

## 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 activities or in employment. The USG is committed to ensuring the highest ethical conduct of the members of its community by promoting a safe learning and working environment. To that end, this Policy prohibits Sexual Misconduct, a form of sex discrimination, as defined herein.

USG institutions are committed to reducing incidents of Sexual Misconduct, providing prevention tools, conducting ongoing awareness and prevention programming, and training the campus community in accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) and the Violence Against Women Act (“VAWA”). Prevention programming and training will promote positive and healthy behaviors and educate the campus community on consent, sexual assault, sexual harassment, alcohol and drug use, dating violence, domestic violence, stalking, bystander intervention, and reporting.

When Sexual Misconduct does occur, all members of the USG community are strongly encouraged to report it promptly through the procedures outlined in this Policy. The purpose of this Policy is to ensure uniformity throughout the USG in reporting and addressing sexual misconduct. This Policy applies to all members of the USG community. 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.

### Reporting Structure

Title IX Coordinators (“Coordinators”) at USG institutions shall have a direct reporting relationship to both the institution’s President or the President’s designee and the USG System Director for Equity and Investigations (“System Director”). The President of each institution shall determine the organizational and operating reporting relationships for the Coordinators at the institution and exercise oversight of institutional issues relating to Sexual Misconduct. However, the System Director shall have authority to direct the Coordinators’ work at each institution as needed to address system-wide issues or directives. The President of each institution shall consult with the System Director on significant personnel actions involving Coordinators, to include but not be limited to, appointment, evaluation, discipline, change in reporting structure, and termination.

#### 6.7.1 Definitions and Prohibited Conduct

**Community:** Students, faculty, and staff, as well as contractors, vendors, visitors and guests.

**Complainant:** An individual who is alleged to have experienced conduct that violates this Policy.

**Consent:** Words or actions that show a knowing and voluntary willingness to engage in mutually agreed-upon sexual activity. Consent cannot be gained by force, intimidation or coercion; by ignoring or acting in spite of objections of another; or by taking advantage of the incapacitation of another where the respondent knows or reasonably should have known of such incapacitation. Minors under the age of 16 cannot legally consent under Georgia law.

Consent is also absent when the activity in question exceeds the scope of consent previously given. Past consent does not imply present or future consent. Silence or an absence of resistance does not imply consent.

Consent can be withdrawn at any time by a party by using clear words or actions.

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the alleged victim. The existence of such relationship shall be determined based on the totality of the circumstances including, without limitation to: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

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.

**Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the alleged victim; by a person with whom the alleged victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the alleged victim.

**Incapacitation:** The physical and/or mental inability to make informed, rational judgments. It can result from mental disability, sleep or any state of unconsciousness, involuntary physical restraint, status as a minor under the age of 16, or from intentional or unintentional taking of alcohol and/or other drugs. Whether someone is incapacitated is to be judged from the perspective of an objectively reasonable person.

**Nonconsensual Sexual Contact:** Any physical contact with another person of a sexual nature without the person's consent. It includes but is not limited to the touching of a person's intimate parts (for example, genitalia, groin, breasts, or buttocks); touching a person with one's own intimate parts; or forcing a person to touch his or her own or another person's intimate parts. This provision also includes "Fondling" as defined by the Clery Act.

**Nonconsensual Sexual Penetration:** Any penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part; or contact between the mouth of one person and the genitals or anus of another person. This provision also includes "Rape, Incest, and Statutory Rape" as defined by the Clery Act.

**Confidential Employees:** Institution employees who have been designated by the institution to talk with a Complainant or Respondent in confidence. Confidential Employees must only report that the incident occurred and provide date, time, location, and name of the Respondent (if

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.

**Sexual Harassment (Student on Student):** Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes), determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to participate in or to benefit from an institutional education program or activity in violation of Title IX.

**Sexual Harassment (Other than Student on Student):** Unwelcome verbal, nonverbal, or physical conduct, based on sex (including gender stereotypes), that may be any of the following:

1. Implicitly or explicitly a term or condition of employment or status in a course, program, or activity;
2. A basis for employment or educational decisions; or
3. Is sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an intimidating, hostile, or offensive work or learning environment, or interfering with or limiting one's ability to participate in or to benefit from an institutional program or activity.

The USG also prohibits unwelcome conduct determined by a Reasonable Person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to a USG education program or activity in violation of Title IX.

