether there would be a continuing safety threat to the campus community after resolution of the specific report of Prohibited Conduct;
- Whether multiple parties are involved;
- Whether the resolution proposed is designed to eliminate, prevent, and address the reported Prohibited Conduct;
- Any other factor deemed relevant by the Title IX Coordinator in the interest of overall campus safety or safety of the parties involved.

To proceed with Informal Voluntary Resolution, the Title IX Coordinator must provide the parties with written notice that includes the following information: (1) a description of the allegations in the Formal Complaint; (2) the requirements of the Informal Voluntary Resolution process, including the circumstances under which UAH precludes the parties from resuming a Formal Complaint arising from the same allegations; (3) any consequences resulting from participating in the Informal Voluntary Resolution process, including the records that will be shared and maintained; and (4) any party's right to, at any time prior to agreeing to a

resolution, withdraw from the Informal Voluntary Resolution process and resume the grievance process with respect to the Formal Complaint.

Informal Voluntary Resolution will be facilitated by University-sanctioned trained professionals. The time frame for completion of Informal Voluntary Resolution may vary, but the University will seek to complete the process within sixty (60) business days of the Complainant's request.

Informal Voluntary Resolution will not be used in cases involving allegations that an employee sexually harassed or committed sexual violence (sexual assault, domestic violence, dating violence, or stalking) against a student.

Informal Voluntary Resolution may result in the following remedies: establishing Supportive Measures; conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; and any other remedy that can be tailored to the involved individuals to achieve the goals of the Title IX Policy.

Informal Voluntary Resolution may also include restorative principles that are designed to allow a Respondent to accept responsibility for misconduct and acknowledge harm to the Complainant or to the University community. Informal Voluntary Resolution may also include mediation.

Participation in Informal Voluntary Resolution is a choice, and either party can request to end this manner of resolution and pursue an investigation at any time, including if Informal Voluntary Resolution is unsuccessful at resolving the Report. Similarly, a Complainant may request to end an investigation and pursue Informal Voluntary Resolution at any time if the Respondent also consents to Informal Voluntary Resolution. In addition, either party may request Supportive Measures regardless of whether any particular course of action is sought.

Facilitators of Informal Voluntary Resolution cannot be used as a witness during a subsequent investigation or adjudication hearing.

If a Report of Prohibited Conduct is resolved by Informal Voluntary Resolution, resolution will be deemed final. Because the outcome of Informal Voluntary Resolution process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted. Should the resolution result in terms or conditions being imposed on one or both parties, a failure to subsequently adhere to those terms or conditions as written may subject the offending party to a Failure to Comply Charge as defined in Section III (Prohibited Conduct) of the Title IX Policy.

#### **E. Emergency Removal Process for Student Respondents and Administrative Leave**

The Title IX Coordinator in consultation with the Behavioral Evaluation and Threat Assessment team may impose an emergency removal to remove a student Respondent from the University's educational program or activity on an emergency basis prior to a determination regarding responsibility. This removal shall be undertaken once an individualized safety and risk analysis determines

that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct justifies removal.

Emergency removals may include, but are not limited to, a full or limited emergency removal from campus activities, removal from University housing, removal from University sponsored events, and/or restriction on access to University facilities and programs.

The Dean of Students will provide notice to the student Respondent of the emergency removal, and the student Respondent may request a review of the emergency removal in writing within two (2) business days of the issuance of any emergency removal. Such request should be submitted to the Dean of Students. Reasonable efforts will be made to hold such a review of the emergency removal within five (5) business days of the receipt of the request for review to determine if the removal should continue, as issued, through the remainder of the conduct process. If the student Respondent submits a timely review request, the review may be held beyond this five (5) calendar day period if scheduling issues exist.

At any requested review, information will be presented in support of any challenged removal. The student Respondent may offer statements or other information to rebut any grounds offered in support of the emergency removal.

Except as limited herein, the student Respondent has the right to be assisted during the review process by any advisor they may choose, at their own expense. The advisor may be an attorney. An advisor has no right to speak or participate directly in any aspect of the emergency removal review process. The Respondent must speak on their own behalf. An advisor's failure to comply with these participation limitations may cause the advisor to be removed from the proceeding.

The decision following the review of the emergency removal will be final.

