

# Policy against Sexual Harassment and other Sexual Misconduct

This policy supersedes all other policies that may be listed in the student, staff, and/or faculty handbooks. This policy may be referred to, in its entirety, as UNA's Title IX and Sexual Misconduct Policy.

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## I. Title IX Coordinator

The University has designated Kayleigh Baker as the University's Title IX Coordinator. As the Title IX Coordinator, this individual has been authorized to effectively coordinate the University's

compliance efforts and responsibilities under Title IX. Further, the Title IX Coordinator oversees implementation and enforcement of this Policy and compliance with all other applicable rules and regulations.

The Title IX Coordinator's contact information is as follows:

Kayleigh Baker, Title IX Coordinator and Compliance Administrator  
titleix@una.edu  
202 Guillot University Center  
UNA Box 5023  
Florence, AL 35632  
(256) 765-4223

The Title IX Coordinator acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Title IX Coordinator, contact the University President in 601 Cramer Way, Room 110, (256) 765-4211.

Any additional reference to the Title IX Coordinator under this Policy should be read to include the Title IX Coordinator or designee.

## II. Glossary

1. Advisor: person of a party's choice, who may be an attorney, who may accompany the party during any meeting or proceeding under this Policy
2. Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment or another form of sexual misconduct under this Policy.
3. Days: All references to "days" under this Policy is construed to mean "Business Days" when the University is in normal operation.
4. Decision-Maker: This refers to those who have decision-making and sanctioning authority within the Formal Grievance process.
5. Determination: A conclusion by a preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate policy.
6. Employee: An employee is an individual who receives compensation for work or services for which the University has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the result of the work or service. For purposes of this Policy, University faculty, staff, and student employees are considered "employees." Volunteers and independent contractors are not considered "employees."
7. Finding: A written conclusion by a preponderance of the evidence, issued by the decision-maker(s), that the conduct did or did not occur as alleged.
8. Formal Complaint: a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or another form of sexual misconduct against a Respondent and requesting that the University investigate the allegation of sexual harassment.

9. Formal Grievance Process: The formal Grievance Process is one method of formal resolution designated by the University to address conduct that falls within this Policy and which complies with the requirements of 34 CFR Part 106.45. All Formal Complaints go through the Formal Grievance Process unless dismissed or an informal or alternative resolution is agreed upon by all parties and the Title IX Coordinator.
10. Grievance Process Pool: This includes any investigators, hearing officers, appeals officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same cases.)
11. Informal Resolution/Alternative Resolution: In lieu of the formal grievance process, upon the agreement of the parties and the Title IX Coordinator, a formal complaint may be resolved via an informal or alternative resolution. This could include an alternative mechanism such as mediation or restorative justice, situations in which the Respondent accepts responsibility for violation Policy, or when the Title IX Coordinator can resolve the matter by providing supportive measures to remedy the situation.
12. Notice: Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
13. Notice of Investigation and Allegations: Notice of allegations of Prohibited Conduct is deemed to have been properly provided when written notification of the allegations and alleged code of conduct violation is sent to the student's assigned University of North Alabama email address, delivered via Certified Mail to the local or permanent address(es) of the parties as indicated in official University records, or personally delivered to the student. University email (userID@una.edu) is the University's primary means of communication with students, staff, and faculty. Students, staff, and faculty are responsible for all communication delivered to their University email address.
14. Parties: Parties include the Complainant(s) and Respondent(s), collectively.
15. Respondent: An individual, or group of individuals such as a student organization, who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
16. Student: A student, under this Policy, is any individual who has accepted an offer of admission or who has registered or enrolled in coursework or University education programs, including, but not limited to, SOAR and Study Abroad, or anyone who otherwise is participating in, or attempting to participate in the University's education programs or activities as a student and who maintains an ongoing relationship with the University.
17. Title IX Team: This includes the Title IX Coordinator, all staff in the Office of Title IX, any deputy coordinators, and anyone in the Grievance Process Pool.
18. University Provided Advisor: A person, who may be, but is not required to be, an attorney, provided by the University, without fee, to any party, to conduct cross-examination on behalf of that party at a live hearing before the Decision-makers.

### III. Confidentiality and Privacy

Information learned through a report or Investigation under this Policy is kept as private as possible and shared only on a need to know basis in order to comply with state or federal laws or to assist in the active review, investigation, or resolution of the report and related issues. University employees and/or agents assisting with any alleged Prohibited Conduct falling under this Policy are expected to safeguard private information in accordance with applicable laws (including, but not limited to, FERPA and other privacy laws). Information about incidents of alleged Prohibited Conduct must be shared with relevant administrators if the Title IX Coordinator determines that the University needs to take action in order to provide a safe and non-discriminatory environment for the entire campus community, but that disclosure will be as limited as possible.

Nothing in this Policy should be construed to unreasonably or unlawfully limit a party's ability to prepare for, or participate in, the process used to address potential violations of this Policy. Notwithstanding, the concern for privacy extends to the parties, advisors, and witnesses. The misuse of information provided by the Office of Title IX, including the disclosure, duplication, or dissemination of information for a purpose unrelated to the gathering of evidence and/or witnesses or otherwise not for the purpose of participating or preparing for the Investigation may result in violations under this Policy.

### IV. Reporting

The University of North Alabama takes allegations of Prohibited Conduct under this Policy seriously and is committed to taking immediate action to combat Prohibited Conduct, prevent its recurrence, and remedy its effects. The University will address all reports under this Policy with a prompt, thorough, and impartial inquiry to determine what is more likely than not to have occurred and to take appropriate steps to resolve the situation and determine an equitable resolution.

1. Prompt Reporting

There is no time limit on reporting or filing complaints of violations of this Policy; however, prompt reporting is encouraged. The University strongly encourages individuals to timely report alleged incidents of Prohibited Conduct or related retaliation to the Office of Title IX and to law enforcement agencies. Timely reporting of alleged Prohibited Conduct allows the University to take steps toward ending the Prohibited Conduct, preventing its recurrence, and remediating its effects. With regard to criminal investigations, preservation of evidence (such as clothing, bodily fluids, and other physical evidence) may strengthen law enforcement's ability to investigate.

