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Filing a Complaint

# POLICY A ND PROCEDURES: Equal Opportunity, Harassment and Nondiscrimination

The University of North Alabama affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the UNA's Equity Resolution Process, as detailed below. The Equity Resolution Process is applicable regardless of the status of the parties involved, who may be members or non-members of the campus community, students, student organizations, faculty, administrators and/or staff. UNA reserves the right to act on incidents occurring oncampus or off

- b) Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;
- Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of UNA.

Any online postings or other electronic communication by students, including cyberbullying, cyber-stalking, cyber-harassment, etc. occurring completely outside of the UNA's control (e.g. not on UNA's networks, websites or between UNA email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial oncampus disruption. Otherwise, such communications are considered speech protected by the 1st Amendment.

Off-campus discriminatory or harassing speech by employees may be regulated by UNA only when such speech is made in an employee's official or work-related capacity or if the discriminatory or harassing speech becomes within the scope of employment.

Inquiries about this policy and procedure

Washington, DC 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012 TDD#: (877) 521-2172 Email: OCR@ed.gov

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

Atlanta Office Office for Civil Rights U.S. Department of Education 61 Forsyth St. S.W., Suite 19T10 Atlanta, GA 30303-8927 Telephone: 404-974-9406

FAX: 404-974-9471; TDD: 800-877-8339

Email: OCR.Atlanta@ed.gov

Equal Employment Opportunity Commission (EEOC)

Contact: http://www.eeoc.gov/contact/

## 1. UNA's Policy on Nondiscrimination

UNA adheres to all federal and state civil rights laws banning discrimination in public institutions of higher education. UNA will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, color, sex, pregnancy, religion, creed, ethnicity, national origin, disability, age, sexual orientation, gender identity, veteran or military status, predisposing genetic characteristics, domestic violence victim status or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any grievance process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the UNA policy on nondiscrimination. When brought to the attention of the UNA, any such discrimination will be appropriately remedied by UNA according to the procedures below. The coordinator for non-discrimination policies for students is the Title IX Coordinator, Room 20, Guillot University Center, 256-765-4223, http://www.una.edu/titleix. The

# 2. UNA's Policy on Accommodation of Disabilities

UNA is committed to full compliance with the Americans with Disabilities Act of 2008, Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

Inquiries about ADA/504 Compliance would be forwarded to UNA's legal counsel through the Title IX Coordinator or the Assistant Vice President for Human Resources.

# a. Studentswith Disabilities

UNA is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of UNA while at the same time maintaining the integrity of the UNA program requirements.

All accommodations are made on a case-by-case basis. A student requesting accommodations should contact the Disability Support Services' office for academic accommodations. The student is responsible for self-identifying to this office and having a meeting with a provider, providing an impact statement and documentation. During the consultation with the (ul) 0.004 .33 Td4A-6 (a [(s)-1 ( (n i)-2 (m)T-10w -2.1])

UNA condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by UNA policy or law.

# c. Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, UNA has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, UNA considers Non-Consensual Sexual

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

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

## iv. Sexual Exploitation

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed)
- Taking pictures or video or audio recording another in a sexual act, or in any
  other private activity without the consent of all involved in the activity, or
  exceeding the boundaries of consent (such as allowing another person to hide in a
  closet and observe sexual activity, or disseminating sexual pictures without the
  photographed person's consent)
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent

## v. Consent<sup>5</sup>

Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon

## 4. Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- A. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- B. For the purposes of this definition:
  - i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - ii. Dating violence does not include acts covered under the definition of domestic violence.

#### Domestic Violencé

A felony or misdemeanor crime of violence committed:

- A. By a current or former spouse or intimate partner of the victim;
- B. By a person with whom the victim shares a child in common;
- C. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- D. 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
- E. By any other person against an adult or youth victim who is protected.

