

## **Human Resources Administrative Practice Manual Prohibit Discrimination & Harassment**

### **Policy Statement**

In accordance with applicable federal and state law the University System Of Georgia (USG) prohibits its faculty, staff and students from engaging in any form of prohibited discrimination or protected status harassment (including sexual harassment), and expects these individuals to refrain from committing acts of bias within the System's jurisdiction. The University System of Georgia complies with applicable State and Federal law which provides that it shall be an unlawful discriminatory practice for any employer, because of the sex (including gender and pregnancy discrimination), age, disability, national origin, race, religion, genetic information, or veteran status of any person, to discharge without cause, to refuse to hire, or otherwise discriminate against any person with respect to any matter directly or indirectly related to employment or academic standing.

### **Reasons for Policy**

This policy ensures compliance with federal and state laws including: Title VI of the Civil Rights Act of 1964 ("Title VI"), Title VII of the Civil Rights Act of 1964 ("Title VII"), Title IX of the Education Amendments of 1972 ("Title IX"), Title II of the Genetic Information Act of 2008 ("Title II"), the Americans with Disabilities Act (ADA), the Pregnancy Discrimination Act, the Age Discrimination in Employment Act (ADEA) and any another other applicable federal and state law.

### **Entities Affected By This Policy**

All units of the University System of Georgia are covered by this policy.

### **Who Should Read This Policy**

All employees within the University System of Georgia should be aware of this policy.

### **Website Address for This Policy**

- [https://www.usg.edu/hr/manual/prohibit\\_discrimination\\_harassment](https://www.usg.edu/hr/manual/prohibit_discrimination_harassment)

### **Related Documents/Resources**

- Board Policy 6.7 Sexual Misconduct Policy
- Board Policy 6.26 Application for Discretionary Review
- Board Policy Section 8 Personnel
- HRAP Participating in Investigations
- HRAP Grievance Policy
- <https://www.eeoc.gov/>
- <https://www.dol.gov/>
- <https://www.ed.gov/>

## Definitions

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

- **Board of Regents:** The governing body of the University System of Georgia
- **Complainant:** An individual who is alleged to have experienced conduct that violates applicable policies
- **Respondent:** An individual who is alleged to have engaged in conduct that violates applicable policies
- **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
- **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; or 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 standards established by this Policy. Additionally, institutions, at their discretion, may apply the Title IX Sexual Misconduct procedural standards to other allegations of prohibited discrimination or protected class harassment, including Non-Title IX Sexual Misconduct allegations.

- A. **Initial Evaluation of Reports:** Upon notice of the alleged misconduct the institution will assess whether a formal investigation, informal resolution, or dismissal would be appropriate. In making this determination, the institution will assess whether the allegation(s), if true, would rise to the level of prohibited conduct, whether an investigation is appropriate in light of the circumstances, whether the parties prefer an informal resolution, and whether any 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.
- B. **Confidentiality:** Where a Complainant 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 providing a safe and nondiscriminatory environment for the institution. The institution should inform the Complainant that the institution cannot guarantee confidentiality and that even granting confidentiality shall not prevent the institution from reporting information or statistical data as required by law, including the Clery Act.
- C. **Retaliation:** Anyone who has made a report or complaint, provided information, assisted, participated, or refused to participate in any manner in these proceedings, shall not be subjected to retaliation. Anyone who believes that they have been subjected to retaliation should immediately contact the institution's designee. Any person found to have engaged in retaliation in violation of this Policy shall be subject to disciplinary action.
- D. **False Reporting:** 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 termination) and adjudicated under the appropriate institutional process.
- E. **Support Services:** Once the institution has received information regarding the alleged 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.

- 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 may 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 in 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 will be provided to the Complainant, the Respondent, and a party's advisor (where applicable).

Formal judicial rules of evidence do not apply to the investigation process, additionally the standard of review throughout the investigation and resolution processes is a preponderance of the evidence.

Additionally, the investigation procedures must provide the following:

