Policy 01:114 – Sexual Misconduct, Nondiscrimination and Harassment Policy

Title IX of the Education Amendments of 1972 is a law that protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Title IX covers all aspects of education programs and the treatment of students and employees, but not limited to, admissions, athletics, employment, and student life, at all levels of education.

Introduction

Members of the University community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual assault, sexual harassment, domestic violence, dating violence, and stalking. All members of our community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University believes in zero tolerance for sex/gender-based misconduct. When an allegation of misconduct is brought to the appropriate administrator's attention, protective and other support measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the Complainant and community have been resolved. These remedies do include severe sanctions, such as suspension, expulsion, and termination. This policy is in place to reaffirm these principles and to provide recourse for those individuals whose rights have been violated.

Nothing in this part may be read in derogation of any individual's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* or any regulations promulgated thereunder. To the extent of a conflict between State or local law and Title IX as implemented by §§ 106.30, 106.44, and 106.45, the obligation to comply with §§ 106.30, 106.44, and 106.45 is not obviated or alleviated by any State or local law.

The University's sexual misconduct, harassment, and discrimination policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom.

Purpose and Scope of Policy

The University of Montevallo is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and State civil rights laws and regulations, and to affirm our commitment to promoting the goals of fairness and equity in all aspects of educational pursuits, the University of Montevallo has developed internal policies and procedures. These policies and procedures will provide a prompt, nondiscriminatory, and impartial processes for those involved in an allegation of sexual misconduct, discrimination, or harassment. The University of Montevallo values and upholds the equal dignity of all members of our community and strives to balance the rights of all parties involved.

The central purpose of this policy is the University's response to all forms of discrimination on the basis of sex. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment advancement. Sometimes, discrimination takes the form of harassment or, in the case of sex-based discrimination, encompasses sexual violence, stalking, sexual exploitation, or domestic violence. When violation of this anti-discrimination policy is alleged, the allegations are subject to resolution using our grievance process as detailed below.

When the Respondent is a member of the University of Montevallo community and the discrimination occurs against a person in the United States, this grievance process will be followed. The procedures below may be applied to incidents, to patterns, and/or to the climate, all of which may be addressed and investigated in accordance with this policy.

Jurisdiction of the University of Montevallo

This policy applies to conduct that takes place on the campus or on property owned or controlled by the University of Montevallo at University-sponsored events that occur to a person in the United States. It also applies to conduct that takes place in buildings owned or controlled by University of Montevallo's recognized student organizations. The Respondent must be a member of the University of Montevallo's community in order for its policies to apply. If the conduct does not fall within this policy's jurisdiction and definitions of sexual harassment, the grievance procedure detailed in this policy will not be followed.

However, the University can resolve the conduct under alternative policies and procedures. Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University of Montevallo interest includes:

a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
d. Any situation that is detrimental to the educational interests or mission of the University of Montevallo.

Title IX Coordinator

The Title IX Coordinator oversees compliance with all aspects of the sexual misconduct, harassment, and discrimination policy and reports directly to the Chief Student Affairs Officer located in Main Hall. The Title IX Coordinator has the responsibility for coordinating the University's efforts related to investigation, resolution, and implementation of support measures, while monitoring to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy. Questions about this policy should be directed to the Title IX Coordinator.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education

400 Maryland Avenue, SW
Washington, D.C. 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

Independence and Conflict-of-Interest

The Title IX Coordinator manages the Title IX team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all grievances under this policy and acts to ensure that all University of Montevallo representatives act with objectivity and impartiality and are assessed with respect to conflicts of interest and/or potential bias. Concerns of bias or potential conflict of interest by any other administrator involved in the grievance process should be raised with the Title IX Coordinator.

If the misconduct involves an employee, the University may utilize a third party to conduct the investigation and decision-maker(s) role to avoid a conflict of interest.

