University of South Alabama
Sexual Misconduct Policy & Complaint Resolution Procedures

SEXUAL MISCONDUCT POLICY
Approved September 28, 2021

Executive Summary

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.

1. Purpose

The University of South Alabama (the “University”) is committed to establishing and maintaining an environment where individuals, regardless of gender, gender identity, gender expression, or sexual orientation, 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.

Retaliation 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 would be in violation of the University’s No Retaliation Policy. Complaints of retaliation may be subject to the same grievance procedures as complaints of sexual misconduct.

The University will promptly and thoroughly investigate and resolve all formal 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 effects of misconduct on the complainant and others, if applicable.
While University employees, as described in Section 4.2.1.1 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.

2. Applicability

This policy applies to all University employees, including administrators, faculty, adjunct faculty, and staff; employees of USA affiliates including but not limited to University of South Alabama Health Care Authority and its subsidiaries (collectively, “USAHCA”) and USA HealthCare Management, LLC (“USAHCM”); 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 does not apply to students, faculty, or staff participating in Study Abroad program activities that are facilitated outside of the United States.

3. Definitions

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual misconduct.

**Consensual Relationships:** Effective consent may not exist when there is a disparity in power between the parties. An example is when one is in a supervisory or evaluative role over the other, such as a faculty member who is teaching a student or an administrator who supervises an employee.

In addition, the appearance of a compromising conflict of interest or of coercion, favoritism, or bias is prejudicial to the interests of the University. Sexual and/or romantic relationships between faculty members and students with whom they also have an academic evaluative role or between supervisory employees and employees whom they supervise create such an appearance, even where the relationship is genuinely consensual.

Because of the significant power differential that exists between faculty and students, faculty members are prohibited from participating in sexual and/or romantic relationships with students enrolled in their classes or with students whom they otherwise evaluate, grade, or supervise. Similarly, faculty members have an obligation to avoid situations that may require them to evaluate, grade, or supervise students with whom they have or have had sexual and/or romantic relationships. If such a situation arises, a faculty member must report the
situation immediately to their immediate supervisor upon becoming aware of such a situation.

Likewise, University personnel may not participate in the evaluation or supervision of any other employee with whom such personnel currently have or have had a sexual and/or romantic relationship. If such a situation arises, the supervisory employee must report the situation immediately to their immediate supervisor upon becoming aware of such a situation.

Consent: 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 either of the following: (1) [f]orcible compulsion[; or] (2) [b]eing incapable of consent..” Ala. Code § 13A-6-70(b). “Forcible compulsion” means:

Use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include, but are not limited to, the respective ages and sizes of the victim and the accused; the respective mental and physical conditions of the victim and the accused; the atmosphere and physical setting in which the incident was alleged to have taken place; the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim; or whether the victim was under duress. Forcible compulsion does not require proof of resistance by the victim.

Ala. Code § 13A-6-60(1).

Furthermore, under Alabama law, “[a] person is deemed incapable of consent if he or she is either: (1) [l]ess than 16 years old[; or] (2) incapacitated.” Ala. Code § 13A-6-70(c). A person is “incapacitated” if he or she is: (1) “suffer[ing] from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct;” (2) “temporarily incapable of appraising or controlling his or her conduct due to the influence of
a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender,” or (3) “unable to give consent or . . . unable to communicate an unwillingness to an act because the person is unconscious, asleep, or . . . otherwise physically limited or unable to communicate.” Ala. Code § 13A-6-60(2).

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.

**Dating Violence:** Dating violence is violence committed by a person (1) who is or has been in a “relationship of a romantic or intimate nature [with the complainant that is] characterized by the expectation of affectionate or sexual involvement by either party.” Ala. Code §§ 13A-6-130 – 13A-6-132. Alabama law does not specifically define dating violence, but conduct of this nature is covered by the definitions of dating relationship and domestic violence found at Alabama Code §§ 13A-6-130 -- 13A-6-132. Dating violence does not depend on the gender, gender identity, gender expression, 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/gender identity or a different gender/gender identity.
Dating violence is a crime and is prohibited by this policy, no matter the motivation. Reports of domestic violence, dating violence, and stalking will be addressed pursuant to the Complaint Resolution Procedures.

**Domestic Violence:** Domestic violence is felony or misdemeanor crimes of violence committed by a current or former spouse, parent, step-parent, child, step-child, a person with whom the complainant shares a child, a present household member, or a person who has or had a dating relationship with the complainant.

Alabama law prohibits domestic violence, pursuant to Alabama Code § 13A-6-130 through 143. Domestic violence does not depend on the gender, gender identity, gender expression, 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/gender identity or a different gender/gender identity.

Domestic violence is a crime and is prohibited by this policy, no matter the motivation. Reports of domestic violence, dating violence, and stalking will be addressed pursuant to the Complaint Resolution Procedures.

**Faculty:** The term “faculty” includes full-time and part-time (i.e., those without a full-time staff appointment) University employees who teach or carry out research, including adjunct and clinical faculty, graduate teaching assistants, graduate research assistants, and administrators with faculty status.

**Formal Complaint:** A formal complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual misconduct against a Respondent and requesting that the University investigate the allegation of sexual misconduct in accordance with this policy and related procedures. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University’s education programs and activities. A “document filed by the Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Formal Complaint.

**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 that 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 or resolution of a complaint of sexual misconduct, and such disciplinary action will not constitute prohibited retaliation.

**Hostile Environment Sexual Harassment:** Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University’s education programs and activities.

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 complainant, and whether there is a power differential between the complainant and alleged perpetrator.

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

Hostile environment sexual harassment can occur between individuals of the same gender/gender identity and individuals of different gender/gender identity.

Specific examples of unwelcome conduct that may constitute hostile environment 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 about 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 communications, including, but not limited to, 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.

