

# **University of South Alabama**

## **Sexual Misconduct Policy & Complaint Resolution Procedures**

# **SEXUAL MISCONDUCT POLICY**

## **I. POLICY STATEMENT**

The University of South Alabama (the “University”) is committed to establishing and maintaining an environment where individuals are free from sex discrimination, sexual harassment, sexual violence, domestic violence, dating violence, stalking, and retaliation (collectively “sexual misconduct”).

The University considers sexual misconduct to be a serious offense because it undermines the atmosphere of trust and respect that is essential to a healthy University Community. As such, sexual misconduct violates the standards of our University Community and constitutes a violation of this policy.

It is a separate violation of this policy to retaliate against any person who reports or assists in making a report of sexual misconduct or who participates in the investigation and resolution of a complaint in any way.

The University will promptly and thoroughly investigate and resolve all complaints of sexual misconduct in accordance with this policy and the Complaint Resolution Procedures. If the University determines that sexual misconduct occurred, the University will take prompt and effective remedial action to prevent the recurrence of the sexual misconduct, eliminate any hostile environment, and address the misconduct’s effects on the victim and others, if applicable.

Individuals found to be in violation of this policy will be subject to disciplinary actions by the University. The discipline imposed will depend on all the facts and circumstances and may include one or more of the following: a requirement not to repeat the conduct at issue, requiring training, written or verbal warning/reprimand, demotion, transfer or reassignment, denial of pay increases, probation, suspension (with or without pay and for varying lengths of time), limitation on participation in particular programs and activities, limitation on access to campus, expulsion, dismissal, or termination. Under certain circumstances, acts of sexual misconduct may also result in criminal and/or civil penalties.

While University employees, as described in Section V.A.1 of this policy are required to report sexual misconduct that they observe or learn about, the University takes seriously reports of sexual misconduct from any interested person.

## **II. SCOPE AND JURISDICTION**

This policy applies to all University employees, including administrators, faculty, and staff; students; applicants for employment; customers; third-party contractors; and all

other persons who participate in the University's educational programs and activities, including third-party visitors on campus (the "University Community").

This policy prohibits sexual misconduct regardless of the gender, gender identity, or sexual orientation of the alleged victim and the alleged perpetrator. The University's prohibition on sexual misconduct extends to all aspects of its educational programs and activities, including, but not limited to, admissions, employment, academics, athletics, housing, and student services.

This policy applies to conduct that occurs on University premises, during or at an official University program or activity (regardless of location), or off University premises when such conduct could interfere with or limit a person's ability to participate in or benefit from the University's educational programs and activities.

The University's jurisdiction over students begins when a student registers for classes or participates in orientation, whichever occurs sooner. The University's jurisdiction over students covers conduct that occurs when a student is not taking classes for a particular term but nonetheless maintains a continuing relationship with the University, as well as conduct that occurs during regular academic breaks. The University's jurisdiction remains in effect until a student's degree has been officially conferred by the University or other separation from the University occurs.

### **III. TITLE IX STATEMENT AND COORDINATORS**

It is the policy of the University to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in the University's educational programs and activities. Title IX and its implementing regulations also prohibit retaliation for making complaints of sexual misconduct. The University has designated the following Title IX Coordinator to coordinate its compliance with Title IX and to receive inquiries regarding Title IX, including complaints of sexual misconduct:

Dr. Krista Harrell  
Associate Dean of Students  
Student Center, Room 116  
Mobile, AL 36688  
(251) 460-6452  
[kristaharrell@southalabama.edu](mailto:kristaharrell@southalabama.edu)

The University has also designated the following individuals as Deputy Title IX Coordinators. Deputy Title IX Coordinators are available to receive inquiries regarding Title IX, including complaints of sexual misconduct, when the Title IX Coordinator is unavailable, if a person is more comfortable engaging with one of the Deputies, or if the Title IX Coordinator has a conflict of interest. The names and contact information for the Deputy Title IX Coordinators are as follows:

**Deputy Title IX Coordinator for Students**

Dr. Michael Mitchell  
Vice President and Dean of Students  
Student Center, Room 245  
(251) 460-6172  
[mmitchell@southalabama.edu](mailto:mmitchell@southalabama.edu)

**Deputy Title IX Coordinator for Faculty**

Dr. Charles Guest  
Associate Vice President for Academic Affairs  
AD 300  
(251) 460-6261  
[cguest@southalabama.edu](mailto:cguest@southalabama.edu)

**Deputy Title IX Coordinator for Athletics**

Jinni Frisbey  
Associate Athletic Director/Senior Woman Administrator  
Football Fieldhouse  
(251) 445-9511  
[jfrisbey@southalabama.edu](mailto:jfrisbey@southalabama.edu)

**Deputy Title IX Coordinator for Administrators, Non-Faculty Employees,  
Contractors, and Third-Parties/Others**

Paula Buerger, Manager EEO  
TRP Building III, Suite 2200  
(251) 460-6641  
[pbuerger@southalabama.edu](mailto:pbuerger@southalabama.edu)

**Deputy Title IX Coordinator for the College of Medicine**

Dr. Kelly P. Roveda, Assistant Professor of Pathology  
Department of Pathology, USAMC  
(251) 471-7790  
[kroveda@health.southalabama.edu](mailto:kroveda@health.southalabama.edu)

**Deputy Title IX Coordinator for the College of Nursing**

Dr. Heather R. Hall, Associate Dean for Academic Affairs  
HAHN 3068  
(251) 445-9483  
[heatherhall@southalabama.edu](mailto:heatherhall@southalabama.edu)

A person may also file a complaint of sexual misconduct with the United States Department of Education’s Office for Civil Rights regarding an alleged violation of Title IX by visiting [www2.ed.gov/about/offices/list/ocr/complaintintro.html](http://www2.ed.gov/about/offices/list/ocr/complaintintro.html) or by calling 1-800-421-3481.

#### **IV. PROHIBITED SEXUAL MISCONDUCT**

##### **A. Sexual Misconduct**

This policy prohibits sexual misconduct. “Sexual misconduct” is an umbrella term that includes sex discrimination, sexual harassment, sexual violence, domestic violence, dating violence, stalking, and retaliation. Sexual misconduct does not depend on the gender, gender identity, or sexual orientation of the alleged victim and alleged perpetrator. Thus, sexual misconduct can occur between persons who consider themselves to be of the same gender, the opposite gender, or to otherwise have differing gender identities.

##### **B. Sex Discrimination**

###### **1. Definition of Sex Discrimination**

Sex discrimination occurs when persons are excluded from participation in, or denied the benefits of, any University program or activity on the basis of their sex, including employment. Sex discrimination includes materially adverse treatment or action based on a person’s:

- biological sex
- pregnancy status
- gender, gender expression, or sexual identity
- and/or failure to conform to stereotypical notions of masculinity and femininity (so called “gender stereotyping”).

Sex discrimination also includes conduct that meets the definitions of sexual harassment and sexual violence, as set forth below.

###### **2. Examples of Sex Discrimination**

Specific examples of conduct that may constitute sex discrimination include:

- Giving unequal pay, promotions, or other job benefits on the basis of gender.
- Allowing a person’s gender to influence the grade conferred in a class.
- Denying persons access to a given degree or major because of their gender.
- Requiring a pregnant student to verify pregnancy-related absences with a doctor’s note when such verification is not required of students with other medical conditions.
- Excluding a person from a University-sponsored group because the person has a gender identity different than the gender assigned to the person at birth.

- Excluding a person from participation in a University-sponsored activity based on stereotypical notions of how a person of a given gender or sexual identity should look, speak, or act.
- Conduct that meets the definition of sexual harassment or sexual violence, as set forth below.

Further examples of sex discrimination may be found in the Frequently Asked Questions.

### C. **Sexual Harassment**

#### 1. **Definition of Sexual Harassment**

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment rises to the level of sex discrimination, and is prohibited by this policy as sexual misconduct, when:

- Submission to such conduct is made or threatened to be made, either explicitly or implicitly, a term or condition of an individual's employment or education,
- Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for academic or employment decisions affecting that individual, or
- Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating what a reasonable person would perceive as an intimidating, hostile, or offensive employment, education, or living environment (i.e., a "hostile environment").