A delay in reporting may limit the University's ability to pursue a formal investigation in certain circumstances. Further, a delay in reporting may limit the University's ability to address inappropriate behavior. Delays may also mean that certain witnesses, evidence, and/or parties are no longer affiliated with or available to the University. Regardless, as previously stated, there is no time limit to report violations under this Policy.

## 2. Reporting to Law Enforcement

A Complainant has the option to speak with the University Police Department (UPD) or local law enforcement about the alleged Prohibited Conduct. A Complainant may alternatively or additionally notify the Office of Title IX, another Official With Authority (OWA), or other University employees about the incident. These campus representatives can also assist the Complainant with contacting law enforcement if the Complainant would like to file a formal criminal complaint; however, a Complainant is not required to report to law enforcement. The initial decision to report the alleged Prohibited Conduct to anyone ultimately rests with the Complainant.

The University encourages individuals to immediately report acts or threats of sexual assault/rape, dating and domestic violence, sexual exploitation, stalking, or any dangerous behavior to UPD, local police authorities, or law enforcement where the alleged incident took place. Law enforcement agencies can be contacted by calling Emergency 911. UPD may be contacted in the Basement of Keller Hall, University of North Alabama; [www.una.edu/police](http://www.una.edu/police); 256-765-4357.

Local law enforcement agencies are not required to share with the University when they receive notice of an alleged incident (Florence Police Department, Muscle Shoals Police Department, Lauderdale County Sheriff's Office, Colbert County Sheriff's Office, etc.). Therefore, to enable the University to assist a Complainant with supportive measures, individuals who have contacted law enforcement are encouraged to also report to the Title IX Coordinator.

## 3. Reporting to the Title IX Coordinator, other Officials with Authority, and Mandated Reporters

The Title IX Coordinator and all staff in the Office of Title IX can receive complaints of Prohibited Conduct. Reports may also be made to the following individuals who have been identified as Officials with Authority (OWAs):

- Members of the President's Executive Council
- Assistant Vice President for Human Resources
- Associate Vice President for Student Affairs
- Director of Student Conduct
- Title IX Coordinator and Compliance Administrator
- Kilby Laboratory School Employees

Reports under this policy may be made directly to the Title IX Coordinator by phone, email, in-person, through the mail, or online<sup>1</sup>. Contact information for the Title IX Coordinator is:

Kayleigh Baker, Title IX Coordinator and Compliance Administrator

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<sup>1</sup> Reports may be made online at: <https://www.una.edu/titleix/reporting.html>

titleix@una.edu  
202 Guillot University Center  
UNA Box 5023  
Florence, AL 35632  
(256) 765-4223  
[www.una.edu/titleix](http://www.una.edu/titleix)

The Office of Student Conduct professional staff can also receive complaints of Prohibited Conduct when the Respondent is a University student. Contact information for the Office of Student Conduct is available at [www.una.edu/student-conduct](http://www.una.edu/student-conduct)

The Office of Human Resources can also receive complaints of Prohibited Conduct involving faculty, staff, or student employees. Contact information for the Office of Human Resources is available at [www.una.edu/humanresources](http://www.una.edu/humanresources)

All employees of the University (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.<sup>23</sup> Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the University. Supportive measures may be offered as the result of such disclosures without formal University action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of University policy and can be subject to disciplinary action for failure to comply.

#### 4. Confidential Resources

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, meaning they are not required to report

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<sup>2</sup> When a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though the University is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

<sup>3</sup> A Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

actual or suspected discrimination or harassment to appropriate university officials. They can offer options and advice without any obligation to inform an outside agency or campus official unless a Complainant has requested information to be shared. Therefore, those individuals whose offices have been designated as a “Confidential Resource” are not Mandated Reporters and are not required to make reports to the Title IX Coordinator. However, these individuals are encouraged, in appropriate circumstances, to recommend that the Complainant contact the Office of Title IX.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following on-campus Confidential Resources:

- Student Counseling Services 256-765-5215
- University Health Services 256-765-4328
- Center for Women’s Studies 256-765-4380
- Center for Social Inclusion 256-765-5137

For the most up to date list of on-campus Confidential Resources, as well as Community Resources, please visit [www.una.edu/titleix](http://www.una.edu/titleix)

All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. For UNA students, licensed counselors from Student Counseling Services are available to assist UNA students. Students can be seen by appointment or on a walk-in basis for crisis intervention during usual UNA operating hours.<sup>4</sup>

For UNA employees, counseling benefits are available through a Blue Cross Blue Shield (BCBS) provider. To obtain provider information, visit <https://www.una.edu/humanresources/benefits/health-insurance.html> to view the providers.

##### 5. Student Organizations and Teams

The grievance process described in this Policy will be utilized related to violations by the individual(s) implicated in a formal complaint. If evidence discovered in an investigation proves the incident(s) constituting Prohibited Conduct were sanctioned by a student organization or team, a follow-up investigation into the organization’s role may be undertaken. For more information about Student Organizational Misconduct, please refer to the Student Code of Conduct.

##### 6. Amnesty for Parties and Witnesses

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<sup>4</sup> In instances where in-person counseling is not available for an extended period of time, such as during times where the University may rely exclusively on remote learning, Student Counseling Services may offer tele-mental health services. Tele-mental health services may be limited to those students residing in the State of Alabama due to licensure requirements. The Office of Title IX or Student Counseling Services may be able to assist out-of-state students in finding alternate resources in these circumstances.

The University of North Alabama 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 or participate in an investigation for that reason. The University will not pursue minor disciplinary violations against a student for their improper use of alcohol or drugs (e.g., underage drinking) if the student makes a good faith report of Prohibited Conduct or participates in a Title IX investigation. These policy violations will not be overlooked; however, rather than punishment, the University will provide education options and referrals. For more information, please visit, <https://www.una.edu/policies/medical-amnesty--good-samaritan-policy.html>

7. Mandatory Reporting of Child Abuse to UPD

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 UPD. The University further encourages those with responsibilities that involve interaction with children, including students, volunteers, and representatives as well as third-party vendors and their employees, representatives, and/or volunteers, that contract for use of University facilities to report (orally and then in written form) known or suspected child abuse to UPD. Sexual abuse, which is one element of the more comprehensive term “abuse” under the Alabama law, includes actual or attempted rape, molestation, sexual exploitation, etc. To review additional information relating to reporting potential child abuse, including how to report to UPD, please visit the Office of Title IX’s website.