#### **F. Administrative Leave for Faculty/Staff Respondents**

In certain circumstances, the University may place a faculty or staff Respondent on administrative leave (with or without pay) during the pendency of a formal investigation prior to a determination regarding responsibility.

For additional information regarding the processes and procedures applicable to administrative leave, please refer to the Faculty Handbook for faculty Respondents and the Staff Handbook for staff Respondents.

### **IV. INVESTIGATION PROCEDURES**

If deemed appropriate based on the Initial Assessment, the Title IX Coordinator shall initiate a prompt, thorough, and impartial investigation of Prohibited Conduct in accordance with these Procedures. The Title IX Coordinator (or Designee) will designate an Investigator(s) who has training and experience investigating allegations of Prohibited Conduct. The Investigator may be a University employee or an outside Investigator. For Formal Complaints involving allegations against faculty, staff, or non-student third-parties, the Title IX Coordinator (or Designee) will collaborate with Human Resources (Deputy Title IX Coordinator). The Investigator(s) will coordinate the gathering of

information, which may be later used to determine whether the alleged Prohibited Conduct constitutes a violation of the Title IX Policy.

The investigation is a neutral fact-gathering process. The Respondent is presumed not to have violated the Title IX Policy until a determination regarding responsibility is made at the conclusion of the grievance process. This presumption may be overcome only where the preponderance of the evidence supports a finding that the Respondent is responsible for violating the Title IX Policy.

Neither party is required to participate in the investigation nor any form of resolution under these Procedures. The Investigator will not draw an adverse inference merely because either of the parties elected not to participate.

UAH will disclose information about its investigation and resolution of Formal Complaints only to those who need to know the information in order to carry out their duties and responsibilities. It will inform all University personnel participating in an investigation, proceeding, or hearing that they are expected to maintain the privacy of the process. This does not prohibit either a Complainant or Respondent from obtaining the assistance of family members, counselors, therapists, clergy, doctors, attorneys, or other resources or discussing the allegations under investigation, or gathering and presenting evidence, including communicating with witnesses or potential witnesses.

## **A. The Investigative Process**

### **1. Notice of Investigation**

The Title IX Coordinator or Deputy Title IX Coordinator will send the Complainant and the Respondent and, if applicable, the Respondent's appropriate supervisor, a written Notice of Investigation, which constitutes the formal charge. The Notice of Investigation will contain the following information:

- Notice of the alleged conduct at issue, including the identities of the parties involved when a Formal Complaint is filed by a Complainant and the identities of the parties (if known) when the Formal Complaint is filed by the Title IX Coordinator;
- Notice of the specific section of the Title IX Policy allegedly violated, and the date and location of the incident;
- Notice of the grievance process, including information about Voluntary Informal Resolution;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Notification of the provision of the Title IX policy prohibiting knowingly making false statements or knowingly submitting false information during the grievance process as defined in Section IV.E. of the Title IX Policy;
- Range of potential violations under the Title IX Policy;
- On and off campus resources;
- Right to an advisor of their choice who may be, but is not required to be, an attorney;
- Range of potential sanctions; and

- Notification that expulsion is a potential sanction and that expulsion precludes matriculation (where appropriate).

The Notice of Investigation must allow the Respondent sufficient time to prepare a response before any initial interview. Upon receipt of the Notice of Investigation, or at any stage in the process, the Respondent may choose to accept responsibility for the Title IX Policy violation(s). Once the Notice of Investigation has been delivered to the parties, the investigation phase begins.

If, in the course of an investigation, the Title IX Investigator decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Investigation, the Title IX Coordinator or Deputy Title IX Coordinator will provide notice of the additional allegations to the parties whose identity is known.

## **2. Conducting the Investigation**

The Title IX Coordinator and/ or Designee will oversee the investigation. The investigation is designed to provide a fair and reliable gathering of the facts by a trained and impartial Investigator(s). All individuals, including the Complainant, the Respondent, and any third-party witnesses will be treated with appropriate sensitivity and respect throughout the investigation. The investigation will safeguard the privacy of the individuals involved in a manner consistent with federal law and University policy.

During the investigation, the Complainant and Respondent will have an opportunity to be heard, to submit information, and to identify witnesses who may have relevant information, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The Investigator(s) will speak separately with the Complainant, the Respondent, and any other individuals who are willing to participate and have information relevant to the determination of responsibility. As part of the investigation, the Investigator(s) will gather or receive information that is relevant to the determination of an appropriate sanction or remedy, including information about the impact of the alleged incident on parties.