In determining whether unwelcome conduct of a sexual nature rises to the level of creating a hostile environment, the University will consider the totality of circumstances, including, but not limited to, the nature and severity of the conduct, the duration of the conduct, whether the conduct is part of a pattern, the age of the potential victim, and whether there is a power differential between the alleged victim and alleged perpetrator. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the alleged victim's position.

A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

Sexual harassment can take many forms, including verbal, non-verbal, and physical conduct.

## 2. Sexual Harassment, Freedom of Speech, and Academic Freedom

While sexual harassment can include verbal and written conduct, the First Amendment to the U.S. Constitution and University policies establishing academic freedom provide significant space for individuals to express controversial views, teach controversial subjects, and engage in controversial research. As such, the offensiveness of a particular expression, course content, subject of academic inquiry, or research topic, as perceived by some, standing alone, is not sufficient to constitute a violation of this policy. The University will apply and construe this policy consistent with the legal rights of community members under the First Amendment and University policies governing academic freedom.

Faculty members and students should be aware that conduct occurring in the context of educational instruction may exceed the protections of free speech and academic freedom if it meets the definition of sexual misconduct and is not germane to academic subject matter, lacks a pedagogical purpose, advances the personal interest of a faculty member or student without relating to the learning process or legitimate academic objectives, causes material adverse action against a person, reveals confidential information about a person, is defamatory or libelous, threatens physical harm or imminent violence, or constitutes some other category of speech that is unprotected by the U.S. Constitution.

## 3. Examples of Sexual Harassment

Sexual harassment can occur between individuals of the opposite sex and individuals of the same sex. Specific examples of conduct that may constitute sexual harassment if unwelcome include:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual activity.
- Kissing, hugging, rubbing, or massaging.
- Sexual innuendos, jokes, humor, or gestures.
- Displaying sexual graffiti, pictures, videos or posters.
- Using sexually explicit profanity.
- Asking, or telling, about sexual fantasies, sexual preferences, or sexual activities.
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin.
- Calling a person derogatory epithets based on stereotypical notions of how a person of a given sex or sexual identity should look, speak, or act.
- Sending sexually explicit emails, text messages, or social media posts.
- Commenting on a person's appearance or dress in a sexual manner.
- Giving unwelcome personal gifts, such as lingerie, that suggest the desire for a sexual relationship.

- Disseminating sexual pictures or videos of another person without consent regardless of whether the pictures or videos were obtained with consent.
- Sexual violence (as defined below).

Further examples of sexual harassment may be found in the Frequently Asked Questions.

#### **D. Sexual Violence**

##### **1. Definition of Sexual Violence**

Sexual violence is a particularly severe form of sexual harassment that, by its very nature, is likely to create a hostile environment. Sexual violence includes physical sexual acts perpetrated without consent or where a person is incapable of giving consent because of physical, mental, or legal incapacity.

Under this policy, sexual violence also includes sexual exploitation, which consists of prostituting another person, secretly recording the sexual activities of a person without their consent, or viewing the sexual activities of another person without their consent (i.e., “peeping” or engaging in voyeurism).

A number of different criminal acts fall into the category of sexual violence, including conduct commonly referred to as “rape,” “sexual assault,” “forced sodomy,” and “sexual battery.” See Section IV.D.3 below for further examples of sexual violence.

##### **2. Consent**

For purposes of this policy, consent is defined as conduct that a reasonable person would understand to indicate agreement to the sexual conduct at issue. Under this policy, consent must be informed, freely given, and mutually understood. Lack of consent is a critical factor in determining whether sexual violence has occurred.

Under Alabama law, lack of consent for criminal purposes “results from: (1) [f]orcible compulsion; or (2) [i]ncapacity to consent; . . . or (3) [i]f the offense charged is sexual abuse, any circumstances . . . in which the victim does not expressly or impliedly acquiesce in the actor’s conduct.” Ala. Code § 13A-6-70(b). “Forcible compulsion” means that physical force was used to overcome resistance or the victim was placed in fear of immediate death or serious physical injury.

Furthermore, under Alabama law, “[a] person is deemed incapable of consent if he [or she] is less than 16 years old; mentally defective; mentally incapacitated; or physically helpless.” Ala. Code § 13A-6-70(c). A person is “mentally defective” if the person suffers from a mental defect or disease. A person is “mentally incapacitated” if the person lacks the ability to understand the fact, nature, or extent of a sexual situation due to a narcotic or

intoxicating substance administered without their consent. A person is “physically helpless” if the person is generally unconscious or unable to communicate.

In addition to Alabama law, the following are essential to understanding what constitutes effective consent under the policy:

- If coercion, intimidation, threats, and/or physical force are used, there is no consent.
- If a person is incapacitated by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent even if the person self-administered the alcohol or drugs.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent can be withdrawn by verbal or physical conduct that a reasonable person would understand to indicate a desire to stop or not engage in the sexual conduct at issue.
- While consent can be withdrawn, a withdrawal of consent operates going-forward. It does not change the consensual nature of sexual activity that has already occurred.
- Being in a romantic relationship with someone does not imply consent to any form of sexual activity.
- Effective consent may not exist when there is a disparity in power between the parties; an example of which is when one is in a supervisory or evaluative role over the other, such as a faculty member who is teaching a student or a director who supervises an employee.

Further discussion of consent may be found in the Frequently Asked Questions.

### 3. Examples of Sexual Violence

Sexual violence can occur between persons of the opposite sex or the same sex. Specific examples of sexual violence include:

- Sexual penetration (anal, vaginal, or oral) or touching of sexual organs that is committed by force, threat, intimidation, or otherwise without consent.
- Having sexual intercourse with, or sexually touching, a person who is incapacitated because of drug or alcohol use, including a person who has been given a “date rape drug” or any other drug causing incapacitating impairment.
- Hazing that involves penetrating a person’s vagina or anus with an object.
- Knowingly exposing another person, without their consent, to a sexually transmitted disease (such as HIV, chlamydia, gonorrhea, syphilis, or herpes) through sexual activity.

- Secretly videotaping or photographing sexual activity where the other party has not consented.
- Prostituting another person.
- Exceeding the scope of sexual permission (e.g., having vaginal or anal sex with a person when they have only consented to oral sex).

Further examples of sexual violence may be found in the Frequently Asked Questions.

#### **E. Domestic Violence, Dating Violence, and Stalking**

Domestic violence, dating violence and stalking are crimes and are prohibited by this policy, no matter what the motivation behind them. Reports of domestic violence, dating violence, and stalking will be addressed pursuant to the Complaint Resolution Procedures below.

##### **1. Definition of Domestic Violence**

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of a victim, by a person with whom the victim shares a child, 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 the jurisdiction in which the crime of violence occurred, 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 the jurisdiction in which the crime of violence occurred.

Alabama law prohibits domestic violence, pursuant to Ala. Code § 13A-6-130 through 143, and as defined at Ala. Code § 13A-6-139.1. Domestic violence does not depend on the gender, gender identity, or sexual orientation of the alleged victim and alleged perpetrator. Thus, domestic violence can occur between persons who consider themselves to be of the same gender, the opposite gender, or to otherwise have differing gender identities.

##### **2. Definition of Dating Violence**

Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on circumstances, such as the alleged victim or alleged perpetrator's statement, and with consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Alabama law does not specifically define dating violence, but conduct of this nature is covered by the definitions of dating relationship, domestic violence, and victim found at

Ala. Code § 13A-6-139.1. Dating violence does not depend on the gender, gender identity, or sexual orientation of the alleged victim and alleged perpetrator. Thus, dating violence can occur between persons who consider themselves to be of the same gender, the opposite gender, or to otherwise have differing gender identities.

### 3. Definition of Stalking

Stalking means 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 who may be targeted by virtue of their relationship with him/her; or (B) suffer substantial emotional distress.

For purposes of the definition of stalking in this policy:

- 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 other means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property.
- "Reasonable person" for purposes of the definition of stalking means a reasonable person under similar circumstances.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Alabama law prohibits stalking, as set forth at Ala. Code § 13A-6-90 to 13A-6-94, inclusive. Stalking can occur between persons of the opposite sex or the same sex.

