

# Procedural Options

## Time Frame for Resolution

Consistent with the goal to maximize educational opportunities and minimize the disruptive nature of the investigation and resolution, the Title IX Coordinator seeks to resolve all reports within 60 days, depending on when the report is received. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness. Ordinarily, after the Title IX Coordinator determines there is sufficient information for the Title IX Coordinator or designee to determine that a report raises a potential issue Under Section III (Jurisdiction) and Section V (Prohibited Conduct) of the Title IX Policy, best efforts will be made to follow the time frame below:

- Investigations will be completed within 30 business days from receipt of written notice from the Complainant of the intent to proceed with the investigation.
- Adjudication will generally take up to twenty-five (25) business days from the date of the Investigative Finding.

Business days do not include weekends or holidays. The Title IX Coordinator may set reasonable time frames for required actions under the Title IX Policy and these Procedures. Those time frames may be extended for good cause as necessary to ensure the integrity and completeness of the Investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, accommodate delays by the parties, account for University breaks or vacations, or address other legitimate reasons, including the complexity of the (including the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged conduct. Any extension of the time frames, and the reason for the extension, will be shared with the parties in writing.

## Initial Assessment

When a report is made, the Title IX Coordinator or Deputy Coordinator will conduct an Initial Assessment. The assessment will determine whether the alleged conduct could present a potential violation of the Title IX Policy and whether further action is warranted based on the alleged conduct.

The first step of the Initial Assessment will usually be a preliminary meeting between the Complainant and the Title IX Coordinator or Deputy Coordinator. The purpose of the preliminary meeting is to gather facts that will enable the Title IX Coordinator or Deputy Coordinator, in consultation with other offices as appropriate, to:

- Assess the nature and circumstances of the allegation
- Address any immediate concerns about the physical safety and emotional well-being of the parties
- If the conduct is criminal in nature, notify the Complainant of the option to notify law enforcement and to be assisted in doing so, as well as the option to decline to notify law enforcement
- Notify the Complainant of the availability of medical treatment to address any physical and mental health concerns and to preserve evidence
- Provide the Complainant with written information about:
  - On and off campus resources
  - The available range of Interim Protective Measures

- An explanation of the procedural options, including Voluntary Resolution and Investigation and Adjudication
- The Complainant's Rights during the process
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding
- Explain the University's policy prohibiting Retaliation
- Explain the role of an Advocate
- Conduct an assessment for potential pattern evidence or other similar conduct by Respondent
- Assess the reported conduct for the need for a timely warning or entry in the crime log under federal law

If a Complainant wants to inform a Responsible Employee but also wants to maintain confidentiality and/or request that no investigative or disciplinary measures be taken, the Responsible Employee or Title IX Coordinator will advise the Complainant that the University will consider the request but cannot guarantee that the University will be able to honor the request. The University will weigh such a request against the University's obligation to provide a safe, non-discriminatory environment. There will be times when the University may not be able to honor a request in order to comply with this obligation. In determining whether it can honor a request for confidentiality, the following factors will be considered:

- the nature and scope of the alleged conduct, including whether the reported misconduct involves the use of a weapon;
- the respective ages and roles of the Complainant and Respondent;
- the risk posed to any individual or to the campus community by not proceeding, including the risk of violence;
- whether there have been other reports of misconduct by the Respondent;
- whether the report reveals a pattern of misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group
- the Complainant's wish to pursue disciplinary action;
- whether the University possesses other means to pursue the investigation and obtain relevant evidence without participation from the Complainant;
- considerations of fundamental fairness and due process with respect to the Respondent should the course of action include disciplinary action against the Respondent; and
- the University's obligation to investigate and to provide a safe and non-discriminatory environment.

Where possible based on the facts and circumstances, the Title IX Coordinator will seek action consistent with the Complainant's expressed preference for manner of resolution, recognizing that the University must move forward with cases in which there appears to be a threat to any individual or the University as a whole. The University's ability to fully investigate and respond to a report may be limited if the Complainant requests that their name not be disclosed to the Respondent or declines to participate in an Investigation.

