

GRIEVANCE PROCEDURES FOR FORMAL COMPLAINTS OF PROHIBITED CONDUCT: PROCEDURE 2

A. Applicability of these Procedures

The following procedures apply to Formal Complaints of Prohibited Conduct made pursuant to the Title IX & Sexual Misconduct Policy (“the Policy”) when the following conditions are met:

- The Formal Complaint does not meet the conditions outlined in Procedure 1, Section A;
- The University has jurisdiction pursuant to Section B of the Policy;
- The Formal Complaint includes at least one allegation of Sex-Based Discrimination, Retaliation or Failure to Comply.

These procedures apply to allegations of Prohibited Conduct under the Policy that are not covered by Procedure 1 or consolidated with Formal Complaints assigned to those procedures.

The process for resolution of Formal Complaints under Procedure 2 is designated below based on the status of the Respondent: student or employee.

B. Resolution of Formal Complaints of Prohibited Conduct: Student Respondents

1. Alternative Dispute Resolution for Formal Complaint of Prohibited Conduct

At any time after a Formal Complaint is filed, but prior to a final resolution, the parties may request to resolve the Formal Complaint through Alternative Dispute Resolution ("ADR"). If the Formal Complaint is resolved through ADR, no record of the report will be entered in the Respondent's official Office of Student Conduct record, unless otherwise agreed by the parties. The report would also not be formally investigated and adjudicated. However, the Title IX Office will record the facts of the report and the resolution achieved as part of its internal records.

All parties must agree to participate voluntarily in the ADR process and the University must deem that the matter to be potentially resolved is appropriate for ADR. The University may gather information necessary through interviewing individuals and other evidence gathering to determine if the report is appropriate for ADR.

At any time during the ADR process, the University may decide to proceed with a formal investigation and withdraw its approval for the process. Additionally, the University must approve the parties' proposed ADR agreement before it can be considered final. If additional potential Policy violations are revealed during the ADR process, the University may withdraw its approval for the process and proceed with a formal investigation or the University, with the consent of the parties, may continue the ADR process and resolve the additional potential Policy violations. The University may also take additional steps to ensure that the Prohibited Conduct does not continue or recur within the University's education programs or activities.

If a report of Prohibited Conduct is resolved by ADR, the resolution will be deemed final. Should ADR result in terms or conditions being imposed on one or both parties, a failure to subsequently adhere to those terms or conditions as written may subject the offending party to a Failure to Comply charge.

To proceed with ADR, the Title IX Coordinator will first provide the parties with notice of the following:

- A description of the allegation(s);
- The requirements of the ADR process, including the circumstances under which the University precludes the parties from resuming a Formal Complaint arising from the same allegations;
- Any consequences resulting from participating in the Alternative Dispute Resolution process, including the records that will be shared and maintained; and
- Any party's right to, at any time prior to agreeing to a resolution, withdraw from the Alternative Dispute Resolution process and resume the formal process with respect to the Formal Complaint.

Factors the University will consider when determining whether a report of Prohibited Conduct is suitable for ADR include, but are not limited to, the following:

- The nature of the alleged offense;
- The dynamics of power or control commonly associated with the alleged offense and/or with the parties involved;
- The Respondent's prior known conduct;
- Whether there would be a continuing safety threat to the campus community after resolution of the specific report of Prohibited Conduct;
- Whether multiple parties are involved; and
- Any other factor deemed relevant by the Title IX Coordinator in the interest of overall campus safety or safety of the parties involved.

Either party may end ADR at any time until a resolution is final and move to the formal process outlined below, or the Complainant may request to withdraw the Formal Complaint. Once the ADR process is final, neither party can request to proceed with the formal process outlined below, and the Complainant cannot file or resume a Formal Complaint arising from the same allegations. Neither party has a right to appeal the outcome of the ADR process, except as specifically stated in the agreement.

2. Formal Resolution Investigation Process for Formal Complaints of Prohibited Conduct

The formal investigation process is triggered when a Formal Complaint is filed by the Complainant or signed by the Title IX Coordinator. All meetings, discussions, and/or hearings that may occur as part of this formal process are closed to the general public.

a. Time Frames

Formal Complaints will be resolved as promptly as practicable after the Formal Complaint is made. The University will provide the parties with periodic updates as it deems appropriate and with timely notice of meetings at which either or both the Complainant and Respondent may be present and will provide both parties with timely and equal access to any information that is utilized in the decision-making process.

The time frames set forth herein may vary, but reasonable efforts will be made to conclude the process as follows:

- An investigation of a Formal Complaint under the Title IX Process within ninety (90) business days from the time a Notice of Allegations letter is sent to the Respondent to the issuance of the Pre-Findings Evidence Summary;

- Any Alternative Dispute Resolution within sixty (60) business days of the parties' agreement to engage in the process;¹
- Any appeals within thirty (30) business days from the issuance of an Investigative Finding Report;
- Any appeals within fourteen (14) business days of the Title IX Coordinator's issuance of a dismissal of a Formal Complaint.

