4.1.7 Sexual Misconduct Policy

The University System of Georgia is committed to ensuring a safe learning environment that supports the dignity of all members of the University System of Georgia community. The University System of Georgia does not discriminate on the basis of sex or gender in any of its education or employment programs and activities. To that end, this policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972. The University System of Georgia will not tolerate sexual misconduct, which is prohibited, and which includes, but is not limited to, domestic violence, dating violence, sexual assault, sexual exploitation, sexual harassment, and stalking. The University System further strongly encourages members of the University System community to report instances of sexual misconduct promptly. These policies and procedures are intended to ensure that all parties involved receive appropriate support and fair treatment, and that allegations of sexual misconduct are handled in a prompt, thorough and equitable manner.

Prevention is one of the primary mechanisms used to reduce incidents of sexual violence on campuses. USG institutions are required to provide prevention tools and to conduct ongoing awareness and prevention programming and training for the campus community including students, faculty, and staff. Such programs are designed to stop sexual violence through the promotion of positive and healthy behaviors. Programming will educate the campus community on consent, sexual assault, alcohol use, dating violence, domestic violence, stalking, bystander intervention, and reporting.

These policies and procedures shall become effective at all institutions on July 1, 2016.

4.1.7.1 Definitions and Prohibited Conduct

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

Complainant: An individual lodging a complaint. The complainant may not always be the alleged victim.

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. 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. Minors under the age of 16 cannot legally consent under Georgia law.

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.

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, by a person similarly situated to a spouse of the alleged victim

under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Incapacitation: The physical and/or mental inability to make informed, rational judgments, and can result from mental disability, sleep, involuntary physical restraint, 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: An intentional sexual touching upon a person, without consent or where the person is incapacitated, and/or by force, by another person or with any object. Sexual contact includes but is not limited to, intentional contact with the breasts, buttocks, groin, or genitals, or touching another with these body parts, or making another touch the alleged victim or themselves with or on any of these body parts.

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. Further, Privileged Employees must still submit anonymous statistical information for Clery Act purposes.

Respondent: Individual who is accused 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 Title IX Coordinator. Responsible Employees include any administrator, supervisor, faculty member, or other person in a position of authority who is not a 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, etc.). Responsible Employees are not required to report information disclosed at public awareness events (e.g., "Take Back the Night," candlelight vigils, protests, "survivor speak-outs" or other public forums in which students may disclose incidents of prohibited conduct).

Sexual Assault: An umbrella term referring to a range of nonconsensual sexual contact, which can occur in many forms including but not limited to rape and sexual battery.

Sexual Exploitation: "Sexual Exploitation" occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to 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 video or audio of sexual activity;
4. Non-consensual distribution of video or audio of sexual activity, even if the sexual activity or video or audio taken of sexual activity was consensual;
5. Intentional observation of unconsenting individuals who are partially undressed, naked, or engaged in sexual acts;
6. Knowingly transmitting an STD or HIV to another individual;
7. Intentionally and inappropriately exposing one's breasts, buttocks, groin, or genitals in non-consensual circumstances; and/or
8. Sexually-based bullying.

Sexual Harassment: Unwelcome verbal, nonverbal, or physical conduct, based on sex or gender stereotypes, that: is implicitly or explicitly a term or condition of employment or status in a course, program, or activity; is a basis for employment/educational decisions; or has the purpose or effect of interfering 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 benefit from an institutional program or activity.

Stalking: Engaging in a course of conduct directed toward another person based upon sex that would cause a reasonable person (i) to fear for his or her safety or the safety of immediate family members or close acquaintances, or (ii) to suffer substantial emotional distress.

4.1.7.2 Reporting Sexual Misconduct

A complainant of sexual misconduct can choose among several reporting options at their respective institutions: filing a criminal complaint with law enforcement officials; filing an administrative report with the institution; or filing an anonymous report at their institution. These processes are detailed below. An individual who believes he/she is a victim of sexual misconduct is encouraged to report allegations of sexual misconduct promptly.

Institutional Reports

Complainants of sexual misconduct who wish to file a report with the institution should notify a Responsible Employee or the Office of the Title IX Coordinator. Responsible Employees informed about sexual misconduct allegations involving any student must notify the Office of the Title IX Coordinator as soon as practicable. Responsible Employees should not attempt to resolve the situation, but must notify and report all relevant information to the Title IX Coordinator. Privileged Employees are not bound by this requirement but may, consistent with their ethical and legal obligations, be required to report limited information about incidents without revealing the identities of the individuals involved to the Office of the Title IX Coordinator. All members of the University System of Georgia institutions' communities are encouraged to report incidents of sexual misconduct promptly.

The Title IX 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. Institutions should encourage complainants to report their complaints in writing, though oral complaints should also be accepted, taken seriously, and investigated, to the extent possible. Further, while complaints should be made as quickly as possible following an alleged incident of sexual misconduct, all reports should be accepted regardless of when reported.

