

## 6.7 Sexual Misconduct Policy

In accordance with federal and state law including, Title IX of the Education Amendments of 1972 (“Title IX”) and Title VII of the Civil Rights Act of 1964 (Title VII), the University System of Georgia (USG) prohibits discrimination on the basis of sex in any of its education programs or

**Consent:** Words or actions that show a knowing and

known) without revealing any information that would personally identify the alleged victim. This minimal reporting must be submitted in compliance with Title IX and the Clery Act. Confidential Employees may be required to fully disclose details of an incident in order to ensure campus safety.

**Privileged Employees:** Individuals employed by the institution to whom a complainant or alleged victim may talk in confidence, as provided by law. Disclosure to these employees will not automatically trigger an investigation against the complainant's or alleged victim's wishes. Privileged Employees include those providing counseling, advocacy, health, mental health, or sexual-assault related services (e.g., sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers) or as otherwise provided by applicable law. Exceptions to confidentiality exist where the conduct involves suspected abuse of a minor (in Georgia, under the age of 18) or otherwise provided by law, such as imminent threat of serious harm.

**Reasonable Person:** An individual who is objectively reasonable under similar circumstances and with similar identities to the person being evaluated by the institution.

**Reporter:** An individual who reports an allegation of conduct that may violate this Policy but who is not a party to the complaint.

**Respondent:** An individual who is alleged to have engaged in conduct that violates this Policy.

**Responsible Employees:** Those employees who must promptly and fully report complaints of or information regarding sexual misconduct to the Coordinator. Responsible Employees include any administrator, supervisor, faculty member, or other person in a position of authority who is not a Confidential Employee or Privileged Employee. Student employees who serve in a supervisory, advisory, or managerial role are in a position of authority for purposes of this Policy (e.g., teaching assistants, residential assistants, student managers, orientation leaders).

**Sexual Exploitation:** Taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited.

Examples of sexual exploitation may include, but are not limited to, the following:

1. Invasion of sexual privacy;
2. Prostituting another individual;
3. Non-consensual photos, video, or audio of sexual activity;
4. Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity or capturing of the activity was consensual;
5. Intentional observation of nonconsenting individuals who are partially undressed, naked, or engaged in sexual acts;
6. Knowingly transmitting an STD or HIV to another individual through sexual activity;
7. Intentionally and inappropriately exposing one's breasts, buttocks, groin, or genitals in non-consensual circumstances; and/or

## 8. Sexually-based bullying.

## 6.7.2 (A) Institutional Reports

An institutional report occurs when the institution has notice of a complaint. That notice occurs in two instances:

1. When a Responsible Employee receives a complaint; or
2. When the Title IX Coordinator or their designee receives a complaint.

Any individual may make a report, but the institution does not have notice of the report until information is known to a Responsible Employee or the Coordinator. The report may be made directly to the Coordinator in multiple formats to include: writing, email, phone, letter, fax, interview, or other method that provides the basis of the complaint of sexual misconduct. There is no specific information required to constitute a report; however, the report should contain as much information as can be provided. Reporting options should be included on the Title IX website.

Complainants, or anyone with knowledge of Sexual Misconduct, may file a report with a Responsible Employee or the Coordinator. That Responsible Employee must provide a complete reporting of all information known to them to the Coordinator. Responsible Employees informed about Sexual Misconduct allegations should not attempt to resolve the situation, but must notify and report all relevant information to the Coordinator as soon as practicable

Upon receipt of an institutional report, the Coordinator will contact the Complainant. That contact will discuss the availability of supportive measures, the invitation to discuss their wishes with respect to implementation of supportive measures, and explain the process of filing a complaint. An institutional report does not automatically prompt an investigation.

Employees and Privilege Employees may make a re

### 6.7.2 (G) Retaliation

Anyone who has made a report or complaint, provided information, assisted, participated or refused to participate in any manner in the Sexual Misconduct Process, shall not be subjected to retaliation. Anyone who believes that they have been subjected to retaliation should immediately contact the Coordinator or their designee. Any person found to have engaged in retaliation in violation of this Policy shall be subject to disciplinary action.