At the conclusion of the Initial Assessment, the Title IX Coordinator will determine the appropriate resolution route. Resolution may include: 1) no further action, 2) Voluntary Resolution, or 3) the initiation of an Investigation and Adjudication that may lead to conduct action. The Respondent will be notified when UAB takes action that would impact a Respondent, such as protective measures that restrict the Respondent's movement on campus, the initiation of an Investigation, or the decision to seek informal resolution.

Regardless of the manner of resolution, a Respondent may choose to accept responsibility at any stage in the process.

## Voluntary Resolution

Voluntary Resolution, when selected by the Complainant and deemed appropriate by the Title IX Coordinator, is a path designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the Complainant and the safety and welfare of the campus community. Voluntary Resolution does not involve an Investigation or disciplinary action against a Respondent, and is not appropriate for all forms of conduct under the Title IX Policy. The time frame for completion of Voluntary Resolution may vary, but the University will seek to complete the process within thirty (30) business days of the Complainant's request.

The University retains the discretion to determine, when selected by the Complainant, which cases are appropriate for Voluntary Resolution. If a Complainant requests Voluntary Resolution, and the Title IX Coordinator concludes that Voluntary Resolution is appropriate based on the factors outlined in the Initial Assessment, the Title IX Coordinator will take appropriate action by imposing individual and community remedies designed to maximize the Complainant's access to all employment, educational, and extracurricular opportunities and benefits at the University and to eliminate a potential hostile environment. A Complainant may request and decide to pursue Voluntary Resolution at any time. In those cases in which the Voluntary Resolution involves either the notification to or participation by the Respondent, it is the Respondent's decision whether to accept Voluntary Resolution.

Voluntary Resolution may include: establishing Interim Protective Measures; conducting targeted or broad-based educational programming or training for relevant individuals or groups; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; facilitating a meeting with the Respondent with the Complainant present (in cases that do not involve Sexual Assault); and any other remedy that can be tailored to the involved individuals to achieve the goals of the Title IX Policy. In some forms of Voluntary Resolution, the remedies imposed will focus on supporting the Complainant with no participation or involvement by the Respondent. In other forms of Voluntary Resolution, the Respondent may agree to participate. Depending on the type of remedy used, it may be possible for a Complainant to maintain anonymity.

Voluntary Resolution may also include restorative principles that are designed to allow a Respondent to accept responsibility for misconduct and acknowledge harm to the Complainant or to the University community. Restorative models will be used only with the consent of both parties, under the supervision of University-sanctioned trained professionals, and following a determination by the University that the matter is appropriate for a restorative approach.

The University will not compel a Complainant to engage in mediation, to confront directly the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, will not be used in cases involving Sexual Assault. As the title implies, participation in Voluntary Resolution is a choice, and either party can request to end this manner of resolution and pursue an Investigation and Adjudication at any time, including if Voluntary Resolution is unsuccessful at resolving the report.

Similarly, a Complainant can request to end an Investigation and pursue Voluntary Resolution at any time. In addition, either party may request Interim Protective Measures regardless of whether any particular course of action is sought.

To assess pattern or systemic behavior fairly, the Title IX Coordinator will maintain records of all reports and conduct referred for Voluntary Resolution. Information disclosed during the Voluntary Resolution process will not be considered during a subsequent Investigation or Adjudication.

Because the outcome of voluntary resolution process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted.

## Investigation

Following the Initial Assessment the University will initiate a prompt, thorough, and impartial Investigation of conduct that is a potential violation of the Policy and is not being addressed through Voluntary Resolution. The Title IX Coordinator will designate an investigator(s) who has training and experience investigating allegations of Prohibited Conduct. The investigator may be a University employee or an outside investigator. The investigator will coordinate the gathering of information to make an Investigative Finding regarding whether the alleged conduct constitutes a violation of the Title IX Policy by a preponderance of the evidence. A preponderance of the evidence means that it is more likely than not that the conduct occurred.