Non-Faculty Employee: The term “Non-Faculty Employee” includes full and part-time staff employees, coaches, resident physicians, postdoctoral fellows, USAHCA physicians, and physicians without faculty appointments.

Quid Pro Quo Sexual Harassment: Quid pro quo sexual harassment occurs when an employee of the University conditions the provision of an aid, benefit, or service of the University on the individual’s participation in unwelcome sexual conduct. Quid pro quo sexual harassment can also occur when a University employee explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature.

Reasonable Person: A reasonable person is one who exercises average care, skill, and judgment in their conduct and who serves as a comparative standard for determining responsibility.

Respondent: An individual who is alleged to be the perpetrator of conduct that could constitute sexual misconduct.

Retaliation: Retaliation is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an 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 related procedures. Examples of retaliation include:
Termination of employment, demotion, denial of promotion, reduction in pay, or being “written up” because a report of sexual misconduct was made;

Sending threatening text messages or social media messages to someone because of a report of sexual misconduct or because of a statement made as a witness;

Causing physical damage to personal belongings because of a report of sexual misconduct or because of a statement made as a witness;

Suspension from an activity or limiting involvement because of a report of sexual misconduct; or

Publication of knowingly false information about a person because of a report of sexual misconduct.

Sex Discrimination: Sex discrimination occurs when persons are excluded from any 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 assault. 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 people 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;
- Unless exempt under Title IX, 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; or
● 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.

**Sexual Assault:** Sexual assault is any of the following conduct:

● Having carnal knowledge, or attempting to have carnal knowledge, of a person, without consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sex organ of the other person.
● Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
● Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. An “object or instrument” is anything used by the offender other than the offender’s genitalia.
● The touching of the private body parts of another for purposes of sexual gratification, without consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
● Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Alabama law.
● Sexual intercourse with a person who is under the statutory age of consent as defined by Alabama law.

**Sexual Harassment:** Conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

**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.

**Sexual Misconduct:** Sexual misconduct is an umbrella term that includes Sex
Discrimination and Sexual Harassment. Sexual misconduct does not depend on
the gender, gender identity, gender expression, or sexual orientation of the
complainant and alleged perpetrator. Thus, sexual misconduct can occur
between persons who consider themselves to be of the same gender/gender
identity or different genders/gender identities.

**Stalking:** Stalking means engaging in a course of conduct directed at a specific
person that would cause a reasonable person to (A) fear for their safety or the
safety of others who may be targeted by virtue of their relationship with the
person; or (B) suffer substantial emotional distress. Alabama law prohibits
stalking, as set forth at Alabama Code § 13A-6-90 to 13A-6-94, inclusive.

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;

- “Substantial emotional distress” means significant mental suffering or
  anguish that may, but does not necessarily, require medical or other
  professional treatment or counseling; and
● Stalking can occur between persons of different genders/gender identities or the same gender/gender identity.

4. Policy Guidelines

4.1 Introduction

This policy prohibits sexual misconduct regardless of gender, gender identity, gender expression, or sexual orientation of the complainant 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 (1) on University premises, (2) during or at an official University program or activity (regardless of location), or (3) 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 if (a) the University exercises substantial control over both the alleged perpetrator and the context in which the conduct occurred, or (b) the conduct occurred in any building owned or controlled by a student organization that is officially recognized by the University.

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 enrolled in classes and during regular academic breaks, as well as when the student is not enrolled in classes for a particular term but nonetheless maintains a continuing relationship with the University. 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.

The University’s jurisdiction over faculty and staff begins on the first day of employment. The University’s jurisdiction remains in effect until the faculty or staff member is no longer employed by the University.

4.2 Reporting

4.2.1 Making a Report

4.2.1.1 Employees

With the exception of those employees who are Confidential Resources identified in Section 4.2.6 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, the Associate 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.

4.2.1.2 Students and Non-Employee Members of the University Community

Students and non-employee (contractors, vendors, volunteers, camp participants, visitors, etc.) members of the University Community who wish to report sexual misconduct should file a report with the Title IX Coordinator, the Associate 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 4.2.6.1 below, have an obligation to report sexual misconduct that they observe or otherwise learn about.

At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the University’s educational program or activity.

4.2.1.3 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 by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or by calling 1-800-421-3481.

4.2.2 Reporting to Law Enforcement

In addition to making a report under this policy, the University encourages any person who believes that they are 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
If requested, the University will assist an individual in notifying the appropriate law enforcement authorities. If a person believes that they are 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 an individual’s permission.

4.2.3 Special Advice for Individuals Reporting Sexual Assault, Domestic Violence, and Dating Violence

For those who believe that they are a victim of sexual assault, 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 incident – avoid bathing, using the toilet, rinsing one’s mouth, or changing clothes. If it is necessary to change clothes, 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. USA Children’s and Women’s Hospital (identified in Section 4.2.6.1 of this policy) has evidence collection kits necessary for criminal prosecution should the individual wish to pursue charges now or in the future;
- 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 trained 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, the Associate Title IX Coordinator, or a Deputy Coordinator; and/or

● 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.

4.2.4 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.

4.2.5 Timing of Reports

The University encourages people 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.

4.2.6 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.

