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# SEXUAL MISCONDUCT AND TITLE IX POLICY

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# INVESTIGATION AND RESOLUTION PROCEDURES

# Sexual Misconduct and Title IX Policy

### **INTRODUCTION**

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

#### The University uses the Preponderance of the Evidence

standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like plicable. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources; however,

### SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

Sexual Harassment<sup>1</sup> conduct on the basis of sex that satisfies one or more of the following:

the university never assumes that a responding party is in violation of university policy.

- (1) An employee of the recipient (federally funded institution/organization) conditioning the provision of an unwelcome sexual conduct (This is also viewed as Quid Pro Quo Harassment. See further explanation, below).
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and

program or activity; or,

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

(3) "Sexual assault"<sup>2</sup> - an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

however slight, with any object,

- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
  - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.<sup>4</sup>
  - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
  - Incapacitation is a state wherein students cannot make rational, reasonable

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

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

#### REPORTING SEXUAL MISCONDUCT

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

#### Department of Public Safety

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

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

#### Title IX Coordinator for Students

Title IX Coordinator for Students oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports to the Vice President for Student Affairs, and is located in the Student Health and Counseling Center. Questions about this policy should be directed to the Title IX Coordinator. Any student wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the university designee, below: Ms. Tanisha Smith *Title IX Coordinator for Students* Division of Student Affairs John and Ela Byrd McCain Student Health and Counseling Center P.O. Box 98 Normal, AL 35762 (256) 372-4499 Tanisha.smith@aamu.edu

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

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

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

Office for Civil Rights (OCR)

Southeast Region U.S Department of Health and Human Services Sam Nunn Atlanta Federal Center, Suite 16T70 61 Forsyth Street, SW. Atlanta, GA 30303-8909 Oustomer Response Center #: (800) 368-1019 Facsimile: (202) 619

# Federal Statistical Reporting Obligations

Certain campus officials those deemed Campus Security Authorities -

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

Warning Probation Suspension Expulsion Organizational Sanctions Other Actions

# Sanctioning for Sexual Misconduct

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

Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).\*

### Additional Policy Provisions

### a. Attempted violations

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

# b. False Reports

University will not tolerate intentional false reporting of incidents. It is a violation of the [Student Code of Conduct

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

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

#### d. Parental Notification

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

depending on the nature and complexity of allegations. If there is insufficient evidence to move forward, the process ends. If, however, the Title IX Investigator finds reason to the believe that there was a policy violation, and that a full investigation is warranted, then, further inquiry will take place, and findings will be submitted in the form of a detailed report. The report, along with all gathered evidence, will be provided to both parties

# FORMAL RESOLUTION PROCESS FOR REPORTS OF MISCONDUCT

## Notification

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

## Department of Public Safety (DPS)

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campus community and visiting stakeholders by upholding all Federal, State, and Campus Laws/regulations/codes. DPS Staff are supervised by the Executive Director/Chief of Public Safety, who reports to the Vice President for Student Affairs.

Department of Public Safety

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

Additional Reporting Tool for Sexual Misconduct: RED FLAG ALERT - https://report.myredflag.com

Department of Public Safety Investigative Process

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

- 3. The investigator will interview the complainant and gather a formal statement. If the complainant wants to move forward with criminal charges or a formal complaint with Title IX, The DPS investigator will:
  - a. Separate complainant from others, if not already completed.
  - b. Explain procedures (criminal process/Title IX process) as they pertain to the steps to follow during the investigative process.
  - c. Interview any witnesses that may be present at that time.
  - d. Notify Title IX Coordinator for Students, Chief of Police, Director of Housing, Health and Counseling Office and Judicial Affairs of the incident.
  - e. Process the scene of the incident, if one is present (e.g. take photographs, collect garments or DNA)
  - f. Transport Complainant to *Crisis Services of North Alabama* for a Sexual Assault Examination, along with any evidence collected from the scene.
  - g. Gather a formal statement from the alleged respondent.
  - h. Implement a *No Contact Order* between parties, if deemed necessary, based on the intial investigation and a risk assessment.
  - *i.* Work with Title IX Coordinator to determine and implement any other necessary supportive measures. (NOTE: Supportive measures will be extended even if no criminal charges are filed and

Ms. Tanisha Smith *Title IX Coordinator for Students* Division of Student Affairs John and Ela Byrd McCain Student Health and Counseling Center P.O. Box 98 Normal, AL 35762 (256) 372-4499 Tanisha.smith@aamu.edu

Title IX Preliminary Inquiry and Investigative Process

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

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Identify the exact policies allegedly violated;

Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the respondent, and what policy violations should be alleged as part of the report;

• If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;

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

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

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

# The Hearing

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

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

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

Parties are entitled to be accompanied by their advisor in all meetings and interviews at which they are entitled to be present, including intake, interviews, hearings and appeals. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith (need to determine chain of evidence) The parties must advise the investigators of the identity of their advisor at least two (2) business days before the date of their first meeting with investigators. The parties must provide subsequent timely notice to the investigators if they change advisors at any time. No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with campus officials.

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

result

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

# STATEMENT OF THE RESPONDENT'S RIGHTS

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

The right to investigation and appropriate resolution of all credible reports of sexual misconduct made in good faith to university administrators;

The right to be informed in advance, when possible, of any public release of information regarding the report.

The right to be treated with respect by university officials;

The right to have university policies and procedures followed without material deviation;

The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;

The right to notification of and options for after an alleged sexual misconduct incident, if so requested by the complainant/respondent, and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available).

Supportive Measures may include, but are not limited to:

- Referral to Health and Counseling
- Education to the community
- Altering the housing situation of the respondent (resident student) (or the complainant, if desired)
- o Altering work arrangements for student employees
- Providing campus escorts,
- Providing transportation accommodations

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The right to be fully informed of the nature, policies and procedures of the campus resolution process and to timely written notice of all alleged violations within the report, including the nature of the violation and possible sanctions;

The right to review all documentary evidence available regarding the allegation, including the investigative report, subject to the privacy limitations imposed by state and federal law, at least 10 business days prior to the hearing and a substantial period (at least 10 days) to respond.

The right to a hearing on the report, including timely notice of the hearing date, and adequate time for preparation;

The right to be informed of the names of all witnesses who will be called to give testimony, at least 2 business days prior to identity will not be revealed to the respondent for compelling safety reasons (this does not include the name of the complainant, which will always be revealed);

The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;

The right to have reports heard by hearing and appeals officers who have received sufficient annual training;

The right to petition that any member of the conduct body be recused on the basis of demonstrated bias;

The right to a panel comprised of representatives of both genders if a panel is to be used;

The right to meetings, interviews and hearings th0 0 of representatives of bel is tIW\* nBT/F5 12 Tf1 0 0