The Investigator(s) will also endeavor to gather any available physical or documentary evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media materials, text messages, and other records as appropriate, available, and feasible. The Investigator(s) has the discretion to determine the relevance of any witness or other evidence to the finding of responsibility and may exclude information if the Investigator(s) determines that the information is irrelevant.

The Investigator(s) may not access, consider, disclose or otherwise use a party's records maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional which are made and maintained in connection with the provision of treatment to the party



unless the party holding such privilege has waived the privilege. Additionally, evidence of the Complainant's sexual history or behavior is not relevant if it is offered to prove that the Complainant engaged in other sexual behavior or to prove the Complainant's sexual predisposition. Such evidence may be offered to show:

- a. Prior or subsequent sexual encounters between the Complainant and the Respondent offered to prove consent; or
- b. That a person other than the Respondent was the source of semen, injury, or other physical evidence.

### **3. Timing of the Investigation**

The University will seek to conclude the investigation within sixty (60) business days from the issuance of the Notice of Investigation. The time frame for completion of the investigation, or any designated time frames of steps in the investigation, may be extended for good cause as necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case (including the number of witnesses and volume of information provided by the parties), or to address other legitimate reasons. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

### **4. Relationship to Criminal Proceeding**

The filing and processing of a Formal Complaint is separate from and independent of any criminal investigation or proceeding. Where the University is made aware that there is a concurrent criminal investigation, the Title IX Coordinator or Deputy Title IX Coordinator will coordinate with law enforcement so that any University processes do not interfere with the integrity or the timing of the law enforcement investigation. At the request of law enforcement, the University may agree to defer its investigation until after the initial stages of a criminal investigation. The Title IX Coordinator or Deputy Title IX Coordinator will nevertheless communicate with the parties regarding Supportive Measures and accommodations, procedural options, anticipated timing, and the implementation of any necessary Supportive Measures for the safety and well-being of all affected individuals. The identity of the Complainant will remain confidential unless disclosing the Complainant's identity is necessary to provide the Supportive Measures for the Complainant.

If the University defers the Title IX investigation, the Investigator(s) will promptly resume fact gathering as soon as law enforcement has released the case for review following the initial criminal investigation. Neither law enforcement's determination as to whether to prosecute a Respondent nor the outcome of any criminal prosecution is determinative of whether

sexual misconduct occurred under the Title IX Policy. If, however, a Respondent is later convicted of a crime, that Respondent could be subject to other policies and procedures that could result in discipline up to and including dismissal.

## **5. Cooperation in the Investigation**

All community members, including students, faculty and staff, are strongly encouraged and expected to cooperate with the Title IX Coordinator or Deputy Title IX Coordinator in the investigation, as well as any adjudication, of any Report or Formal Complaint of Prohibited Conduct. The Title IX Coordinator or Deputy Title IX Coordinator may request the appearance of persons from the University community who can provide relevant evidence. Both a Complainant and a Respondent may decline to participate in proceedings under the Policy. The Title IX Coordinator or Deputy Title IX Coordinator will determine whether the investigation and any adjudication will proceed without any Complainant(s) pursuant to the factors set out in Section III.B. above.

### **B. Standard of Proof**

At all stages of the process, UAH will apply the preponderance of the evidence standard of proof (more likely than not) when determining whether the Title IX policy has been violated.

### **C. Right to Discuss Allegations versus Witness Tampering**

The Complainant and Respondent have the right to discuss or write about the allegations under investigation and to gather and present evidence. While a party has a right to communicate with witnesses or potential witnesses, witness tampering and intimidation is prohibited. If a Respondent reacts to a written notice of allegations by intimidating witnesses, such conduct constitutes Retaliation and will be investigated and adjudicated pursuant to these Procedures.

### **D. Review of the Evidence and Submission of Additional Evidence**

At the conclusion of the investigation, the Investigator(s) will provide the Complainant and Respondent and their advisors, if any, a copy of the evidence that has been obtained as part of the investigation that is directly related to the allegations in the Formal Complaint, including inculpatory and exculpatory evidence whether obtained from a party or another source, as well as evidence that the University does not intend to rely in reaching a determination of responsibility. The evidence will be provided with any redactions if required by applicable federal and/or state law and/or information that is not directly related to the allegations. The parties will receive a copy of the evidence electronically but as a precondition of receiving a copy of the evidence, all parties, and their respective advisors (if any) must sign and agree to abide by a non-disclosure agreement.