## F. Retaliation

### 1. Definition of Retaliation

Retaliation consists of materially adverse action taken against a person because the person made a good faith report of sexual misconduct or participated in the investigation of a report of sexual misconduct, such as by serving as a witness or support person.

### 2. Examples of Retaliation

Specific examples of retaliation include:

- Terminating a person's employment, demoting them, denying them a promotion, reducing their pay, or "writing them up" because they made a report of sexual misconduct.

- Sending threatening text messages or social media messages to someone because they made a report of sexual misconduct or gave a statement as a witness.
- Causing physical damage to a person's personal belongings because they made a report of sexual misconduct or gave a statement as a witness.
- Suspending a person from an activity or limiting their involvement because they made a report of sexual misconduct.
- Publishing knowingly false information about a person because they made a report of sexual misconduct.

### 3. Good Faith Reports

The University encourages the good faith reporting of sexual misconduct. However, the University will not allow this policy or the Complaint Resolution Procedures to be abused for improper means. Accordingly, the University may take disciplinary action against any person who makes a bad faith report of sexual misconduct, and such disciplinary action will not constitute prohibited retaliation. A person makes a bad faith report of sexual misconduct if, at the time they make the report, they know the report is false or frivolous. Further, the University may take disciplinary action against any person who knowingly provides false information during the investigation and resolution of a complaint of sexual misconduct and such disciplinary action will not constitute prohibited retaliation.

## V. REPORTING

### A. Making a Report

#### 1. Employees

With the exception of those employees who are Confidential Resources identified in Section V.F below, all University employees (including administrators, faculty, staff, and student employees) have a duty to report sexual misconduct that they observe or otherwise learn about. Employees should make their report promptly to the Title IX Coordinator, a Deputy Title IX Coordinator, or the University Police Department. The University may take disciplinary action against an employee who fails to report sexual misconduct as required by this policy, up to and including termination.

#### 2. Students and Non-Employee Members of the University Community

Students and non-employee members of the University Community who wish to report sexual misconduct should file a complaint with the Title IX Coordinator, a Deputy Title IX Coordinator, and/or the University Policy Department. Students and non-employee members of the University Community should be aware that all employees at

the University, other than the Confidential Resources identified in Section V.F below, have an obligation to report sexual misconduct that they observe or otherwise learn about.

3. Right to Make a Report to the U.S. Department of Education

In addition to the reporting options under this policy, any person may make a report of sexual misconduct to the U.S. Department of Education's Office for Civil Rights, at the contact information listed in Section III.

**B. Conduct that Constitutes a Crime**

In addition to making a report under this policy, the University encourages any person who believes he or she is the victim of a crime to make a report to law enforcement. The contact information for the University's Police Department is:

University of South Alabama Police Department  
290 Stadium Blvd.  
Beta Gamma Commons  
Mobile, Alabama 36688-0001  
Phone: (251) 460-6312  
[police@southalabama.edu](mailto:police@southalabama.edu)

Patrol Office  
Phone: (251) 460-6312 (24 hours a day)  
On Campus Emergency: 911  
Tips Line: (251) 460-6667

If requested, the University will assist an alleged victim in notifying the appropriate law enforcement authorities. If a person believes he or she is in imminent danger, the person should dial 911. Unless there is a health or safety emergency, articulable threat to members of the University Community, or a state law requiring reporting (such as in the case of child abuse) the University will not contact outside law enforcement without the alleged victim's permission.

**C. Special Advice for Individuals Reporting Sexual Violence, Domestic Violence, and Dating Violence**

For those who believe that they are victims of sexual violence, domestic violence, or dating violence, the University recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one's mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.

- Contact University police by calling (251) 460-6312 if the incident occurred on campus or the local police by calling 911 if the incident occurred off campus.
- Get medical attention – all medical injuries are not immediately apparent. This is also necessary to collect evidence in case the individual decides to press charges. Local hospitals (identified in Section V.F of this policy) have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges.
- Contact a trusted person, such as a friend or family member for support.
- Call the Assault Hotline at (251) 460-7151, 24 hours a day, seven (7) days a week. A certified Victim’s Advocate will contact you to offer assistance.
- Talk with a counselor who will help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator or a Deputy Coordinator.
- Explore this policy and avenues for resolution under the Complaint Resolution Procedures.

It is also important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. In cases of stalking, evidence is more likely to be in the form of letters, emails, text messages, etc., rather than evidence of physical contact and violence.

**D. Limited Amnesty**

The University recognizes that an individual who has been drinking alcohol or using drugs may be hesitant to report sexual misconduct arising from the same setting where the alcohol or drugs were consumed. To encourage reporting, the University will not take disciplinary action for drug or alcohol use against an individual who makes a good faith report of sexual misconduct, either as the reporter/complainant or as a witness, provided that these conduct violations did not and do not place the health or safety of any other person at risk.

The University’s commitment to amnesty in these situations does not prevent action by local police or other legal authorities against an individual who has illegally consumed alcohol or drugs.

**E. Timing of Reports**

The University encourages persons to make complaints of sexual misconduct as soon as possible because late reporting may limit the University’s ability to investigate and respond to the conduct complained of.

**F. Confidential Resources**

The University has designated a limited number of employees as Confidential Resources. These Confidential Resources do not have a duty to report sexual misconduct to the Title IX Coordinator and will not disclose identifying information provided to them

in their professional capacities unless a specific law requires them to do so, such as laws requiring the reporting of child abuse. However, Confidential Resources have received training about the policy and may, if they deem it appropriate, encourage patients and clients to report sexual misconduct to the University and/or law enforcement on a voluntary basis.

The University's Confidential Resources are:

**Professional counselors at Counseling and Testing Services**

326 Alpha East Hall  
Mobile, Alabama 36688-0001  
Phone: (251) 460-7051

**Trained advocates with the Sexual Assault Victim Advocacy Program**

Phone: (251) 460-7151 (24 hours a day)

**Medical providers at the Student Health Center**

5870 Alumni Circle  
Mobile, Alabama 36688-0002  
Phone: (251) 460-7151

**Employee Assistance Counselor (for employees only)**

Phone: (251) 461-1346

In addition, there are a number of hospitals and support services in the greater Mobile region that can provide counseling and advice to victims of sexual misconduct. These entities will not disclose information that is provided to them without the victim's consent unless a specific law requires them to do so.

These third-party resources include:

**Lifelines Counseling Services: Rape Crisis**

705 Oak Circle Drive, N.  
Mobile, Alabama 36609  
Phone: (251) 473-7273 or (800) 718-7273 (24 hours a day)

**Penelope House**

Phone: (251) 342-8994

**USA Children and Women's Hospital (SANE exam provider)**

1700 Center Street  
Mobile, Alabama 36604  
Phone: (251) 415-1000

**USA Medical Center**

2451 Fillingham Street

Mobile, Alabama 36617  
Phone: (251) 471-7000

**Springhill Medical Center**  
3719 Dauphin Street  
Mobile, Alabama 36608  
Phone: (251) 344-9630

**Infirmiry Health**  
5 Mobile Infirmiry Circle  
Mobile, Alabama 36607  
Tel: (252) 435-2400

**Providence Hospital**  
6801 Airport Boulevard  
Mobile, Alabama 36685  
Tel: (251) 633-1000

**VI. EVALUATION OF THE REPORT AND ENGAGEMENT WITH THE ALLEGED VICTIM**

**A. Initial Evaluation of the Report**

After the University receives a report of sexual misconduct, the Title IX Coordinator or designee will conduct an initial evaluation of the report to determine whether the conduct alleged, if true, could constitute a violation of this policy.

If the conduct as alleged does not constitute a violation of the policy, the Title IX Coordinator or designee may refer the report to be addressed under any other applicable University policy. However, the report will not be further addressed under this policy or the Complaint Resolution Procedures.

If the Title IX Coordinator or designee determines the conduct alleged, if true, could constitute a violation of this policy, the Title IX Coordinator or designee will attempt to make contact with the alleged victim. If the reporting party is not also the alleged victim, the reporting party may have no further involvement in the process.