4.2.6.1 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 Advocate 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

- USA Children’s and Women’s Hospital (SANE exam provider)
  1700 Center Street
  Mobile, Alabama 36604
  Phone: (251) 415-1000

- University Hospital
  2451 University Hospital Drive
  Mobile, Alabama 36617
  Phone: (251) 471-7000

4.2.6.2 Community Resources

In addition, there are a number of hospitals and support services in the greater Mobile region that can provide counseling and advice to individuals subjected to sexual misconduct. These entities will not disclose information that is provided to them without the individual’s consent unless a specific law requires them to do so. These third-party resources include:

- Lifelines Counseling Services Rape Crisis
4.3 Evaluation of the Report and Engagement with the Parties

4.3.1 Initial Evaluation of the Report

After the University receives a report of sexual misconduct, the Title IX Coordinator or their 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 could not constitute a violation of the policy, the Title IX Coordinator or a designee may refer the report to be addressed under any other applicable University policy or close the matter without further investigation. However, the report will not be further addressed under this policy or the Complaint Resolution Procedures.
If the Title IX Coordinator or a designee determines the conduct alleged, if true, could constitute a violation of this policy, the Title IX Coordinator, the Associate Title IX Coordinator, or their designee will attempt to make contact with the potential complainant. If the reporting party is not also the potential complainant, the reporting party may have no further involvement in the process.

4.3.2 Contact with the Parties

The Title IX Coordinator, the Associate Title IX Coordinator, or their designee (often a trained support advocate) will make contact with the potential complainant of the conduct reported. The Title IX Coordinator, the Associate Title IX Coordinator, or their designee will advise the potential complainant of their 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 formal complaint under the Complaint Resolution Procedures;
- Requesting that no further action be taken and that the potential complainant’s identity not be disclosed; and/or
- Seeking interim measures, such as housing or academic assistance.

The Title IX Coordinator, the Associate Title IX Coordinator, or their designee will give the potential complainant a written document that outlines these options and provides contact information for local resources and support organizations.

If a formal complaint is filed, the Title IX Coordinator, or a designee, will make contact with the respondent of the conduct reported. The Title IX Coordinator, the Associate Title IX Coordinator, or their designee will advise the respondent of the process and options under the policy. There is a presumption that the respondent is not responsible for the reported conduct, pending the outcome of the process.
4.3.3 Interim Measures

Interim measures are temporary measures taken to ensure equal and continuing access to University 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 report or complaint is found not to be substantiated.

After receiving a report and during any investigation under the Complaint Resolution Procedures, the Title IX Coordinator, the Associate Title IX Coordinator, or their designee will impose any interim measures necessary to protect the involved parties from further sexual misconduct, to separate the parties, to protect witnesses, and/or to support the parties pending resolution. These interim measures may include but are not limited to: provision of counseling or support services; reasonable changes in academic, living, transportation, or work arrangements; and/or entry of a mutual “no contact” order or similar order to ensure separation of the parties. Either the complainant or the respondent may request interim measures. Interim measures may not unduly burden either party.

In cases where an individualized risk assessment indicates there is reasonable cause to believe the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct, the University may issue full or partial suspension, on an interim basis, until the matter is resolved through the Complaint Resolution Procedures. However, the respondent will have the opportunity to meet with the Title IX Coordinator, the Associate Title IX Coordinator, or their designee and be heard either prior to or within 24 hours after such interim suspension being imposed.

If a complainant or potential complainant has obtained an ex parte order of protection (i.e., a temporary order for shelter and protection against someone who is a danger to another person), 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, they should provide such information to the Title IX Coordinator, the Associate Title IX Coordinator, or a 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 4.2.

4.3.4 Decision on How to Proceed

In the event a formal complaint is filed under the Complaint Resolution Procedures, the Title IX Coordinator, the Associate Title IX Coordinator, or their designee will appoint an Investigator 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 a complainant’s privacy and will conduct any 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 respondent and others involved in the investigation.

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

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

The written complaint will be provided to the Title IX Investigator (the “TIX Investigator”), as specified in the Complaint Resolution Procedures.

If the complainant requests that the report not be investigated and/or is unwilling to make a formal complaint 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 a potential complainant’s wishes to the contrary, when, considering the totality of circumstances, the University determines that not initiating proceedings would be clearly unreasonable. This may occur when 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 Title IX Coordinator may sign a formal complaint to initiate proceedings against a respondent.

In the event that a complainant initiates a formal complaint under the Complaint Resolution Procedures, but then elects to withdraw the complaint, the University may also proceed with resolution of the formal complaint at its discretion depending upon the facts and circumstances of the incident. Additionally, the University may consolidate multiple formal complaints involving different persons when they arise from the same facts or circumstances.

If the University initiates a formal complaint or continues proceedings under the Complaint Resolution Procedures contrary to the wishes of the complainant, the University is obligated to treat the non-participating complainant as a party and provide notifications to them throughout the complaint resolution process. This requirement is intended to preserve the non-participating complainant’s right to choose to participate, not to pressure the non-participating complainant into participating.

The University may dismiss a formal complaint at any time if the complainant would like to withdraw the complaint; the respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination.

4.4 Investigation and Resolution

4.4.1 ComplaintResolution Procedures

All formal 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 formal complaints of sexual misconduct. Provided, however, that if a formal complaint is dismissed, the University may refer the matter for resolution under other policies or procedures, where permitted by law. 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 the investigation. Under the Complaint Resolution Procedures, the party making a formal complaint is referred to as the “complainant” and the person accused of misconduct is referred to as the “respondent.”

4.4.2 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 is expected to be discreet with the information they receive during the process, and they will not be permitted to attend, present information, argue, or actively participate in the proceedings unless the support person has also been designated as a party’s advisor. 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.

The University’s Advocate Program offers trained Support Advocates who are available to serve as support persons for complainants. The Advocates have received in-depth training regarding this policy and the Conflict Resolution Procedure and can provide support and assistance in understanding and navigating the process. Any complainant wishing to utilize a Support Advocate should make a request to the Title IX Coordinator, the Associate Title IX Coordinator, or their designee.

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, the Associate Title IX Coordinator, or their designee.

Each party is also entitled to an advisor of their choice for the purpose of conducting cross-examination for the party during the hearing. An advisor does not have to be, but may be, an attorney. If a party does not have an advisor, the University will provide one free of charge. A support person
may also serve as an advisor, either by choice of the party or by designation of the University.