**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.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

1. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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 person's property.
2. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily, require medical or other professional treatment or counseling.

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## 6.7.2 Reporting Sexual Misconduct

USG encourages the reporting of all Sexual Misconduct as soon as possible. While there is no statute of limitations on an institution's ability to respond to a report, the ability to respond diminishes with time as information and evidence may be more difficult to secure.

## 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.

The Coordinator's identity and contact information shall be published by each institution prominently on the institution's website, as well as in any relevant publication. Each institution may choose to have Deputy Title IX Coordinators to whom reports may be made, as well.

The Coordinator shall notify the System Director of any allegation(s) of Sexual Misconduct that could, standing alone as reported, lead to the suspension or expulsion of the Respondent(s). The System Director will work with the institution to determine whether any support services or interim measure(s) are necessary and to assign an investigator who will work under the direction of the System Director or designee, if directed by System Director. If an allegation is not initially identified as one that would lead to the suspension or expulsion of the Respondent(s), but facts arise during the course of the investigation that could lead to the Respondent's suspension or expulsion, the Title IX Coordinator shall notify the System Director or designee. The System Director shall have the discretion oversee the handling of the complaint.

## 6.7.2 (B) Confidential Reports

Confidential Employees or Privileged Employees may receive reports of Sexual - based Misconduct without the requirement to report that information to the Coordinator, except as dictated by law or professional standards. Upon request by the Complainant, Confidential

Employees and Privilege Employees may make a report to the Coordinator within the degree of specificity dictated by the Complainant.

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

#### 6.7.2.(C) Law Enforcement Reports

Because Sexual Misconduct may constitute criminal activity, a Complainant also has the option, should the Complainant so choose, of filing a report with campus or local police, for the Complainant's own protection and that of the surrounding community. The institution may assist the Complainant in reporting the situation to law enforcement officials. Filing a criminal report does not automatically constitute an institutional report.

#### 6.7.2 (D) Anonymous Reports

Each institution shall provide a mechanism by which individuals can report incidents of alleged Sexual Misconduct anonymously. Individuals should understand, however, that it will be more difficult for the institution to respond and to take action upon anonymous reports.

#### 6.7.2 (E) Complaint Consolidation

Each institution may consolidate complaints as to allegations of Sexual Misconduct against more than one Respondent, by more than one Complainant against one or more Respondents, or cross-complaints between parties, where the allegations of sexual misconduct arise out of the same facts or circumstances.

Parties shall have the opportunity to request or object to the consolidation; however, the institution shall have the authority to make the final determination. For the purpose of this Policy consolidation may occur during the investigation and/or the adjudication phases of the sexual misconduct process.

#### 6.7.2 (F) Complaint Dismissal

Each institution is permitted, but not required, to dismiss complaints on the following grounds:

1. The alleged conduct, even if proved, would not constitute sexual misconduct;
2. The Complainant notifies the Coordinator in writing that they would like to withdraw the complaint;
3. The Respondent is no longer enrolled or employed by the institution; or
4. There are circumstances that prevent the institution from gathering evidence sufficient to reach a determination regarding the complaint.

The parties shall receive simultaneous written notice of the dismissal and the reason(s) for the dismissal. The parties shall have a right to appeal the institution's decision to dismiss the complaint.

### 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 other party, including measures designed to protect the safety of all parties or the campus community, or deter Sexual Misconduct and retaliation. Interim measures must be provided consistent with the provisions in applicable Board and institutional policies and procedures.

### 6.7.3 (C) Jurisdiction

Emergency removal should only occur where necessary to maintain safety and should be limited to those situations where the Respondent poses a serious and immediate danger or threat to persons or property. In making such an assessment, the institution should consider the existence of a significant risk to the health or safety of the Complainant or the campus community; the nature, duration, and severity of the risk; the probability of potential injury; and whether less restrictive means can be used to significantly mitigate the risk.

### 6.7.3 (D) Jurisdiction

Each USG institution shall take necessary and appropriate action to protect the safety and well-being of its community. Sexual misconduct allegedly committed is addressed by this Policy when the misconduct occurs on institution property, or at institution-sponsored or affiliated events, or off-campus, as defined by other Board or institution student conduct policies.

### 6.7.3 (E) 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 at the party's own expense. 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 as outlined in BOR 6.7.4 (D). All communication during the Sexual Misconduct process will be between the institution and the party and not the advisor. With the party's permission, the advisor may be copied on all communications.