### 6.7.2 (H) False Complaints

Individuals are prohibited from knowingly making false statements or knowingly submitting false information to a system or institution official. Any person found to have knowingly submitted false complaints, accusations, or statements, including during a hearing, in violation of this Policy shall be subject to appropriate disciplinary action (up to and including suspension or expulsion) and adjudicated under the appropriate institutional process.

### 6.7.2 (I) Amnesty

Individuals should be encouraged to come forward and to report Sexual Misconduct notwithstanding their choice to consume alcohol or to use drugs. Information reported by a student during an investigation concerning the consumption of drugs or alcohol will not be used against the particular student in a disciplinary proceeding or voluntarily reported to law enforcement; however, students may be provided with resources on drug and alcohol counseling and/or education, as appropriate. Nevertheless, these students may be required to meet with staff members in regards to the incident and may be required to participate in appropriate educational program(s). The required participation in an educational program under this amnesty procedure will not be considered a sanction.

Nothing in this amnesty provision shall prevent an institution staff member who is otherwise obligated by law (the Clery Act) to report information or statistical data as required.

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## 6.7.3 Responding to Reports of Sexual Misconduct

### 6.7.3 (A) Support Services

Once the Title IX Coordinator has received information regarding an allegation of Sexual Misconduct the parties will be provided written information about support services. Support services are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without charge that are made available to the Complainant and Respondent before or after the filing of a complaint or where no complaint has been filed. Support services include counseling, advocacy, housing assistance, academic support, disability services, health and mental services, and other services, available at the student's institution. Available support services should also be listed on the institution's Title IX website.

### 6.7.3 (B) Interim Measures

Interim measures may be implemented at any point after the institution becomes aware of an allegation of sexual misconduct and should be designed to protect any student or other individual in the USG community. Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the ot







All Sexual Misconduct investigations involving an employee Respondent, shall be addressed utilizing Board and institutional employment policies and procedures.

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### 6.7.5 Hearings, Possible Sanctions and Appeals

All Sexual Misconduct hearings, sanctions, and appeals involving a student Respondent, shall follow the hearing and resolution process set forth in this Policy and Section 4.6.5, Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings.

All Sexual Misconduct adjudication involving an employee Respondent, shall be addressed utilizing Board and institutional employment policies and procedures.

#### 4.6.5 Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings

(This policy will take effect Fall Semester, 2020)

This Policy establishes minimum procedural standards for investigations and resolutions of alleged student conduct violations, which each institution must incorporate into its respective student conduct policies. The purpose of this Policy is to ensure uniformity in the quality of investigations while providing for due process that affords fairness and equity in all student conduct investigations. This Policy is not intended to infringe or restrict rights guaranteed by the United States Constitution including free speech under the First Amendment, or the due process clauses of Fifth and Fourteenth Amendments.

These procedures apply to matters relating to student misconduct, except matters relating to academic dishonesty, which may be covered under separate institutional policies. Institutions shall inform students of their procedures governing student conduct complaints and investigations.

For the purposes of this Policy the term Complainant means an individual who is alleged to be a victim of conduct that would violate any Board or other applicable institution policy. The term Respondent means an individual who is alleged to have engaged in behavior that would violate any Board or other applicable institution policy. Other individuals who report information to an institution regarding alleged policy violations are deemed Reporters. Institutions may establish what extent the procedures outlined in this Policy may apply to Reporters.

##### 4.6.5.1 Reports of Student Misconduct

Institutions must provide clear notice to students and other campus community members as to how to file complaints of misconduct.

Complaints to the appropriate department and person(s) should include as much information as possible – such as: (1) the type of misconduct alleged; (2) the name and contact information of the individual(s) accused of misconduct; (3) the date(s), and place(s) of the misconduct; (4) the name(s) and contact information of any individual(s) with knowledge of the incident; (5) whether any tangible evidence has been preserved; and (6) whether a criminal complaint has been made.

