

I.

SEXUAL MISCONDUCT AND TITLE IX POLICY

II.

INVESTIGATION AND RESOLUTION PROCEDURES

Sexual Misconduct and Title IX Policy

INTRODUCTION

Alabama A&M University recognizes that there are varying forms of sexual misconduct and will abide by the applicable laws and guidelines affiliated therein. The University community, guests and visitors have the right to be free from all categories of sex/gender discrimination and wrongdoing, and the Institution is wholly committed to providing and maintaining a safe and conducive learning environment. It is expected that everyone should conduct themselves in a manner that does not infringe upon the rights of others. This policy has been developed to reaffirm these principles and to offer recourse for those individuals whose rights have been violated.

The University uses the *Preponderance of the Evidence* (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt, “innocence” and “burdens of proof” are not applicable. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources; however, the university never assumes that a responding party is in violation of university policy.

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

Sexual Harassment¹ – conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient (federally funded institution/organization) conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct (This is also viewed as Quid Pro Quo Harassment. See further explanation, below).
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or,

¹ §106.30(a) <http://www.saveservices.org/2020/05/new-title-ix-regulatory-text-34-cfr-106/>

(3) **“Sexual assault”**² - an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another. It constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly through a term or condition of rating or evaluating an individual’s educational [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Retaliatory Harassment is:

- Denying persons access to benefits of any educational [or employment] program for their refusal to welcome sexual advances or provide sexual favors.

A **hostile environment** is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- so objectively offensive that it:
 - unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the university’s educational [and/or employment], social and/or residential program.

Related Definitions:

A. Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is:

- any intentional sexual touching,

²As defined by the Code of Laws of the United States of America - 20 U.S.C. 1092(f)(6)(A)(v)
<https://www.govinfo.gov/content/pkg/USCODE-2018-title20/pdf/USCODE-2018-title20-chap28-subchapIV-partG-sec1092.pdf>

- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

B. Non-Consensual Sexual Intercourse

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

ADDITIONAL APPLICABLE DEFINITIONS:

Consent³ -

- Consent is
 - clear, and
 - knowing, and
 - voluntary [or affirmative, conscious and voluntary],
 - words or actions,
 - that give permission for specific sexual activity.
- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.

³ The definition of “consent” provided here is model policy language from ATIXA. www.atixa.org

- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
 - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.⁴
 - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
 - Incapacitation is a state wherein students cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
 - This policy also covers a student whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy]
- **Force** - Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you”. “Okay, don’t hit me, I’ll do what you want.”).
 - **Coercion** is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
 - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not

⁴ Blackout, as it is used in scholarly literature, refers to a period where memory formation is blocked. A period of consistent memory loss is termed a blackout, whereas periods where memory is both lost and formed intermittently can be referred to in the literature as a brownout. Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to make rational, reasonable decisions or judgments). It is a mistake to automatically associate memory loss with incapacitation; they are often coupled, but not always. (see e.g.: Mundt & Wetherill – 2012; NIH 2004)

demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
- This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

Sexual Assault (which is regarded as Sexual Harassment) **also encompasses the following:**

1. Dating violence
2. Domestic Violence
3. Stalking

Dating Violence⁵ - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence⁶ - A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Stalking⁷ - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

⁵As defined by 34 U.S.C. 12291(a)(10) <https://www.govinfo.gov/content/pkg/USCODE-2018-title34/pdf/USCODE-2018-title34-subtitleI-chap121-subchapIII-sec12291.pdf>

⁶As defined in 34 U.S.C. 12291(a)(8) <https://www.govinfo.gov/content/pkg/USCODE-2018-title34/pdf/USCODE-2018-title34-subtitleI-chap121-subchapIII-sec12291.pdf>

⁷As defined in 34 U.S.C. 12291(a)(30) <https://www.govinfo.gov/content/pkg/USCODE-2018-title34/pdf/USCODE-2018-title34-subtitleI-chap121-subchapIII-sec12291.pdf>

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

REPORTING SEXUAL MISCONDUCT

Alabama A & M University does not tolerate any form of sexual misconduct. Students who believe that they, or someone they know (third party reporting), may be a victim of sexual misconduct are encouraged to immediately report the incident to one or more of the following: the **Department of Public Safety** or the **Title IX Coordinator for Students**. Remedies, education and/or training will be provided in response.