8. Federal Statistical Reporting Obligations

Reports under this Policy may also be reportable for Federal Statistical Reporting Purposes under the Clery Act. Campus Security Authorities (CSAs), including the Title IX Coordinator, have a duty to report statistical information regarding sexual assault, domestic violence, dating violence and stalking reports to UPD. All personally identifiable information is kept confidential, but information regarding the type of incident and its general location is required for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

For further information about Campus Security Authorities, the Annual Report, or obligations under the Clery Act, please contact UPD.

## V. Applicable Scope

Students, staff, administrators, and faculty are entitled to a working and educational environment free of sexual harassment and other forms of sexual misconduct. When an alleged violation of this Policy is reported, the allegations are subject to resolution under the University’s grievance process as determined by the Title IX Coordinator.

When the Respondent is a member of the University community, a grievance process may be available regardless of the status of the Complainant. The community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures accompanying this Policy may be applied to incidents, patterns, and/or to campus climate, all of which may be addressed and investigated in accordance with this Policy. Other forms of discriminatory harassment may be addressed by procedures set out in accordance with other University policies.

#### Faculty members with property interests

As set out in the Faculty Handbook, in certain situations faculty members may have a property interest in their jobs in the form of tenure or a set amount of time remaining on a contract. Therefore, to assure the protection of individual rights and due process in actions involving the disciplinary suspension, dismissal, or other termination for cause (see Faculty Handbook 2.6.2, Termination for Cause), faculty members are entitled to procedural due process. As outlined in the Faculty Handbook, 2.8, Title IX grievances are exceptions to the Due Process procedures outlined within the Faculty Handbook and instead fall under this Policy (i.e. the Title IX grievance process will be followed rather than the procedures explained in section 2.8 of the Faculty Handbook). A Title IX violation under this Policy may result in the revocation of tenure and/or termination without any additional hearing.

## VI. Prohibited Conduct Defined

For purposes of this Policy, conduct, or attempted conduct, that is deemed, by a preponderance of the evidence to be sex or gender-based and meets the definitions of any of the types<sup>5</sup> of Prohibited Conduct identified below constitutes a violation of this Policy. In addition to the Prohibited Conduct outlined herein, unlawful discrimination on the basis of sex, sexual orientation, gender identity, gender expression, and pregnancy is prohibited by this Policy.

### 1. Type 1 Prohibited Conduct: Sexual Harassment and Retaliation

The Department of Education's Office for Civil Rights (OCR) and the Equal Employment Opportunity Commission (EEOC) regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. The University has adopted the following definition of Sexual Harassment in order to address the unique

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<sup>5</sup> Pursuant to 34 CFR part 106, certain types of sexual misconduct, specifically, sexual harassment require certain procedural components. This is illustrated in this Policy's accompany procedures. Under certain circumstances, federal regulations require technical dismissals of conduct that is outside of 34 CFR part 106; however, that conduct is permitted to, and in fact would, violate other aspects of this Policy. Therefore, in order to ensure clear compliance with 34 CFR part 106, the University of North Alabama has divided this Policy into types based on whether or not it falls under Sexual Harassment as defined by 34 CFR part 106. Except to the extent required by the federal regulations, whether the Prohibited Conduct is Sexual Harassment as defined by 34 CFR part 106 or another form of sexual misconduct, there is no other distinction between Type 1 and Type 2 prohibited conduct. One level of conduct is not "better" or "worse" than another in the eyes of the Title IX Coordinator or the University.

environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking as defined below.

- a. Quid Pro Quo sexual harassment: Under this Policy, quid pro quo sexual harassment occurs when, on the basis of sex, an employee of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual or sex- and/or gender-based<sup>6</sup> conduct.

Examples of aid, benefit, or service include, but are not limited to: an individual'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. Violations of the University's Consensual Relationship Policy may also be deemed instances of "unwelcome sexual conduct" and therefore constitute Quid Pro Quo sexual harassment.

- b. Hostile Environment sexual harassment: Under this Policy, hostile environment sexual harassment occurs when unwelcome sexual or sex- and/or gender-based<sup>7</sup> conduct occurs 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 education program or activity.
- c. Sexual Assault:<sup>8</sup> Under this Policy, sexual harassment in the form of sexual assault occurs when the following incidents of forcible and non-forcible sex offenses occur.

Forcible sex offenses are defined as any sexual act, directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent. Forcible sex offenses include the following:

- i. Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

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<sup>6</sup> Includes gender.

<sup>7</sup> Includes gender.

<sup>8</sup> Defined in 20 USC 1092(f)(6)(A)(v)

- ii. Sodomy is oral or anal sexual intercourse with another person without the consent of the Complainant.
- iii. Sexual assault with an object occurs when an object or instrument is used to penetrate, however, slightly, the genital or anal opening of the body of another person, without the consent of the Complainant.
- iv. Fondling is the touching of the private body parts of another person, including the buttocks, groins, and breast, for the purpose of sexual gratification without the consent of the Complainant.

Non-forcible sex offenses include:

- v. Incest is nonforcible sexual intercourse between persons who are related to each other as prohibited under the laws of the state in which the intercourse occurs.
  - vi. Statutory Rape is nonforcible sexual intercourse with a person who is under the statutory age of consent in the state in which the intercourse occurs.<sup>9</sup>
- d. Dating Violence:<sup>10</sup> Under this policy, sexual harassment in the form of dating violence occurs when, on the basis of sex, violence, or sexual violence, is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined based on the parties' statements and with consideration of:
- i. the length of the relationship,
  - ii. the type of relationship, and
  - iii. the frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Dating violence does not include acts covered under the definition of domestic violence.

- e. Domestic Violence:<sup>11</sup> Under this policy, sexual harassment occurs in the form of Domestic Violence when, on the basis of sex, any felony or misdemeanor crimes of violence are committed:
- i. by a current or former spouse or intimate partner of the Complainant,
  - ii. by a person with whom the Complainant shares a child in common,
  - iii. by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner,

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<sup>9</sup> In Alabama, this would include individuals under the age of 16

<sup>10</sup> Defined in 34 USC 12291(a)(1)

<sup>11</sup> Defined in 34 USC 12291(a)(8)

- iv. by a person similarly situated to a spouse of the Complainant under Alabama law, or
  - v. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Alabama.
- f. Stalking:<sup>12</sup> Under this policy, sexual harassment occurs in the form of stalking when, on the basis of sex, a person engages in a course of conduct directed at a specific person that would cause a reasonable person to:
- i. Fear for the person's safety or the safety of others; or
  - ii. Suffer substantial emotional distress.