The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator and/or Hearing Panel conclude that there is sufficient evidence, by a "Preponderance of the Evidence", to support a finding that the Respondent violated the Title IX Policy. Neither party is required to participate in the investigation or any form of resolution under these Procedures, and the Investigator will not draw any adverse inference from a decision by either of the parties not to participate.

Information gathered during the Investigation will be used to evaluate the appropriate course of action, provide for individual and campus safety, and identify the need for Interim Protective Measures and other remedies as necessary to eliminate the alleged conduct and to address its effects.

## Investigative Process

The Title IX Coordinator will send the Complainant and the Respondent a written Notice of Investigation, which constitutes the formal charge. The Notice of Investigation will generally contain the following:

- Summary of the allegation or conduct at issue
- Range of potential violations under the Title IX Policy
- On and off campus resources
- Rights of the Respondent
- Range of potential sanctions
- Notification that expulsion is a potential sanction and that expulsion precludes matriculation (where appropriate)

Upon receipt of the Notice of Investigation, or at any stage in the process, the Respondent may choose to accept responsibility for the Title IX Policy violation(s). Once the Notice of Investigation has been delivered to the parties, the Investigation phase begins.

The Title IX Coordinator will oversee the Investigation. The Investigation is designed to provide a fair and reliable gathering of the facts by a trained and impartial investigator. All individuals, including the Complainant, the Respondent, and any third party witnesses, will be treated with appropriate sensitivity and respect throughout the Investigation. The Investigation will safeguard the privacy of the individuals involved in a manner consistent with federal law and University policy.

During the Investigation, the Complainant and Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information. The investigator will speak separately with the Complainant, the Respondent, and any other individuals who are willing to participate and have information relevant to the determination of responsibility. As part of the Investigation, the investigator may gather or receive information that is relevant to the determination of an appropriate sanction or remedy, including information about the impact of the alleged incident on parties.

Throughout the process, any participant may have an Advocate present at any meeting related to resolution of a report under the Title IX Policy. The Advocate can be anyone of the individual's choosing, including an attorney, who is not otherwise a party or witness involved in the Investigation.

The investigator will also gather any available physical or documentary evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media materials, text messages, and other records as appropriate and available.

The University will seek to conclude the Investigation within thirty (30) business days from the issuance of the Notice of Investigation. This Notice will generally be issued within five (5) business days of receipt of written notice from the Complainant of the intent to proceed with Investigation and sufficient information for the Title IX Coordinator to determine that the report falls within Section III (Jurisdiction) and Section V (Prohibited Conduct) of the Title IX Policy. The time frame for completion of the Investigation, or any designated time frames of steps in the Investigation, may be extended for good cause as necessary to ensure the integrity and completeness of the Investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case (including the number of witnesses and volume of information provided by the parties), or to address other legitimate reasons. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

The filing and processing of a complaint of sexual misconduct is separate from and independent of any criminal investigation or proceeding. Where the University is made aware that there is a concurrent criminal investigation, the Title IX Coordinator will coordinate with law enforcement so that any University processes do not interfere with the integrity or the timing of the law enforcement investigation. At the request of law enforcement, the University may agree to defer the fact-finding portion of its Investigation until after the initial stages of a criminal investigation. The Title IX Coordinator will nevertheless communicate with the parties regarding resources and accommodations, procedural options, anticipated timing, and the implementation of any necessary Interim Protective Measures for the safety and well-being of all affected individuals. The investigator will promptly resume fact-gathering as soon as law enforcement has released the case for review following the initial criminal investigation.

Neither law enforcement's determination as to whether or not to prosecute a respondent nor the outcome of any criminal prosecution is determinative of whether sexual misconduct occurred under the University's Title IX Policy. If, however, a responding party is later convicted of a crime, the responding party could be subject to other policies and procedures that could result in discipline up to and including dismissal or termination.