Department of Public Safety

The University's Department of Public Safety ensures the protection and well-being of the campus community and visiting stakeholders by upholding all Federal, State, and Campus Laws/regulations/codes. DPS Staff are supervised by the Executive Director/Chief of Public Safety, who reports to the Vice President for Student Affairs.

Department of Public Safety

University Services Building
Alabama A&M University
Normal, AL 35762
(256) 372-5555

Title IX Coordinator for Students

The university's *Title IX Coordinator for Students* oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports to the Vice President for Student Affairs, and is located in the Student Health and Counseling Center. Questions about this policy should be directed to the Title IX Coordinator. Any student wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the university designee, below:

Ms. Tanisha Smith

Title IX Coordinator for Students

Division of Student Affairs

John and Ella Byrd McCain Student Health and Counseling Center

P.O. Box 98

Normal, AL 35762

(256) 372-4499

Tanisha.smith@aamu.edu

Additionally, **anonymous reports** can be made by victims and/or third parties using the online reporting form entitled **RED FLAG ALERT** at <https://report.myredflag.com>.

One can also report anonymously to the Department of Public Safety (DPS) at (256) 372-5555. Note that these anonymous reports may prompt a need for the institution to investigate.

Individuals experiencing harassment or discrimination also have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)

Southeast Region

U.S. Department of Health and Human Services

Sam Nunn Atlanta Federal Center, Suite 16T70

61 Forsyth Street, S.W.

Atlanta, GA 30303-8909

Customer Response Center #: (800) 368-1019

Facsimile: (202) 619-3818

TDD#: (800) 537-7697

Email: ocrmail@hhs.gov

Web: <http://www.ed.gov/ocr>

U.S. Department of Justice Civil Rights Division

950 Pennsylvania Avenue, N.W.

Educational Opportunities Section, PHB

Washington, D.C. 20530

By e-mail to education@usdoj.gov

By telephone at (202) 514-4092 or 1-877-292-3804 (toll-free)

By facsimile at (202) 514-8337

Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (*Clery Act*). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that university administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The university will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

RETALIATION

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity [subject to limitations imposed by the 1st Amendment and/or Academic Freedom]. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of university policy.

SANCTIONS

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. Factors considered in sanctioning are defined in [reference or link to Student Handbook, Faculty Handbook, Staff Handbook]. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

Student Sanctions (listed below and defined in [Student Code of Conduct and Student Handbook])

- Warning
- Probation
- Suspension
- Expulsion
- Organizational Sanctions
- Other Actions

Sanctioning for Sexual Misconduct

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).*

Additional Policy Provisions

a. Attempted violations

In most circumstances, university will treat attempts to commit any of the violations listed in the *Gender-Misconduct Policy* as if those attempts had been completed.

b. False Reports

University will not tolerate intentional false reporting of incidents. It is a violation of the [*Student Code of Conduct*] to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

c. Amnesty for Victims and Witnesses

The university community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to university officials or participate in resolution processes because they fear that they themselves may be accused of policy

violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to university officials, and that witnesses come forward to share what they know. To encourage reporting, university pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, as student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Campus Police). The university pursues a policy of amnesty (protection from punishment) for students who offer help to others in need. [While policy violations cannot be overlooked, the university will provide educational options, rather than punishment, to those who offer their assistance to others in need.

d. Parental Notification

The university reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the university will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The university also reserves the right to designate which university officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

II

Sexual Misconduct & Title IX Investigation and Resolution Procedures

Alabama A&M University does not permit any form of discrimination or harassment in its programs and activities on the basis of race, color, national origin, sex, gender identity, gender expression, sexual orientation, disability, veteran status, predisposing genetic characteristic, age, religion, pregnancy status or any other characteristic protected by university policy or state, local, or federal law. Students who believe they have been subjected to discrimination or harassment are strongly encouraged to immediately report the incident to the **Title IX Coordinator for Students**.

Once reported, the resolution process involves a preliminary inquiry to determine if there is reasonable cause to believe the policy has been violated. If so, the university will initiate an investigation that is thorough, reliable, impartial, prompt and fair. The purpose of this document is to provide a clear and succinct outline of the procedures involved to investigate and ultimately remedy all reported cases of sexual misconduct.