Extenuating circumstances could require the process to extend beyond the time frames set herein, and the University will determine in its discretion if such circumstances exist and will notify the Complainant and Respondent of the delay and the reason for the delay. Potential reasons for requiring additional time for resolution of the process include, but are not limited to the following: to ensure the integrity and completeness of the investigation, to comply with a request by law enforcement, the complexity of the investigation, the severity and extent of the alleged conduct, University closings or limited operations, breaks, holidays, summer terms, to accommodate the delays by witnesses or the parties, pandemics or public health crises, and factors outside the University's control.

b. Standard of Proof

The standard used to determine whether the Respondent is responsible for Prohibited Conduct is preponderance of the evidence, which means more likely than not that the alleged conduct occurred and said conduct is in violation of this Policy based on the available evidence obtained during the University investigation.² Unless ultimately proven otherwise pursuant to the standards and processes of this Policy, individuals accused of Prohibited Conduct are presumed to be not responsible for any alleged violation.

c. Formal Investigation Process

The University will provide for adequate, reliable, and impartial investigation of Formal Complaints. The burden is on the University—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether the Prohibited Conduct occurred.

- i. *Initial Meeting with Complainant*—The investigator(s) will conduct an initial meeting with the Complainant. During this initial meeting, the investigator(s) and the Complainant will discuss available University supportive measures as well as the rights and options for filing a Formal Complaint under the Policy and for pursuing criminal charges. The investigator(s) will obtain as much information as possible during the initial meeting about the alleged incident, including witness names and any available evidence. The Complainant will also have the opportunity to raise issues or otherwise suggest specific questions directly related to the investigation for the investigator(s) to ask of the Respondent or any potential witnesses, provided the questions are directly related to the allegations and permissible. The investigator(s) reserves the right to alter the wording of any proposed question. The Complainant may, at any time during the investigation process, request that the investigation end and the University will try to accommodate this request, which may result in a dismissal of the Formal Complaint. However, if the alleged conduct presents an issue of overall campus safety and/or is sufficiently grave, the investigation may continue if the Title IX Coordinator signs the Formal Complaint. See Section H.2.b. of the [Policy](#).

¹ If the ADR process is requested, all other time frames are tolled as of the date of the request.

² This standard will apply to all charges, including any that incorporate or reference a state or federal criminal law.

- ii. *Notice of Allegations*— Upon initiation of these grievance procedures, the University will notify the parties of the following:
- The University’s grievance procedures and any informal resolution process;
 - Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the alleged Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
 - The Respondent is presumed not responsible for the alleged Prohibited Conduct until a determination is made at the conclusion of the grievance procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence;
 - The parties may have an advisor of their choice who may be, but is not required to be, an attorney;
 - Retaliation is prohibited;
 - The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence; and
 - It is a violation of University Policy to knowingly make false statements or knowingly submit false information during the grievance procedures. For students, see Section III.A.(1) of the [Code of Student Conduct](#).

Notice of the Formal Complaint, with allegations of Prohibited Conduct, is deemed to have been properly provided when written notification of the allegations and alleged violations of the Policy/Code of Student Conduct is sent to the Complainant’s and Respondent’s assigned University of Alabama email address, delivered via Certified Mail to their last known address available through myBama, or personally delivered to them. University-issued email is the University’s primary means of communication with students. Students are responsible for all communication delivered to their University-issued email address.

If, during the course of the investigation, the Title IX Office decides to investigate allegations of Prohibited Conduct by the Respondent towards the Complainant that are not included in the Notice of Allegations or the Formal Complaint, the Title IX Office will provide written notice of the additional allegations to the parties.

If the Title IX Office has reasonable concerns, based on an individualized safety and risk analysis, for the safety of any person as a result of providing the Notice of Allegations, the Title IX Office may reasonably delay providing the Notice of Allegations in order to address the safety concern appropriately.

- iii. *Initial Meeting with Respondent*— An effort will be made to set the initial investigative meeting with the Respondent at least seven (7) calendar days after delivery of the written notification of the alleged violation(s). Pre-scheduled meetings are scheduled around students’ academic schedule. Should the Respondent wish to reschedule an appointment or meet sooner than the designated time, they should make such request in a timely manner. The University will make a reasonable effort to accommodate scheduling conflicts but will not permit unreasonable delays in the investigation process. Students are advised to keep their most current local address, permanent address, and local telephone number (or cell phone number) updated in the [myBama](#) records system.