# 6. Stalking<sup>7</sup>

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

<sup>&</sup>lt;sup>6</sup> Under Alabama law, domestic violence, which has three levels of degrees, is defined as one of several specific types of crimes s h3.3 (hi)-(ees)-12.3 (,)-

#### A. Prohibited Relationships.

Faculty members and staff members shall not engage in, and are prohibited from, consensual relationships with students whenever a faculty member or staff member has direct supervision with respect to the student. Should a consensual relationship exist prior to the beginning of the professional relationship, or develop, or appear likely to develop, while the faculty member or staff member is, or would be, in a position of direct supervision over the student, the faculty member or staff member shall immediately report such relationship with his or her immediate supervisor and initiate steps to avoid and/or terminate the position of direct supervision. Avoidance or termination includes but is not limited to the student not enrolling in a course; a qualified alternative faculty member or teaching assistant taking the position of direct supervision; transfer of the student to another course, section, seminar, etc. taught by a different faculty member or teaching assistant; assigning or transferring the student to, or the student selecting, another academic advisor; or the student dropping or withdrawing from a course.

Paraprofessional student staff members shall not have a romantic and/or sexual relationship with anyone currently in their duty coverage area. A consensual friendship based relationship may exist even if one or both partners consider it casual, temporary, or episodic. The policy applies to even a single intimate, sexual, or romantic encounter. If the potential for such a relationship should develop, the paraprofessional student staff member must immediately notify his/her supervisor in writing. A paraprofessional student staff member must understand if he/she wishes to pursue such a relationship, appropriate action will be taken. This would include, but not be limited to, offering the resident the option to voluntarily move to another complex, or having the paraprofessional student staff member moved to an appropriate location if the ability to do so is present. A paraprofessional student staff member should not be assigned to rounds within an area where a resident with whom he/she is in a relationship currently lives, and should not become involved in a disciplinary incident involving said party absent an emergency situation.

basis depending upon the specific facts and context of the relationship. If paraprofessional staff are required to address an incident with said party, they should recuse themselves and contact a back-up paraprofessional student staff member. If another paraprofessional student staff member is not available, the supervisor on duty should be contacted.

# III. Policy Regarding Employee/Employee Consensual Relationships

An employee should be aware that entering into a consensual relationship with another employee that exercises direct supervision over the employee creates the potential for risk to both parties. In particular, such a relationship will limit that supervisor/employee's ability to direct work or promote that employee's career and creates conflicts of interest and perceptions of undue advantage.

# A. <u>Prohibited Relationships</u>.

A University employee shall not engage in, and is prohibited from, consensual relationships with another employee whenever one employee has direct supervision with respect to the other employee. Should a consensual relationship exist prior to the beginning of the period of direct supervision, or develop, or appear likely to develop, while an employee is, or would be, in a position of direct supervision over another employee, the employee exercising direct supervision shall immediately report such relationship to his or her immediate supervisor and steps to avoid and/or terminate the position of direct supervision shall 2 (s)-1Sctnd ts of inthsn eha(e)4 (c)4 (t)-2 (2 (t)4 s)-1 E (c)4 (t)-2 (2

- the hazing policy) on the basis of actual or perceived membership in a protected class; hazing is also illegal under Alabama law and prohibited by UNA policy
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class
- Any other UNA rules, when a violation is motivated by the actual or perceived membership of the victim on the basis of sex or gender or in a protected class, may be pursued using this policy and process.

Sanctions for the above-listed "Other Civil Rights Behaviors" behaviors range from reprimand up through and including expulsion (students) or termination of employment.