IMPORTANT TERMINOLOGY:

Recipient – Any Federally funded program/institution that falls within the Title IX ambit. In this document, the “recipient” is Alabama A&M University.

Complainant – an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent – an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Actual Knowledge – notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has the authority to institute corrective measures on behalf of the recipient.

Formal Complaint – document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of harassment. At the time of the formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

Supportive Measures – non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. The university will keep supportive measures and actions as private as possible. These measures may include, but are not limited to:

- Referral to Health and Counseling Services
- Education to the community
- Altering the housing situation of the respondent or complainant
- Altering work arrangements for student employees
- Providing campus escorts,
- Providing transportation accommodations
- Implementing contact limitations between the parties (e.g. No Contact Order)
- Offering adjustments to academic deadlines, course schedules, etc.

JURISDICTION

Jurisdiction for the investigation and resolution of Title IX cases is limited to conduct which occurs in the university's education program or activity, which occurs within the U.S., and which occurs on property owned or under the control of a university student/student organization (e.g. sorority or fraternity house). This jurisdiction extends to all of the university's programs or activities, whether such programs or activities occur on-campus or off-campus.

OVERVIEW OF THE PROCEDURAL TIMEFRAME

The university aims to respond to and resolve all allegations within a reasonably prompt time period. This period can be extended, as necessary, for appropriate cause by the Title IX Coordinator for Students, with notice to both the complainant and respondent. In overview, the timeline for resolution begins with notice to a mandated reporter. The Coordinator then engages in a preliminary inquiry that is typically 1-3 days in duration. From there, the formal complaint can lead to a formal investigation. Investigations range from days to weeks,

depending on the nature and complexity of allegations. If there is insufficient evidence to move forward, the process ends. If, however, the Title IX Investigator finds reason to believe that there was a policy violation, and that a full investigation is warranted, then, further inquiry will take place, and findings will be submitted in the form of a detailed report. The report, along with all gathered evidence, will be provided to both parties, who will be given ten (10) days to review and respond. At the completion of this ten day period, steps will be taken to reach either a formal or informal resolution of the case. The university works to complete the resolution process within 3-4 weeks of the investigation's conclusion. A failed informal resolution, which triggers a formal resolution, may require the university to extend this timeline accordingly. Appeals may also extend the timeline.

INFORMAL RESOLUTION PROCESS FOR REPORTS OF MISCONDUCT

Before pursuing the Formal Resolution Process, every reasonable effort should be made to constructively resolve conflicts between students or between students and an immediate Supervisor or Employee of the recipient. The respondent should keep a written log that can aid in later investigation and resolution. Whenever possible and safe, the problematic behavior, conflict or misconduct should first be discussed between the complainant and respondent. The **Office of the Title IX Coordinator for Students** will facilitate such conversations, upon request, and monitor them for safety. Various conflict resolution mechanisms are available, including mediation. Mediation is not used when violent behavior is involved, when the Coordinator determines a situation is not eligible, or the parties are reluctant to participate in good faith. The university does not require a complainant to contact the respondent or the respondent's supervisor, if doing so is impracticable, or if the complainant believes that the conduct cannot be effectively addressed through informal means. If informal efforts are unsuccessful, the formal resolution process may be initiated. Either party has the right to end the informal process and begin the formal process at any time prior to resolution.

FORMAL RESOLUTION PROCESS FOR REPORTS OF MISCONDUCT

Notification

Notice of Misconduct can be made in person, by phone, via email, or in writing to the **Department of Public Safety (DPS)** or the **Title IX Coordinator for Students** (Please see contact information, below). The **Department of Public Safety, Title IX Coordinator for Students** and **Office of Judicial Affairs** will work cooperatively/collaboratively, where necessary, to ensure a seamless resolution process, whether formal or informal.

Department of Public Safety (DPS)

The University's Department of Public Safety ensures the protection and well-being of the campus community and visiting stakeholders by upholding all Federal, State, and Campus Laws/regulations/codes. DPS Staff are supervised by the Executive Director/Chief of Public Safety, who reports to the Vice President for Student Affairs.