At the initial investigative meeting, the allegations will be discussed with the Respondent. The investigator(s) and the Respondent will discuss the Respondent's rights as well as available University supportive measures while the investigation is pending. The Respondent will be given the opportunity to respond to the allegations and offer evidence directly related to the allegations and/or potential witnesses. The Respondent will also have the opportunity to raise issues or otherwise suggest specific questions for the investigator(s) to ask of the Complainant or any potential witnesses, provided the questions are directly related to the allegations and appropriate. The investigator(s) reserves the right to alter the wording of any proposed question.

The Respondent is not required to make a statement or otherwise provide information relevant to the investigation. A Respondent's failure to make a statement shall not be used as an admission of responsibility during the formal investigative procedure. However, the process will continue and a decision regarding responsibility may be made based on the available statements and evidence at the formal hearing.

1. Acceptance of Responsibility by a Respondent— After receiving notice of the allegations but prior to the issuance of a determination, a Respondent may accept responsibility for the alleged violation(s) of the Policy. By doing so, the Respondent waives their right to appeal the finding of responsibility, if applicable, in any manner. In such instances, the investigator(s), in consultation with the Title IX Coordinator, may obtain any additional information necessary to determine appropriate sanctions/remedies. If a Respondent accepts responsibility for the alleged conduct prior to a final outcome being issued, the acceptance of responsibility may be considered a mitigating factor with regard to the issuance of sanctions/remedies. Both the Complainant and the Respondent shall be informed concurrently in writing of the Respondent's acceptance of responsibility, sanctions assigned to the Respondent by the University, and whether remedies will be provided by the University to the Complainant, if applicable.

Neither party has the right to seek an appeal of the determination or the sanctions/remedies assigned to a Respondent who has accepted responsibility prior to a final outcome.

- iv. *Advisors*—Respondents and Complainants are both entitled to one advisor throughout the grievance process. The parties are responsible for selecting their own advisor and arranging for the advisor to be present at meetings during the grievance process if the party so chooses. Upon request by a party, the University may assist the parties with obtaining access to a University-provided advisor during the grievance process. In addition to an advisor, the parties may also be entitled to have one support person throughout the grievance process. Additional information about advisors and support persons can be found on the Title IX Office's [website](#).

The Title IX Office will work with the party to arrange for a mutually agreeable time for meetings but will not unreasonably delay the grievance process based on the advisor's availability. Requests for delay must be considered reasonable given the circumstances. Parties requesting a delay to be in the same physical location with their advisor may not be considered a reasonable request if there is technology available to allow both the party and their advisor to participate in the meeting or proceeding and confer in private.

- v. *Other Evidence*—The investigator(s) will make reasonable attempts to contact and interview individuals who are identified as witnesses with information relevant to the allegations of Prohibited Conduct. The investigator(s) may elect to limit the number of witnesses whose sole purpose is to provide character information, as duplicative evidence is not relevant. The investigator(s) may also elect not to interview witnesses unlikely to have information directly related to the allegations as determined in the sole discretion of the investigator(s). The investigator(s) will make reasonable attempts to obtain other directly related evidence available from the parties, witnesses, or other University departments that is not otherwise impermissible.

1. Irrelevant Evidence: The following evidence is considered irrelevant as it relates to the investigation and any subsequent proceedings under the Policy:

- *Complainant's Prior Sexual Behavior*: For reports involving sexual assault/rape, evidence of the Complainant's sexual predisposition or prior sexual behavior is not relevant if it is offered to prove that the Complainant engaged in other sexual behavior or to prove the Complainant's sexual predisposition. Evidence of specific instances of sexual behavior by the Complainant may be offered to show:
 - Sexual encounters between the Complainant and the Respondent for purposes of establishing consent; or
 - That a person other than the Respondent was the source of semen, injury, or other physical evidence.
- *Legally Privileged Information*: Evidence that discloses or seeks to disclose information protected under a legally recognized privilege is considered irrelevant unless the person holding such privilege has waived the privilege. This may include attorneys, medical providers, psychologists, and others with a privileged recognized by applicable state or federal law.
- *Medical Records*: Evidence that includes a party's medical, psychological, and similar records are considered irrelevant unless the party has given voluntary written consent for the consideration of those records. See section F.3. of the [Policy](#).

2. Evidence of Parties' Prior Bad Acts

- *Complainant's Prior False Allegations*: Evidence that the Complainant made prior bad faith, materially false allegation(s) of Prohibited Conduct may be offered as evidence of Complainant's credibility. For purposes of this Policy, a prior bad faith, materially false allegation is one that has been adjudicated as false by a court of law or other body adjudicating a claim of Prohibited Conduct, including proceedings conducted by the University, as defined by this Policy.
- *Respondent's Prior Prohibited Conduct*: Evidence that the Respondent has been adjudicated as responsible for an allegation(s) of Prohibited Conduct that is similar in nature may be directly related to the allegation(s) in that it could prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident (all indicia of Respondent's credibility). For purposes of this Policy, adjudications include those by a court of law or other body adjudicating a claim of Prohibited Conduct, including proceedings conducted by the University, as defined by this Policy.