A Complainant and Respondent may submit any additional evidence, comment, or information to the Investigator(s) within ten (10) business days of the date

upon which the University makes the evidence available. This is the final opportunity for the parties to identify any additional information or witnesses. In the absence of good cause shown, information discoverable through the exercise of due diligence that is not provided to the Investigator within ten (10) business days of the date upon which the University makes the evidence available will not be considered by the Investigator(s) or Hearing Officer.

#### **E. Final Investigation Report**

Upon receipt and consideration of any additional information from the Complainant or Respondent, or after the ten (10) business day comment period provided for in Section IV.D. has lapsed without comment, the Investigator(s) will complete a Final Investigation Report that objectively summarizes the relevant evidence. The parties and their advisors will simultaneously receive a copy of the Final Investigation Report (which is also subject to the non-disclosure agreement) at least ten (10) business days before an adjudication hearing. The Complainant and Respondent will each have an opportunity to review and respond in writing to the Final Investigation Report. Any such response by the parties must be submitted to the Title IX Coordinator within five (5) business days of transmission of the Final Investigation Report. The Title IX Coordinator will provide any statement(s) submitted by the parties with the Final Investigation Report to the Hearing Officer.

### **V. ADJUDICATION BY A HEARING OFFICER**

#### **A. Initiation of the Hearing**

The Title IX Coordinator (or Designee) will appoint a Hearing Officer who has received appropriate training.

#### **B. Hearing Requirements**

The Hearing Officer's role is to conduct an independent and objective review of all of the evidence, including inculpatory and exculpatory evidence, directly related to the allegations, and determine if the Respondent violated the Title IX policy based on a preponderance of the evidence standard (and, if yes, to determine an appropriate sanction).

The hearing will be scheduled and will proceed according to the guidelines set forth below:

##### **1. Notice and Timing of Hearing**

The Title IX Coordinator (or Designee) will issue a written Notice of Hearing to the parties and their advisors with information regarding the hearing including the date, time, and location of the hearing; the name of the Hearing Officer; and how to challenge the Hearing Officer for bias or conflict of interest. The Title IX Coordinator (or Designee) will have sole discretion to determine whether the Hearing Officer has bias or conflict of interest, and if so, the responsibility to appoint another Hearing Officer.

The hearing will usually be scheduled within twenty-five (25) business days from the date of the Notice of Hearing, subject to extension for good cause at the discretion of the Hearing Officer. Good cause for extension may include the unavailability of the parties, the schedule of the Hearing Officer, the timing of semester breaks or University holidays, concurrent law enforcement activity, or other extenuating circumstances. Any extension, including the reason for the extension, will be shared with the Complainant and Respondent and their advisors in writing.

If, despite being notified of the date, time, and location of the hearing—and in the absence of good cause—a party or an advisor does not attend the hearing, the hearing may proceed subject to the limitations set forth herein.

## **2. Administration of the Hearing Process**

The Hearing Officer is responsible for the administration of the hearing process, including procedural matters and decisions leading up to the hearing, determinations about information that will be considered or not, appropriate and inappropriate lines of questioning, and the overall decorum and conduct of the proceedings. The Hearing Officer is not bound by strict rules of legal evidence and may admit evidence that is of probative value (evidence that is useful in proving or disproving a fact) in determining the issues involved.

The Hearing Officer will apply the preponderance of the evidence standard (more likely than not) when determining whether the Title IX Policy has been violated.

An audio-visual recording of the hearing will be available to the parties for inspection and review within twenty-one (21) business days after the conclusion of the hearing.

## **3. Hearing Format**

The hearing is an opportunity for the Complainant and Respondent to address the Hearing Officer in person. The parties may address any information in the Final Investigation Report and supplemental statements submitted in response to the Final Investigation Report. The Complainant and the Respondent have the right to make an opening and a closing statement. The Complainant shall give the first opening statement. The Respondent shall give the final closing statement. The Complainant and the Respondent may each include a statement of the impact of the alleged offense as part of their respective closing statements.