All community members, including students, faculty and other University employees, are expected to cooperate with the Title IX Coordinator in the Investigation, as well as any adjudication, of any report to assure fairness and procedural due process. The Title IX Coordinator may request the appearance of persons from the University community who can provide substantial, relevant evidence. Both a Complainant and a Respondent may decline to participate in proceedings under the Policy; the Title IX Coordinator will determine whether the Investigation and any adjudication will proceed without the Complainant pursuant to the factors set out in § IV.B above or without the Respondent.

The investigator has the discretion to determine the relevance of any witness or other evidence to the finding of responsibility, and may exclude information in preparing the investigation report if the information is irrelevant, immaterial, or more prejudicial than informative. The investigator may also exclude statements of personal opinion by witnesses and statements as to general reputation for any character trait, including honesty. The investigator will not exclude direct observations or reasonable inferences drawn from the facts.

## Impact Statement

The Complainant and Respondent will be provided the opportunity to submit a written Impact Statement. These written Impact Statements will not be considered in the determination of responsibility, but will be provided to the investigator, and at the appropriate stage of the process, to the disciplinary authority or Hearing Panel for consideration in the determination of the sanction and remedy. The Impact Statement may be submitted at any time in the process, provided that it is received no later than five (5) days after the parties have been given notice of the opportunity to review the draft Investigative Report. The parties may submit a supplemental Impact Statement to the disciplinary authority or

Hearing Panel if there is a change in circumstances warranting an updated Impact Statement. The Impact Statements will be shared with the parties, and may be redacted at the discretion of the Title IX Coordinator, or in accordance with FERPA.

## Review of Draft Investigation Report

At the conclusion of the Investigation, the investigator will prepare a written report that summarizes the information gathered, synthesizes the areas of agreement and disagreement between the parties with any supporting information or accounts, and includes an Investigative Finding regarding whether a Title IX Policy violation occurred. However, before the report is finalized, the Complainant and Respondent will be given the opportunity to review a draft Investigation Report, which will not include the Investigative Finding, and may be presented in redacted format. The parties will not receive an electronic or written copy, nor may they photograph or copy the draft Investigation Report, but they will be permitted to take notes on the content.

A Complainant and Respondent may submit any additional comment or information to the investigator within five (5) business days of the date of the notice of the opportunity to review of the draft Investigation Report. This is the final opportunity for the parties to identify any additional information or witnesses. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the investigator at this juncture will not be considered by the investigator or Hearing Panel.

## Investigative Finding

Upon receipt of any additional information from the Complainant or Respondent, or after the five (5) business day comment period has lapsed without comment, the investigator will make an Investigative Finding, by a preponderance of the evidence, regarding whether a Title IX Policy violation occurred and will recommend a sanction and/or remedy based on the Investigative Finding. In reaching these determinations, the investigator will consult with the Title IX Coordinator and any other designated administrator who has information relevant to the Investigation. The investigator may also seek and review relevant information related to the allegations from the Office of Student Advocacy, Rights and Conduct regarding prior disciplinary history and UABPD regarding prior criminal history. Both the Complainant and Respondent will be notified of the Investigative Finding and the recommended sanction(s) and/or remedy(ies) in writing at the same time.

## Outcome Conference

Upon issuance of the Investigative Finding, and where appropriate, a recommended sanction and/or remedy, each party will have the opportunity to meet, separately, with the Title IX Coordinator. The Title IX Coordinator will share the Investigative Finding and, as applicable, the recommended sanction with the Complainant and Respondent and the remedy with the Complainant. During the Outcome Conference, the parties will each have an opportunity to review the full Investigation Report. The parties will not, however, receive an electronic or written copy, nor may they photograph or copy the Investigation Report. The parties will be permitted to take notes on the content.

Where there has been an Investigative Finding that a Title IX Policy violation has occurred, both the Complainant and Respondent may:

- Accept both the Investigative Finding and recommended sanction;
- Accept the Investigative Finding, but request a Hearing on the recommended sanction; or
- Request a Hearing on the Investigative Finding and recommended sanction.

If either party requests a Hearing, the matter will be referred to a Hearing Panel to determine whether a Title IX Policy violation was committed and/or to determine an appropriate sanction.