**B. Contact With the Alleged Victim**

The Title IX Coordinator or designee (often a trained victim advocate) will make contact with the alleged victim of the conduct reported. The Title IX Coordinator or designee will advise the alleged victim of his or her options under the policy and otherwise, including:

- Voluntarily contacting parents or a relative.
- Seeking legal advice.

- Seeking personal counseling through the University's counseling center.
- Contacting law enforcement with the University's assistance.
- Requesting an investigation and making a complaint under the Complaint Resolution Procedures.
- Requesting that no further action be taken and that the potential victim's identity not be disclosed.
- Seeking accommodations, such as housing accommodations or academic accommodations.

The Title IX Coordinator or designee will give the alleged victim a written document that outlines these options and provides contact information for local resources and support organizations.

### C. **Decision On How To Proceed**

In the event the alleged victim requests an investigation and wishes to make a complaint under the Complaint Resolution Procedures, the Title IX Coordinator or designee will appoint an Investigating Officer (as defined in the Complaint Resolution Procedures) and the report will be investigated and resolved in accordance with the Complaint Resolution Procedures. The University will make all reasonable and appropriate efforts to preserve an alleged victim's privacy and will conduct the investigation and resolution with discretion. However, the University cannot guarantee complete confidentiality due to state and federal laws governing the reporting of certain types of misconduct as well as the necessity for information to be disclosed to the potential perpetrator and others involved in the investigation.

If the alleged victim wishes to pursue a complaint under the Complaint Resolution Procedures, the alleged victim must reduce the complaint to writing or describe the complaint so that the Title IX Coordinator or designee can document it in writing. The written complaint shall include the following:

- The name of the alleged victim.
- The name of the alleged perpetrator.
- The details of the alleged sexual misconduct.
- The names of any persons believed by the alleged victim to have relevant information.
- Any other information the alleged victim believes is pertinent to the alleged sexual misconduct.

The written complaint will be provided to the appropriate Investigating Officer as specified in the Complaint Resolution Procedures.

If the alleged victim requests that the report not be investigated and/or is unwilling to be a complainant under the Complaint Resolution Procedures, the University will take

all reasonable steps to address the report consistent with the request. However, the University's ability to address the reported misconduct may be limited.

The University reserves the right to initiate or continue proceedings under the Complaint Resolution Procedures, despite an alleged victim's wishes to the contrary, when, considering the totality of circumstances, a report involves serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community. In such a case, the University will act as a complainant under the Complaint Resolution Procedures. The Title IX Coordinator or designee is responsible for determining whether the University will act as a complainant under the Complaint Resolution Procedures.

In the event that an alleged victim initiates a complaint under the Complaint Resolution Procedures, but then elects to withdraw the complaint, the University may also proceed with resolution of the complaint to provide at its discretion.

#### **D. Interim Measures**

After receiving a report, and during any investigation under the Complaint Resolution Procedures, the Title IX Coordinator or designee will impose any necessary interim measures necessary to protect the alleged victim from further sexual misconduct, to separate the parties, to protect witnesses, and/or to support the parties pending resolution. These interim measures may include: provision of counseling or support services; reasonable changes in academic, living, transportation, or work arrangements; and entry of a "no contact" order or similar order to ensure separation of the parties. Either the alleged victim or the alleged perpetrator may request interim measures.

In cases where there is reasonable cause to believe the alleged perpetrator poses a continuing threat to the alleged victim or others, the University may issue full or partial suspension, on an interim basis, until the matter is resolved through the Complaint Resolution Procedures. However, except in an emergency situation, an alleged perpetrator will have the opportunity to meet with the Title IX Coordinator or designee and be heard prior to such interim suspension being imposed.

If an alleged victim has obtained an ex parte order of protection, full order of protection, or any other temporary restraining order or no contact order against the alleged perpetrator from a criminal, civil, or tribal court, the alleged victim should provide such information to the Title IX Coordinator or Deputy Title IX Coordinator so that the University can take all reasonable and legal action to implement the order with respect to those persons and areas the University controls.

Interim measures may be requested by any party at any time. Any person who believes interim measures are being violated should report the alleged violation in the same manner for reporting sexual misconduct as set forth in Section V.

Interim measures are temporary measures taken to ensure equal and continuing access to its programs and activities and to ensure the safety of the University Community.

They do not constitute a finding of guilt and may be removed if a complaint is found not to be substantiated.

## **VII. INVESTIGATION AND RESOLUTION**

### **A. Complaint Resolution Procedures**

All complaints of sexual misconduct will be investigated and resolved pursuant to the Complaint Resolution Procedures, which, along with this policy, are the exclusive means of resolving complaints of sexual misconduct. To the extent this policy and/or the Complaint Resolution Procedures conflict with any other University policy, this policy and/or the Complaint Resolution Procedures, as the case may be, will control. Under the Complaint Resolution Procedures, the party making a complaint is referred to as the “complainant” and the person accused of misconduct is referred to as the “respondent.”

### **B. Support Persons**

At each stage of the Complaint Resolution Procedures (interviews, meetings, hearings, etc.), the complainant and respondent may be accompanied by a support person of their choice. The support person’s role is to provide support and private counsel to the party. The support person will not be permitted to present information, argue, or actively participate in the proceedings and is expected to be discreet with the information he or she receives during the process. The University reserves the right to dismiss a support person who fails to follow this policy and applicable provisions of the Complaint Resolution Procedures, in which case the party will be allowed to select a different support person.

Advocates with the University’s Sexual Assault Victim Advocacy Program are available to serve as support persons to complainants.

Similarly, the University has a pool of trained support persons, referred to as Respondent Resources, who are available to serve as support persons for respondents. These Respondent Resources have received in-depth training regarding this policy and the Complaint Resolution Procedures and can assist a respondent in understanding and navigating this policy and the Complaint Resolution Procedures. A respondent wishing to utilize a Respondent Resource should make a request to the Title IX Coordinator or designee.

### **C. General Principles Applicable to the Investigation and Resolution Process**

In conducting its investigation and resolution under the Complaint Resolution Procedures, the University will:

- Make reasonable and appropriate efforts to preserve the privacy of the parties involved while recognizing that absolute confidentiality is not possible.

- Provide equal information to both parties about the investigation and resolution process.
- Conduct a thorough, fair, and impartial investigation that provides the parties an equal opportunity to present information and equivalent procedural safeguards.
- Allow the parties to be accompanied to all meetings and hearings by a support person of their choice.
- Keep the parties apprised of the progress of the investigation and anticipated time to resolution.
- Provide the parties an equal opportunity to meet with the Investigating Officer and to be present and testify (if applicable) at any hearing required by the Complaint Resolution Procedures, though not during the deliberative process.
- Provide the parties an equal opportunity to comment on the information developed during the investigation.
- Move promptly to conduct the investigation and complete the resolution within sixty (60) days in most circumstances.
- Avoid conflicts of interest that could call into question the integrity of the process.
- Provide simultaneous written notice to the parties of the outcome of a complaint and the outcome of any appeal.
- If a complaint of sexual misconduct is substantiated, take appropriate corrective, disciplinary, and remedial action to prevent the recurrence of the conduct and correct its discriminatory effects.

#### **D. Sharing of Information**

As a general rule, the University will share information about the complaint, and information received during the investigation, only with those persons who have a need to know and those whose participation is necessary to ensure a full and fair investigation and resolution under this policy and the Complaint Resolution Procedures. However, once a report is made to anyone other than a Confidential Resource, absolute confidentiality cannot be guaranteed. Further, while the outcome of a particular complaint and any related discipline and remedial steps will generally be shared only with the parties, the University reserves the right to share the outcome of a particular complaint more broadly, to the extent such disclosure is permitted by applicable laws, including the Family Educational Rights and Privacy Act (FERPA) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by the Campus SaVe Act.

### **VIII. EDUCATION**

Because the University recognizes that the prevention of sexual misconduct is important, it offers a variety of educational programming, including primary prevention and awareness training for new students and new employees and ongoing awareness programs for all members of the University Community. Information on specific training

programs, as well as a calendar of upcoming trainings, is available from the Title IX Coordinator and posted on the University's website.