For the purposes of this definition:

- i. 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.
  - ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
  - iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
- g. Retaliation:<sup>13</sup>
- i. It is prohibited for the University or any member of the University community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.
  - ii. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.
  - iii. Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

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<sup>12</sup> Defined in 34 USC 12291(a)(30)

<sup>13</sup> As defined under 34 CFR part 106

- iv. The exercise of rights protected under the First Amendment does not constitute retaliation.
- v. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## 2. Type 2 Prohibited Conduct: Sexual Misconduct

- a. Sexual Contact: any non-consensual intentional touching or physical contact, or attempts thereof, that is done for the purpose of the Respondent or a third-party's sexual gratification or arousal. This definition is not limited to the touching or contact of a Complainant's private or intimate parts, if a sexual purpose can otherwise be established. For example, the touching of a non-intimate body part on a Complainant (i.e. feet) while the Respondent is touching his own private part, if done non-consensually, would violate this policy.
- b. Sexual Exploitation: Under this policy, sexual exploitation occurs when there is the taking or attempted taking of non-consensual 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:

- i. Causing or attempting to cause the incapacitation of another individual for sexual purposes;
- ii. Electronically recording, videoing, photographing, or transmitting sexual sounds or images of another individual against that person's will or without their consent;
- iii. Allowing a third-party to observe sexual acts without all parties' consent;
- iv. Prostituting another individual for one's or another's gain;
- v. Exposing one's genitals for the purpose of sexual gratification without consent;
- vi. Intentionally exposing another's genitals or intimate body parts without their consent;
- vii. 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); or
- viii. Knowingly exposing another individual to a sexually transmitted disease/infection or HIV without their consent.

## 3. Type 3 Prohibited Conduct:

- a. Making False Statements

- i. It is a violation of this Policy to report intentionally dishonest or malicious allegations of Prohibited Conduct. If a complaint is brought in bad faith as demonstrated by a preponderance of the evidence, disciplinary action may be taken against the person making the complaint. In addition to violating this Policy, a person filing a bad faith report of Prohibited Conduct may be in violation of other University policies or state law.
      - ii. A determination regarding Responsibility, alone, is not sufficient to conclude that any party made a false statement in bad faith.
    - b. Failure to Comply
      - i. Failure to comply means a failure to comply with directions of University officials, who include, but are not limited to, any employee of the Office of Title IX Office or any other member of the Title IX team.
      - ii. For purposes of this Policy, failure to comply includes a failure to comply with a No Contact Order or other directive issued by the Title IX Office or Title IX team in response to a report of alleged Prohibited Conduct where the individual's failure to comply directly impacts the other party or parties to the No Contact Order. Failure to comply also includes disseminating documents received in the Grievance Process for an unauthorized purpose.
    - c. For students and student organizations, charges resulting from this category Prohibited Conduct will be charged as a violation Section 20 of the Code of Student Conduct - Abuse of Conduct Process.
    - d. For staff, charges resulting from this category of Prohibited Conduct will be charged through Human Resources and will constitute Conduct Warranting Disciplinary Action pursuant to the Staff Handbook.
    - e. For Faculty, charges resulting from this category of Prohibited Conduct will be charged through Human Resources pursuant to the Faculty Handbook.
4. Consent
  - a. Consent is clear permission to engage in sexual activity, given knowingly and voluntarily, by words or action.
    - i. 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.
    - ii. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication prior to engaging in the activity is highly recommended.
    - iii. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.
    - iv. A lack of resistance does not grant consent.

- v. Previous consent does not grant consent to future sexual acts.
  - vi. Consent to some sexual acts cannot be presumed to be consent for other sexual acts.
  - vii. A current or previous intimate relationship is not sufficient to constitute consent.
- b. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.
  - c. It is the responsibility of the initiator of any sexual activity to obtain their potential partner's consent; however, proof of consent or non-consent is not a burden placed on either party involved in an incident. The University must determine whether a policy has been violated based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances.
  - d. Consent to a sexual act is not freely given if the consent is obtained by force or coercion.<sup>14</sup>
    - i. Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

- ii. "Coercion" is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on multiple factors, including the type or extent of pressure used. If a person makes clear that they do not want to engage in certain sexual activities or that they want to stop, continued pressure beyond that point may constitute coercion.
- e. Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. Therefore, in situations when the Respondent knew or should have known that the Complainant is physically or mentally incapacitated, any "consent" obtained is invalid. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation is based on the totality of the circumstances and all relevant indicators of an individual's state of mind. Situations wherein an individual is deemed to have an inability to give consent in situations where the individual is include:

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<sup>14</sup> Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying "no" may be part of the kink and thus consensual, so any evaluation of communication in kink situations will be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

- i. Incapacitated due to alcohol, drugs, or other substances including, but not limited to, prescription medications;
  - A. Determining consent when alcohol or other drugs are involved: In incidents involving alcohol, drugs, or other substances, the totality of the circumstances is analyzed to determine whether the use of alcohol, drugs, or other substances caused an inability make rational, reasonable decisions about sex activity. Whether a Respondent knew or reasonably should have known of the Complainant's inability to give knowing consent is an element of the policy violation. An individual's use of alcohol or drugs does not diminish that individual's responsibility to obtain consent if that individual is the one who initiates sexual activity. Incapacitation differs from drunkenness or intoxication. Incapacitation is a state where an individual cannot make a rational, reasonable decision because they lack the capacity to make informed judgments about the situation.

Some factors considered to determine whether an individual is incapacitated due to alcohol, drugs, or other substances and therefore not able to give consent include, but are not limited to:

- whether the individual was conscious or unconscious,
  - whether the individual became sick due to intoxication,
  - the individual's ability to communicate and/or slurred speech,
  - the individual's coordination (ex. ability to walk, dress/undress, perform simple tasks),
  - and any other action that would be indicative of a level of cognitive functioning.
  - The existence of any one of these factors may support a finding of incapacitation for purposes of this policy. The mere presence of alcohol, drugs, or other substances does not equate to an inability to give consent. Stated differently, it is possible for an individual to have alcohol, drugs, or other substances in their system and not be incapacitated.
- ii. Unconscious, asleep, or in a state of shock.
  - iii. 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.
  - iv. Mentally or physically incapacitated and not reasonably able to give consent.

