

# Policy against Sexual Harassment and other Sexual Misconduct

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

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9. Formal Grievance Process: The formal Grievance Process is one method of formal







actual or suspected discrimination or harassment to appropriate university officials. They can offer options and advice without any obligation to inform an outside agency or campus official unless a Complainant has requested information to be shared.

Therefore, those individuals whose offices have been designated as a “Confidential

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



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

Non-forcible sex offenses include:

- v. Incest is nonforcible sexual intercourse between persons who are related

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

For

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

2. Type 2 Prohibited Conduct: Sexual Misconduct

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

Examples of sexual exploitation include, but are not limited to:

- i. Causing or attempting to cause the incapacitation of another individual for sexual purposes;
- ii. Electronically recording, videoing, photographing, or transmitting sexual sounds or images of another individual against that person's will or without their consent;
- iii. Allowing a third-party to observe sexual acts without all parties' consent;
- iv. Prostituting another individual for one's or another's gain;

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

- v. Previous consent does not grant consent to future sexual acts.
  - vi. Consent to some sexual acts cannot be presumed to be consent for other sexual acts.
  - vii. A current or previous intimate relationship is not sufficient to constitute consent.
- b. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.
  - c. It is the responsibility of the initiator of any sexual activity to obtain their potential partner's consent; however, proof of consent or non-conse





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

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

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

## VIII. Burden of Proof/Standard of Evidence

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

## IX. Supportive Measures

1. Supportive measures are non-disciplinary, non-punitive, and individualized services offered as appropriate, as reasonably available, without fee or charge to the parties before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment.
2. The University will institute supportive measures to the parties upon receiving a formal complaint or to a Complainant once a report is brought forth to the Title IX Coordinator. At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already.



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

- d. The University sets out to resolve all Formal Complaints, including appeals and the completion of any Informal Resolutions, in a reasonably prompt manner. In most instances, this is accomplished within 90 days from the time the Formal Complaint has been filed.
- e. Delays for good cause are allowed under this Policy pursuant to procedures

C. Did not occur in the United States.

- iii. If the Title IX Coordinator must dismiss the formal complaint with regard to the Type 1 Prohibited Conduct, the allegation may be pursued elsewhere under any applicable section of this or any other University Policy.
- b. The Title IX Coordinator will consider dismissing the formal complaint if:
  - i. The Complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the Formal Complaint; and/or
  - ii. The Respondent is no longer enrolled or employed by the University; and/or
  - iii. The University is unable to gather evidence sufficient to reach a determination as to the formal complaint and the allegations therein.
- c. For prohibited conduct that falls outside of Type 1, permissive dismissals are permitted under the Policy for any of the above reasons and pursuant to any additional procedures developed by the Title IX Coordinator.
- d. Any dismissal must be accompanied by prompt written notice to all parties indicating the dismissal and the reasons why.
- e. Following a dismissal, all parties will have the option of the 5 (nd t)-b (t)-6.7 (he )næssalm(e.)TF (



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

- C. Evidence that is neither relevant nor directly related is not shared with any party.
- ii. After the Investigator(s) have sorted the evidence and begun working on the Investigative Report, the parties will be given a reasonable opportunity to review and respond, in writing, to all directly related evidence obtained.
- iii. Each party will have a minimum of 10 days to review the evidence.
- iv. Each party, along with their advisor(s), will have the opportunity to review









- v. Facilitators of Informal Resolutions
- vi. University-provided Advisors
- b. The University will provide training to the above-listed individuals under this policy pursuant to procedures developed by the Title IX Coordinator on the following topics:
  - i. The definition of Sexual Harassment under 34 CFR 106.30;
  - ii. The scope of the University's education program and activity;
  - iii. Conducting an investigation;
  - iv. The Grievance Process, including hearings, appeals, and informal resolution processes; and
  - v. Impartiality, including avoiding prejudgment, conflicts of interest, and bias.
  - vi. The University will provide additional training to Investigators on the following topics:
    - i. Relevancy; and
    - ii. How to create an investigative report.
  - vii. The University will provide additional training to decision-makers on the following topics:



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

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

## XVI. Conflicts of Interests

The Title IX Coordinator acts with independence and authority free of conflicts of interest. To



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