Where there has been an Investigative Finding that no Title IX Policy violation occurred, the Complainant may:

- Accept the Investigative Finding (on one or all of the alleged violations); or
- Request Administrative Review of the Investigative Finding (on one or all of the alleged violations).

The Complainant and Respondent must communicate their chosen course of action to the Title IX Coordinator in writing (e.g., email, facsimile, letter) within five (5) business days of notification of the Investigative Finding.

## Adjudication Options

At the conclusion of the Outcome Conference, one of the following will occur:

1. Imposition of Final Finding, Sanction, and Remedy
  - a. Where both the Complainant and the Respondent agree to the Investigative Finding and any recommended sanction, or where neither party requests further review, the outcome will become final. The finality of the outcome, which is not subject to further appeal or review, will be communicated to the parties, in writing at the same time.
  - i. Administrative Review of an Investigative Finding of No Title IX Policy Violation

Where the Complainant requests administrative review of the Investigative Finding that no Title IX Policy violation occurred, the Investigation Report will be reviewed by the VP of Student Affairs or his or her designee. Both the Respondent and the Complainant will have the opportunity to meet with the reviewer or submit additional information in writing. The designated reviewer may agree with the Investigative Finding, reverse the finding, or request additional investigative follow-up. The designated reviewer will render a decision in writing to both parties at the same time within ten (10) business days of receipt of the request for review. This timeframe may be extended for good cause provided that both the delay and the reason for the delay are communicated to the parties in writing.

Where the VP of Student Affairs (or the designee) agrees with the Investigative Finding, this determination is final and is not subject to further appeal or review. Where the designated reviewer reverses the Investigative Finding that there is no Title IX Policy violation, the matter will be immediately forwarded for Adjudication by the Hearing Panel. Where the



designated reviewer requests additional Investigation, the matter will be returned to the investigator for further review.

ii. Adjudication by a Hearing Panel: Review of an Investigative Finding that a Title IX Policy Violation Occurred

If the Respondent challenges the Investigative Finding that a Title IX Policy violation occurred, the Title IX Coordinator will issue a Notice of Hearing to the Complainant and the Respondent and forward the report for adjudication by the Hearing Panel. The Hearing Panel's role is twofold: determination that a Policy violation occurred by a preponderance of the evidence and, if warranted, imposition of sanctions.

The Title IX Coordinator is responsible for establishing that a Title IX Policy violation occurred, and the Complainant may choose their own level of engagement at the hearing. At the hearing, the Title IX Coordinator is responsible for and must present sufficient witness and/or documentary evidence to establish the violation. The Respondent must be given an opportunity to question this evidence.

iii. Adjudication by a Hearing Panel: Review of Recommended Sanction Only

Where either the Complainant or the Respondent requests a hearing only on the recommended sanction, a Hearing Panel will be convened for the sole purpose of determining the appropriate sanction.

## Imposition of Sanctions

The Title IX Policy prohibits a broad range of behaviors, which are serious in nature. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free of Prohibited Conduct, the Title IX Policy provides the investigator and Hearing Panel with wide latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the misconduct on the Complainant and surrounding community, and accountability for the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct under the Title IX Policy, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and federal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some behavior, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational process that it requires severe sanctions, including suspension from the University.

In cases that are resolved at the Outcome Conference after the Investigation, the investigator, in concert with the Title IX Coordinator, is responsible for determining the appropriate sanction. In cases that are resolved through a Hearing Panel, the Hearing Panel is responsible for determining the appropriate sanction. In reaching this determination, the investigator or Hearing Panel may solicit information from the Complainant, the Respondent, and any other individual who can provide information relevant to a determination regarding potential sanctions. The investigator and Hearing Panel may also review any written Impact Statements submitted by the Complainant, the Respondent, or a

community representative. A Complainant or Respondent who elects to meet with the Hearing Panel may be accompanied by an Advocate.