- vi. *Parties' Review of Evidence and the Pre-Finding Evidence Summary*— Once the investigator(s) has made reasonable attempts to obtain all inculpatory evidence (that may support a finding or conclusion that Respondent engaged in Prohibited Conduct) and exculpatory evidence (that may support a finding or conclusion that a Respondent did not engage in Prohibited Conduct), the parties will be given a reasonable opportunity to review and respond to the relevant and not otherwise impermissible evidence obtained during the investigation. This evidence will be summarized in a document called the Pre-Finding Evidence Summary. The investigator(s) will send each party and the party's advisor, if any, the Pre-Finding Evidence Summary and any evidence subject to inspection and review in an electronic format or a hard copy. The parties will have ten (10) calendar days to submit a written response, including suggesting specific questions relevant to the investigation for the investigator(s) to ask of the other party or any potential witnesses, which the investigator(s) will consider prior to submitting the investigation file for completion. The University will take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Formal Complaint are authorized.
- vii. *Respondent Disassociation from the University*— If a Respondent voluntarily withdraws from the University, fails to re-enroll for a subsequent semester, is no longer employed by the University or otherwise is no longer associated with the University after an investigation is initiated but before a Finding Report is issued, the Title IX Coordinator (or designee) will make a determination of how to proceed. This determination is in the sole discretion of the Title IX Coordinator (or designee).
 - The Title IX Coordinator may dismiss the Formal Complaint;
 - The Title IX Coordinator may elect to resolve the pending Formal Complaint with formal or informal procedures; or
 - A hold can be placed on the Respondent's record that prevents them from registering or enrolling at the University in the future. The Respondent may be prohibited from entering campus or attending campus-sponsored events. The Respondent's Conduct Record may indicate that they disassociated from the University after a complaint was asserted and pending disciplinary review. Resolution of the case and permission from the Title IX Office will be required before a disassociated Respondent is permitted to return to the University.

d. Finding Report

Following the investigation, and provided the Formal Complaint has not been dismissed, the Title IX Coordinator (or designee) shall determine whether the evidence presented during the investigation supports a finding that the alleged Prohibited Conduct more likely than not occurred, including the rationale for this determination. This determination will be provided concurrently to both parties in a Finding Report. The Finding Report will include an objective evaluation of all evidence that is relevant and not otherwise impermissible, including inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

If the Title IX Coordinator (or designee) concludes that the evidence presented during an investigation supports a finding that the alleged Prohibited Conduct more likely than not occurred,

the Finding Report will also include any disciplinary sanctions imposed, after the investigator(s) consults with relevant campus partners. The Title IX Coordinator will also coordinate and implement remedies to the Complainant and take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the University's education program or activity. A current list of possible sanctions/remedies can be found in section K of the [Policy](#).

3. Appeals Following a Finding Report

Following the issuance of a Finding Report, both the Complainant and Respondent have a right to seek an appeal of the Title IX Coordinator's determination with regard to a finding of responsibility or non-responsibility and/or the imposed sanctions/remedies. An appeal may be requested on any of the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- To determine if the sanction(s) imposed were grossly disproportionate to the violation(s) committed;
- New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, or investigator(s), or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

If a party is seeking an appeal, they must submit that request in writing on the form available through the Title IX Office [website](#) within seven (7) calendar days of the issuance of the determination and/or sanction(s). If either party requests an appeal, any accompanying sanction(s) will be on hold and will not take effect until the determination is final. If seven (7) calendar days pass without a party timely and properly requesting an appeal, the determination and/or sanction(s) will be deemed final.

When one party files a request for appeal, the other party will be notified of the request in writing by the Title IX Office. Both parties will be given an opportunity to submit a written statement to the Title IX Office in support of, or challenging, the responsibility determination from the formal hearing. Such submission must be made within seven (7) calendar days of the notification of the request for appeal.

The Decision-Maker for the appeal will be different from anyone who made the determination regarding responsibility or dismissal and must not be either the investigator or the Title IX Coordinator. The Decision-Maker will be free from conflict of interest and bias and receive appropriate training.

Following the appeal, the Decision-Maker will issue a written decision describing the result of the appeal and the rationale for such result. This decision will be final and provided simultaneously to both parties.

Any additional processes or procedures applicable to appeals will be available on the Title IX website.

C. Resolution of Formal Complaints of Prohibited Conduct: Employee Respondents

Formal Complaints under Procedure 2, wherein an employee (faculty or staff) is the Respondent, are investigated by the Title IX Office, alone or in conjunction with Office of Academic Affairs and/or the Human Resources Business Partner, as appropriate.

The process for resolution of Formal Complaints against employee Respondents is outlined in more detail in the Harassment Policy.