#### 5. Retaliation

Retaliation is defined as any intentional, adverse action taken by a responding individual or allied third party, absent legitimate nondiscriminatory purposes, against a participant or supporter of a participant in a civil rights resolution proceeding or other protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing a complaint or for assisting in providing information relevant to a claim of harassment is a serious violation of UNA policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator or the Assistant Vice President for Human Resources or to a Deputy Coordinator and will be promptly investigated. UNA is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

#### 6. Remedial Action

UNA will implement initial remedial and responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counsel

# 7. Confidentiality and Reporting of Offenses Under This Policy

UNA employees are expected to report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, one should be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate UNA officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for you to report crimes and policy violations and these resources will take action when you report victimization to them. The following describes the three reporting options at UNA:

# a. Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- Student Counseling Services 256-765-5215
- **U4328**sity Health Services 256-765-4328

- At least 5 members of academic affairs faculty
- At least 5 members of the staff
- At least 1 representative from Human Resources
- At least 2 representatives from Athletics
- At least 1 representative from ROTC

Panel members are usually appointed to three-year terms. Appointments to the ERP should be made with attention to representation of groups protected by the harassment and non-discrimination policy. The ERP panel members have an obligation to keep all information confidential involving investigations. Individuals who are interested in serving on the ERP are encouraged to contact the Title IX Coordinator or the Assistant Vice President for Human Resources.

## 2. Filing a complaint

Any member of the community, guest or visitor who believes that the policy on Equal Opportunity, Harassment and Nondiscrimination has been violated should contact the Title IX Coordinator, Assistant Vice President for Human Resources, or Deputy Coordinators. It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member, or any member of the community may contact UNA Police. These individuals will in turn notify the Title IX Coordinator and/or the Assistant Vice President for Human Resources. UNA's website also includes a reporting form at www.una.edu/titleix which may serve to initiate a complaint.

All employees receiving reports of a potential violation of UNA policy are expected to promptly contact the Title IX Coordinator or the Assistant Vice President for Human Resources, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with the maximum possible privacy: specific information on any complaints received by any party will be reported to the Title IX Coordinator or the Assistant Vice President for Human Resources, but, subject to UNA's obligation to redress violations, every effort will be made to maintain the privacy of those initiating a report of a complaint. In all cases, UNA will give consideration to the party bringing a complaint with respect to how the complaint is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal complaint.

As necessary, UNA reserves the right to initiate a complaint, to serve as a report party, and to initiate conduct proceedings without a formal complaint by the reporting party.

## 3. Equity Resolution ProcessIntake

Following receipt of notice or a complaint, the Title IX Coordinator<sup>9</sup> or the Assistant Vice President for Human Resources will, promptly assign an ERP panel member to work as advisor to the person who reported the complaint. A party bringing a complaint may also choose from the ERP pool or choose a non-trained advisor from outside the pool, if preferred, or proceed without an advisor. Normally, within two business days, an initial determination is made whether a policy violation may have occurred and/or whether conflict resolution might be appropriate. If the complaint does not appear to allege a policy violation or if conflict resolution is desired by the party bringing a complaint, and appears appropriate given the nature of the alleged behavior, then the complaint does not proceed to investigation.

A full investigation will necessarily be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. UNA aims to complete all investigations within a 60 business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator or the Assistant Vice President for Human Resources with notice to the parties.

#### 4. Role of Advisor

The parties have the right to an advisor/advocate of their own choosing. Advisors/advocates may be a friend, parent, faculty mentor, attorney or any other person to accompany or assist throughout the process. The advisor may not make a presentation or represent the party bringing the complaint or responding party during the investigation and/or hearing. They may confer quietly with their advisee, exchange notes, clarify procedural questions with the investigator and suggest questions to their advisee.

#### 5. Recording

There will be a single verbatim record, such as an audio recording, for all investigations. Deliberations will not be recorded. The record will be the property of UNA and maintained according to UNA's record retention policy. Individuals may not record any meetings pursuant to this process. UNA may record or transcribe proceedings, and those recordings or transcriptions will be made available to the reporting party and/or respondent.