Department of Public Safety

University Services Building
Alabama A&M University
Normal, AL 35762
(256) 372-5555

Additional Reporting Tool for Sexual Misconduct:

RED FLAG ALERT - <https://report.myredflag.com>

Department of Public Safety Investigative Process

1. The initial Incident/Sexual Harassment Report from a complainant, in most cases, will be taken by an on duty Patrol Officer. The Department of Public Safety receives reports by walk in, dispatched calls or by anonymous tips. The reporting Patrol Officer will:
 - a. Make contact with complainant and determine if medical attention is needed.
 - b. Detain the alleged repondent, if present, pending further investigation.
 - c. Secure the crime scene, if located, to maintain its integrity.
 - d. Transport the complainant to the Department of Public Safety and place in a separate location
 - e. Notify on call DPS investigator
2. The On call/on duty investigator will respond to campus or the scene to take over the investigation

3. The investigator will interview the complainant and gather a formal statement. If the complainant wants to move forward with criminal charges or a formal complaint with Title IX, The DPS investigator will:
 - a. Separate complainant from others, if not already completed.
 - b. Explain procedures (criminal process/Title IX process) as they pertain to the steps to follow during the investigative process.
 - c. Interview any witnesses that may be present at that time.
 - d. Notify Title IX Coordinator for Students, Chief of Police, Director of Housing, Health and Counseling Office and Judicial Affairs of the incident.
 - e. Process the scene of the incident, if one is present (e.g. take photographs, collect garments or DNA)
 - f. Transport Complainant to *Crisis Services of North Alabama* for a Sexual Assault Examination, along with any evidence collected from the scene.
 - g. Gather a formal statement from the alleged respondent.
 - h. Implement a *No Contact Order* between parties, if deemed necessary, based on the initial investigation and a risk assessment.
 - i. Work with Title IX Coordinator to determine and implement any other necessary supportive measures. (**NOTE:** *Supportive measures will be extended even if no criminal charges are filed and the complainant does not wish to file a formal complaint with Title IX.*)
4. If any DNA evidence is collected, it will be transported to the *Department of Forensics* for Processing as soon as possible. Any additional evidence that is collected will be housed at the *Department of Public Safety* in the evidence closet.
5. The DPS investigator will follow up with the complainant or any additional witnesses during the duration of the investigation, as needed.
6. A Student Conduct Report will be generated in the *Maxient* reporting system, compiling pertinent information that was obtained during the investigation. This report will be submitted to the proper recipients in a timely manner.

Title IX Coordinator for Students

The university's *Title IX Coordinator for Students* oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports to the Vice President for Student Affairs, and is located in the Student Health and Counseling Center. Questions about the Title IX Policy and Procedures for Students should be directed to the Title IX Coordinator for Students. Any student wishing to file a formal complaint/grievance relating to discrimination or harassment may do so by reporting the concern to the following university designee:

Ms. Tanisha Smith

Title IX Coordinator for Students

Division of Student Affairs

John and Ella Byrd McCain Student Health and Counseling Center

P.O. Box 98

Normal, AL 35762

(256) 372-4499

Tanisha.smith@aamu.edu

Title IX Preliminary Inquiry and Investigative Process

If the complainant wishes to pursue a formal resolution, or if the university, based on the alleged policy violation, wishes to pursue a formal resolution, then the Title IX Coordinator for students will appoint trained university of the recipient (typically using a team of two investigators) to conduct an investigation (usually within 2-3 business days of determining that a resolution should proceed). The Title IX Investigations are completed expeditiously, normally within 10-14 business days of notice to the Title IX Coordinator. Investigations may take longer depending on their nature or complexity.

The university's resolution will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. However, the university may undertake a short delay (several days to weeks) in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g.: to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The university will promptly resume its investigation and processes once notified by DPS that the initial evidence collection process is complete.