4.4.3 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 all 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 all parties to be accompanied to the hearing by an advisor 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 TIX Investigator 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;
- Complete various phases of the process in a reasonably prompt time frame, and in the event of any delays, which may only be for good cause, provide written notice to the parties;
- 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 formal complaint and the outcome of any appeal; and
• If a formal complaint of sexual misconduct is substantiated, take appropriate corrective, disciplinary, and remedial action intended to prevent the recurrence of the conduct and correct its discriminatory effects.

At any point during the investigation, if the University determines that the conduct alleged in the formal complaint, if assumed true:

• Does not constitute sexual harassment;
• Did not occur in the University's education program or activity; or
• Did not occur against a person in the United States;

then the University must dismiss the complaint for purposes of this policy.

The University has discretion to address such conduct under another policy, such as a student code of conduct, faculty handbook, or staff employee handbook.

4.4.4 Sharing of Information

As a general rule, the University will share information about a report or formal complaint, and information received during any 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.

4.5 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 education programs and training is available from the Title IX Coordinator and is published on the Title IX website. Education
materials and information regarding upcoming workshops and training can be requested via email at titleix@southalabama.edu.

4.6 Policy Review

This policy is maintained by the University’s Title IX Coordinator. The Title IX Coordinator will review this policy at least biannually, with the assistance of the University’s Title IX Executive Committee. The review will capture evolving legal requirements, evaluate the support 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.

4.7 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 other appropriate channels of communication.

5. Procedures

5.1 General Principles:

5.1.1 Applicability

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

For employees: Consequences for employees found in violation of University policy, based on the clear and convincing standard, can range from a written warning to suspension up to termination of employment.

5.1.2 Definitions

“TIX Investigator” means the individual(s) designated by the Title IX Coordinator, the Associate Title IX Coordinator, or their designee to investigate a particular formal complaint and administer relevant provisions of these Complaint Resolution Procedures. The TIX Investigator may consult with other University administrators and counsel as needed. The TIX Investigator may be a third-party investigator or attorney retained for that purpose by the University. The TIX Investigator will also be trained on
issues of relevance to create an investigative report that fairly summarizes relevant evidence. The training is free of sex stereotypes and promotes impartial investigations.

5.1.3 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 is unable to 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 or the Associate Title IX Coordinator to fill the role.

5.1.4 Training

These procedures will be implemented by University employees who receive training on the issues related to sexual misconduct. The Title IX Coordinator, Associate Title IX Coordinator, Deputy Title IX Coordinators, Title IX Investigators, and decision-makers have all been trained on the various relevant aspects of the University’s Sexual Misconduct Policy and Complaint Resolution Procedures.

The training includes how to conduct investigations, hearings, appeals, and informal resolutions, as well as how to serve impartially, including avoiding prej udgment of the facts at issue and conflicts of interest and bias. The training is free of sex stereotypes and promotes impartial investigations.

Additionally, decision-makers receive training on relevant technology that is used at any live hearing, relevance, and the permissible use of sexual history during a live hearing.

5.1.5 Participation on Investigations

All members of the University Community are encouraged and expected to fully cooperate with any investigation and resolution under these Complaint Resolution Procedures. In the event a complainant refuses to participate under these Complaint Resolution Procedures, the Title IX Coordinator may sign a formal complaint to initiate proceedings against a respondent under the circumstances specified in Section 4.3.4 of this 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.

5.1.6 Virtual Process

To the extent that the parties are conducting meetings, the University can accommodate virtual processes. Hearings may be held via virtual platforms only with consent from all parties.

5.2 Timing, Notification, and Initiation of Process

5.2.1 Timing of Investigation and Resolution

The University will endeavor to conclude its investigation and resolution of the formal complaint in a timely manner. The complainant (including a complainant who elected not to proceed with filing a formal complaint and a complainant who filed a formal complaint and subsequently withdrew) 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 TIX Investigator in writing explaining how much additional time is needed and why it is needed. The TIX Investigator shall respond to any such request in a timely manner.

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, in the University’s sole discretion, 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.

5.2.2 Complaints Involving Multiple Parties

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

To the extent multiple formal complaints arise from the same transaction of facts, the TIX Investigator, in consultation with the Title IX Coordinator or the Associate Title IX Coordinator, may merge the formal 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 formal complaint, the TIX Investigator, in consultation with the Title IX Coordinator or the Associate Title IX Coordinator, may combine all related and relevant allegations of sexual misconduct into one investigation and resolution process.

5.2.3 Notification of the Respondent and Selection of Process

Once a formal complaint is received by the TIX Investigator, the TIX Investigator will promptly notify the respondent and provide the respondent with the opportunity to review a copy of the written formal complaint. Additionally, the TIX Investigator will provide written notice to both parties that contains:

- Notice of the University’s process for resolving the formal complaint, including the informal resolution process;

- Notice of the specific allegations of sexual misconduct, including sufficient details known at the time to allow the parties to prepare a response before any initial interview by the TIX Investigator, which include, but are not limited to, the identity of the parties involved, the conduct allegedly constituting sexual misconduct, and the date and location of the alleged incident, if known;

- 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;

- Notice that each party may have an advisor of their choice who may be, but is not required to be, an attorney;
● Notice that all parties may inspect and review evidence; and

● Notice of any provisions in the University’s student code of conduct, or applicable faculty or staff handbook, that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

The TIX Investigator will then communicate with each party separately to discuss the pertinent avenues for resolution as set forth below. If the parties provide written consent to informal resolution, the TIX Investigator, in consultation with the Title IX Coordinator or the Associate Title IX Coordinator, will then determine whether informal resolution is an appropriate means to resolve the formal complaint, instead of the formal process. The TIX Investigator will then notify the parties of the specific informal resolution process to be used. If any students are parties, the Title IX Deputy Coordinator (TIXDC), or a designee, shall also be notified.