## 5. Collateral Conduct

- a. In the event that an allegation of an additional University policy violation, such as a violation of the Code of Student Conduct, arises out of the same facts or circumstances of a violation under this Policy, all related offenses may be addressed under this Policy as collateral behavior at the discretion of the Title IX Coordinator.

## VII. Jurisdiction

1. For Type 1 Prohibited Conduct, the University has jurisdiction under 34 CFR Part 106 and this Policy when the conduct occurs:
  - a. In the United States, and
  - b. As part of a University's education program or activity, including
    - i. On-campus locations,
    - ii. Off-campus locations that are owned or controlled by a University Registered Student Organization, or
    - iii. Off-campus locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurs
2. Jurisdiction, generally
  - a. Notwithstanding the considerations under subsection (1), the University retains jurisdiction to address all categories of prohibited conduct under this Policy when:
    - i. The Respondent is a University student, staff-member, or faculty-member; and
    - ii. The conduct occurs on-campus or at a University-sponsored event; or
    - iii. The conduct directly relates to a University investigation under this or a related University Policy.
  - b. Online Harassment and Misconduct: This Policy is written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities or use University Networks, technology, or equipment. While the University may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the Title IX Coordinator, the University will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via SnapChat or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the University community.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this policy when such

online conduct can be shown to cause a substantial in-program disruption. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline. Off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

3. With regard to allegations of Prohibited Conduct as outlined herein, this Policy will supersede all other policies and procedures. Where there is a delayed report of Prohibited Conduct, the Policy in effect on the date of the alleged incident will be applied with regard to what is considered Prohibited Conduct the procedures in effect on the date of the report will be applied with regard to the applicable procedures. If an investigation involves multiple reports of Prohibited Conduct where it would be appropriate to consider all reports with regard to a totality of the circumstances analysis, the Policy in effect as of the date of the most recent alleged Prohibited Conduct will be applied unless the previous conduct would not have constituted a policy violation.

## VIII. Burden of Proof/Standard of Evidence

1. Burden of proof, including the burden of production, rests on the University. This means that the University is obligated to prove any and all allegations of Prohibited Conduct brought forth under this Policy and obligated to come forward with sufficient evidence to support any determination made. However, nothing in this policy should be interpreted to place any restrictions on the ability of any party to gather and present relevant evidence.
2. All cases pursuant to this Policy will be determined based on the preponderance of the evidence standard (i.e. whether it is more likely than not that the Respondent committed each alleged violation).
3. Unless ultimately proven otherwise pursuant to the standards and processes of this Policy and any related grievance process, individuals accused of Prohibited Conduct are presumed to be not responsible for any alleged violation.

## IX. Supportive Measures

1. Supportive measures are non-disciplinary, non-punitive, and individualized services offered as appropriate, as reasonably available, without fee or charge to the parties 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 University's 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 sexual harassment.
2. The University will institute supportive measures to the parties upon receiving a formal complaint or to a Complainant once a report is brought forth to the Title IX Coordinator. At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already.

3. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The grievance process is not initiated, though the Complainant can elect to initiate it later, if desired.
4. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
5. Supportive measures will be provided confidentiality, to the extent they can be, without interfering with the University's ability to provide the supportive measures, and will always be provided in a way that is as private as possible.
6. Support measures will be implemented under this Policy pursuant to procedures developed by the Title IX Coordinator.

## X. Emergency Removal

1. After a complaint of Type 1 Prohibited Conduct has been received, the Title IX Coordinator may remove a Respondent from University education programs and/or activities on an emergency basis, if an individualized safety and risk analysis determines:
  - a. An immediate threat
  - b. To the physical health OR safety of
  - c. Any student or other individual
  - d. And that the threat arises from the allegations under this Policy
2. If, after an individualized safety and risk analysis, an Emergency Removal occurs, the Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal.
3. Procedures for conducting the individualized safety and risk analysis will be determined by the Title IX Coordinator, in coordination with appropriate University offices.
4. Procedures for conducting the opportunity to challenge the decision will be determined by the Title IX Coordinator.
5. Non-student employee Respondents may be placed on Administrative Leave during the pendency of any investigation under existing University policies and procedures regardless of the outcome of any individualized safety and risk analysis.

## XI. Grievance Process

1. Grievance Process, generally
  - a. The formal grievance process and accompanying procedures are used after the signing of a Formal Complaint. The formal grievance process continues until there is a final resolution under the grievance process, the Formal Complaint is dismissed, or an informal resolution is agreed to, adopted, and completed.
  - b. All meetings, discussions, and or/hearings that occur as part of the Grievance Process are closed to the general public.
  - c. All parties will have the same opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to any

related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- d. The University sets out to resolve all Formal Complaints, including appeals and the completion of any Informal Resolutions, in a reasonably prompt manner. In most instances, this is accomplished within 90 days from the time the Formal Complaint has been filed.
- e. Delays for good cause are allowed under this Policy pursuant to procedures developed by the Title IX Coordinator so long as:
  - i. Any extension for good cause is a limited extension (i.e. not indefinite) and
  - ii. Written notice is provided to all parties for the reason for delay.

## 2. Filing of a Formal Complaint

- a. Upon receipt of a report of sexual harassment or sexual misconduct under this Policy, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, with or without the filing of a Formal Complaint. The Title IX Coordinator will also explain to the Complainant the process for filing a Formal Complaint. If a Formal Complaint is not filed at this time, it may be filed at a later time. There is no time limit for filing a Formal Complaint.
- b. A Formal Complaint may only be filed by the Complainant<sup>15</sup> or the Title IX Coordinator, on behalf of the Complainant. The Title IX Coordinator may file a Formal Complaint on behalf of the Complainant if the Title IX Coordinator makes a determination that a Formal Complaint should be filed pursuant to the procedures developed under this Policy by the Title IX Coordinator.<sup>16</sup>
- c. If a Formal Complaint is pursued, the investigation and grievance process will determine whether or not any Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

## 3. Dismissal/Consolidation of a Formal Complaint:

- a. In the case of an allegation of Type 1 Prohibited Conduct, the Title IX Coordinator will dismiss the formal complaint if:
  - i. The Complainant was not participating or attempting to participate in the University's education program or activities at the time the Complaint was filed, or
  - ii. A determination is made that the conduct, even if proved:
    - A. Would not satisfy the definitions under Type 1; or
    - B. Did not occur in the University's education program or activity; or

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<sup>15</sup> In the case where a parent or guardian has a legal right to act on behalf of any party, or other individual, this Policy does not limit their ability to do so. This would include the ability to file a formal complaint.