Title IX Coordinator and Deputy Title IX Coordinators

Anyone wishing to make a report relating to sexual misconduct, discrimination or harassment may do so by reporting the concern to the university Title IX Coordinator:

Alex Maxwell – Title IX Coordinator
Main Hall, Station 6020
205.665.6020
amaxwel2@montevallo.edu

Dawn Makofski – Deputy Title IX Coordinator
Will Lyman House, Station 6055
205.665.6055
makofskidb@montevallo.edu

Julia Marquardt – Deputy Title IX Coordinator
Track/LAX Complex (behind Vacca Hall), Station 6600
205.665.7839
mjmarquardt@montevallo.edu

Reporting Time Limits

There is no time limitation on reporting allegations. However, if the Respondent is no longer under the jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited. When a considerable time delay impacts the reporting of alleged misconduct, the University will apply the current policy and procedures in place, and not the policy and procedures in place at the time of the alleged misconduct.

Mandated Reporting and Confidential Employees

All UM employees (including student employees), with the exception of those who are designated as Confidential Resources are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment. Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or Third party.

University of Montevallo Response to Sexual Harassment

When the University has actual knowledge of alleged sexual harassment, the University will respond promptly. The Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures. The Title IX Coordinator will consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint.

Definition of Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Alabama regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. The University of Montevallo has adopted the following definition of Sexual Harassment to address the unique environment of an academic community, which consists not only of employers and employees but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

For the purposes of this Policy, sexual harassment is defined below and conduct on the basis of sex that satisfies one or more of the following:

1) Quid Pro Quo: an employee of the University of Montevallo, conditioning the provision of an aid, benefit, or service of the University of Montevallo, on an individual's participation in unwelcome sexual conduct;

2) Sexual Harassment: unwelcome conduct determined by a reasonable person to be so severe, and pervasive, and objectively offensive that it effectively denies a person equal access to the University of Montevallo's education program or activity.

3) Sexual assault, defined as:

    a) Sex Offenses, Forcible: any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
    b) Forcible Rape: penetration, no matter how slight of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the Complainant.
    c) Forcible Sodomy: oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

d) Sexual Assault with an Object: the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
e) Sexual Contact: the intentional touching of the clothed or unclothed body parts of the Complainant or the forced touching by the Complainant of the Respondent's clothed or unclothed body parts without consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The offense includes instances where the Complainant is incapable of giving consent because of their age or incapacity due to temporary or permanent mental or physical impairment or intoxication.
f) Sex Offenses, Non-forcible: incest: non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Alabama law.
    i) Statutory Rape: non-forcible sexual intercourse with a person who is under the statutory age of consent of 16.

4) Dating Violence, defined as: violence on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    i. The existence of such a relationship shall be determined based on the Complainant'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. For the purposes of this definition—Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic Violence, defined as: violence on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Alabama or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Alabama.

6) Stalking, defined as: engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.

    For the purposes of this definition—

    (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

All other forms of sexual misconduct that do not fall within this definition of sexual harassment, including but not limited to sexual exploitation, etc. can be addressed through other processes within the University.

Sexual misconduct that does not meet the criteria above and can be addressed through other processes are defined below:

Any form of unwelcome sexual conduct or nonconsensual sexual activity determined by a reasonable person to be severe or objectively offensive. This includes attempted or actual unwanted sexual activity, such as touching or fondling. This also includes touching an unwilling person's intimate parts (defined as genitalia, groin, breast or buttocks, or clothing covering them), or forcing an unwilling person to touch another's intimate parts. This also includes sexual penetration or intercourse without consent, under conditions of force, the threat of force, fear or when a person is unable to give consent because of substance abuse, captivity, sleep or disability.
This also includes sexual exploitation and any other form of sexual misconduct.

Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

1) **Consent**
   Consent is defined as knowing, voluntary, and clear permission by word or action to engage in sexual activity. Consent cannot be obtained from individuals who are less than 16 years of age. Consent can be withdrawn once given as long as it is reasonably and clearly communicated. Consent cannot be obtained from an individual who is disoriented, asleep, or unconscious. Silence or the absence of resistance should not be interpreted as consent. Consent for some sexual contact cannot be considered consent for all sexual activity. Previous or current relationship status does not constitute consent. There must be a clear expression in words or actions of consent to specific sexual conduct.

   Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on University of Montevallo to determine whether its Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

   Consent cannot be obtained through force or incapacitation as defined below:

2) **Force**
   Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

   Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," which elicits the response, "Okay, don't hit me. I'll do what you want.").

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

3) **Incapacitation**

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.
This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

How to Report and File a Formal Complaint of Sexual Misconduct, Discrimination or Harassment

Reports of sexual misconduct, discrimination or harassment can be made by using the following options:

1. Report directly to one of the Title IX Coordinators listed above.
2. Report online using this form. Click here.
3. Report to your supervisor (if applicable).
4. Report to your resident assistant.
5. Report to any campus mandated reporters.

All reports will be acted upon promptly, and every effort will be made to preserve the privacy of reports. Please note, that a formal complaint must be filed to begin the grievance procedures. To file a formal complaint, a document must be signed by a Complainant or the Title IX Coordinator or Deputy Title IX Coordinator alleging sexual harassment against a Respondent and requesting the University investigate the allegation of sexual harassment. You can file a formal complaint by clicking here.

Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed above.

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

The University may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegation of sexual harassment arises out of the same facts or circumstances.

When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant is reluctant or does not wish to do so. The Title IX Coordinator or Deputy Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

Dismissal of a Formal Complaint

The University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

a. The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or

b. The conduct did not occur in an educational program or activity controlled by the University of Montevallo (including buildings or property controlled by registered student organizations), and/or the University of Montevallo does not have control of the Respondent; and/or

c. The conduct did not occur against a person in the United States

Please note the University may dismiss a formal complaint for the follow reasons below:

a. If at any time during the investigation or hearing; a Complainant notifies the Title IX Coordinator in writing that he/she/they would like to withdraw the formal complaint;

b. The Respondent is no longer enrolled or employed by the University;

c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination.

Emergency Removal

The University has the right to remove a Respondent from the campus community on an emergency basis. The University must conduct an individualized safety and risk analysis. This will be completed by the Title IX Coordinator in conjunction with the Threat Assessment Team (TAT). To remove a Respondent, TAT must determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. The Respondent will be provided notice and will have the opportunity to challenge the decision immediately following the removal.

The Title IX Coordinator or designee has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion. The University also has the right to place non-student employee Respondents on administrative leave during the pendency of a grievance process.

Supportive Measures

University of Montevallo will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve equal access to the University of Montevallo's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University of Montevallo's educational environment, and/or deter harassment, discrimination, and/or retaliation. Supportive measures are available before or after the filing of a formal complaint or where not formal complaint has been filed.

These actions may include, but are not limited to:

1. Putting No Contact Orders in place between parties
2. Referral to counseling, medical, and/or other healthcare services; or community-based service providers
3. Referral to the Employee Assistance Program
4. Student financial aid counseling
5. Altering campus housing assignment(s)

6. Altering work arrangements for employees or student-employees
7. Safety planning
8. Providing campus safety escorts
9. Academic support, extensions of deadlines, or other course/program-related adjustments
10. Class schedule modifications, withdrawals, or leaves of absence
11. Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

University of Montevallo Grievance Process

The University will treat Complainants and Respondents equitably through the use of supportive measure and by providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent. Please note it is presumed the Respondent is not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

All relevant evidence will be objectively evaluated, both inculpatory and exculpatory evidence. Any credibility determinations will not be based on a person's status as a Complainant, Respondent, or Witness. The Title IX Coordinator, Investigator, decision-maker(s), or anyone facilitating an Informal Resolution process will not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

Informal Resolution

To initiate an Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the University of Montevallo will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University of Montevallo.

The University of Montevallo will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

An Informal Resolution cannot be entered when the employee has allegedly harassed a student.

Standard of Evidence

To resolve all issues of sexual misconduct, discrimination, and harassment, the University of Montevallo uses the preponderance of the evidence standard. It is used to determine whether it is more

like than not that the Respondent violated the policy. The burden of collecting evidence and proving a violation of policy is on the University, and not the parties.