All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

The investigators will take the following steps (not necessarily in order):

- In coordination with campus partners (e.g.: the campus Title IX Coordinator), initiate any necessary remedial actions;
- Determine the identity and contact information of the complainant;

- Identify the exact policies allegedly violated;
- Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the respondent, and what policy violations should be alleged as part of the report;
 - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Meet with the complainant to finalize their statement and
- Prepare the notice of charges on the basis of the initial inquiry;
- Present the respondent with the notice of charge(s). The notice will include the following:
 - An outline of the university's grievance process, including the possibility of an informal resolution.
 - Notice of the allegation and sufficient details that include the identity of parties involved, the date, time and location of the incident, and a description of the conduct constituting the charge/violation.
 - Allotted time-frame to prepare a response, before an initial interview.
 - Presumption of non-responsibility (innocence) until a determination is made at the conclusion of the grievance process.
 - Reference to consequences for knowingly submitting false information.
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the respondent, who may be given notice prior to or at the time of the interview;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline of ten (10) – fourteen (14) business days;
- Provide regular updates to both the reporting and responding parties, as appropriate, throughout the investigation;
- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not) that will be documented in a written report.
- Present a copy of the report and all evidence to both parties and their advisors.
- The parties will have ten (10) days to respond to review all evidence and respond to the report.

At any point during the investigation, if it is determined there is no reasonable cause to believe that university policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

Where the respondent is found not responsible for the alleged violation(s), the investigation will be closed.

Where the respondent accepts the finding of the investigation and waives his/her right to a hearing, the Office of Judicial Affairs will impose appropriate sanctions for the violation, after consultation with the Title IX Coordinator for Students, when applicable.

The parties will receive written notification of the outcome, to the extent permitted or mandated by law. In cases involving sexual misconduct, sexual harassment, stalking and/or domestic violence, the written notification includes the finding, any resulting sanctions, and the rationale for the decision. This written notification of final decision is delivered to the parties without undue delay between the notifications, explains appeals options and procedures, and any changes to the results that could occur before the decision is finalized.

The Hearing

In the event that the respondent rejects the findings in part or entirely, the Office of Judicial Affairs will convene a hearing under its respective procedures to determine whether the respondent is in violation of the contested aspects of the report. At the hearing, the findings of the investigation will be admitted, but are not binding on the decider(s) of fact. Both parties have the right to review all documentary evidence available regarding the allegation, including the investigative report, subject to the privacy limitations imposed by state and federal law, at least 10 business days prior to the hearing and a substantial period (at least 10 days) to respond. Both parties will have access to this evidence during the hearing. The hearing will determine whether it is more likely than not that the respondent violated the policies forming the basis of the charge. The goal of the hearing is to provide an equitable resolution via an equitable process, respecting the civil and legal rights of all participants. The hearing officers/decision makers will recommend sanction(s) to the Office of Judicial Affairs.

The parties will receive written notification of the outcome, to the extent permitted or mandated by law. In cases involving sexual misconduct, sexual harassment, stalking and/or domestic violence, the written notification includes the finding, any resulting sanctions, and the rationale for the decision. This written notification of final decision is delivered to the parties without undue delay between the notifications, explains appeals options and procedures, and any changes to the results that could occur before the decision is finalized.

Participation of Advisors in the Resolution Process

All parties are entitled to an advisor of their choosing to guide and accompany them throughout the campus resolution process. The advisor may be a friend, mentor, family member, attorney or any other supporter a student chooses to advise them who is both eligible and available. People who will be called as witnesses may not serve as advisors. The university will assign a trained ~~(non-attorney)~~ advisor to those students who do not provide their own.

Parties are entitled to be accompanied by their advisor in all meetings and interviews at which they are entitled to be present, including intake, interviews, hearings and appeals. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith (need to determine chain of evidence).

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may cross-examine and question the opposing party and witnesses on behalf of their client/representee. The complainant and respondent may not cross-examine witnesses or each other.

Advisors are expected to refrain from interference with the university investigation.

The university expects that the parties will wish the university to share documentation related to the allegations with their advisors. The university provides a consent form that authorizes such sharing. The parties must complete this form before the university is able to share records with an advisor. The parties are not otherwise restricted from discussing and sharing information relating to allegations with others who may support them or assist them in preparing and presenting. Advisors are expected to maintain the privacy of the records shared with them by the university. These records may not be shared with 3rd parties, disclosed publicly, or used for purposes not explicitly authorized by the university. The university may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the university's privacy expectations.

Parties are not prohibited from discussing the allegations but are encouraged to use discretion.