If the scope of the investigation expands, the University will issue a supplemental written notice providing additional details to all parties.

5.3 Informal Resolution

5.3.1 Nature of Informal Resolution

Informal resolution is a process by which the TIX Investigator, working alone or in concert with other appropriate University administrators (such as a supervisor if the parties are employees), attempts to resolve a formal complaint to the mutual satisfaction of all parties. 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 TIX Investigator 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.
5.3.2 When Informal Resolution May Be Used

Informal resolution is intended to resolve complaints quickly and collaboratively. However, the TIX Investigator may determine that informal resolution is not appropriate in certain circumstances, such as where informal resolution has failed between the same parties in the past, where 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.

All parties must agree in writing to use informal resolution. If any party does not wish to use informal resolution, formal resolution will be used. Any party has the right to end informal resolution at any time prior to agreement on resolution and insist upon formal resolution. Similarly, if the TIX Investigator determines that efforts at informal resolution have been unsuccessful and have no prospect for success, the TIX Investigator may convert the matter to formal resolution, irrespective of the parties’ wishes. Informal resolution will not be utilized in any case in which an employee is accused of sexual misconduct involving a student.

5.3.3 Documentation of Informal Resolution

If the parties reach agreement on an informal resolution, the TIX Investigator will consult with the Title IX Coordinator or the Associate Title IX Coordinator and other appropriate University administrators (including the TIXDC or their designee if any student is a party). This group will review the resolution and may reject it, approve it, or require modifications prior to approval. In the event the resolution is approved, the TIX Investigator will prepare a written memorandum setting forth the terms of the resolution. The TIX Investigator will present the written memorandum to the parties for their review and signature. The TIX Investigator will then provide the parties with simultaneous written notification that the case has been resolved pursuant to informal resolution. If any students are parties, the Student Conduct Administrator (SCA) shall also be notified. The TIX Investigator 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.

5.3.4 Monitoring of Implementation

Because it is collaborative and must be agreed to by all parties, there is no right to appeal the terms of an informal resolution. In the event the terms of
an informal resolution require future action or inaction, the TIX Investigator 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 TIX Investigator, after consulting with the Title IX Coordinator or the Associate Title IX Coordinator, may reactivate the formal complaint and immediately commence its resolution under the formal process.

5.4 Formal Resolution

5.4.1 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 complainant. Unlike informal resolution, formal resolution involves an in-depth investigation and determination of facts under a clear and convincing 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.

5.4.2 Rules of Evidence

Formal rules of evidence do not apply in any of the formal resolution processes specified below. Nonetheless, information presented 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.

5.4.3 Time Frames

The University will endeavor to conduct the formal resolution process within a reasonable time frame. However, the time that it takes to complete the process will be affected by circumstances such as the availability 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. The parties will
receive written notification if extenuating circumstances are anticipated to result in lengthy delays.

5.5 Formal Resolution Processes

5.5.1 Investigator

Complaints under this process will be investigated by the TIX Investigator, or a designee, unless the TIX Investigator is the respondent, in which case the investigator will be appointed by the TIX Coordinator.

5.5.2 Investigation

Once the case is identified for formal resolution, the TIX Investigator 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 emails, 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 TIX Investigator. Both parties will have equal opportunity to present witnesses, including both fact and expert witnesses, together with other inculpatory and exculpatory evidence. The TIX Investigator may decline to interview witnesses or collect information that the TIX Investigator deems irrelevant. The scope of the investigation shall be at the discretion of the TIX Investigator.

Prior to completion of the investigative report, the TIX Investigator will send to each party and the party’s advisor the evidence collected for review in an electronic format or a hard copy, and the parties shall have ten (10) days to submit a written response to the TIX Investigator, which the TIX Investigator will consider prior to completion of the investigative report. Throughout the investigation, the parties will have those rights specified in Section 4.4 of this policy.

The TIX Investigator will complete the investigation report. Prior to any hearing, the TIX Investigator will submit the investigation report and any appended information to the Title IX Coordinator, or a designee, for review. At least ten (10) business days prior to the hearing, the Title IX Investigator, or a designee, shall send to each party, the party’s advisor, and the
University administrator the investigative report in an electronic format or a hard copy for their review.

5.5.3 Hearing Committee

Complaints are assigned to committees for adjudication based on the relationship of the respondent to the University.

5.5.3.1 University Disciplinary Committee

The University Disciplinary Committee (UDC) shall adjudicate complaints proceeding to a hearing against any University student, including graduate students and College of Medicine students. The UDC consists of two to five students and two to four faculty or staff/administrators and is chaired by the non-voting Student Conduct Administrator (SCA) or a designee of the Dean of Students. In complaints involving a respondent who is a College of Medicine student or a graduate student, one member of the UDC must be a College of Medicine student or graduate student, respectively.

5.5.3.2 Sexual Harassment and Sexual Violence Resolution Committee

The Sexual Harassment and Sexual Violence Resolution Committee (SHSVRC) will be appointed by the President of the University and shall adjudicate complaints proceeding to a hearing against any University faculty member. The SHSVRC consists of three (3) members from departments other than those of the respondent: (1) a department chair; (2) a tenured member of the faculty or of the rank of professor or associate professor; and (3) the Vice President for Student Affairs or Dean of Students, or a designee of the same, if the complainant is a student; if the complainant is not a student, another faculty member meeting the above description will be appointed to the SHSVRC. A chair will be selected by the SHSVRC.