**IX. ANNUAL REVIEW**

This policy is maintained by the University's Title IX Coordinator. The Title IX Coordinator will review this policy at least bi-annually, with the assistance of the University's Title IX Committee. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the Complaint Resolution Procedures. The review will incorporate an aggregate view of reports, resolution, and climate.

**X. DISTRIBUTION**

This policy will be disseminated widely to the University Community through email communication, the University's website, inclusion in orientation programs for new employees and new students, and through other appropriate channels of communication.

# **SEXUAL MISCONDUCT COMPLAINT RESOLUTION PROCEDURES**

## **I. GENERAL PRINCIPLES**

### **A. Applicability**

These Complaint Resolution Procedures apply to the resolution of all complaints under the Sexual Misconduct Policy. They apply to the resolution of complaints against all members of the University Community, and they are the exclusive means of resolving complaints of sexual misconduct.

### **B. Administration**

For purposes of these Complaint Resolution Procedures, “Investigating Officer” means the individual(s) designated by the Title IX Coordinator to investigate a particular complaint and administer relevant provisions of these Complaint Resolution Procedures. The Investigating Officer may consult with other University administrators and counsel as needed. The Investigating Officer may be a third-party investigator or attorney retained for that purpose by the University.

### **C. Promptness, Fairness and Impartiality**

These procedures provide for prompt, fair, and impartial investigations and resolutions. All University employees involved in the investigation and resolution process shall discharge their obligations under these Complaint Resolution Procedures fairly and impartially. If an involved University employee determines that he or she cannot apply these procedures fairly and impartially because of the identity of a complainant, respondent, or witness, or due to any other conflict of interest, another suitable individual will be designated by the Title IX Coordinator to fill the role.

### **D. Training**

These procedures will be implemented by University employees who receive annual training on the issues related to sexual misconduct and how to conduct an investigation that protects the safety of victims and promotes accountability.

### **E. Participation in Investigations**

All members of the University Community are encouraged and expected to fully cooperate with any investigation and resolution under these Complaint Resolution Procedures. University employees who fail to cooperate and/or participate will face discipline, up to and including termination. In the event an alleged victim refuses to participate under these Complaint Resolution Procedures, the University may proceed as a complainant under the circumstances specified in Section VI.C of the Sexual Misconduct Policy. In the event a respondent refuses to participate, the Complaint Resolution

Procedures will be completed despite the Respondent's lack of participation and may result in a finding of misconduct *in absentia*.

## **II. TIMING, NOTIFICATION, AND INITIATION OF PROCESS**

### **A. Timing of Investigation and Resolution**

The University will endeavor to conclude its investigation and resolution of the complaint within sixty (60) calendar days of receiving the complaint, absent extenuating circumstances. Both the complainant and the respondent will be given periodic updates regarding the status of the investigation. If either the complainant or respondent needs additional time to prepare or to gather their witnesses or information, they shall notify the Investigating Officer in writing explaining how much additional time is needed and why it is needed. The Investigating Officer shall respond to any such request within three (3) business days.

Some instances of sexual misconduct may also constitute criminal conduct. In the case where alleged criminal conduct has also been reported to law enforcement, the University may temporarily delay its investigation of the complaint where necessary to avoid interfering with law enforcement. However, the pendency of a criminal investigation does not serve as a substitute for these procedures, and the investigation and resolution process will commence promptly once interference is no longer a concern. In addition, because the University's process is separate and distinct from any criminal prosecution, the University's determination will not be held in abeyance due to the pendency of a criminal trial.

### **B. Complaints Involving Multiple Parties**

In most cases, a complaint will involve a single complainant and a single respondent. To the extent there are multiple complainants making complaints against a single respondent, or a single complainant making complaints against multiple respondents, each complaint will be addressed separately under this Complaint Resolution Procedures unless the complaints arise from the same transaction of facts.

To the extent multiple complaints arise from the same transaction of facts, the Investigating Officer, in consultation with the Title IX Coordinator, may merge the complaints into a single investigation and resolution process.

Similarly, where the respondent makes a reciprocal allegation of sexual misconduct or where the complainant later makes additional allegations that relate to the original complaint, the Investigating Officer, in consultation with the Title IX Coordinator, may combine all related and relevant allegations of sexual misconduct into one investigation and resolution process.

### **C. Notification of the Respondent and Selection of Process**

Once a complaint is received by the Investigating Officer, the Investigating Officer will promptly notify the respondent and provide the respondent with the opportunity to review a copy of the written complaint. The Investigating Officer will then communicate with each party, separately, to discuss the pertinent avenues for resolution as set forth below. Considering the parties' wishes and other circumstances, the Investigating Officer will then determine whether the complaint will be resolved through informal or formal process. The Investigating Officer will then notify the parties of the process to be used.

## **III. INFORMAL RESOLUTION**

### **A. Nature of Informal Resolution**

Informal resolution is a process by which the Investigating Officer, working alone or in concert with other appropriate University administrators (such as a supervisor if the parties are employees), attempts to resolve a complaint to the mutual satisfaction of both the complainant and respondent. Informal resolution may include, but is not limited to, mediation, agreed separation of the parties, referral of the parties to their respective counseling programs, agreed upon educational or training programs for one or more of the parties, the agreement of a party to apologize for their conduct, and other agreed remedial measures, which may include agreed upon forms of discipline. Although informal resolution may involve some investigation by the Investigating Officer in order to understand the background of the complaint, informal resolution is not intended to reach a formal determination as to whether or not sexual misconduct occurred, unless the respondent admits to the conduct at issue.

### **B. When Informal Resolution May Be Used**

Informal resolution is intended to resolve complaints quickly and collaboratively. However, not all complaints are amenable to informal resolution. Specifically, informal resolution is never available for complaints involving sexual violence. The Investigating Officer may also determine that informal resolution is not appropriate in other circumstances, such as where informal resolution has failed between two parties in the past, the resolution sought by one party is of a type that cannot be achieved through informal resolution, where the conduct is particularly serious, or where the respondent is accused of a pattern of misconduct.

Both parties must agree to use informal resolution (Note: Even if both parties agree to use informal resolution, informal resolution will not be used to resolve cases of sexual violence). If either party does not wish to use informal resolution, formal resolution will be used. Both parties have the right to end informal resolution at any time and insist upon formal resolution. Similarly, if the Investigating Officer determines that efforts at informal resolution have been unsuccessful and have no prospect for success, the Investigating Officer may convert the matter to formal resolution, irrespective of the parties' wishes.

**C. Documentation of Informal Resolution**

If the parties reach agreement on an informal resolution, the Investigating Officer, in consultation with the Title IX Coordinator and other appropriate University administrators, will review the resolution and may reject it, approve it, or require modifications prior to approval. In the event the Investigating Officer approves the resolution, the Investigating Officer will prepare a written memorandum setting forth the terms of the resolution. The Investigating Officer will present the written memorandum to the parties for their review and signature. The Investigating Officer will then provide the parties with simultaneous written notification that the case has been resolved pursuant to informal resolution. The Investigating Officer may transmit a copy of the written memorandum to other University administrators or employees whose involvement is necessary to effectuate the resolution and/or for inclusion in appropriate personnel files.

**D. Monitoring of Implementation**

In the event the terms of an informal resolution require future action or inaction, the Investigating Officer may monitor the implementation of the informal resolution and maintain jurisdiction over a particular complaint until the terms of the informal resolution are satisfied. In the event the terms of the informal resolution are not satisfied, the Investigating Officer, after consulting with the Title IX Coordinator, may reactivate the complaint and immediately commence its resolution under the formal process.

**E. No Right of Appeal**

Because it is collaborative and must be agreed to by both parties, there is no right to appeal the outcome of an informal resolution.

**IV. FORMAL RESOLUTION**

**A. Nature of Formal Resolution**

Formal resolution is a process by which a formal determination is made as to whether sexual misconduct occurred. If a finding is made that sexual misconduct occurred, formal resolution will also result in a decision regarding disciplinary action to be taken against the perpetrator, as well as remedial measures that may be necessary to remedy the effect of the sexual misconduct on the victim. Unlike informal resolution, formal resolution involves an in-depth investigation and determination of facts under a preponderance of the evidence standard. The formal resolution process varies depending on whether the alleged perpetrator is a student, faculty member, or non-faculty employee/other member of the University Community.