### 6.7.3 (F) Informal Resolutions

Allegations of Sexual Misconduct may be resolved informally. The Complainant, the Respondent, and the institution must agree to engage in the informal resolution process and to the terms of the informal resolution. The Complainant(s) and the Respondent(s) have the option to end informal resolution discussions and request a formal process at any time before the terms of an informal resolution are reached. However, matters resolved informally shall not be appealable.

### 6.7.3 (G) Timeframe

Efforts will be made to complete the investigation and resolution within 120 business days. Temporary delays and limited extensions may be granted by the institutions for good cause throughout the investigation and resolution process. The parties will be informed in writing of any extension or delay and the applicable reason. The institution shall keep the parties informed of the status of the investigation.

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## 6.7.4 Responding to Reports of Sexual Harassment Pursuant to Title IX

The implementing Title IX regulations require special handling of complaints of sexual harassment, as defined in the regulations and listed below. The following section outlines the required specialized handling of these matters that may differ from an institution's handling of Sexual Misconduct, as defined in this Policy. Unless expressly mentioned in this section, other provisions of this Policy shall apply to all alleged Sexual Misconduct.

Other Title IX sex-discrimination allegations are handled pursuant to other applicable Board and/or institutional policies.

### 6.7.4 (A) Definition of Sexual Harassment

Under Title IX sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct
- (2) 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 institution's education program or activity; or
- (3) "Sexual assault" as defined by the Clery Act and "dating violence," "domestic violence," and "stalking" as defined by the VAWA Amendments.

### 6.7.4. (B) Jurisdiction

Alleged misconduct is addressed by Title IX when the misconduct occurs against a person in the United States on institution property, 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.

### 6.7.4 (C) Formal Complaints

A Formal Complaint is a written document filed by the Complainant or signed by the Coordinator alleging sexual harassment, as defined by Title IX and its implementing regulations, against a Respondent and requesting that the institution open an investigation. In order to file a Formal Complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the institution occurring within the United States at the time of the filing.

#### 6.7.4 (D) Informal Resolution

Formal Complaints may be resolved informally, except in the instance of an allegation by a student against an institution employee. The following must be met in order to proceed with the informal resolution process:

1. The parties have received written notice of the allegations
2. The parties have received written explanation of the informal process to include, but not limited to:
  - a. Written agreement of the parties to initiate the informal resolution process;
  - b. Written notice that the parties may withdraw from the process at any time prior to the agreement of the terms of the resolution;
  - c. Written notice that the final resolution precludes any further institutional actions on the allegations
3. The institution has agreed to engage in the informal resolution process.

#### 6.7.4 (E) 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 but may not actively participate in the process except to conduct cross-examination at the hearing. 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.

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## 6.7.4 5 Investigations

All Sexual Misconduct investigations involving a student Respondent, shall follow the investigation process set forth in [Section 4.6.5, Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings](#).

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 misconduct 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 to 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/or 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), time(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 Jeanne 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

subjected to retaliation should immediately contact the appropriate department or individual(s) for that institution. Any person found to have engaged in retaliation shall be subject to disciplinary action, pursuant to the institution's policy.

3. **False Complaints/Statements:** Individuals are prohibited from knowingly giving false statements to an institution official. Any person found to have knowingly submitted false complaints, accusations, or statements, including during a hearing, in violation of applicable Board or institution policy shall be subject to appropriate disciplinary action (up to and including suspension or expulsion) and adjudicated pursuant to the institution's policy.
4. **Amnesty:** Students should be encouraged to come forward and report violations of the law and/or student code of conduct notwithstanding their choice to consume alcohol or drugs. Information reported by a student during the conduct process concerning their consumption of drugs or alcohol will not be voluntarily reported to law enforcement; nor will information that the individual provides be used against the individual for purposes of conduct violations. Nevertheless, these students may be required to meet with staff members regarding 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 procedure shall prevent a university staff member who is otherwise obligated by law (the Clery Act) to report information or statistical data as required.

#### **4.6.5.2 Process for Investigating and Resolving Disputed Student Conduct Reports**

**Jurisdiction:** Each institution shall take necessary and appropriate action to protect the safety and well-being of its community. Accordingly, student conduct should be addressed when such acts occur on institution property, at institution-sponsored or affiliated events, or otherwise violate the institution's student conduct policies, regardless as to where such conduct occurs. If the student has admitted responsibility and has voluntarily decided to participate in the informal process, the procedures outlined in this section will not apply.