Information from complaints may be shared as necessary to investigate and to resolve the alleged misconduct. Complaints shall be investigated and resolved as outlined below. The need to issue a broader warning to the community in compliance with the Jean Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) shall be assessed in compliance with federal law.

Where appropriate, Complainants may file a law enforcement report as well as an institutional report, but are not required to file both.

1. Confidentiality: Where a Complainant (where applicable) requests that their identity be withheld or the allegation(s) not be investigated, the institution should consider whether or not such request(s) can be honored while still promoting a safe and nondiscriminatory environment for the institution and conducting an effective review of the allegations. The institution should inform the requesting party that the institution cannot guarantee confidentiality and that even granting requests for confidentiality shall not prevent the institution from reporting information or statistical data as required by law, including the Clery Act.
2. Retaliation: Anyone who has made a report or complaint, provided information, assisted, participated or refused to participate in any investigation or resolution under applicable Board or institution policy shall not be subjected to retaliation. Anyone who believes they have been



Any report that involves allegation(s) of conduct that could lead to the suspension or expulsion of the Respondent(s) in an initial violation must be promptly reported to the System Director of Equity & Investigations ("System Director") by the institution. The System Director will assign an investigator and may conduct an investigation. If an allegation is reported to the System Director, the institution must cooperate with the investigation.

Items 6.06(e) and 6.06(f) of the System Director's Policy on the Reporting of Potential Conflicts of Interest and the System Director's Policy on the Reporting of Potential Conflicts of Interest are hereby incorporated by reference into this Policy. Items 6.06(e) and 6.06(f) of the System Director's Policy on the Reporting of Potential Conflicts of Interest are hereby incorporated by reference into this Policy.

investigation may still proceed and policy charges still result and be resolved. Timely and equal access to information that will be used during the investigation will be provided to the Complainant (where applicable), Respondent.

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(where applicable); however, the Complainant (where applicable) and Respondent may have the option of selecting informal resolution as a possible resolution in certain student misconduct cases where they mutually agree, except where deemed inappropriate by the Vice President for Student Affairs (or their designee) or the System Director.

Where a case is not resolved through informal resolution, informal resolution is not available due to the nature of the charges, the Respondent shall have the option of having the charges heard either by an administrator (Hearing Officer) or a Hearing Panel. If an administrative hearing is requested, the Respondent shall use their discretion to determine whether the case should be heard by a Hearing Panel. Notice of the date, time, and location of the hearing shall be provided to the Respondent and Complainant (where applicable) at least five business days prior to the hearing. Notice shall be provided via institution email where applicable. Hearings shall be conducted in person or via conferencing technology as reasonably available. Additionally, the following standards will apply to any such hearing:

The Respondent and Complainant (where applicable) shall have the right to present witnesses and evidence to the hearing officer or panel. Witness test



#### 4.6.5.3 Reports of Sexual Misconduct

**Initial Evaluation of Sexual Misconduct Reports:** Upon notice of the alleged Sexual Misconduct the institution's Title IX Coordinator ("Coordinator") will assess whether a formal investigation, informal resolution, or dismissal would be appropriate. In making this determination, the Coordinator will assess whether the allegation(s), if true, would rise to the level of prohibited conduct, whether a Formal Complaint must be filed, whether an investigation is appropriate in light of the circumstances, whether the parties prefer an informal resolution, and whether safety concerns exist for the campus community. The need to issue a broader warning to the community in compliance with the Clery Act shall be assessed in compliance with federal law.

**Confidentiality :** Where a Complainant requests that their identity be withheld or the allegation(s) not be investigated, the Coordinator should consider whether such request(s) can be honored in a manner consistent with the institution's obligations to promote a safe and nondiscriminatory environment. The institution should inform the Complainant that the institution cannot guarantee confidentiality. Honoring a Complainant's request for confidentiality shall not prevent the institution from reporting information or statistical data as required by law, including the Clery Act.