In determining the appropriate sanction, the investigator and the Hearing Panel shall consider the following factors:

- the nature and violence of the conduct at issue;
- the impact of the conduct on the Complainant;
- the impact or implications of the conduct on the community or the University;
- prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the University or elsewhere, including criminal convictions;
- maintenance of a safe and respectful environment conducive to learning;
- protection of the University community; and,
- any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

The investigator and the Hearing Panel may also consider restorative outcomes that, taking into account the safety of the community as a whole, allow a Respondent to develop insight about their responsibility for the behavior, learn about the impact of the behavior on the Complainant and the community, and identify how to prevent or change the behavior.

### 1. Sanctions that Impact a Student's Status

Sanctions may be imposed individually or in combination. Sanctions that affect a student's status with the University include the following:

**Expulsion** means that a student is removed from the University permanently and may not seek readmission. **Suspension for a Definite or Indefinite Period** means that the student must leave the University for a definite or indefinite period. This form of suspension anticipates that the student may eventually return if applicable conditions are satisfied. **Probation for a Definite or Indefinite Period** means that a student is not in good standing and may remain at the University but may be required to satisfy specified conditions or requirements.

### 1. Sanctions that Do Not Impact a Student's Status

Sanctions which do not affect a student's good standing status with the University include, but are not limited to:

**Educational Requirements.** Completion of projects, programs, or requirements designed to help the student manage behavior and understand why it was inappropriate. **"No Contact" Orders.** Compliance with orders of no contact that limit access to specific University areas or forms of contact with particular persons. **Housing Restrictions.** Exclusion from University housing or change in housing arrangements. **Community Service.** Completion of up to sixty (60) hours of community service over a period not to exceed twelve (12) weeks under guidelines established and monitored by the Title IX Coordinator and AVP of Student Experience.

**Written Warning.** Written warning in the form of an official reprimand that is formally communicated by a letter giving the student notice that any subsequent Title IX Policy violation will carry more serious sanctions.

## Remedies

The Title IX Coordinator will identify long-term or permanent remedies to address the effects of the conduct on the Complainant, restore the Complainant's safety and well-being, and maximize the Complainant's educational and employment opportunities. Such remedies should seek to restore to the Complainant, to the extent possible, all benefits and opportunities lost as a result of the Prohibited Conduct. The Title IX Coordinator will also identify remedies to address the effects of the conduct on the University community.

The Title IX Coordinator will consider the appropriateness of remedies, including Protective Measures, on an ongoing basis to assure the safety and well-being of the parties throughout the process. Long-term remedies may include extending or making permanent any Interim Protective Measures or implementing additional measures tailored to achieve the goals of the Title IX Policy. Many of the remedies and supports that a Complainant might need after a finding of responsibility will have already been provided as Interim Protective Measures, including Protective Measures, on an ongoing basis to assure the safety and well-being of the parties throughout the process. Many of the remedies and supports that a Complainant might need after a finding of responsibility will have already been provided as Interim Protective Measures, including but not limited to academic accommodations, short term counseling, and housing arrangements. The Title IX Coordinator will, in all cases, consider whether there is a need for additional remedies. Additional remedies or supports may be included in the sanctions, such as reassignment or removal of the Respondent from a class or a dormitory.

### 1. Hearing Process

The Hearing Process will generally be completed within twenty-five (25) business days from the date of the request for a Hearing. As with all time frames in the Title IX Policy and these Procedures, this time frame may be extended for good cause with notice to the parties in writing.

#### 1. Hearing Panel

Upon receipt of a Notice of Hearing, a Hearing Panel will be designated to review all relevant information gathered in the Investigation. In addition to a Hearing Chair, a Hearing Panel is comprised of three (3) individuals, selected from a pool of trained individuals (typically including two faculty or staff members and one student). Any individual designated by the University to serve on a Hearing Panel must have sufficient training or experience to serve in this capacity. A Hearing Panel member may decline to participate on the basis of an actual conflict of interest, bias, or lack of impartiality. A Hearing Chair will conduct and preside over the hearings. The Hearing Chair is not a voting member of any Hearing Panel, but is available to provide consistency in process, informed understanding of Title IX Policy definitions, and guidance as to available sanctions; the Hearing Chair will also draft the Hearing Panel findings. Hearing Chair will also draft the Hearing Panel findings.