**Access to Advisors:** The Respondent and Complainant (where applicable), as parties to these proceedings, shall have the right to have an advisor (who may or may not be an attorney) of the party's choosing, and at their own expense, for the express purpose of providing advice and counsel. The advisor may be present during meetings and proceedings during the investigatory and/or resolution process at which his or her advisee is present. The advisor may advise their advisee in any manner, including providing questions, suggestions, and guidance on responses to any questions posed to the advisee, but shall not participate directly during the investigation or hearing process.

**Initial Evaluation of Student Conduct Reports:** Regardless of how an institution becomes aware of alleged misconduct, the institution shall ensure a prompt, fair, and impartial review and resolution of complaints alleging student misconduct. Where a report of student misconduct has been made to the appropriate department and/or person, the institution shall review the complaint to determine whether the allegation(s) describes conduct in violation of the institution's policies and/or code of conduct. If the reported conduct would not be a violation of the institution's policies and/or code of conduct, even if true, then the report should be dismissed. Otherwise, a prompt, thorough, and impartial investigation, and review shall be conducted into each complaint received to determine whether charges against the Respondent should be brought.

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 work with the institution to determine whether any interim measure(s) are necessary, to assign an investigator and may collaboratively supervise the investigation with the appropriate institution professional (e.g., the Title IX Coordinator, Dean of Students). If an allegation is not initially identified as one that could lead to suspension or expulsion of the Respondent(s), but facts arise during the course of the investigation that would require notice to the System Director, then the institution shall report that case to the System Director or their designee prior to proceeding.

### **Interim Measures**

Interim measures may be implemented by the institution at any point after the institution becomes aware of the alleged student misconduct and should be designed to protect any student or other individual in the USG community. To the extent interim measures are imposed, they should minimize the burden on both the Complainant (where applicable) and the Respondent, where feasible. Interim measures may include, but are not limited to:

1. Change of housing assignment;
2. Issuance of a “no contact” directive;
3. Restrictions or bars to entering certain institution property;
4. Changes to academic or employment arrangements, schedules, or supervision;
5. Interim suspension; and
6. Other measures designed to promote the safety and well-being of the parties and the institution’s community.

An interim suspension should only occur where necessary to maintain safety and should be limited to those situations where the respondent poses a serious and immediate danger or threat to persons or property. In making such an assessment, the institution should consider the existence of a significant risk to the health or safety of the Complainant (where applicable) or the campus community; the nature, duration, and severity of the risk; the probability of potential injury; and whether less restrictive means can be used to significantly mitigate the risk.

Before an interim suspension is issued, the institution must make all reasonable efforts to give the Respondent the opportunity to be heard on whether the Respondent’s presence on campus poses a danger. If an interim suspension is issued, the terms of the suspension take effect immediately. The Respondent shall receive notice of the interim suspension and the opportunity to respond to the interim suspension.

Within three business days of receiving a challenge the institution will determine whether the interim suspension should continue.

### **Investigation**

Throughout any investigation and resolution proceedings, a party shall receive written notice of the alleged misconduct, shall be provided an opportunity to respond, and shall be allowed 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 an investigation, the

investigation may still proceed and policy charges may 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.

Where the potential sanctions for the alleged misconduct may involve a suspension or expulsion (even if such sanctions were to be held “in abeyance,” such as probationary suspension or expulsion) the institution’s investigation and resolution procedures must provide the additional minimal safeguards outlined below.