**Retaliation:** Anyone who has made a report or complaint, provided information, assisted, participated, or refused to participate in any manner in the Sexual Misconduct process, shall not be subjected to retaliation. Anyone who believes that they have been subjected to retaliation should immediately contact the Coordinator or their designee. Any person found to have engaged in retaliation shall be subject to disciplinary action.

**False Complaints/Statements** Individuals are prohibited from knowingly making false statements or knowingly submitting false information to a system or institution official. Any person found to have knowingly submitted false complaints, accusations, statements, including during a hearing, shall be subject to appropriate disciplinary action (up to and including suspension or expulsion) under the appropriate institutional process.

**Amnesty.** Students should be encouraged to report and to report Sexual Misconduct notwithstanding their choice to consume alcohol or use drugs. Information reported by a student during the Sexual Misconduct process concerning the consumption of drugs or alcohol will not be used against the particular student in a disciplinary proceeding voluntarily reported to law enforcement; however, students may be provided with resources on drug and alcohol counseling and education, as appropriate.

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party's choosing. The advisor may accompany the party to all meetings and may provide advice and counsel to their respective party throughout the Sexual Misconduct process, including providing questions, suggestions and guidance to the party, but may not actively participate in the process except to conduct cross-examination during as outlined in the Resolution/Hearing section below. If a party chooses not to use an advisor during the investigation, the institution will provide an advisor for the purpose of conducting cross-examination on behalf of the relevant party.

All communication during the Sexual Misconduct process will be between the institution and the party and not the advisor. The institution will copy the party's advisor prior to the finalization of the investigation report when the institution provides the parties the right to inspect and review directly related information gathered during the investigation. With the party's permission, the advisor may be copied on all communications.

2. For Non-Title IX Sexual Misconduct Complaints: Both the Complainant and the Respondent, as

Throughout any investigation and resolution proceeding, a party shall receive written notice of the alleged Sexual Misconduct, shall be provided an opportunity to respond, and shall be allowed the right to remain silent or otherwise not participate in or during the investigation and resolution process without an adverse inference resulting. If a party chooses to remain silent or otherwise not participate in the investigation or resolution process, the investigation and resolution process may still proceed, and policy violations may result.

Until a final determination of responsibility, the Respondent is presumed to have not violated the Sexual



At all times participants in the hearing process, including parties, a party's advisor, and institution officials, are expected to act in a manner that promotes dignity and decorum throughout the hearing. Participants are expected to be respectful to others and follow procedural formalities outlined by this Policy and the institution. The institution reserves the right to remove any participant from the hearing environment if the participant refuses to adhere to the institution's established rules of decorum.

Each institution shall maintain documentation of the investigation and resolution process, which may include written findings of fact, transcripts, audio recordings, and/or video recordings. Any documentation shall be maintained for seven years.

Additionally, the following standards will apply to Title IX and Non-Title IX Sexual Misconduct hearings respectively:

#### A. Title IX Hearings

1. Where a party or a witness is unavailable, unable, or otherwise unwilling to participate in the hearing, including being subject to cross-examination, the hearing panel shall not rely on statements of that party or witness in reaching its determination regarding responsibility. The hearing panel shall not draw adverse inference against the party or witness based solely on their absence from the hearing or refusal to subject to cross-examination.
2. The parties shall have the right to present witnesses and evidence at the hearing.
3. The parties shall have the right to confront any witness, including the other party, by having their advisor ask relevant questions directly to the witness. The Hearing Officer shall limit questions raised by the advisor when they are irrelevant to determining the veracity of the allegations against the Respondent(s). In any such event, the Hearing Officer shall err on the side of permitting the raised questions and must document the reason for not permitting any particular questions to be raised.
4. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, shall be deemed irrelevant, unless questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct or consent between the parties during the alleged incident.
5. The hearing panel shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional made in connection with the party's treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
6. Formal judicial rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.
7. Following a hearing, the parties shall be simultaneously provided a written decision via

any sanction or other administrative action. The institution shall also notify the parties of their right to appeal as outlined below.