5.5.3.3 Human Resources Hearing Committee

The Human Resources Hearing Committee (HRHC) shall adjudicate complaints proceeding to a hearing against any University administrator, non-faculty employee, contractor, or third party. The
HRHC will consist of the Human Resources Director of Employment and Employee Relations, the Human Resources Executive Director, and the respondent’s department head. If either party is employed in the USA Health system (including, but not limited to, USAHCA and USAHCM), a USA Health administrator will serve on the HRHC in lieu of the Human Resources Executive Director. A chair will be selected by the HRHC.

5.5.4 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, appropriate discipline shall be determined, in consultation with University administrators, by the SCA, SHSVRC, and or HRHC, as the case may be, who will then 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 5.5.7.

5.5.5 Hearing

In the event the respondent does not accept responsibility at the conclusion of the investigation, the case shall proceed to a hearing. The hearing shall be administered by a hearing officer who is not a member of the committee adjudicating the complaint. The procedures for the hearing are as follows:

- Any party may request a pre-hearing meeting with the SCA or an appropriate Title IX Deputy Coordinator to receive an explanation of the hearing process and answers to questions about the process, to discuss options for participation in the hearing, and to coordinate possible hearing dates.

- The parties will receive written notice of the scheduled hearing at least ten (10) business days in advance, unless otherwise agreed in writing by the parties.

- The parties are expected to provide all relevant information and/or materials to the TIX Investigator during the investigation and are expected to immediately deliver any relevant information discovered after the investigation to the TIX Investigator for delivery to all relevant parties.
● At least ten (10) business days prior to the hearing, the TIX Investigator, or their designee, shall send to each party, the party’s advisor, TIXC, and the hearing officer the investigation report in an electronic format or a hard copy, for their review. The hearing officer shall send a copy of the investigation report to the members of the adjudicating committee.

● During the hearing, to the extent any party so requests, the parties will be separated by a divider or curtain or placed in separate rooms with the use of technology, or another similar arrangement, provided that arrangements will be made so that the parties can simultaneously see and hear the party or the witness answering questions.

● The Title IX Coordinator may attend the hearing but will have no formal role.

● Each party’s advisor may ask any other party or witnesses all relevant and follow-up questions, including those bearing on credibility, provided any such questioning or cross-examination is conducted directly, orally, and in real time.

● No one other than a party’s advisor or a member of the adjudicating committee may direct questions to parties or witnesses.

● All parties and witnesses are expected to cooperate and provide truthful information.

● At the close of the hearing, the adjudicating committee will retire for deliberation. During deliberation, the adjudicating committee shall apply a clear and convincing standard to determine what conduct occurred and whether such conduct constitutes sexual misconduct.

● The University must make an audio or video recording of the hearing, or a transcript, but not of the deliberations, and make it available to the parties for inspection and review.

● The adjudicating committee will issue a written decision of finding(s) determined by majority, under a clear and convincing standard. The written decision will include identification of the allegations at issue, description of the procedural steps taken throughout the case, findings of fact supporting the determination, conclusions regarding application of the Sexual Misconduct Policy, a statement and rationale as to the determination for each allegation, a statement of any
disciplinary sanctions and whether any remedies will be provided to
the complainant, and a description of the procedures and permissible
grounds for appeal.

● The University will, within five (5) business days of receiving the
adjudicating committee’s written decision, provide simultaneous
written notification to the parties of the adjudicating committee’s
written decision.

● The Title IX Coordinator, or a designee, shall separately notify the
complainant, in writing, of any non-disciplinary remedial measures
that will be offered for the complainant’s benefit.

5.5.6 Sanctions

If the adjudicating committee finds the respondent responsible for violating
this policy, appropriate discipline shall be determined, in consultation with
University administrators, by the SCA, SHSVRC, or HRHC, as the case
may be, who will then provide simultaneous written notification of the same
to the parties. Sanctions may range from remedial education and training to
removal from the University Community (i.e., dismissal or termination of
employment), or any combination of the same.

5.5.6.1 Faculty

In the event that the SHSVRC recommends termination as a sanction,
the recommendation will be referred to the Office of Academic Affairs
for handling through the appropriate process as outlined by the Faculty
Handbook.

5.5.7 Appeal of the Adjudicating Committee’s Written Determination

Each party has the right to appeal the written determination of the
adjudicating committee on the grounds set forth below.

The grounds for appeal are limited to the following:

● Material and prejudicial violation of procedural rights that affected the
outcome of the hearing;

● New information, not reasonably available at the time of the hearing,
that could have resulted in a different outcome;
The discipline imposed is too severe or too lenient; and/or

Conflict of interest or bias by the decision-makers that affected the outcome.

In order to appeal, the aggrieved party must submit a written statement of appeal within five (5) business days of being notified of the outcome of the hearing to the appropriate University official designated below. The written statement must include the grounds for appeal and describe the basis for it in detail. 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.

5.5.7.1 Appeals from Complaints Against Students

Appeals from complaints against students must be directed to the Dean of Students. Within three (3) business days of receiving a valid appeal, the Dean of Students, or a designee, will 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 Dean of Students, or a designee, shall deliver simultaneous written notification of the outcome of the appeal and the rationale for the result to the parties within ten (10) business days after the deadline for submission of any written response to the appeal. The written determination becomes final upon the earlier of when: (i) the parties are notified of the determination on appeal; or (ii) the time to file an appeal has passed with neither party appealing.

The decision of the Dean of Students is final.

5.5.7.2 Appeals from Complaints Against Faculty.

5.5.7.2.1 Faculty with USA Health.

Appeals from complaints against such faculty must be directed to the Vice President for Medical Affairs, Dean of the College of Medicine. Within three (3) business days of receiving a valid appeal, the Vice President for Medical Affairs, Dean of the College of Medicine, or a designee, will 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 Vice President for Medical Affairs, Dean of the College of Medicine, or a designee, shall deliver simultaneous written notification of the outcome of the appeal and the rationale for the result to the parties within ten (10) business days after the deadline for submission of any written response to the appeal. The written determination becomes final upon the earlier of when: (i) the parties are notified of the determination on appeal; or (ii) the time to file an appeal has passed with neither party appealing.