1. The parties shall be provided with written notice of the: report/allegations with sufficient details, pending investigation, possible charges, possible sanctions, available support services and interim measures, and other rights under applicable institutional policies. For the purposes of this provision sufficient details include the identities of the parties involved, if known, the conduct allegedly constituting sexual misconduct, and the date and location of the alleged incident, if known. This information will be supplemented as dictated by evidence collected during the investigation. The notice should also include the identity of any investigator(s) involved. Notice should be provided via institution email to the party's email.
2. Upon receipt of the written notice, the parties shall have at least three business days to respond in writing. In that response, the Respondent shall have the right to admit or deny the allegations, and to set forth a defense with facts, witnesses, and supporting materials. A Complainant shall have the right to respond to and supplement the notice. Throughout the investigation and resolution process the Complainant and the Respondent shall have the right to present witnesses and other inculpatory and exculpatory evidence.
3. If the Respondent admits responsibility, the process may proceed to the sanctioning phase or may be informally resolved, if appropriate.
4. An investigator shall conduct a thorough investigation and should retain written notes and/or obtain written or recorded statements from each interview. The investigator shall also keep a record of any party's proffered witnesses not interviewed, along with a brief, written explanation of why the witnesses were not interviewed.
5. An investigator 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. The initial investigation report shall be provided to the Complainant, the Respondent, and a party's advisor (if applicable). This report should fairly summarize the relevant evidence gathered during the investigation and clearly indicate any resulting charges or alternatively, a determination of no charges. For purposes of this Policy, a charge is not a finding of responsibility.
7. The Complainant and the Respondent shall have at least 10 calendar days to review and respond in writing to the initial investigation report and directly related information gathered during the investigation. The investigator will review the Complainant's and the Respondent's written responses, if any, to determine whether further investigation or changes to the investigation report are necessary. The final investigation report should be provided to the Complainant, the Respondent, and a party's advisor, if applicable, at least 10 calendar days prior to the hearing. The final investigation report should also be provided to the Hearing Officer for consideration during the adjudication process.

- C. **Resolution/Hearing:** The Respondent and the Complainant, as parties to the matter, may have the option of selecting informal resolution as a possible resolution in certain cases where the parties agree, and it is deemed appropriate by the institution. Student allegations of Title IX Sexual Misconduct against an employee may not be resolved informally. Institutions may establish an informal resolution process under the guiding principles discussed in the Sexual Misconduct Policy.

Matters involving alleged Title IX Sexual Misconduct must be heard at a live-hearing, as outlined below. Institutions may determine whether the live hearing is conducted by a single administrative decision maker (such as the Chief Human Resources Officer, the Chief Academic Officer, or their designee) or by a panel.

#### *Title IX Hearings*

The investigator may testify as a witness regarding the investigation and findings but shall otherwise have no part in the hearing process and shall not attempt to otherwise influence the proceedings outside of providing testimony during the hearing. All directly related evidence shall be available at the hearing for the parties and their advisors to reference during the hearing. Relevant facts or evidence that were not known or knowable to the parties prior to the issuance of the final investigative report shall be admissible during the hearing. The institution will determine how the facts or evidence will be introduced. The admissibility of any facts or evidence known or knowable by the parties prior to the issuance of the final investigative report, and which were not submitted during the investigation, shall be determined by the institution in compliance with the obligation to provide both parties an equal opportunity to present and respond to witnesses and other evidence.

Notice of the date, time, and location of the hearing as well as the designated Hearing Officer shall be provided via email at least 10 calendar days prior to the hearing. Parties may attend the hearing with their advisor.

Hearings shall be conducted in-person or via video conferencing technology. 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 temperate, respectful to others, and follow procedural formalities outlined by this Policy and the institution. Institutions may establish their own rules of decorum and expectations of behavior during the hearing process. The institution reserves the right to remove any participant from the hearing environment.

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:

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 Officer shall not rely on statements of that party or witness in reaching its determination regarding responsibility. The Hearing Officer shall not draw an 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 all 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 such 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. Decision maker(s) 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 civil 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 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; previous institutional response to similar conduct; strength of the evidence; and the wellbeing of the university community. The institution will determine disciplinary action and issue notice of the same, as outlined above.
- E. **Title IX Appeals:** The Complainant and the Respondent 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 investigation(or hearing), because such information was not known or knowable to the person appealing during the time of the investigation (or hearing); (2) to allege a procedural error within the investigation or hearing process that may have substantially impacted the fairness of the process, 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 , investigator(s), or administrative decision maker(s), or (3) to allege that the finding was inconsistent with the weight of the information.

The appeal must be made in writing, must set forth one or more of the bases outlined above, and must be submitted within five business days of the date of the final written decision. The appeal should be made to the President of the institution solely on the three grounds set forth. The appeal shall be a review of the record only, and no new meeting with the Respondent or the Complainant is required.

The President may affirm the original finding and sanction, affirm the original finding but issue a new sanction of greater or lesser severity, remand the case back to the decision maker to correct a procedural or factual defect, or reverse or dismiss the case if there was a procedural or factual defect that cannot be remedied by remand. The President's decision shall be simultaneously issued in writing to the Complainant, the Respondent within a reasonable time period. The President's decision shall be the final decision of the institution.

Should the Respondent or Complainant 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.