B. Non-Title IX Sexual Misconduct Hearings

1. The parties shall have the right to present witnesses and evidence at the hearing. Witness testimony, if provided, shall pertain to knowledge and facts directly associated with the case being heard.
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abuse prevention programs; counseling or mentoring; volunteering/community service; loss of institutional privileges; delays in obtaining administrative services and benefits from the institution (e.g., holding transcripts, delaying registration, graduation, diplomas); additional academic requirements relating to scholarly work or research; financial restriction; or any other discretionary sanctions directly related to the violation or conduct.

For suspension and expulsion, the institution must, in its written decision, the substantial evidence relied upon in determining that suspension or expulsion were appropriate. For purposes of this Policy substantial evidence means evidence that a reasonable person might accept to support the conclusion.

#### 4.6.5.6 Appeals

Appeals may be made in any cases where sanctions are issued, even when such sanctions are held "in abeyance," such as probationary or expulsions. If the sanction imposed includes a suspension or expulsion (even for one held in abeyance), the following appellate procedures must be provided.

The Respondent (and in cases involving sexual misconduct or other forms of discrimination and/or harassment, the Complainant) shall have the right to appeal the outcome on any of the following grounds:

- (1) to consider new information, sufficient to alter the decision, or other relevant facts not brought out in the original hearing (or appeal), because such information was not known or knowable to the person appealing during the time of the hearing (or appeal);
- (2) to allege a procedural error within the hearing process that may have substantially impacted the result of the hearing (or appeal), including but not limited to whether any hearing questions were improperly excluded or whether the decision was tainted by a conflict of interest or bias by the Title IX Coordinator, Conduct Officer, investigator(s), decision

Should the Respondent or Complainant (where applicable) wish to appeal the President's decision, they may request review by the Board of Regents in accordance with the Board of Regents' Policy on Discretionary Review.

Appeals received after the designated deadlines will not be considered unless the institution or Board of Regents has granted an extension prior to the deadline. If an appeal is not received by the deadline the last decision on the matter will become final.

#### 4.6.5.7 Recusal/Challenge for Bias

Any party may challenge the participation of any institution official, employee or student panel member in the process on the grounds of personal bias by submitting a written statement to the institution's designee setting forth the basis for the challenge. The designee shall not be the same individual responsible for investigating or adjudicating the individual allegation. The written challenge should be submitted within a reasonable time after the individual knows or reasonably should have known of the existence of the bias. The institution's designee will determine whether to sustain or deny the challenge and, if sustained, the replacement to be appointed.





## Definitions

These definitions apply to these terms as they are used in this Policy:

- x Board of Regents The governing body of the University System of Georgia
- x Complainant: An individual who is alleged to have experienced conduct that violates applicable policies
- x Respondent An individual who is alleged to have engaged in conduct that violates applicable policies
- x Sexual Misconduct Includes, but is not limited to, such unwanted behavior as dating violence, domestic violence, nonconsensual sexual contact, nonconsensual sexual penetration, sexual exploitation, sexual harassment and stalking as defined in Board Policy
- x Title IX Sexual Misconduct: means conduct on the basis of sex that satisfies one or more of the following: conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (quid pro quo harassment); unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; sexual assault, dating violence, domestic violence, or stalking as defined by IX. The alleged conduct must have occurred in the United States on or at institution-sponsored or affiliated events where the institution exercises substantial control over both the Respondent and the context, or in buildings owned or controlled by a student organization that is officially recognized by the institution.

## Overview

The USG is committed to ensuring the highest ethical conduct of the members of its community by promoting a safe learning and working environment. Employees accused of behavior in violation of this Policy shall be afforded procedural due process as established within this and other USG and institutional policies and procedures. Those who are found to have engaged in such behavior shall be subject to disciplinary action, including dismissal, as appropriate.