To the extent a single complaint involves multiple respondents of different classifications, the Investigating Officer, in coordination with the Title IX Coordinator, in consultation with the appropriate Vice-President/Director, shall determine which formal resolution process to use.

**B. Rules of Evidence**

Formal rules of evidence do not apply in any of the formal resolution processes specified below. Nonetheless, evidence that is irrelevant or whose prejudicial effect substantially outweighs its probative value may be excluded from consideration. A complainant's irrelevant sexual history will be excluded from consideration.

**C. Time Frames**

Each formal resolution process contains time frames for various stages commensurate with the University's typical practice of determining complaints within sixty (60) days of the complaint being made. However, these time frames may be extended at the discretion of the Investigating Officer or Title IX Coordinator due to extraordinary circumstances, including, but not limited to, the unavailability of parties or witnesses, scheduling conflicts, intervening breaks, prior attempts at informal resolution, the complexity of a case, and the need to avoid interference with a pending law enforcement investigation. To the extent any time frame is extended, the parties will receive written notification of the extension.

**D. Formal Resolution Process for Complaints Against Students**

1. Investigating Officer to Be a Student Conduct Administrator

In cases where the respondent is a student, the Investigating Officer will typically be a Student Conduct Administrator.

2. Application of Code of Student Conduct

Where the respondent is a student, complaints of sexual misconduct shall be investigated and resolved pursuant to Option 2 of the Disciplinary Procedures in the Code of Student Conduct (available in the [Lowdown](#)), as modified by the provisions of the Sexual Misconduct Policy and in these Complaint Resolution Procedures.

3. Complainant

Only the alleged victim or the University, acting pursuant to Section VI.C of the Sexual Misconduct Policy, may act as a complainant. In the event the University acts as a complainant pursuant to Section VI.C of the Sexual Misconduct Policy, it will designate a specific individual (typically an administrator or conduct officer) to participate on its behalf.

#### 4. Investigation

Once the case is identified for formal resolution, the Investigating Officer will conduct an investigation to gather information and statements from witnesses and other sources for eventual review and consideration at a hearing.

The investigation will involve interviews with the complainant, respondent and witnesses and the collection of non-testimonial information and/or materials, such as email, text messages, security camera footage, and the like. Witnesses and information and/or materials may be identified and/or submitted by the parties or independently gathered by the Investigating Officer. The Investigating Officer may decline to interview witnesses or collect information that the Investigating Officer deems irrelevant. The scope of the investigation shall be at the discretion of the Investigating Officer.

The Investigating Officer will prepare a written investigation report summarizing the allegations of sexual misconduct, the scope of the investigation, the information collected, and appending any statements or summaries of statements or interviews provided. Throughout the investigation, the parties will have those rights specific in Section VII of the Sexual Misconduct Policy.

#### 5. Waiver of Right to Hearing

At the conclusion of the investigation, the respondent may accept responsibility for the sexual misconduct and waive the right to a hearing. If the respondent accepts responsibility and waives the right to a hearing, the Investigating Officer, in consultation with University administrators as appropriate, shall determine the appropriate discipline and provide simultaneous written notification of the same to the parties. Either party who disagrees with the discipline imposed has the right to appeal pursuant to Section IV.D.7 of the Complaint Resolution Procedures.

#### 6. Hearing

In the event the respondent does not accept responsibility at the conclusion of the investigation, the case shall proceed to a hearing before the University Disciplinary Committee (UDC). The procedures for hearing as specified in the Code of Student Conduct shall be modified/supplemented as follows:

- In cases involving a complaint of sexual violence, the UDC will include at least two and no more than four faculty or staff/administrators.
- Both the complainant and respondent are entitled to a pre-hearing conference with the Investigating Officer, during which the Investigating Officer will explain the hearing process, answer questions about the process, discuss options for participation in the hearing, and coordinate possible hearing dates.

- If the complainant submits a victim impact statement, the respondent shall have the opportunity to review the statement and respond to it in writing or verbally at the hearing.
- The parties will receive written notice of the scheduled UDC hearing at least five (5) business days in advance. The written notice shall note the specific alleged policy violations that are the subject of the hearing.
- Not less than three (3) business days before the UDC hearing, the Investigating Officer shall transmit the investigation report and any appended information to the UDC members, the complainant, and the respondent. The complainant and respondent are expected to provide all relevant information and/or materials to the Investigating Officer during the investigation, and are expected to immediately deliver any relevant information discovered after the investigation to the Investigating Officer for delivery to the receiving parties. New information and/or materials should not be brought to the UDC hearing by the complainant or respondent.
- To the extent either party so requests, the parties will be separated by a divider, curtain, or other similar arrangement.
- The Title IX Coordinator may attend the hearing.
- The UDC hearing will commence with the Investigating Officer summarizing the scope of the investigation and answering any questions from the UDC regarding the investigation report and appended information.
- The parties may not question one another directly, although they may submit questions to chair, who may pose those questions to the party.
- All parties and witnesses are expected to cooperate and provide truthful information.
- At the close of the hearing, the UDC will retire for deliberation. During deliberation, the UDC shall apply a preponderance of the evidence standard to determine what conduct occurred and whether such conduct constitutes sexual misconduct.
- The UDC will issue a written decision finding, under a preponderance of the evidence standard, the material conduct that occurred and whether such conduct constitutes harassment violation of the policy. The written decision will summarize the UDC's rationale, where necessary, and will note any credibility determinations that were important to the decision. If the UDC finds that the

alleged sexual misconduct occurred, it shall include in its written decision a recommendation to the Investigating Officer regarding discipline.

- The Investigating Officer shall, within three (3) business days, review the UDC's written decision and, if sexual misconduct has been found, refer the matter to an appropriate University administrator(s) to promptly determine sanctions and remedial steps to be offered to the complainant. The Investigating Officer will, within five (5) business days of receiving the UDC's written decision, provide simultaneous written notification to the parties of the outcome of the hearing (i.e., whether sexual misconduct occurred or did not occur). If the respondent is found to have committed sexual violence, the complainant will be notified of all sanctions. If the respondent is found to have committed a form of sexual misconduct other than sexual violence, the complainant will only be notified of the sanctions that relate directly to the complainant.
- The Investigating Officer shall separately notify the complainant, in writing, of any non-disciplinary remedial measures that will be offered for the complainant's benefit.

## 7. Appeals

Both the complainant and respondent, have the right to appeal the finding as to whether or not sexual misconduct occurred and/or the discipline imposed as provided in Section 9 of the Code of Student Conduct (available in the [Lowdown](#)). The appeal procedures shall be modified/supplemented as follows:

In order to appeal, the aggrieved party must submit a written statement of appeal to the Dean of Students or designee within five (5) business days of being notified of the outcome of the hearing. The written statement must include the ground for appeal and describe the basis for it in detail.

The grounds for appeal are limited to the following:

- Material and prejudicial violation of procedural rights that affected the outcome.
- New information, not available at the time of the hearing, would have resulted in a different outcome.
- The discipline imposed is too severe or not severe enough.

In the event the written statement of appeal fails to state a permissible ground for appeal and/or does not describe the basis for the appeal, the appeal may be summarily dismissed.

Upon receiving a valid appeal, the Dean of Students or designee will, within three (3) business days, provide a copy of the written statement of appeal to the other party.

Thereafter, the party so notified will have five (5) business days to submit a written response to the appeal.

The complainant and respondent shall receive simultaneous written notification of the outcome of the appeal no later than ten (10) business days after the written notice of appeal was filed. The decision of the Dean of Students is final.

**E. Formal Resolution Process for Complaints Against Faculty**

1. Definition of “Faculty”

For purposes of these Complaint Resolution Procedures, the term “faculty” includes full and part-time University employees, who teach or carry out research, including adjunct and clinical faculty, graduate teaching assistants, graduate research assistants, and administrators with faculty status.

2. Compliance Officer

The Compliance Officer is the Associate Vice President for Academic Affairs or designee. The Compliance Officers is responsible for coordinating implementation of these procedures and working with the Title IX Coordinator to designate an Investigating Officer.