<sup>16</sup> If the Title IX Coordinator signs a Formal Complaint, this does not make the University or the Title IX Coordinator a party in the Grievance Process. The Complainant would still be offered supportive measures and the opportunity to participate in all aspects of the Grievance Process, including the hearing.

- C. Did not occur in the United States.
- iii. If the Title IX Coordinator must dismiss the formal complaint with regard to the Type 1 Prohibited Conduct, the allegation may be pursued elsewhere under any applicable section of this or any other University Policy.
- b. The Title IX Coordinator will consider dismissing the formal complaint if:
  - i. The Complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the Formal Complaint; and/or
  - ii. The Respondent is no longer enrolled or employed by the University; and/or
  - iii. The University is unable to gather evidence sufficient to reach a determination as to the formal complaint and the allegations therein.
- c. For prohibited conduct that falls outside of Type 1, permissive dismissals are permitted under the Policy for any of the above reasons and pursuant to any additional procedures developed by the Title IX Coordinator.
- d. Any dismissal must be accompanied by prompt written notice to all parties indicating the dismissal and the reasons why.
- e. Following a dismissal, all parties will have the option to appeal based on any of the following grounds:
  - i. Procedural irregularity that affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time the dismissal was made, that could affect the outcome of the matter; OR
  - iii. The Title IX Coordinator, investigator(s), or decision-maker(s), had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
  - iv. Any other appeals rights may be permitted under this Policy pursuant to procedures developed by the Title IX Coordinator so long as:
    - A. All parties are notified in writing when an appeal is filed and given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
    - B. Appeal procedures are implemented equally for all parties,
    - C. Appellate decision-makers will not be the same person or person(s) as the decision-maker that reached the determination for responsibility
    - D. Appellate decision-makers will issue a written determination, provided simultaneously to the parties, describing the result of the appeal and the rationale for the result
    - E. The same person will not hear both an appeal of a dismissal and an appeal of a hearing result.
- f. If all or a portion of a formal complaint is dismissed as described above, any remaining allegations under this Policy will continue using an appropriate grievance process set out under this Policy. Likewise, a claim may be dismissed

under this policy and referred to or reinstated by another University department for investigation.

- g. Consolidation of complaints may be permitted, at the discretion of the Title IX Coordinator, under the following circumstances:
    - i. When there are allegations by one Complainant against more than one Respondent;
    - ii. When there are multiple complaints against the same Respondent;
    - iii. When there are allegations against each party brought by the other party; or
    - iv. When the allegations otherwise arise out of the same facts or circumstances.
4. Investigation
- a. After the receipt of a formal complaint, a Notice of Investigation and Allegations (NOIA) will be sent to the parties. Notice will include:
    - i. Sufficient details known at the time, including:
      - A. Identities of the parties involved in the incident,
      - B. The conduct allegedly constituting Prohibited Conduct, and
      - C. The date and location of the alleged incident.
    - ii. 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.
    - iii. Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, as described under this Policy.
    - iv. Inform the parties that they may inspect and review evidence as described under this Policy.
    - v. Inform the parties of prohibitions, under this Policy or any other, against knowingly making false statements or knowingly submitting false information during the grievance process.
    - vi. Provide notice of any additional allegations added after the initial Notice
    - vii. Include time to prepare a response before any initial interview.
  - b. The Title IX Coordinator will assign one or more Investigators to meet with the parties and witnesses, gather evidence, and otherwise conduct the Investigation.
  - c. Evidentiary Review
    - i. Once the investigator(s) has made reasonable attempts to obtain all relevant inculpatory and exculpatory evidence, the Investigator will sort information into three types of groups: relevant, irrelevant but directly related, and neither relevant nor directly related.
      - A. Relevant information is that which either could prove or disprove an issue in the complaint. Relevant information is the information that the Investigator will use to draft the Investigative Report.
      - B. Irrelevant information may be directly related when it is connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and as such, it will not be relied upon in creating the Investigation Report;

however, parties will have the opportunity to review this category of evidence.

- C. Evidence that is neither relevant nor directly related is not shared with any party.
    - ii. After the Investigator(s) have sorted the evidence and begun working on the Investigative Report, the parties will be given a reasonable opportunity to review and respond, in writing, to all directly related evidence obtained.
    - iii. Each party will have a minimum of 10 days to review the evidence.
    - iv. Each party, along with their advisor(s), will have the opportunity to review and respond to all directly related evidence collected pursuant to procedures developed under this Policy by the Title IX Coordinator.
  - d. After all parties have had a minimum of 10 days to review all evidence collected, the Investigator(s) will prepare the Investigative Report.
    - i. The Investigative Report will include all relevant evidence collected during the investigative stage.
    - ii. The Investigative Report will include other information, as deemed necessary by the Investigator(s), pursuant the procedures developed under this Policy by the Title IX Coordinator.
    - iii. Each party, and their advisor, will receive a copy of the Investigative Report and have the opportunity to review and respond to the Report.
5. The investigation will be followed by a live-hearing.<sup>17</sup>
- a. The live-hearing will be conducted no sooner than 10 days after each party, and their advisor, received a copy of the Investigative Report.
  - b. The hearing will be recorded. A recording and/or a transcript of any live hearing will be made available to the parties for inspection and review.
  - c. The hearing may be overseen by a non-voting Hearing Administrator.<sup>18</sup>
  - d. The hearing will consist of three individuals who serve as “decision-makers.”
    - i. The Title IX Coordinator is prohibited from serving as a decision-maker.
    - ii. Any Title IX Investigators who investigated a case are prohibited from serving as decision-makers.
    - iii. Individuals who have served as an Advisor to any party in the case are prohibited from serving as decision-makers.
    - iv. In the event that a faculty member is charged with a policy violation under this Policy, the decision-makers must be tenured faculty.
  - e. In situations where questioning is required or permitted, all questioning must be conducted by the party’s advisor.
  - f. The decision-makers, after making a determination of responsibility, will issue a Finding, simultaneously, to all parties. It must include
    - i. The allegations;
    - ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the