Notice of Charges

The Title IX Coordinator will provide written Notice of Investigation and Allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University of Montevallo records, or emailed to the parties' University of Montevallo-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Resolution Timeline

The University of Montevallo will make a good faith effort to complete the resolution process within a seventy-five-to-one-hundred (75-100) business day time period, including appeal, which can be extended as necessary for good cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

Investigation Timeline

Investigations are completed expeditiously, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University of Montevallo will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

There are no restrictions on the ability of any party to discuss the allegations or gather and present relevant evidence, including the presentation of expert witness.

Delays in the Process

The University of Montevallo may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, pandemic and/or public health crisis, and/or accommodations for disabilities or health conditions.

The University of Montevallo will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University of

Montevallo will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the University of Montevallo will implement supportive measures as deemed appropriate.

The University of Montevallo action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or designee will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Hearing Procedures

At the hearing, the Chair and/or panel has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Sexual Misconduct, Nondiscrimination, and Harassment.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf. Questions or evidence that constitute, or seek disclosure of, information protected under legally protected recognized privilege shall not be allowed, relied upon, or otherwise used, unless the person holding such privilege has waived the privilege.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and will then be excused.

Notice of Outcome

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University of Montevallo records, or emailed to the parties' University of Montevallo issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Sanctions

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- ***Formal Warning****:* a formal statement indicating a violation of the Student Code of Conduct has occurred but will not be reported as part of the student's conduct record. Further violation of any University of Montevallo policy, procedure, or directive will result in more severe sanctions/responsive actions.
- ***Conduct Probation****:* Student is no longer in good standing with the University; the student is informed that further violations may result in suspension. This status may prevent a student from participating in other student leadership opportunities that require a student to be in good standing with the University.
- ***Deferred Suspension****:* a written notice indicating a severe violation or multiple violations of the Student Code of Conduct has occurred; Student is no longer in good standing with the University; however, the Conduct Educator does not feel the student should be separated from the University. The student is informed that further violations will result in suspension. The student can convene classes as normal due to the suspension being deferred and not active. This status may prevent a student from participating in other student leadership opportunities that require a student to be in good standing with the University.
- ***Suspension****:* a student is removed from the University for a specified period. The status of suspension is not placed anywhere on the student's transcript. When a student is suspended and required to leave the University community due to discipline, he or she may not re-enter without an interview with the Director of Student Conduct or appropriate designees of either party. Upon their recommendation, a student may regain full student status.
- ***Expulsion****:* permanent termination of student status at the University and revocation of rights to be on campus for any reason or to attend University of Montevallo-sponsored events.
- ***Educational Sanctions****:* educational activity is meant to assist students in learning from their experience, learning about their behavior, preventative information, and an opportunity to reflect on the impact of their actions to the UM community.
- ***Other Actions****:* In addition to or in place of the above sanctions, the University of Montevallo 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 – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*

- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

Appeals

Any student party may file a request for appeal, but it must be submitted in writing to the Chief Student Affairs Officer or designee within five business days of the delivery of the Notice of Outcome. Any employee party may file a request for appeal, but it must be submitted in writing to the President or designee within five business days of the delivery of the Notice of Outcome.

The appellate officer will not have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

(A) Procedural irregularity that affected the outcome of the matter;
(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
(C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.
(D) The recommendation of a sanction is either unreasonably harsh or inadequate.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the appellate officer and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the appellate officer will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University of Montevallo is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University of Montevallo is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' University of Montevallo-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University of Montevallo is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for University of Montevallo or any member of the University of Montevallo's community to intimidate, threaten, coerce, harass, or discriminate against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Revision

These policies and procedures related thereto supersede any previous policy(ies) addressing harassment, sexual misconduct, and discrimination and will be reviewed and updated annually by the Title IX Coordinator. The University of Montevallo reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

This document and the policies set forth in it shall be construed consistent with the requirements imposed by the most recent federal implementing regulations. To the extent this document and the

policies set forth in it are inconsistent with the requirements imposed by the most recent federal implementing regulations, the requirements in those implementing regulations shall control. If government laws or regulations change, or if court decisions later alter, the requirements in a way that impacts this document, this document will further be construed to comply with the most recent laws, regulations, or applicable court decisions.

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