Parties may elect to change advisors during the process, if they believe that the advisor is not properly advocating for them during the resolution process.

The parties must advise the investigators of the identity of their advisor at least two (2) business days before the date of their first meeting with investigators. The parties must provide subsequent timely notice to the investigators if they change advisors at any time. No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with campus officials.

Requesting an Appeal

In the event that the respondent accepts the findings of the investigation; **those findings cannot be appealed.** Sanctions imposed by the Office of Judicial Affairs post-investigation can be appealed by any party according to the grounds, below. Post-hearing, any party may appeal the findings and/or sanctions only under the grounds described, below.

All sanctions imposed by the original hearing body will be in effect during the appeal. A request may be made to the Associate Vice President for Student Affairs to delay implementation of the sanctions until the appeal is decided, but the presumptive stance of the institution is that the sanctions will go into effect immediately. Graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the university or resumption of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

The decision of the Office of Judicial Affairs may be appealed by petitioning the Vice President for Student Affairs. Any party who files an appeal request must do so in writing to the **Office of Student Affairs** 256-372-5233) or studentaffairs@aamu.edu within 3-5 business days of receiving the written decision, for a review of the decision or the sanctions imposed. The written decision will be provided to the respective party as indicated in university records and emailed to the parties' university-issued email accounts. Once received via email, the notice of decision will be deemed presumptively delivered.

The Office of Judicial Affairs will share the appeal request with the other party (e.g., if the respondent files an appeal, the appeal is shared with the complainant, who may also wish to file a response and/or bring their own appeal on separate grounds; this response or appeal will be shared with the initial appealing party). Based on the written requests/responses or on interviews as necessary, the Vice President for Student Affairs will

send a letter of outcome for the appeal to all parties. The Vice President for Student Affairs can take one of three possible actions: 1) Dismiss an appeal request as untimely or ineligible; 2) Grant an appeal and remand the finding and/or sanction for further investigation; or, 3) Return for reconsideration at the hearing level, or modify a sanction.

The original finding and sanction will stand if the appeal request is not timely or substantively eligible, and that decision is final. The party requesting appeal must show clear error as the original finding and/or a compelling justification to modify a sanction, as both finding and sanction are presumed to have been decided reasonably and appropriately during the original hearing.

The ONLY grounds for appeal are as follows:

1. A procedural error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.)
2. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
3. The sanctions-imposed fall outside the range of sanctions designated for this offense and the cumulative conduct history of the respondent.

If remanded to re-open the investigation, the results of a revised investigation can be subsequently forwarded for reconsideration at the hearing level, at the discretion of the Office of Judicial Affairs. If the appeal remands to the hearing body for review, the reconsideration of the hearing body is not appealable.

In rare cases where a procedural [or substantive] error cannot be cured by the original hearing officers (as in cases of bias), the Vice President for Student Affairs may order a new hearing with a new body of hearing officers. The results of a reconvened hearing cannot be appealed. The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.

The procedures governing the hearing of appeals include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the original hearing body for reconsideration (remand) should be pursued;
- Appeals are not intended to be full re-hearings of the allegation (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal;
- Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- An appeal is not an opportunity for appeals officers to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions.
- Sanctions imposed are implemented immediately unless the Associate Vice President for Student Affairs stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

- The Vice President for Student Affairs will typically render a written decision on the appeal to all parties within five (5) business days from hearing of the appeal. The Vice President for Student Affairs' decision to deny an appeal request is final.

Additional Notes

The university reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. Students are encouraged to check online www.aamu.edu for the updated versions of all policies and procedures. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form. Reports of misconduct made after the fact may raise issues of policy and procedure application, if policies and procedures have changed. Unless the parties accept current policies, all reports are governed by the policies that were in place at the time the alleged misconduct occurred. Procedures applicable are those that are in place at the time of resolution.