### 6. Investigation

If a party bringing a complaint wishes to pursue a formal complaint or if UNA, based on the alleged policy violation, wishes to pursue a formal complaint, then the Title IX Coordinator or Assistant Vice President for Human Resources appoints two ERP members (also known

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<sup>&</sup>lt;sup>9</sup> If circumstances require, the President or Title IX Coordinator/Assistant Vice President for Human Resources may designate another person to oversee the process below, should a complaint be made against the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

as investigators) to conduct the investigation, usually within two business days of determining that a complaint should proceed. Investigation of complaints brought directly by those alleging harm should be completed expeditiously, normally within 10 business days of notice to the Title IX Coordinator or Assistant Vice President for Human Resources. Investigation may take longer when initial complaints fail to provide direct first-hand information. UNA may undertake a short delay (3-10 days, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. UNA action will not 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. 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.

#### 7. Interim Remedies

If, in the judgment of the Title IX Coordinator or the Assistant Vice President for Human Resources, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the Title IX Coordinator or the Assistant Vice President for Human Resources (or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. These remedies may include, but not limited to, referral to counseling and health services, education to the community, altering the housing situation of an accused student or resident employee (or the alleged victim, if desired), altering work arrangements for employees, providing campus escorts, implementing contact limitations between the parties, offering adjustments to academic deadlines, course schedules, etc.

UNA may interim suspend a student, employee or organization pending the completion of ERP investigation and procedures. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the opportunity to meet with the Title IX Coordinator/Assistant Vice President for Human Resources prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator/Assistant Vice President for Human Resources has sole discretion to implement or stay an interim suspension under the policy on Equal Opportunity, Harassment and Nondiscrimination, and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to UNA housing and/or the UNA campus/facilities/events. As determined by the [appropriate administrative officer/Title IX Coordinator/Assistant Vice President for Human

serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Coordinator/Assistant Vice President for Human Resources believe that it could be beneficial. It is not necessary to pursue conflict resolution first in order to make a formal ERP complaint, and anyone participating in conflict resolution can stop that process at any time and request a formal process.

#### b. Administrative Resolution

Administrative Resolution can be pursued for any behavior that falls within the policy on Equal Opportunity, Harassment and Nondiscrimination, at any time during the complaint process. Administrative Resolution is to be used for those violations for which the accused admits responsibility. The Title IX Coordinator, Assistant Vice President for Human Resources, and/or Deputy Coordinators will provide written notification of a complaint to any member of the UNA community who is accused of an offense of harassment, discrimination, or retaliation. Once informed, the responding party may,

- An individual's disciplinary history
- Previous complaints or allegations involving similar conduct
- Any other information deemed relevant by the ERP

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- (including University registration), for a specified period of time.
- Other Actions In addition to or in place of the above sanctions, the UNA may assign any other sanctions as deemed appropriate.

# Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination and/or retaliation include warning, required counseling, demotion, suspension with pay, suspension without pay and termination.

### e. Notification of Outcomes

The outcome of a Title IX investigation involving employees is a part of the personnel record of the employees but is not subject to disclosure or release. However UNA observes the legal exceptions that allow for notification of the parties involved and others whom UNA determines to inform based on the law and this policy.

Students who bring any sort of sex discrimination complaint against faculty or staff may be informed of the outcome of the investigation and the resolution.

The outcome of a Title IX investigation involving students is part of the education record of the student parties involved, and is protected from release under a federal law, FERPA. However, UNA observes the legal exceptions that allow for notification of the parties involved and others whom UNA determines to inform based on the law and this policy.

UNA may release publicly the name, nature of the violation and the sanction for any employee or student who is found in violation of UNA policy that is a "crime of violence," including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. UNA will release this information to the reporting party in any of these offenses regardless of the outcome.

# f. Withdrawal or Resignation While Charges Pending

Students: UNA does not permit a student to withdraw if that student has a complaint in included did it is the complaint in the complaint in the complaint is the complaint in the complaint in the complaint is the complaint in the complaint in the complaint in the complaint is the complaint in th

IX Coordinator/Assistant Vice President for Human Resources will reflect that status, as will UNA responses to any future inquiries regarding employment references for that individual. The Title IX Coordinator/Assistant Vice President for Human Resources will act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

g. Appeals

All request

# 9. Revision

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator and the Assistant Vice President for Human Resources. The Title IX Coordinator may make min