Each party must notify the Title IX Coordinator (or Designee) at least ten (10) business days prior to the hearing if they will be accompanied by an advisor. If a party does not have an advisor, UAH will assign the party an advisor of the University's choice (who may be, but is not required to be, an attorney) provided without fee or charge. Each party has the opportunity to be heard and to identify and secure witnesses, including

expert witnesses, for the Hearing Officer's consideration. At least four (4) business days prior to the hearing, each party must submit to the Title IX Coordinator (or Designee): (1) the name of any advisor accompanying the party; (2) if applicable, notification that the party and/or advisor will not attend the hearing; (3) a list of potential hearing witnesses; and (4) all materials that the Complainant or Respondent want the Hearing Officer to consider. All evidence each party wishes to be considered by the Hearing Officer should be presented to the Investigator(s) during the investigation process. If a party does not provide some piece of evidence to the Investigator during the investigation process, that party may only present such evidence during the hearing if the Hearing Officer permits the party to do so in the Hearing Officer's sole discretion. Generally, evidence not presented during the investigation process will only be allowed in the hearing if it is new information not known and not available during the investigation process.

The Title IX Coordinator (or Designee) will provide the witness lists and submitted materials to the Hearing Officer and make copies available to the Complainant and Respondent at least three (3) business days prior to the hearing, consistent with FERPA or other laws and regulations governing the disclosure of education records. Any materials submitted and/or discovered fewer than four (4) business days before the hearing may only be considered at the sole discretion of the Hearing Officer.

All participants in the hearing are expected to behave with decorum and may be asked to leave if they do not.

At the request of either party, the University will conduct the entire hearing (including cross-examination) with the parties located in separate rooms, utilizing technology enabling the parties to see and hear each other.

#### **4. Questioning of Parties/Witnesses and Relevancy Determination**

With the exception of cross-examination, all questioning of parties is conducted through the Hearing Officer. A party may recommend direct questions to be asked of a party's own witness or non-party witnesses by submitting them in writing to the Hearing Officer prior to the hearing. During the hearing, a party may also submit suggested questions, in writing, to the Hearing Officer, which are based on information presented during the hearing.

The Hearing Officer may also independently question the parties, witnesses, and/or Investigator to elicit relevant information. The Hearing Officer is barred from drawing any inference about the determination of responsibility based solely on a party's refusal to answer the Hearing Officer's questions.

All admissible relevant evidence will be evaluated for weight or credibility (the quality of being reliable, trusted and believed in). Evidence that is deemed duplicative of other evidence is not relevant.

Each party and all witnesses are subject to cross-examination by the opposing party's respective advisors. The party's advisor may ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility. Such questioning must be conducted directly, orally, and in real time by the party's advisor and never by the parties personally. The parties and advisors are prohibited from questioning parties and witnesses in an abusive, intimidating, or disrespectful manner.

The party's advisor may otherwise not make statements, challenge relevancy determinations, or otherwise directly participate in the proceedings. The Hearing Officer may remove or dismiss an advisor who becomes disruptive or who does not abide by the limitations on their participation and require the party to use a different advisor.

Neither party is required to participate in the hearing in order for the hearing to proceed. The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

A party's advisor may appear and conduct cross-examination even when the party whom they are advising does not appear. Similarly, when one party does not appear and that party's advisor of choice does not appear, a UAH-provided advisor will cross-examine the other, appearing party "on behalf of" the non-appearing party.<sup>10</sup>

The Hearing Officer, in his or her sole discretion, will determine the relevance of all cross-examination questions presented. If the Hearing Officer deems the question irrelevant the Hearing Officer must explain the basis for such a decision. A question is relevant if it tends to prove or disprove the issue of responsibility. The Hearing Officer's relevancy decision may not be challenged during the hearing by the parties or their advisors.

Where a cross-examination question or piece of evidence is relevant but concerns a party's character or prior bad acts, the Hearing Officer cannot exclude or refuse to consider the relevant evidence but may objectively evaluate that relevant evidence by analyzing whether that evidence warrants a high or low level of weight or credibility.