University students are responsible for knowing the information, policies and procedures outlined in this document.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

Special Resolution Process Provisions

e. University-initiated proceedings

As necessary, university reserves the right to initiate a report and to initiate resolution proceedings without a formal report or participation by the victim of misconduct.

f. Notification of Outcomes

The outcome of a campus hearing is part of the education record of the respondent, and is protected from release under a federal law, FERPA. However, the university observes the legal exceptions as follows:

- Parties to non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and domestic violence incidents have an absolute right to be informed of the outcome, essential findings/rationale, and any sanctions that may

result, in writing, without condition or limitation, and without substantial delay between notifications to each party.

c. Alternative Testimony Options

For sexual misconduct reports, and other reports of a sensitive nature, whether the alleged victim is serving as the complainant or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged victim to testify outside the physical presence of the respondent, by video. While these options are intended to help make the complainant more comfortable, they are not intended to work to the disadvantage of the respondent.

d. Past Sexual History/Character

The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the Chair. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be reviewed in advance of the hearing by the Associate Vice President for Student Affairs. While previous conduct violations by the respondent are not generally admissible as information about the present allegation, the Associate Vice President for Student Affairs may supply previous reports of good faith allegations and/or findings to the investigators, the hearing officers, and Vice President for Student Affairs to consider as evidence of pattern and/or predatory conduct.

e. Witness participation in an investigation

Witnesses are expected to cooperate with and participate in the university's investigation. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a hearing. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by video, if they cannot be interviewed in person. Parties who elect not to participate in the investigation will have the opportunity to offer evidence during the hearing and/or appeal stages of the process, though failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence. Any witness scheduled to participate in a hearing must have been interviewed first by investigators (or have proffered a written statement), unless all parties consent to the participation of that witness in the hearing.

f. Training for those implementing these procedures

Personnel tasked with implementing these procedures, e.g.: Title IX Coordinator, investigators, hearing officers, appellate officers, etc.) will be trained at least annually. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to sexual harassment and discrimination allegations; the university's Sex/Gender-based Discrimination and Sexual Misconduct Policies and Procedures; confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance.

Training materials are available on the **Student Affairs Virtual Website** found [here](#), as well as upon request from the **Office of Judicial Affairs (256) 372-5616**.

g. Conflicts of Interest and Bias

The university is committed to ensuring that its resolution processes (e.g.: investigation, hearing, appeal, etc.) are free from actual or perceived bias or conflicts of interest that would materially impact the outcome. Any party who feels that there is actual or perceived bias or conflict of interest that would materially impact the outcome may submit a written petition for the person's removal from the process. The petition should include specifics as to the actual or perceived bias or conflict of interest, as why the petitioner believes the bias or conflict could materially impact the outcome. When the allegation involves a respondent who is an employee, petitions should be submitted promptly to the **Director of Human Resources**. When the allegation involves a respondent who is a student, petitions should be submitted promptly to the **Title IX Coordinator for Students**. Such petitions may also be made to the Vice President for Student Affairs, or to the University President in the event that the potential conflict or bias involves the Title IX Coordinator.

h. Recordkeeping

In implementing these procedures, records of all allegations, investigations, and resolutions will be kept by the Title IX Coordinator and Office of Judicial Affairs in the electronic *Maxient* Student Database for a period of seven years.

STATEMENT OF THE RIGHTS OF THE COMPLAINANT

- The right to investigation and appropriate resolution of all credible reports or notice of sexual misconduct or discrimination made in good faith to university officials;
- The right to be informed in advance of any public release of information regarding the incident;
- The right of the complainant not to have any personally identifiable information released to the public, without his or her consent.
- The right to be treated with respect by university officials;
- The right to have university policies and procedures followed without material deviation;
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by university officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by university officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire;
- The right to have reports of sexual misconduct responded to promptly and with sensitivity by campus law enforcement and other campus officials.
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services for victims of sexual assault, both on campus and in the community;
- The right to notification of and options for, **supportive measures** after an alleged sexual misconduct incident, if so requested by the complainant/respondent, and if such

changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available).

Supportive Measures may include, but are not limited to:

- Referral to Health and Counseling
 - Education to the community
 - Altering the housing situation of the respondent (resident student) (or the complainant, if desired)
 - Altering work arrangements for student employees
 - Providing campus escorts,
 - Providing transportation accommodations
 - Implementing contact limitations between the parties (*No Contact Order*)
 - Offering adjustments to academic deadlines, course schedules, etc.
-
- The right to have the institution maintain such measures for as long as is necessary, and for measures to remain confidential, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures.
 - The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
 - The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
 - The right to review all documentary evidence available regarding the allegation, including the investigative report, subject to the privacy limitations imposed by state and federal law, at least 10 business days prior to the hearing and a substantial period (at least 10 days) to respond.
 - The right to be informed of the names of all witnesses who will be called to give testimony, at least two business day prior to the hearing, except in cases where a witness' identity will not be revealed to the respondent for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);
 - The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
 - The right to regular updates on the status of the investigation and/or resolution.