1. The Complainant (where applicable) and Respondent shall be provided with written notice of the complaint/allegations, pending investigation, possible charges, possible sanctions, and available support services. The notice should also include the identity of any investigator(s) involved. Notice should be provided via institution email to the address on file.
2. Upon receipt of the written notice, the Respondent shall have at least three business days to respond in writing. In that response, the Respondent shall have the right to admit or to deny the allegations, and to set forth a defense with facts, witnesses, and supporting materials. A non-response will be considered a general denial of the alleged misconduct. Any Complainant (where applicable) shall also be provided three business days to respond to or to supplement the notice.
3. If the Respondent admits responsibility, the process may proceed to the sanctioning phase or may be informally resolved, if appropriate.
4. If at any point the investigator determines there is insufficient evidence to support a charge or to warrant further consideration of discipline, then the complaint should be dismissed.
5. 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.
6. The initial investigation report shall be provided to the Respondent and the Complainant (where applicable). This report should clearly indicate any resulting charges (or alternatively, a determination of no charges), as well as the facts and evidence in support thereof, witness statements, and possible sanctions. For purposes of this Policy, a charge is not a finding of responsibility, but indicates that there is sufficient evidence to warrant further consideration and adjudication.
7. The final investigation report should be provided to the misconduct panel or hearing officer for consideration in adjudicating the charges brought against the Respondent. A copy shall also be provided to the respondent and Complainant (where applicable) before any hearing. 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.

### **Resolution/Hearing**

In no case shall a hearing to resolve charge(s) of student misconduct take place before the investigative report has been finalized.

Where the Respondent indicates that they contest the charges, the matter shall be set for a hearing and once the investigative report has been finalized and copies provided to the Respondent and Complainant

(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 or 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 testimony, if provided, shall pertain to knowledge and facts directly associated with the case being heard. The Respondent and Complainant (where applicable) shall have the right to confront any witnesses, including the other party, by submitting written questions to the Hearing Officer or Hearing Panel for consideration. Advisors may actively assist in drafting questions. The Hearing Officer or Hearing Panel shall ask the questions as written and will limit questions only if they are unrelated to determining the veracity of the charge leveled against the Respondent(s). In any event, the Hearing Officer or Hearing Panel shall err on the side of asking all submitted questions and must document the reason for not asking any particular questions.

1. Where the Hearing Officer or Hearing Panel determines that a party or witness is unavailable and unable to be present due to extenuating circumstances, the Hearing Officer or Hearing Panel may establish special procedures for providing testimony from a separate location. In doing so, the Hearing Officer or Hearing Panel must determine whether there is a valid basis for the unavailability, ensure proper sequestration in a manner that ensures testimony has not been tainted, and make a determination that such an arrangement will not unfairly disadvantage any party. Should it be reasonably believed that a party or witness who is not physically present has presented tainted testimony, the Hearing Officer or Hearing Panel will disregard or discount the testimony.
2. Formal judicial rules of evidence do not apply to the investigatory or resolution process.
3. The standard of review shall be a preponderance of the evidence.
4. Institutions should maintain documentation of the proceedings, which may include written findings of fact, transcripts, audio recordings, and/or video recordings.
5. Following a hearing, both the Respondent and Complainant (where applicable) shall be simultaneously provided a written decision via institution email (where applicable) of the outcome and any resulting sanctions. The decision should include details on how to appeal, as outlined below. Additionally, the written decision must summarize the evidence relied on in support of the outcome and the rationale for the resulting sanction. The same form will be completed, regardless of whether the student opts for a hearing panel or an administrative proceeding.

### 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 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.

**Confidentiality:** Where a Complainant requests that their identity be withheld or the allegation(s) not be investigated, the Coordinator should consider whether or not 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, or 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 come forward and to report Sexual Misconduct notwithstanding their choice to consume alcohol or to 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 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 regarding 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.

**Jurisdiction:** Each institution shall take necessary and appropriate action to promote the safety and well-being of its community. Accordingly, Sexual Misconduct should be addressed when such acts occur on institution property, at institution-sponsored or affiliated events, or otherwise violates the institution's student conduct policies, regardless as to where such conduct occurs.

#### **Access to Advisors:**

1. For Formal Title IX Complaints: 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.

2. For Non-Title IX Sexual Misconduct Complaints: 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 at the party's own expense. The advisor may accompany the party to all meetings and may provide advice and counsel to their respective party throughout the Sexual Misconduct process but may not actively participate in the process. All communication during the Sexual Misconduct process will be between the institution and the party and not the advisor. With the party's permission, the advisor may be copied on all communications.

**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 other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter Sexual Misconduct and retaliation. Interim measures must be implemented consistent with the provisions in applicable Board and institutional policies and procedures.

An interim suspension should only occur where necessary to promote safety and should be limited to those situations where the Respondent poses a serious and immediate danger or threat to persons or property. In making such an assessment, the institution should consider the existence of a significant risk to the health or safety of the Complainant or the campus community; the nature, duration, and severity of the risk; the probability of potential injury; and whether less restrictive means can be used to significantly mitigate the risk.