### 2. Pre-Hearing Meeting

As a first step, the Hearing Chair will meet separately with the investigator and each party to resolve pre-hearing concerns. At this pre-hearing meeting, the parties will each have the opportunity to identify the witnesses (who have already been identified to and interviewed by the investigator) they wish to call at the hearing; raise any challenge to the composition of the Hearing Panel based on bias, conflict of interest or lack of impartiality; and identify any evolving or new information not previously identified through the Investigation or available through the exercise of due diligence. The parties will also have the opportunity to address questions about the process. If not participating in the hearing, the Complainant is not required to attend this meeting.

Both parties have the ability to challenge a Hearing Panel member on the basis of an actual conflict of interest, bias, or lack of impartiality. The request must be submitted in writing or raised no later than the date of the pre-hearing meeting and must clearly state the grounds to support a claim of bias, conflict of interest, or an inability to be fair and impartial. Failure to object prior to the date of the pre-hearing meeting eliminates the possibility of appealing the outcome of the hearing based on the assertion that a member of the Hearing Panel had a conflict of interest, was biased, or lacked impartiality.

### 3. Hearing Procedures

The Hearing will take place in a closed session. At the Hearing, the investigator will be responsible for presenting the evidence supporting the Investigative Finding of a Title IX Policy violation. However, the Hearing Panel will make its own determination by a preponderance of the evidence whether a Title IX Policy violation occurred. In reaching a determination, the Hearing Panel will solicit information from the investigator, the Complainant, the Respondent, and any witnesses as appropriate to ensure a full assessment of the relevant facts. This information shall be provided in the presence of the parties, unless a party waives their right to participate.

The Complainant and Respondent will be granted the opportunity to appear before the hearing panel if they wish and make an oral statement regarding the facts. During the hearing, each party may be accompanied by an Advocate. Upon request, a party or witness may participate by telephone or videoconference from a different physical location or may request that a visual barrier be placed to limit the individual's exposure to other hearing participants. The Complainant and Respondent will not be in the hearing room together, unless both parties agree in writing. The party who is not before the Hearing Panel may have audio access to the hearing via telephone when the other party appears.

A Respondent, Complainant, adviser, and/or witness may not bring electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) into a hearing room. The Title IX Coordinator will make an audio recording of the hearing to be kept on file in accordance with UAB's document retention policy. Reasonable care will be taken to create a quality audio

recording and minimize technical problems; however, technical problems that result in no recording or an inaudible one will not be a valid argument for appeal.

Questions directed to the parties will be made through the Hearing Chair, who will screen them for relevance. Questions may be directed to the investigator. Similarly, the parties have the right to question witnesses; however, the Hearing Chair has the discretion to determine that the questions will be made through the Hearing Chair in cases where the Hearing Chair determines that questioning by the parties will be unduly intimidating to a witness. In all such instances, the Hearing Chair may require measures to assure the integrity of the process.

The Hearing Panel will not review any Impact Statements unless a determination of a Title IX Policy violation is made. After a consideration of all of the relevant information, the Hearing Panel will make a determination by a preponderance of the evidence whether a Title IX Policy violation occurred. Preponderance of the evidence means that it is more likely than not that the conduct occurred. The Hearing Panel's determination must be reached by a majority vote. If so, the Hearing Panel will also impose a sanction. Sanctions of suspension or expulsion must be supported by a unanimous vote. A majority vote is required for all other sanctions.

## Notice of Hearing Outcome

Within five (5) business days of the conclusion of the Hearing, the University will provide a written Notice of Hearing Outcome to the Complainant and the Respondent at the same time. The Title IX Coordinator will also provide written notice, at the same time to both parties, of any change in the Outcome that occurs before the Outcome becomes final.