Allegations of discrimination and harassment prohibited by this Policy, except as prohibited under the Sexual Misconduct Policy, should be addressed using applicable institutional policies and procedures.

Allegations of Sexual Misconduct, which includes Sexual Harassment, should be addressed using the standards set out in the Sexual Misconduct Policy BOR 6.7, the Process/Procedures section of this Policy, and any additional institutional policies and procedures.

Institutions are expected to ensure that all employees are informed of this Policy and any other institutional policies and procedures governing such matters.

## General Process/Procedures

This section establishes minimum procedural standards for investigating and resolving alleged complaints of discrimination or harassment by employees. Each institution must incorporate these minimal standards into its respective employee conduct policies. Institutions may create additional policies or procedures to supplement this Policy but may not lessen the minimum

appropriate, as reasonably available, and without charge that be made available to the Complainant and Respondent.

- F. Investigation and Resolution Institutions should establish an investigation protocol and resolution process for employees.
- G. Disciplinary Action: In determining the severity of sanctions or corrective actions the following should be considered: the frequency, severity, and/or nature of the offense; history of past conduct; an offender's willingness to accept responsibility; previous institutional response to similar conduct; strength of the evidence; and the wellbeing of the university community.
- H. Appeals: Institutions should establish appeal procedures in accordance to BOR policy and HRAP Policy on Grievance.

#### Additional Process/Procedures for Allegations of Title IX Sexual Misconduct

This section establishes the additional procedures that are minimally required when investigating and resolving alleged Title IX Sexual Misconduct by employees. Each institution must incorporate these minimal standards into its respective employee conduct policies. Institutions may create additional policies or procedures to supplement this Policy but may not lessen the minimum standards established by this Policy. Additionally, institutions, at their discretion, may apply these procedural standards to other allegations of prohibited discrimination or protected class harassment, including Non-Title IX Sexual Misconduct allegations.

- A. Access to Advisors Both the Complainant and the Respondent, as parties to the matter, shall have the opportunity to use an advisor (who may or may not be an attorney) of the party's choosing. The advisor may accompany the party to all meetings and may provide advice and counsel to their respective party throughout the sexual misconduct process, including providing questions, suggestions and guidance to the party, but may not actively participate in the process except to conduct cross-examination at the hearing as outlined in the Resolution/Hearing section below. If a party chooses not to use an advisor during the investigation, the institution will provide an advisor for the purpose of conducting cross-examination on behalf of the relevant party.

All communication during the sexual misconduct process will be between the institution and the party and not the advisor. The institution will copy the party's advisor prior to the finalization of the investigation report when the institution provides the parties the right to inspect and review directly related information gathered during the investigation. With the party's permission, the advisor will be copied on all communications.

- B. Investigation: Throughout any investigation and resolution proceeding, a party shall receive written notice of the allegations made against them and shall be provided the opportunity to respond. In accordance with the USG Human Resources Administrative

Practices (HRAP) on Cooperation Internal Investigations, all employees, both parties and non-parties, are required to cooperate to the fullest extent possible in any internal investigation conducted by the Board of Regents or any institution thereof when directed to do so by the persons who have been given investigative authority.

Until a final determination of responsibility, the Respondent is presumed to have not violated any applicable policies associated with the allegations. Prior to finalizing the investigation report, timely and equal access to information directly related to the allegations that has been gathered during the investigation may be used at the hearing

the party has provided volunt



7. Following a hearing, the parties shall simultaneously provide a written decision via email of the hearing outcome and any resulting disciplinary or administrative actions. The decision must include the allegations, procedural steps taken through the investigation and resolution process, findings of facts supporting the determination(s), determination(s) regarding responsibility, and the rationale for any disciplinary or other administrative action.
- D. Title IX Disciplinary Action: In determining the severity of sanctions or corrective actions the following should be considered: the frequency, severity, and/or nature of the offense; history of past conduct; an offender's willingness to accept responsibility;