Before an interim suspension is issued, the institution must make reasonable efforts to give the Respondent the opportunity to be heard on whether the Respondent's presence on campus poses a danger. If an interim suspension is issued, the terms of the interim suspension take effect immediately. The Respondent shall receive notice of the interim suspension and the opportunity to respond to the interim suspension.

Within three business days of receiving a challenge the institution will determine whether the interim suspension should continue.

#### **4.6.5.4 Process for Investigating and Resolving Sexual Misconduct Reports**

##### **Investigation**

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 Misconduct Policy. Prior to the finalization of the investigation report, timely and equal access to information directly related to the allegations that has been gathered during the investigation and 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 Sexual Misconduct process is a preponderance of the evidence.

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 necessary with relevant 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 institution 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 Sexual Misconduct 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.
8. 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 all Hearing Panel members for consideration during the adjudication process.

### **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. Where a matter is not resolved through informal resolution a hearing shall be set. All Sexual Misconduct cases shall be heard by a panel of faculty and/or staff. All institutional participants in the Sexual Misconduct resolution process shall receive appropriate annual training as directed by the System Director or Coordinator and required by the Clery Act and Title IX.

In no case shall a hearing to resolve a Sexual Misconduct allegation take place before the investigation report has been finalized. 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 selected hearing panel members shall be provided to the Complainant and the Respondent at least 10 calendar days prior to the hearing. Notice shall be provided via institution email to the parties' institution email. Parties may attend the hearing with their advisor.

Hearings shall be conducted in-person or via video conferencing technology. Where the institution determines that a party or witness is unable to be present in person due to extenuating circumstances, the institution may establish special procedures to permit that individual to provide testimony from a separate location. In doing so, the institution must determine whether there is a valid basis for the individual's unavailability, require that the individual properly sequester in a manner that ensures testimony has not been tainted, and make a determination that such arrangement will not unfairly disadvantage any party. Should it be reasonably believed that the individual presented tainted testimony, the hearing panel will disregard or discount the testimony. Parties may also request to provide testimony in a separate room from the opposing party, so long as no party is unfairly disadvantaged, and they have the opportunity to view the testimony remotely and submit follow-up questions.

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 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. 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 institution email of the hearing outcome and any resulting sanctions 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 evidence relied upon and rationale for

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.
2. The parties shall have the right to confront any witnesses, including the other party, by submitting written questions to the Hearing Officer for consideration. Advisors may actively assist in drafting questions. The Hearing Officer shall ask the questions as written and will limit questions only if 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 asking all submitted questions and must document the reason for not asking any particular questions.
3. 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.
4. 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.
5. Formal judicial rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.
6. Following a hearing, the parties shall be simultaneously provided a written decision via institution email of the hearing outcome and any resulting sanctions 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 evidence relied upon and rationale for any sanction or other administrative action. The institution shall also notify the parties of their right to appeal, as outlined below.

#### **4.6.5.5 Possible Sanctions**

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 sanctions and issue notice of the same, as outlined above.

The broad range of sanctions includes: expulsion; suspension for an identified time frame or until satisfaction of certain conditions or both; temporary or permanent separation of the parties (e.g., change in classes, reassignment of residence, no contact orders, limiting geography of where parties can go on campus) with additional sanctions for violating no-contact orders; required participation in sensitivity training/awareness education programs; required participation in alcohol and other drug awareness and

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 restitution; or any other discretionary sanctions directly related to the violation or conduct.

For suspension and expulsion, the institution must articulate, 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 expulsion. Where 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 fairness 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 makers(s); or (3) to allege that the finding was inconsistent with the weight of the information.

The appeal must be made in writing, and 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 institution’s Vice President for Student Affairs or their designee.

The appeal shall be a review of the record only, and no new meeting with the Respondent or any Complainant is required. The Vice President, or their designee, 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 Vice President or his or her their designee shall then issue a decision in writing to the respondent within a reasonable time period.

The decision of the Vice President or his or her designee may be appealed in writing within five business days (as determined by the date of the decision letter) to the President of the institution solely on the three grounds set forth above.

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 any lower 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 decision shall be simultaneously issued in writing to the parties within a reasonable time period. The President’s decision shall be the final decision of the institution.

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 above 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 conduct 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.

## **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.