The Hearing Officer will not make credibility determinations based on a person's status as a Complainant, Respondent or witness. Additionally, credibility determinations shall not be based solely on observations of the demeanor of a party or witness when questioned but also on other factors including, but not limited to, specific details, inherent plausibility, internal inconsistency, and corroborating evidence. A party's answers to cross-examination questions must be evaluated in context, including taking into

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<sup>10</sup> The University reserves the right to delay the hearing, for good cause, if it has less than four (4) business days' notice that a party and that party's advisor will not be present at the hearing.

account that a party may experience stress while trying to answer questions.

## **5. Medical Records**

The Hearing Officer may not access, consider, disclose, or otherwise use a party's records maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional which are made and maintained in connection with the provision of treatment to the party unless the party holding such privilege has waived the privilege.

## **6. Sexual History or Behavior**

Evidence of the Complainant's sexual history or behavior is not relevant if it is offered to prove that the Complainant engaged in other sexual behavior or to prove the Complainant's sexual predisposition. Such evidence may be offered to show:

- Prior or subsequent sexual encounters between the Complainant and the Respondent that are offered to prove consent; or
- That a person other than the Respondent was the source of semen, injury, or other physical evidence.

## **C. Sanctions**

### **1. General Considerations**

If the Hearing Officer determines that the preponderance of the evidence supports a finding of responsibility under the Title IX Policy, any one or more sanctions may be imposed. In determining appropriate sanction(s), the Hearing Officer may consult the Title IX Coordinator for the purpose of ensuring a particular sanction is feasible, consistent with past practice, and reasonably calculated to end the Title IX Policy violation. As part of this determination, the Hearing Officer will be guided by a number of considerations, including, but not limited to:

- Whether the circumstances suggest an increased risk exists that the Respondent will commit additional acts of Prohibited Conduct (e.g., whether there have been other Prohibited Conduct complaints about the same Respondent, whether the Respondent has a history of violent behavior, whether the Respondent threatened sexual violence or other violence against the Complainant or others);
- Whether the circumstances suggest an increased risk exists of the occurrence of future acts of Prohibited Conduct under similar circumstances (e.g., whether the circumstances reveal a pattern of perpetration via illicit use of drugs or alcohol, at a given location, or by a particular group);
- Whether the Prohibited Conduct was perpetrated with a weapon or involved other aggravating considerations;

- Whether the Respondent upon return to campus would be likely to pose a threat to the safety and/or well-being of the Complainant and/or the UAH community generally and, if so, the nature and extent of the threat and the availability of steps to effectively mitigate the impact;
- The impact of the Prohibited Conduct on the Complainant;
- The impact of the Prohibited Conduct on the University community;
- The need for any sanctions or remedies to eliminate, prevent, or address the existence of a hostile environment within the University community or to maintain a safe and respectful environment conducive to learning, working and living;
- Whether the Respondent accepted responsibility for the Prohibited Conduct; and
- Whether there are any other mitigating, aggravating, or compelling circumstances warranting a sanction or remedy to reach a just and appropriate resolution of the matter.

## 2. Student Respondent Sanctions

One or more of the following sanctions actions may be imposed on a student Respondent found responsible for a violation(s) of the Title IX Policy:

- **Formal Written Warning** - Formal written warning that the student's behavior violated Title IX.
- **Probation** - A status in which the student is deemed not to be in good conduct standing with the University for a specified period of time. Probation does not affect the student's academic standing (i.e., the student may continue attending the University), is not shared with instructors, and is not notated on the student's permanent academic record. If the student is subsequently found responsible for a violation(s) of the Title IX policy while on probation, more severe sanctions, including suspension or expulsion, may result. Conditions restricting the student's participation in University activities may also be imposed.
- **Suspension** - Separation of the student from the University for a specified period of time. During the suspension period, the student is administratively banned from the University and may not be present on University premises; attend or participate in classes; access various University electronic systems; or participate in student organizations or any University-sponsored activity. Violation of the terms of suspension may subject the student to additional sanctions or criminal action. The student will be automatically withdrawn from registered courses based upon the effective date of the suspension. The student will be responsible for any financial obligations to the University but may be eligible for a refund of tuition and fees based upon the effective date of the suspension and the University's institutional refund policy.



Notation of the suspension will appear on the student's permanent academic record and will remain until the end of the suspension period.