3. Investigating Officer to be Selected by Compliance Officer

In cases where the respondent is a faculty member, the Investigating Officer shall be selected by the Compliance Officer, in consultation with the Title IX Coordinator. The Associate Vice President for Academic Affairs may be designated as an Investigating Officer only after approval by the Title IX Coordinator. In the event the Associate Vice President for Academic Affairs is designated as the Investigating Officer, the Associate Vice President of Academic Affairs shall not also serve as the Compliance Officer; in such circumstance, the Compliance Officer shall be designated by the Provost and Senior Vice-President for Academic Affairs.

4. Complainant

Only the alleged victim or the University, acting pursuant to Section VI.C of the Sexual Misconduct Policy, may act as a complainant.

5. Written Response by Respondent

Upon receipt of the written complaint, the respondent shall have five (5) business days in which to provide a written response to the Investigating Officer. If the respondent fails to submit a timely written response, the respondent will be deemed to have admitted to the sexual misconduct alleged and the complaint will be forwarded immediately to the

Sexual Harassment and Sexual Violence Resolution Committee for a recommendation regarding discipline.

6. Investigation

In the event the respondent submits a written response, the Investigating Officer will conduct an investigation to gather information and statements from witnesses and other sources for eventual review and consideration at a hearing.

The investigation will involve interviews with the complainant, respondent and witnesses and the collection of non-testimonial information and/or materials, such as email, text messages, security camera footage, and the like. Witnesses and non-testimonial evidence may be identified and/or submitted by the parties or independently gathered by the Investigating Officer. The Investigating Officer may decline to interview witnesses or collect information that the Investigating Officer deems irrelevant. The scope of the investigation shall be determined by the Investigating Officer.

The Investigating Officer will prepare a written investigation report summarizing the allegations of sexual misconduct, the scope of the investigation, the information collected, and appending the written complaint, written response, witness statements, and other information collected during the investigation. The Investigating Officer will submit the investigation report to the Sexual Harassment and Sexual Violence Resolution Committee at the conclusion of the investigation which, in most cases, will be completed within thirty (30) days of receipt of the respondent's written response. The complainant and respondent shall receive a copy of the written report when it is transmitted to the Sexual Harassment and Sexual Violence Resolution Committee.

Throughout the investigation, the parties will have those rights set forth in Section VII of the Sexual Misconduct Policy.

7. Composition of the Sexual Harassment and Sexual Violence Resolution Committee

The Sexual Harassment and Sexual Violence Resolution Committee will be appointed by the President of the University and will be composed of three (3) members from departments other than those of the respondent: (1) a department chair; (2) a tenured member of the faculty; and (3) the Vice President for Student Affairs or Dean of Students, if the complainant is a student; if the complainant is not a student, another tenured faculty member will be appointed to the Committee. A chair will be selected by the Committee. All members of the Committee will receive periodic training in the processing of sexual misconduct complaints, including training regarding the types of sexual misconduct, consent, the preponderance of the evidence standard, and how to weigh and evaluate the information and/or materials presented.

8. Review by the Sexual Harassment and Sexual Violence Resolution Committee

The Sexual Harassment and Sexual Violence Resolution Committee will meet to review the entire investigation report and appended materials within five (5) business days of receipt. The purpose of the Committee's review is to determine whether or not, based upon the information and/or materials presented, a preponderance of evidence establishes it is more likely than not that a violation of the Sexual Misconduct Policy or any other University policy occurred, and, if so, what the recommended discipline will be.

The Committee may call the parties, any witnesses or the Investigating Officer before a Committee meeting at any time during its evaluative process. No party to the proceeding or any witness has a right to attend a Committee meeting. If the Committee allows the parties to address it, to the extent either party so requests, a divider, curtain, or other similar arrangement will be used to separate the parties.

9. Time Frame for Committee Review

Absent extenuating circumstances, the Sexual Harassment and Sexual Violence Resolution Committee will complete its review of the complaint and make its determination as described below within fifteen (15) business days of the Committee's receipt of the investigation report.

10. Determination by the Committee

The Committee may determine:

- That the alleged conduct did not occur or does not constitute a policy violation. If so, within three (3) business days of that decision, the Committee chair will provide written notification to the Compliance Officer; or
- That the alleged conduct did occur and constitutes sexual misconduct. If so, within three (3) business days the Committee chair will provide written notification to the Compliance Officer and the appropriate Associate Vice President (if other than the Compliance Officer) of the Committee's determination; or
- That a policy violation did not occur but that the Committee found the behavior that occurred to be unacceptable in the employment context and should be subject to correction either through remediation or disciplinary action through another policy or process, up to and including termination. If so, within three (3) business days of that decision, the Committee chair will provide written notification to the Compliance Officer.

#### 11. Review by the Compliance Officer

The Compliance Officer will review the Committee's written notification. If the determination includes a finding of sexual misconduct or unacceptable behavior, the Compliance Officer will make a determination regarding discipline of the respondent and any necessary remedial steps to be taken for the complainant. Within three (3) business days of receiving the Committee's determination, the Compliance Officer will provide simultaneous written notification to the parties of the outcome of the complaint. (i.e., whether sexual misconduct or unacceptable conduct occurred or did not occur) and any discipline imposed. If the respondent is found to have committed sexual violence, the complainant will be notified of all sanctions. If the respondent is found to have committed a form of sexual misconduct other than sexual violence, the complainant will only be notified of the sanctions that directly relate to the complainant. The Compliance Officer shall separately notify the complainant, in writing, of any non-disciplinary remedial measures that will be offered for the complainant's benefit.

#### 12. No Right to Review the Committee's Written Notification

Unless specifically required by law, neither the complainant, respondent, nor any witness will be allowed to review the Committee's written notification.

#### 13. Appeal

Where a determination has been made that the respondent engaged in sexual misconduct or unacceptable behavior, either the complainant or respondent may appeal a sanction imposed that relates directly to the appealing party. Where a finding of sexual violence is made, either party may appeal any sanction imposed. There is no right to appeal the determination as to whether or not sexual misconduct or unacceptable behavior occurred.

An appeal must be based on one or more of the following grounds:

- The discipline imposed is too severe or too lenient.
- New information, previously unavailable, would have resulted in different discipline.
- Material and prejudicial violation of procedural rights occurred that affected the determination of the discipline.

In order to appeal, the aggrieved party must submit a detailed written statement of appeal to the Provost/Senior Vice President for Academic Affairs within five (5) business days of notification of the outcome of the complaint. In the event the written statement of appeal fails to state a permissible ground for appeal and/or does not describe the basis for the appeal, the appeal may be summarily dismissed.

Upon receiving a valid appeal, the Provost/Senior Vice President for Academic Affairs will, within three (3) business days, provide a copy of the written statement of appeal to the other party. Thereafter, the party so notified will have five (5) business days to submit a written response to the appeal to the Provost/Senior Vice President for Academic Affairs.

The Provost/Senior Vice President for Academic Affairs will evaluate the written appeal and any written response. Within five (5) business days of receiving the written response (or the time for a written response expiring with no response submitted), the Provost/Senior Vice President for Academic Affairs will provide simultaneous written notification to the parties of the Compliance Officer's decision. The Provost/Senior Vice President for Academic Affairs' determination of the appeal is final.

#### 14. Records

All records created during the formal resolution of a complaint against a faculty member shall be maintained by the Associate Vice President for Academic Affairs. Where a faculty member is found to have engaged in sexual misconduct, a letter will be placed in the faculty member's personnel file indicating that the Associate Vice President for Academic Affairs maintains records of the sexual misconduct complaint.

#### **F. Formal Resolution Process for Complaints Against Administrators, Non-Faculty Employees, Contractors, and Third Parties**

##### 1. Definition of "Non-Faculty Employees"

For purposes of these Complaint Resolution Procedures, the term "Non-Faculty Employees" includes full and part-time staff employees, coaches, resident physicians, and postdoctoral fellows.

##### 2. Investigating Officer to be the EEO Manager.

In cases where the respondent is an administrator, non-faculty employee, contractor, or third party, the Investigating Officer will generally be the EEO Manager or his/her designee.

##### 3. Complainant

Only the alleged victim or the University, acting pursuant to Section VI.C of the Sexual Misconduct Policy, may act as a complainant.