The decision of the Vice President for Medical Affairs, Dean of the College of Medicine, is final.

5.5.7.2.1  Faculty with the University – General Division.

Appeals from complaints against such faculty must be directed to the Provost. Within three (3) business days of receiving a valid appeal, the Provost, or a designee, will 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 Provost, or a designee, shall deliver simultaneous written notification of the outcome of the appeal and the rationale for the result to the parties within ten (10) business days after the deadline for submission of any written response to the appeal. The written determination becomes final upon the earlier of when: (i) the parties are notified of the determination on appeal; or (ii) the time to file an appeal has passed with neither party appealing.

The decision of the Provost is final.

5.5.7.2  Appeals from Complaints Against Administrators, Non-Faculty Employees, Contractors, and Third Parties

Appeals from complaints against administrators, non-faculty employees, contractors, and third parties must be directed to the Vice
President for Finance and Administration. Upon receipt, the Vice President for Finance and Administration shall notify the President, who will constitute the Sexual Misconduct Appeals Committee within three (3) business days of his receipt of notice. The Sexual Misconduct Appeals Committee shall be a three-member panel designated by the President for the specific case appealed. No member of the Sexual Misconduct Appeals Committee shall be from the same division as the complainant or respondent or will have previously been involved with the case for which they are appointed.

The Vice President for Finance and Administration will provide the written statement of appeal to the Sexual Misconduct Appeals Committee within five (5) business days of its formation. The Vice President for Finance and Administration will also send a copy of the written statement of appeal to the non-appealing party, who will have five (5) business days to submit a written response to the appeal to the Vice President for Finance and Administration, who will promptly provide the written response to the Sexual Misconduct Appeals Committee.

After receipt of the written response by the non-appealing party (or the passing of the deadline for receipt of such response), 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 determination of the HRHC. Within ten (10) business days of receiving the written response from the non-appealing party (or from the time for filing a written response expires if no response is submitted), the Sexual Misconduct Appeals Committee will provide simultaneous written notification to the parties of the outcome of the appeal and the rationale for the result. The written determination becomes final upon the earlier of when: (i) the parties are notified of the determination on appeal; or (ii) the time to file an appeal has passed with neither party appealing.

The decision of the Sexual Misconduct Appeals Committee is final.
5.5.8 Violations of Other University Policies by Employees.

The adjudicating committee may determine that a violation of this policy did not occur (or was not proven to the required evidentiary standard) but that the behavior that occurred was unacceptable in the employment context. If the adjudicating committee makes such a finding, the respondent shall be referred as set forth below for proceedings or additional action as warranted by this or any other University policy, which may result in remediation or disciplinary action up to and including termination.

5.5.8.1 Violations by Faculty with USA Health.

Any referrals of faculty with USA Health pursuant to Section 5.5.8 shall be directed to the Office of Academic Affairs for a determination regarding discipline of the respondent. The University will provide written notification to the parties of the outcome of any matter referred to the Office of Academic Affairs, but the complainant will only be notified of sanctions that directly relate to the complainant. The University shall separately notify the complainant, in writing, of any non-disciplinary remedial measures that will be offered for the complainant’s benefit. Unless specifically required by law, neither the complainant, respondent, nor any witness will be allowed to review or appeal the Office of Academic Affairs’ written determination.

5.5.8.2 Violations by Faculty with the University – General Division.

Any referrals of faculty with the University – General Division pursuant to Section 5.5.8 shall be directed to the Office of Academic Affairs for a determination regarding discipline of the respondent. The University will provide written notification to the parties of the outcome of any matter referred to the Office of Academic Affairs, but the complainant will only be notified of sanctions that directly relate to the complainant. The University shall separately notify the complainant, in writing, of any non-disciplinary remedial measures that will be offered for the complainant’s benefit. Unless specifically required by law, neither the complainant, respondent, nor any witness
will be allowed to review or appeal the Office of Academic Affairs’ written determination.

5.5.8.3 Violations by Administrators or Non-Faculty Employees.

Any referrals of administrators or non-faculty employees pursuant to Section 5.5.8 shall be directed to the Assistant Vice President for Finance and Administration/Human Resources (AVPFAHR). The AVPFAHR will make a determination regarding discipline of the respondent and any necessary remedial steps to be taken for the complainant. The AVPFAHR will provide written notification to the parties of the outcome of any matter referred to the AVPFAHR, but the complainant will only be notified of sanctions that directly relate to the complainant. The AVPFAHR shall separately notify the complainant, in writing, of any non-disciplinary remedial measures that will be offered for the complainant’s benefit. Unless specifically required by law, neither the complainant, respondent, nor any witness will be allowed to review or appeal the written determination of the AVPFAHR.

5.5.9 Records

All official records created during the formal resolution of a complaint shall be maintained by the University for a period of seven years, including informal resolution records.

5.5.9.1 Complaints Against Students.

Records relating to complaints against students shall be maintained by the SCA.

5.5.9.2 Complaints Against Faculty with USA Health.

Records relating to complaints against faculty with USA Health shall be maintained by the Associate Title IX Coordinator. Where such 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 Title IX Coordinator maintains records of the sexual misconduct complaint.
5.5.9.3 Complaints Against Faculty with the University – General Division.

Records relating to complaints against faculty with the University – General Division shall be maintained by the Deputy Title IX Coordinator for Academic Affairs. Where such 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 Deputy Title IX Coordinator for Academic Affairs maintains records of the sexual misconduct complaint.