The Notice of Hearing Outcome will include the finding by the Hearing Panel as to whether there is a Title IX Policy violation, the rationale for the result, and a brief summary of the evidence on which the decision is based, as appropriate. Where there is a finding of a Title IX Policy violation, the Respondent will be informed of any sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. The Complainant will be informed of any sanctions and remedies that directly relate to the Respondent, including information about the Respondent's presence on campus (or in a shared class or residence hall), that may help a Complainant make informed decisions or work with the University to eliminate Prohibited Conduct and prevent its recurrence.

The Notice of Hearing Outcome will also include information about the appeal process, including the available grounds for an appeal, the time frame for submitting an appeal, and the name of the Appeals Officer who will be assigned to review any appeal filed. If neither party seeks an appeal within five (5) business days of the Notice of Outcome, any sanction imposed by the Hearing Panel will take effect immediately.

## Appeal/Review of Hearing Outcome

Either party may appeal the Notice of Hearing Outcome to the VP of Student Affairs ("Appeals Officer"). Either party may appeal the Hearing Outcome only on the following grounds:

- A violation of procedural due process (material deviation from established procedures that would substantially affect the Outcome);
- Newly discovered information has been obtained that was not previously available during the Investigation or Adjudication Processes through the exercise of due diligence, and this newly discovered information would substantially affect the Outcome.

\*The time frame for filing an appeal based on newly discovered information may be extended at the discretion of the Title IX Coordinator where the evidence could not reasonably have been discovered within the time frame and compelling justification exists for its consideration

The parties may appeal the portions of the Hearing Outcome that directly relate to that party. Mere dissatisfaction with the Hearing Outcome is not a valid basis for appeal.

The appeal must be submitted in writing to Title IX Coordinator within five (5) business days of the Notice of Hearing Outcome. The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. Receipt of the written appeal will be acknowledged in writing.

The Title IX Coordinator will assess the written appeal to determine whether the appeal is timely filed and, if so, whether the appeal is properly framed based on the two permissible grounds. If the Title IX Coordinator determines that the appeal does not properly fit within one of the two grounds, the appeal will be denied.

If the appeal is properly filed, each party will be given the opportunity to review the written appeal and respond to it in writing to the Appeals Officer. Any response by the opposing party must be submitted to the Appeals Officer within three (3) business days from being provided the appeal. If both parties file an appeal, the appeal documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, because the Hearing Outcome will be presumed to have been decided reasonably and appropriately. Appeals are not intended to be a rehearing of the matter. The scope of the appeal will be limited only to the two permissible grounds that have been accepted for review. 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. The Appeals Officer may speak to the investigator, the Hearing Chair, or the parties, as appropriate. The Appeals Officer will defer to the original Hearing Panel, making changes to Hearing Panel's findings only where there is clear error. Depending on the basis of the requested appeal, the Appeals Officer may:

- Affirm the Outcome;
- Alter the Outcome;

- Return the matter to the Hearing Panel with instructions to reconvene to cure a procedural error or to assess the weight and impact of newly discovered information.
- Where the procedural error cannot be cured by returning the matter to the original Hearing Panel, convene a hearing before a newly constituted Hearing Panel.

The Appeals Officer will render a written decision on the appeal to both parties within fifteen (15) business days from the date of the submission of all appeal documents. Appeal decisions by the Appeals Officer are final.

## Post-Resolution Follow Up

After a sanction or remedy is issued, the Title IX Coordinator will periodically contact the Complainant to ensure the Prohibited Conduct has ended and to determine if additional remedies are necessary and will contact the Respondent to assure compliance with any sanctions that have been imposed. The Complainant may decline future contact. Any violation by a Respondent of a sanction or protective measure imposed under the Title IX Policy or a failure by a University employee to provide a specified remedy should be reported to the Title IX Coordinator.

The Complainant and Respondent are encouraged to provide the Title IX Coordinator with feedback about their experience with the process and recommendations regarding ways to improve the effectiveness of the campus' implementation of the Title IX Policy.