##### 4. Investigation

Once the case is identified for formal resolution, the Investigating Officer will conduct an investigation to gather statements and other information for eventual review and consideration by the Assistant Vice President, Human Resources.

The investigation will involve interviews with the complainant, respondent and witnesses and the collection of non-testimonial information and/or materials, such as email, text messages, security camera footage, and the like. Witnesses and non-testimonial information and/or materials may be identified and/or submitted by the parties or independently gathered by the Investigating Officer. The Investigating Officer may decline to interview witnesses or collect information that the Investigating Officer deems irrelevant. The scope of the investigation shall be at the discretion of the Investigating Officer.

Throughout the investigation, the parties will have those rights set forth in Section VII of the Sexual Misconduct Policy.

5. Submission and Acceptance of the Preliminary Investigation Report

The Investigating Officer will prepare a written investigation report summarizing the allegations of sexual misconduct, the scope of the investigation, the information collected, and appending the written complaint, any statements or summaries of testimony provided, and other information collected during the investigation. The Investigating Officer will submit the investigation report to the Associate Vice President, Human Resources at the conclusion of the investigation which, in most cases, will be completed within thirty (30) business days of receipt of the complaint.

Within five (5) business days of receiving the report, the Associate Vice President, Human Resources, using a preponderance of the evidence standard, and after consulting with the Investigating Officer, other administrators, division heads, and supervisors, as appropriate, will determine whether sexual misconduct occurred or, if deemed necessary, remand the report to the Investigating Officer for further investigation.

In the event the Associate Vice President, Human Resources finds that sexual misconduct occurred, the Associate Vice President, Human Resources, after consulting with the Investigating Officer, other administrators, division heads, and supervisors, as appropriate, shall also determine necessary sanctions to be imposed upon the respondent and remedial steps to be offered to the complainant.

6. Notification of the Parties

Within seven (7) days of the Associate Vice President, Human Resource's determination, the Investigating Officer will provide simultaneous written notification to the complainant and the respondent of the outcome of the investigation (i.e., whether sexual misconduct occurred or did not occur) and his or her right to review the investigation report with the Investigating Officer. If the respondent is found to have committed sexual violence, the complainant will be notified of all sanctions. If the respondent is found to have committed some form of sexual misconduct other than sexual violence, the complainant will only be notified of the sanctions that directly relate to the complainant.

The Investigating Officer shall separately notify the complainant, in writing, of any non-disciplinary remedial measures that will be offered for the complainant's benefit.

## 7. Appeals

In the event the outcome of the investigation includes a finding that sexual misconduct occurred, either the complainant or respondent may appeal the discipline imposed that relates directly to the appealing party. Where a finding of sexual violence is made, either party may appeal any sanction imposed. There is no right to appeal the determination as to whether or not sexual misconduct occurred.

An appeal must be based on one or more of the following grounds:

- The discipline imposed is too severe or too lenient.
- New information, previously unavailable, would have resulted in different discipline.
- Material and prejudicial violation of procedural rights occurred that affected the determination of the discipline.

In order to appeal, the aggrieved party must submit a detailed written statement of appeal to the Vice President for Finance and Administration within five (5) business days of receiving notification of the outcome of the investigation. In the event the written statement of appeal fails to state a permissible ground for appeal and/or does not describe the basis for the appeal, the appeal may be summarily dismissed.

Upon receiving a valid written statement of appeal, the Vice President for Finance and Administration will, within three (3) business days, provide a copy of the written statement of appeal to the other party. Thereafter, the party so notified will have five (5) business days to submit a written response to the appeal to the Vice President for Finance and Administration.

Within three (3) business days of the date the written statement of appeal and any response are received, the Vice President for Finance and Administration will notify the Sexual Misconduct Appeals Committee (a three-member panel of the University's Title IX Committee designated by the President, none of whom will be from the same division as the complainant or respondent) that an appeal has been filed. Within ten (10) business days of notification, the Sexual Misconduct Appeals committee shall convene to review the written statement of appeal, any response, the investigation report (including its appendices), and the written notice of outcome. The Sexual Misconduct Appeals Committee may receive direction and guidance from the Investigating Officer regarding proper appeal procedure. During this meeting, the Sexual Misconduct Appeals Committee may allow each party to briefly address the Committee and advocate for their position. If the Sexual Misconduct Appeals Committee allows the parties to address it, to the extent either party so requests, a divider, curtain, or other similar arrangement will be used to

separate the parties. The Sexual Misconduct Appeals Committee will not hear testimony from witnesses.

The Sexual Misconduct Appeals Committee will issue a written recommendation on the appeal within seven (7) days of its meeting, which will be transmitted to the Vice President for Finance and Administration. The Vice President for Finance and Administration may accept the recommendation, reject it, or modify it. Within five (5) business days of receiving the Committee's recommendation, the Vice President for Finance and Administration will provide simultaneous written notification to the parties of the outcome of the appeal. The Vice President for Finance and Administration may transmit a copy of the written notification to pertinent supervisors or Division Heads, the Sexual Misconduct Appeals Committee, and the EEO Manager.

The decision of the Vice President for Finance and Administration is final.

#### 8. Records

All records created during the formal resolution of a complaint against an administrator, non-faculty employee, contractor, or third party shall be maintained by the EEO Manager. Where sexual misconduct is found to have occurred, a letter will be placed in an employee's personnel file or other relevant business file indicating that the EEO Manager maintains records of the sexual misconduct complaint.

### V. SPECIAL PROCEDURES FOR COMPLAINTS AGAINST THE UNIVERSITY PRESIDENT

If a complaint involves alleged sexual misconduct on the part of the University's President, the University's Board of Trustees ("Board") will designate the Investigating Officer.

The Investigating Officer will conduct an investigation to gather testimony and other information for eventual review and consideration by the Board.

The investigation will involve interviews with the complainant, respondent and witnesses and the collection of non-testimonial information and/or materials, such as email, text messages, security camera footage, and the like. Witnesses and non-testimonial information and/or materials may be identified and/or submitted by the parties or independently gathered by the Investigating Officer. The Investigating Officer may decline to interview witnesses or collect information that the Investigating Officer deems irrelevant. The scope of the investigation shall be at the discretion of the Investigating Officer.

The Investigating Officer will prepare a written report summarizing the allegations of sexual misconduct, the scope of the investigation, the information collected, and appending the written complaint, witness statements, and other information collected

during the investigation. The Investigating Officer will present the written report to the Board. The complainant and respondent shall receive a copy of the written report when it is transmitted to the Board.

Throughout the investigation, the parties will have those rights set forth in Section VII of the Sexual Misconduct Policy.

After review and consideration of the report, the Board will issue a written determination, delivered simultaneously to the parties, determining whether sexual misconduct occurred and, if so, the sanction to be imposed. If the respondent is found to have committed sexual violence, the complainant will be notified of all sanctions. If the respondent is found to have committed some form of sexual misconduct other than sexual violence, the complainant will only be notified of the sanctions that directly relate to the complainant. The Board shall separately notify the complainant, in writing, of any non-disciplinary remedial measures that will be offered for the complainant's benefit. The Board's determination shall be based on a preponderance of the evidence standard. The determination of the Board is final and not subject to appeal.

#### **VI. SPECIAL PROCEDURES FOR COMPLAINTS AGAINST THE TITLE IX COORDINATOR**

If a complaint involves allegations of sexual misconduct on the part of the University's Title IX Coordinator, formal resolution will be conducted pursuant to Section IV.F of these Complaint Resolution Procedures as modified herein. The President shall designate the Investigating Officer, shall receive the Investigating Officer's report, and shall determine whether or not sexual misconduct occurred or may remand the report to the Investigating Officer for further investigation. If the President determines that sexual misconduct occurred, the President shall determine the sanctions to be imposed. The President's determination whether sexual misconduct occurred, and his decision regarding sanctions, are final and not subject to appeal.

In addition, the President shall designate one of the Deputy Title IX Coordinators to perform all non-investigatory functions that would otherwise be performed by the Title IX Coordinator, including, but not limited to, the initial evaluation of the report, the consideration and implementation of interim measures, and the implementation of final remedial measures, if any.