5.5.9.4 Complaints Against Administrators, Non-Faculty Employees, Contractors, and Third Parties.

Records relating to complaints against administrators, non-faculty employees, contractors, and third parties shall be maintained by the Equal Employment Opportunity (EEO) Manager. When a party is found to have engaged in sexual misconduct, a letter will be placed in the party’s personnel file indicating that the EEO Manager maintains records of the sexual misconduct complaint.

5.6 Special Procedures for Complaints Against the University President

If a complaint involves alleged sexual misconduct on the part of the University’s President, the TIX Investigator will conduct the investigation to gather testimony and other information for eventual review and consideration by the University Board of Trustees (Board) Vice Chair or a designee.

Any investigation, hearing, or appeal of alleged sexual misconduct involving the University President shall proceed in the manner set forth above for University administrators, except that the Board Vice Chair or a designee shall serve in the role of the HRHC and the Chair pro tempore or a designee shall serve in the role of the Sexual Misconduct Appeals Committee.

5.7 Special Procedures for Complaints Against the Title IX Coordinator

Any complaint involving allegations of sexual misconduct on the part of the Title IX Coordinator will be handled in accordance with this policy, except that any duties ordinarily performed by the Title IX Coordinator will instead be performed by a Deputy Title IX Coordinator appointed by the University President.
5.8 Special Procedures for Complaints Against the TIX Investigator

The University has a TIX Investigator who will normally conduct all required investigations in accordance with this policy, regardless of the classification of the respondent. However, if a complaint involves allegations of sexual misconduct on the part of the TIX Investigator, the Title IX Coordinator shall appoint an investigator to investigate the allegations. Otherwise, such complaints will follow the process for employees.

5.9 Objections to Process

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a timely manner so that the University may evaluate the matter and address it, as appropriate.

5.10 Vendors, Contractors, and Third Parties

The University does business with various vendors, contractors, and other third parties who are not students or employees of the University. Notwithstanding any rights that a given vendor, contractor, or third-party respondent may have under these procedures, the University retains all rights it enjoys by contract or law to modify or terminate its relationship with any vendor, contractor, or third-party irrespective of the outcome under this process.

5.11 Deadlines, Time, Notices, and Methods of Transmittal

Where this policy specifies a period of days by which some act must be performed, the relevant time period will be calculated as follows:

- Exclude the day of the event that triggers the period;
- Count every day, including intermediate Saturdays, Sundays, and legal holidays recognized by the federal government; and
- Include the last day of the period until 5:00 p.m. central time, but if the last day is a Saturday, Sunday, or legal holiday recognized by the federal government, the period continues to run until 5:00 p.m. central time on the next day that is not a Saturday, Sunday, or legal holiday recognized by the federal government.

All deadlines and other time periods specified in this policy are subject to modification by the University where, in the University’s sole discretion, good cause exists.
The parties will be provided written notice of the modification of any deadline or time period specified in this policy, along with the reasons for the modification.

Where this policy refers to notice being given to parties “simultaneously,” notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.

Unless otherwise specified in this policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this policy will be email using University email addresses. If a party does not have a University email address, or wishes to use a personal email address in lieu of the University email address, the party must notify the Title IX Coordinator or designee. The University is not responsible for outages, technical errors, or other features of a private email account that may interfere with a person’s receipt of email. Therefore, a party is deemed to have received notice upon transmittal of an email to their email account.

Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of the University, considering all the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the nature and complexity of the allegations at issue; the schedules of relevant University officials; approaching holidays or closures; and the number and length of extensions already granted.

6. Enforcement

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, but not be limited to, 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.

7. Related Documents

7.1 Ala. Code § 13A-6-70 - Lack of Consent

Unless otherwise stated, an element of every offense defined in this article is that the sexual act was committed without the consent of the victim. Lack of consent results from either of the following:

- Forcible compulsion; or
- Being incapable of consent.

A person is deemed incapable of consent if they are:

- Less than 16 years old; or
- Incapacitated.

Consent to engage in sexual intercourse, sodomy, sexual acts, or sexual contact may be communicated by words or actions. The existence of a current or previous marital, dating, social, or sexual relationship with the defendant is not sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device or sexually transmitted disease protection, without additional evidence of consent, is not sufficient to constitute consent.

7.2 Campus SaVE Act

The Campus Sexual Violence Elimination Act, or Campus SaVE Act, is a federal law that promises prompt and effective responses by higher education institutions to incidents of sexual violence. At its core, the Campus SaVE Act increases transparency about incidents of sexual violence, guarantees complainants’ rights, sets standards for campus disciplinary proceedings, and requires campus-wide prevention education programs.

To understand the Campus SaVE Act, it’s important to first know a little about laws and the judicial process. Every state in the United States has laws against sexual assault, domestic violence, dating violence, and stalking. To find out what the sexual violence laws are in the state where you attend college, check out womenslaw.org.
Additionally, all colleges and universities have a judicial process for sexual misconduct that functions independently from state laws. While laws and judicial processes vary by state, by school, and by crime, the Campus SaVE Act, enforced as of March 2014, represents improvements to the handling of sexual misconduct on every U.S. college and university campus.

More information can be found at:

https://www.mystudentbody.com/hbg/publicpage/library_campussaveact

7.3 The Lowdown: A Student Handbook

The University is committed to informing its student population, as well as faculty and staff, of the University’s expectations and resources. This item can be found at the following link:

https://www.southalabama.edu/departments/studentaffairs/lowdown/

7.4 Discretion in Application

The University retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the University’s interpretation or application differs from the interpretation of the parties.

Despite the University’s reasonable efforts to anticipate all potential circumstances in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this policy at any time and for any reason. The University may apply policy revisions to an active case provided that doing so is not clearly unreasonable.