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<sup>17</sup> As required under 34 C.F.R. Part 106

<sup>18</sup> At times, if no other conflict occurs, the Title IX Coordinator may serve in this role.

parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

- iii. Findings of fact supporting the determination;
- iv. A statement of, and rationale for, the result as to each allegation including:
  - A. Any disciplinary sanctions the University imposes on the respondent, and
  - B. Whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the Office of Title IX to the Complainant

g. Procedures will be developed pursuant to this Policy by the Title IX Coordinator

## 6. Appeals

- a. All parties will be entitled to appeal based on the following grounds:
  - i. Procedural irregularity that affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time of the determination regarding responsibility, that could affect the outcome of the matter; and/or
  - iii. The Title IX Coordinator, investigator(s), or decision-maker(s), had a conflict of interest or bias for or against complainant or respondents generally or the individual complainant or respondent that affected the outcome of the matter
- b. In faculty cases, after a sanction including the revocation of tenure is issued, each party will have an automatic opportunity to appeal the sanction to the University provost, or designee.
- c. All appeals require that:
  - i. All parties are notified in writing when an appeal is filed and given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
  - ii. Appeal procedures are implemented equally for all parties,
  - iii. Appellate decision-makers will not be the same person or person(s) as the decision-maker that reached the determination for responsibility
  - iv. Appellate decision-makers will issue a written determination, provided simultaneously to the parties, describing the result of the appeal and the rationale for the result

## 7. Informal Resolutions

- a. For Type 1 Prohibited Conduct:
  - i. The University will not offer an Informal Resolution process unless a Formal Complaint is filed.
  - ii. In instances where a Formal Complaint has been filed and the Respondent is an employee and one or more Complainants are students, Informal Resolutions will not be offered.
- b. For Type 2 Prohibited Conduct:
  - i. Informal Resolutions may be offered at any time after a report of Prohibited Conduct is received by the Title IX Coordinator.

- c. Informal Resolutions and Alternative Resolutions require the agreement of all parties and the Title IX Coordinator.
  - d. The University will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section.
  - e. Informal Resolutions are otherwise permitted under the Policy pursuant to procedures developed by the Title IX Coordinator.
8. Sanctions and Remedies
- a. Following any determination of Responsibility under this Policy, the University may implement Sanctions and/or Remedies.
  - b. After a determination is made by the decision-maker(s) that a Respondent is responsible for a policy violation, the decision-maker(s) may review additional information for the limited purpose of determining sanctions, including, but not limited to:
    - i. Written impact statements prepared and provided, in advance, from any parties;
    - ii. Circumstances surrounding or contributing to the incident, including the inherent severity of the incident, whether the behavior intentional, or premeditated and whether there was physical violence or a weapon involved;
    - iii. Factors specific to the Respondent, such as a history of misconduct, evidence of a pattern of behavior, and/or multiple violations within the same occurrence; and
      - A. In the case of a faculty Respondent, after determining that a responsible finding is forthcoming, the decision-maker(s) will make a recommendation on sanctions to the Vice Provost. The Vice Provost will consult with the Dean of the faculty member's college and review any relevant employee files in determining whether to agree with or deviate from the decision-maker(s) sanction. The Vice Provost will return their determination regarding sanctions, and a rationale for such sanctions and any deviation from the decision-maker(s) recommendation, to the decision-maker(s) in no more than 10 days.
    - iv. Whether any additional mitigating, aggravating, or compounding factors are at play.
  - c. Sanctions may be implemented pursuant to the specifications laid out in the accompanying procedures to this Policy. Those procedures will also include a non-exhaustive list of sanctions pursuant to the following ranges:
    - i. A staff member found responsible for violation of this Policy is subject to sanctions up to and including termination from the University.
    - ii. A faculty member found responsible for violation of this Policy is subject to sanctions up to and including the revocation of tenure and/or termination from the University.

- iii. A student found responsible for violation of this Policy is subject to sanctions up to and including expulsion from the University.
  - iv. A student organization found responsible for violation of this Policy is subject to sanctions including deactivation, de-recognition, and loss of all privileges for a specified or indefinite amount of time.
- d. Remedies are designed to restore or preserve a Complainant's equal educational access if a Respondent is found responsible for Prohibited Conduct under this Policy. The Title IX Coordinator is responsible for effectively implementing remedies. Upon finding a Respondent in violation of this Policy, remedies will be provided to the Complainant pursuant to the specifications laid out in the accompanying procedures to this Policy.

Remedies may include:

- i. Permanent one-sided No-Contact Orders, preference in class registration; preference in student-group, club, or athletics participation;
- ii. 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.
- iii. The continuation or implementation of any service the Complainant could have been eligible for or was receiving as Supportive Measures.
- iv. Other remedies determined by the Title IX Coordinator.

## XII. Advisors

1. Each party is required to have an Advisor present during the live hearing. It will be the responsibility of the Advisor to conduct questioning for the party at the live hearing. All questioning is subject to procedures developed by the Title IX Coordinator.
2. The University will provide an Advisor to any party who does not otherwise have an Advisor present for any reason at the time of the live hearing. This Advisor will be provided under this Policy pursuant to procedures developed by the Title IX Coordinator.
3. Aside from the live hearing, a party is permitted, but not required, to use an Advisor under this Policy pursuant to procedures developed by the Title IX Coordinator.
4. Any Advisor under this Policy may be, but is not required to be, an attorney.