- **Expulsion** - Permanent separation of the student from the University. The student is administratively banned from the University and may not be present on University premises, attend or participate in classes; access various University electronic systems; or participate in student organizations or any University-sponsored activity. Violation of the terms of expulsion may subject the student to criminal action. The student will be automatically withdrawn from registered courses based upon the effective date of the expulsion. The student will be responsible for any financial obligations to the University but may be eligible for a refund of tuition and fees based upon the effective date of the suspension and the University's institutional refund policy. Notation of the expulsion will appear on the student's permanent academic record.
- **Housing Reassignment or Removal from University Housing** - Reassignment to another University housing facility and/or loss of the privilege of living in University housing. Removal may be for a definite period of time not less than the remainder of the semester in which the removal is imposed or for an indefinite period of time. If the removal is for an indefinite period, the student may petition the Director of Residence Life and the Title IX Coordinator in writing for restoration of University housing privileges, but not earlier than one (1) calendar year from the effective date of the removal. The student will be responsible for any financial obligations to the University as set forth in the student housing contract between the University and the student.
- **Additional Sanctions** - The following sanctions may also be imposed: exclusion and/or administrative ban from all or a portion of any University premises or any University-sponsored activity, as specified in the sanction, for a definite or indefinite period of time; an administrative no-contact order with an individual(s); alcohol/substance use assessment and education; anger management assessment and education; essay/reflection or research paper; mandatory assessment with a licensed counselor; community service and/or participation in educational programs; removal from intercollegiate athletic team and loss of athletic scholarship.

### **3. Faculty, Staff, Affiliates, and Non-Affiliates (non-students) Respondents Sanctions**

Sanctions for non-student Respondents may include, but are not limited to, formal written warning, suspension without pay (vacation, holiday, or sick time benefits will be paid by UAH during suspension), imposed

probation, reassignment of job responsibilities or duties, mandatory counseling, mandatory attendance at the Employee Assistance Program, demotion, ineligibility to receive raise or promotion, suspension of annual merit increase, decrease in salary, transfer, revocation of tenure, termination (including termination of tenured faculty), campus ban/no trespass warning from UAHPD, prohibition on further employment at the University, loss of University benefits for retirees, and referral to proper law enforcement authorities for prosecution.

#### **D. Notice of Hearing Outcome Letter**

The Hearing Officer will provide the parties with the final hearing decision ("Hearing Outcome Letter") no later than seven (7) business days after the conclusion of the hearing. The Hearing Outcome Letter must include the following information:

- Identification of the allegations potentially constituting sexual harassment as defined in the Title IX Policy;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of UAH's Title IX Policy to the facts;
- A statement of and rationale for the result as to each allegation in the Formal Complaint, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- UAH's procedures for the Complainant and Respondent to appeal.

The Hearing Officer will simultaneously issue the "Hearing Outcome Letter" to both the Complainant and the Respondent within seven (7) business days following the hearing (or such longer time as the Title IX Coordinator (or Designee) may for good cause determine). The Hearing Outcome Letter may also identify protective measures implemented with respect to the Respondent or the broader University community. The Hearing Outcome Letter will not disclose any remedial measures provided to the Complainant.

The hearing decision will not be final and, if the Respondent is found responsible, sanctions will not be imposed until the appeal process is completed or the deadline to file an appeal has passed and no appeal was filed.

## **VI. APPEALS PROCESS**

Both the Complainant and the Respondent may seek a review of a dismissal of a Formal Complaint or the Hearing Officer's decision with regard to a finding of responsibility or non-responsibility and/or imposed sanctions. Appeals must be submitted to the appropriate Appeals Officer as outlined below:

- Student Appeals are submitted to the VP of Student Affairs or his or her designee.
- Staff Appeals are submitted to the relevant Vice President or his or her designee.
- Faculty Appeals are submitted to the Provost or his or her designee.

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

- The existence of a procedural irregularity that materially affected the outcome of the matter;
- The existence of new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome;
- The Title IX Coordinator or designee, Investigator, or Hearing Officer had a conflict of interest or bias that affected the outcome of the matter; and/or
- The recommended sanction(s) is too severe or lenient.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, because the Title IX Coordinator or designee and/or the Hearing Officer's decision will be presumed to have been decided reasonably and appropriately. Appeals are not intended to be a rehearing of the matter. The scope of the appeal will be limited only to the permissible grounds outlined above that have been accepted for review. In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. The Appeals Officer may speak to the Title IX Coordinator or designee, Investigator, the Hearing Officer, or the parties, as appropriate. The Appeals Officer will defer to the original decision by the Title IX Coordinator or designee or Hearing Officer, making changes to the findings only where there is clear error.