- The right to have reports heard by hearing and appeals officers who have received [at least eight hours of] annual sexual misconduct training;
- The right to a panel comprised of representatives of both genders, if a panel is to be used;
- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to meetings, interviews and/or hearings that are closed to the public;
- The right to petition that any member of the conduct body be recused on the basis of demonstrated bias;
- The right to bring a victim advocate or advisor of the complainant's choosing to all phases of the investigation and resolution proceeding;
- The right to provide evidence by means other than being in the same room with the respondent;
- [The right to have the university compel the presence of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, [directly or indirectly], of all present witnesses [including the respondent], and the right to challenge documentary evidence].
- The right to be present for all testimony given and evidence presented during any resolution-related hearing;
- The right to make or provide an impact statement in person or in writing to the hearing officers following determination of responsibility, but prior to sanctioning;
- The right to be informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties, and usually within 1 business day of the end of the process;
- The right to be informed in writing of when a decision of the university is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the [finding and] sanction of the resolution process, and

the procedures for doing so in accordance with the standards for appeal established by the university;

STATEMENT OF THE RESPONDENT'S RIGHTS

The rights of the respondent should also be prominently indicated. These should include, among others particular to your university:

- The right to investigation and appropriate resolution of all credible reports of sexual misconduct made in good faith to university administrators;
- The right to be informed in advance, when possible, of any public release of information regarding the report.
- The right to be treated with respect by university officials;
- The right to have university policies and procedures followed without material deviation;
- The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;
- The right to notification of and options for **supportive measures** after an alleged sexual misconduct incident, if so requested by the complainant/respondent, and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available).

Supportive Measures may include, but are not limited to:

- Referral to Health and Counseling
- Education to the community
- Altering the housing situation of the respondent (resident student) (or the complainant, if desired)
- Altering work arrangements for student employees
- Providing campus escorts,
- Providing transportation accommodations
- Implementing contact limitations between the parties (*No Contact Order*)
- Offering adjustments to academic deadlines, course schedules, etc.

- The right to be fully informed of the nature, policies and procedures of the campus resolution process and to timely written notice of all alleged violations within the report, including the nature of the violation and possible sanctions;
- The right to review all documentary evidence available regarding the allegation, including the investigative report, subject to the privacy limitations imposed by state and federal law, at least 10 business days prior to the hearing and a substantial period (at least 10 days) to respond.
- The right to a hearing on the report, including timely notice of the hearing date, and adequate time for preparation;
- The right to be informed of the names of all witnesses who will be called to give testimony, at least 2 business days prior to the hearing, except in cases where a witness' identity will not be revealed to the respondent for compelling safety reasons (this does not include the name of the complainant, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;
- The right to have reports heard by hearing and appeals officers who have received sufficient annual training;
- The right to petition that any member of the conduct body be recused on the basis of demonstrated bias;
- The right to a panel comprised of representatives of both genders if a panel is to be used;
- The right to meetings, interviews and hearings that are closed to the public;
- [The right to have the university compel the presence of student, faculty and staff witnesses, and the opportunity to ask questions, [directly or indirectly], of all present witnesses, and the right to challenge documentary evidence].
- The right to have an advisor of their choice to accompany and assist in the campus resolution process.

- The right to a fundamentally fair resolution, as defined in these procedures;
- The right to make or provide an impact statement in person or in writing to the hearing officers board following any determination of responsibility, but prior to sanctioning;
- The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to be informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties, and usually within 1 business day of the end of the process;
- The right to be informed in writing of when a decision of the university is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the [finding and] sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the university.

References:

Association for Title IX Administrators (ATIXA) www.atixa.org

PaperClip Communications www.paper-clip.com

U.S. Department of Education www.ed.gov

Office for Civil Rights (OCR) <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>