## XIII. Training and Records

1. Members of the Title IX Team will be trained on an annual basis.
  - a. The University will provide training under this policy pursuant to procedures developed by the Title IX Coordinator to the following individuals:
    - i. Title IX Coordinator(s), including Deputy Title IX Coordinators
    - ii. Title IX Investigators
    - iii. Decision-Makers
    - iv. Appeals Officers

- v. Facilitators of Informal Resolutions
  - vi. University-provided Advisors
- b. The University will provide training to the above-listed individuals under this policy pursuant to procedures developed by the Title IX Coordinator on the following topics:
- i. The definition of Sexual Harassment under 34 CFR 106.30;
  - ii. The scope of the University's education program and activity;
  - iii. Conducting an investigation;
  - iv. The Grievance Process, including hearings, appeals, and informal resolution processes; and
  - v. Impartiality, including avoiding prejudice, conflicts of interest, and bias.
  - vi. The University will provide additional training to Investigators on the following topics:
    - i. Relevancy; and
    - ii. How to create an investigative report.
  - vii. The University will provide additional training to decision-makers on the following topics:
    - i. Technology that may be used at a live hearing; and
    - ii. Relevancy, including questions about the Complainant's sexual predisposition or prior sexual behavior.
  - viii. The University will provide additional training to the Title IX Team on other topics as determined by the Title IX Coordinator.
- c. The University will not provide any training that "relies" on sex stereotypes in training Title IX personnel on how to serve in those roles impartially and without prejudice, so that decisions are made on the basis of the individualized facts at issue and not on stereotypical notions of what "men" or "women" do or do not do.
2. Publication of Training
- a. The University will make current materials used to train the Title IX Coordinator, investigators, decision-makers, appeals officers, and facilitators of informal resolutions publicly available on the University's website.
  - b. The training will be published under this Policy pursuant to procedures developed by the Title IX Coordinator.
3. Records Retention
- a. The University will maintain all records under this Policy for a minimum of 7 years.
  - b. The types of records that will be retained include:
    - i. Documents related to any investigation under this Policy, including any recordings and/or transcripts of any hearing conducted;
    - ii. Documents related to any appeal or results from an appeal;
    - iii. Documents related to any informal resolution or results from an informal resolution;
    - iv. Documents related to training as discussed elsewhere in this Policy;
    - v. Documents related to any supportive measure taken;

- vi. Documents related to the University's rationale for not implementing supportive measures;
  - vii. Any other types of documentation in compliance with procedures developed by the Title IX Coordinator
- c. Notwithstanding other provisions under this Section, the University will maintain and dispose of all records in accordance with the Public Universities of Alabama General Records Disposition Authority.
  - d. The records will be retained under this Policy pursuant to procedures developed by the Title IX Coordinator.

## XIV. Prevention and Awareness

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

The objectives of the comprehensive education and awareness plan are to:

- Widely disseminate this Policy to the University community through email communications, publications, websites, training programs, and other appropriate channels of communication.
- Identify conduct that is considered a violation of this Policy by defining Prohibited Conduct.
- Create multiple reporting options and inform students, employees, and community members of those options to encourage reporting.
- Educate students, employees, and community members about University disciplinary procedures.
- Inform students, employees, and community members of available University resources.
- Provide safe and positive options for bystander intervention.
- Provide information regarding risk reduction, general safety recommendations, and the warning signs of abusive behaviors.
- Provide information about healthy relationships and encounters.

For specific information about prevention, education, or awareness programs offered by the University, contact the Title IX Coordinator.

## XV. Applicability

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

expression of personal opinion, particularly in the classroom. Nonetheless, speech or conduct of a harassing or hostile nature that occurs in the context of educational instruction may exceed the protections of academic freedom and constitute prohibited harassment if it meets the definition of sexual harassment.

2. Nothing in this Policy and related procedures should be interpreted to restrict any rights guaranteed under existing law, including the First Amendment, Due Process Clause of the Fifth and Fourteenth Amendments, or the Fourth Amendment of the United States Constitution.
3. Nothing in this Policy and related procedures should be interpreted to restrict or limit any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

## XVI. Conflicts of Interests

The Title IX Coordinator acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Title IX Coordinator, contact the University President in 601 Cramer Way, Room 110, (256) 765-4211. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. To raise concerns regarding a potential conflict of interest with any other individual involved in the procedures set forth under this Policy, please contact the Title IX Coordinator.

Matters related to this Policy should be addressed by people free of any actual or reasonably perceived conflicts of interest. 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 will 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 a party believes a person exercising investigative or decision-making authority under this Policy has a conflict of interest or bias relating to a party that would prevent the person from exercising their authority impartially, the party may make a prompt objection to the Title IX Coordinator (or designee) within five (5) days of becoming aware of the potential conflict. The Title IX Coordinator shall conduct an inquiry into any such potential conflict, and in the case of an actual conflict, Arrangements will then be made to designate a conflict/bias-free alternative investigator or decision-maker in the case at issue.

## XVII. Inquiries about the Policy

1. Inquiries about and reports regarding this policy and procedure may be made internally to:

Kayleigh Baker, Title IX Coordinator and Compliance Administrator  
202 Guillot University Center  
UNA Box 5023  
Florence, AL 35632  
(256) 765-4223

[kbaker5@una.edu](mailto:kbaker5@una.edu)

2. Inquiries may be made externally to:
  - a. Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Fax: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>
  - b. Atlanta Office  
Office for Civil Rights  
U.S. Department of Education  
61 Forsyth St. S.W., Suite 19T10  
Atlanta, GA 30303-8927  
Telephone: 404-974-9406  
Fax: 404-974-9471; TDD: 800-877-8339  
Email: [OCR.Atlanta@ed.gov](mailto:OCR.Atlanta@ed.gov)
  - c. Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>  
Birmingham Office  
Equal Employment Opportunity Commission (EEOC)  
Ridge Park Place  
1130 22<sup>nd</sup> Street South, Suite 2000  
Birmingham, AL 35205  
(800) 669-4000

## XVIII. Revision

1. These policies and all accompanying procedures will be reviewed annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.
2. Any technical changes, including locations, confidential resources, contact information, and other related changes may be made by the Title IX Coordinator in consultation with the University General Counsel without going through Shared Governance. Any additional changes required by law may be approved by the University General Counsel and updated with the appropriate date of effect identified without going through Shared Governance. Shared Governance Executive Committee and the University Executive Council will be notified of those changes.
3. This document does not create legally enforceable protections or confer rights beyond the protection and rights of the background state and federal laws which frame such codes generally.

*Last Updated: February 4, 2021*

*Approved by the Board of Trustees: March 5, 2021*