Written requests for appeal must be submitted within three (3) business days following delivery of the notice of the dismissal and/or outcome. Each party may respond in writing to any appeal submitted by the other party. Written responses must be submitted within three (3) business days following delivery of the notice of the written appeal. Written requests for appeal submitted by one party will be shared with the other party.

The appeal decision of the Appeals Officer will be provided simultaneously to both parties no later than fifteen (15) business days after all written responses are received. All appeal decisions need to be in writing.

If an appeal of the dismissal of Formal Complaint is granted, the Formal Complaint will be reinstated and the Title IX Coordinator will initiate a prompt, thorough, and impartial investigation of Prohibited Conduct in accordance with the Investigation Procedure outlined in Section IV of these Procedures. The decision of the Appeals Officer will be final and not subject to further appeal under the Title IX Policy.

If an appeal of the dismissal of a Formal Complaint is denied, the matter is closed, and the Hearing Officer's decision stands as final. The Appeals Officer will issue a written decision describing the result of the appeal and the rationale for the result.

If an appeal of a determination of responsibility and/or imposed disciplinary sanction(s) is granted, the Appeals Officer may remand the case to the Hearing Officer and provide instructions regarding the nature and extent of its reconsideration. The Hearing Officer will act promptly to reconsider the matter consistent with those instructions. Following reconsideration, the finding of the Hearing Officer or the sanction imposed by the Hearing Officer will be final and not subject to further appeal under the Title IX Policy.

Alternatively, the Appeals Officer may modify the Hearing Officer's decision and/or sanction in accordance with the Title IX Policy and these Procedures.

If the appeal of a determination of responsibility and/or imposed sanction(s) is denied, the matter is closed, and the Hearing Officer's decision stands as final.<sup>11</sup> The Appeals Officer will issue a written decision describing the result of the appeal and the rationale for the result. The appeal decision will be provided simultaneously to both parties no later than fifteen (15) business days after all written responses are received.

In the event of a determination that the Title IX Policy was violated by an employee, the Hearing Outcome Letter and appeal decision will be provided to the Dean of the Respondent's School or College and/or Department Chair (if the Respondent is a faculty member), the Provost (if the Respondent is a Dean), or relevant Vice President and/or appropriate Supervisor (if the Respondent is a staff member or third-party).

## **VII. REMEDIES**

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

## **VIII. OTHER RELEVANT INFORMATION**

### **A. External Agreements**

The University will not recognize or enforce agreements between the parties outside of these Procedures. The University will recognize, however, a lawfully issued protective order under Alabama law.

### **B. Withdrawal and Readmission**

If a student Respondent voluntarily withdraws from the University, fails to re-enroll for a subsequent semester, is no longer employed by the University or is no longer associated with the University while a Formal Complaint against him or her is pending, permission for readmission will be considered only after the charges have been resolved. For student Respondents, a hold will be placed on the Respondent's record that prevents them from registering or enrolling at the University in the future. The Respondent may be prohibited from entering campus or attending campus-sponsored events. The Respondent's conduct

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<sup>11</sup> The appeal is final pursuant to the Title IX Policy and these Procedures but a Respondent may have additional rights under separate policies and procedures.

record/ personnel file may indicate that they disassociated from the University after a complaint was asserted and pending disciplinary review. Resolution of the case and permission from the Title IX Coordinator or designee will be required before a Respondent is permitted to return to the University.

### **C. Preservation of Records**

The Title IX Coordinator and/or the Human Resources Department/ Provost Office will maintain for a period of seven (7) years all records related to the following: all Formal Complaints, including the investigation and disposition, any disciplinary sanctions imposed, any remedies provided to the Complainant, any audio or audiovisual recording or transcript of the live hearing, any appeal and results, any informal resolution and the results there from, and all materials used to train Title IX Coordinators, Deputy Title IX Coordinators, Title IX Investigators, Hearing Officers, and any person who facilitates a voluntary informal resolution process.

The date of the record's creation begins the seven (7) year period. All records maintained pursuant to this provision are considered confidential and subject to applicable state and federal privacy laws.