Complaints should include as much information as possible – that is: (1) the type of sexual misconduct experienced; (2) the name of the respondent; (3) the date(s), time(s), and place(s) of the sexual misconduct; (4) the name(s) 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 will be shared only as necessary to investigate and to resolve the alleged sexual misconduct. Complaints will be investigated and resolved as outlined below. Institutions, through their Title IX Coordinators, will also assess the need for and institute interim measures as described below as appropriate and where reasonable, as well as work with the appropriate institutional department to determine the need to issue a broader warning to the community in compliance with the Clery Act or to report activity to the authorities.

Institutional reports will be investigated and adjudicated separately from any criminal complaints.

1. *Confidentiality*: Where a complainant or alleged victim requests that his or her identity be withheld or the allegation(s) not be investigated, the institutions should consider, through the Title IX Coordinator, whether this request can be honored while still providing a safe and nondiscriminatory environment for the institution. Honoring the request may limit the institution's ability to respond fully to the incident and may limit the institution's ability to discipline the respondent.

2. *Retaliation*: Anyone who, in good faith, reports what she or he believes to be misconduct under this Policy , or who participates or cooperates in, or is otherwise associated with any investigation, shall not be subjected to retaliation. Anyone who believes he or she has been the target of retaliation for reporting, participating or cooperating in, or otherwise being associated with an investigation should immediately contact the Title IX Coordinator for the institution. Any person found to have engaged in retaliation in violation of this Policy shall be subject to disciplinary action.

3. *False Complaints*: Individuals are prohibited from intentionally giving false statements to an institution official. Any person found to have intentionally submitted false complaints, accusations, or statements, including during a hearing, in violation of this policy shall be subject to disciplinary action.

4. *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 an individual during an investigation concerning use of

drugs or alcohol will not be used against the particular individual in a disciplinary proceeding or voluntarily reported to law enforcement; however, individuals may be provided with resources on drug and alcohol counseling and/or education, as appropriate.

Law Enforcement Reports

Because sexual misconduct may constitute criminal activity, a complainant also has the option, should he or she so choose, of filing a report with campus or local police, for his or her own protection and that of the surrounding community.

Complainants considering filing a report of sexual misconduct with law enforcement should preserve any evidence of sexual misconduct, including, but not limited to, the following:

1. Clothing worn during the incident including undergarments;
2. Sheets, bedding, and condoms, if used;
3. Lists of witnesses with contact information;
4. Text messages, call history, social media posts;
5. Pictures of injuries; and/or
6. Videos.

Anonymous Reports

Each institution should provide a mechanism by which individuals can report incidents of alleged sexual misconduct anonymously.

4.1.7.3 Interim Protective Measures

The Title IX Coordinator or his/her designee may impose interim protective measures before the final outcome of an investigation and until final resolution of the allegations if failure to take the interim measures would constitute an immediate threat to the safety and well-being of the alleged victim or other members of the institution, or to ensure equal access to the institution's education programs and activities. Before any such measures are instituted, however, the Title IX Coordinator should, where practicable, provide the respondent with an initial opportunity to respond to the allegations and to the imposition of any interim protective measures specifically.

Imposing interim protective measures does not indicate that a violation of this Policy has occurred, and is designed to protect the alleged victim and community, and not to harm the respondent. To the extent interim measures are imposed, they should minimize the burden on both the alleged victim 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 alleged victim 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 his or her presence on campus poses a danger. If an interim suspension is issued, the terms of the suspension take effect immediately. When requested by the respondent, a hearing to determine whether the intermediate suspension should continue will be held within three (3) business days of the request.

4.1.7.4 Support Services

Once an individual makes a complaint, or receives notice that a complaint has been made against him or her, that individual should receive information about support services, such as counseling, advocacy, housing assistance, academic support, disability services, health and mental services, and legal assistance, as is available at their respective institutions.

Available support services should also be listed on the institution's Title IX website.

4.1.7.5 Process for Investigating and Resolving Institutional Reports

Jurisdiction: The institution shall take necessary and appropriate action to protect the safety and well-being of its community. Accordingly, sexual misconduct perpetrated against students by University System of Georgia students, faculty, or staff should be addressed whenever such acts occur on a campus, in connection with an institution's program or activity, or in a manner that creates a hostile environment for members of the institution community. Further, the policy is applicable to all University System of Georgia students, faculty, and staff, as well as contractors, vendors, visitors, guests or other third parties.

Advisors: Both the alleged victim and respondent, as parties to the matter, shall have the opportunity to use an advisor (including an attorney) of his/her choosing for the express purpose of providing advice and counsel at his/her own expense. The selected advisor shall not otherwise be a party or witness involved in the investigation. The advisor may be present during any meetings and proceedings involved in the investigatory or resolution process in which the advisee is also eligible to be present. The advisor may advise the advisee, including providing questions, suggestions, advice on the proceedings, and guidance on responses to any questions of the participant, but shall not participate directly. The institution shall not prohibit family members of any party from attending if the party requests such attendance, but may limit the number to two family members.

Timeframe: Reasonable efforts will be made to complete the investigation and resolution within 60 calendar days of the initial complaint, though a longer period of time may be needed in some cases. The Title IX Coordinator will notify the respondent and the alleged victim, in writing, of any extension of this timeframe.

Investigations

1. The Office of the Title IX Coordinator is primarily responsible for directly overseeing the investigation and resolution of complaints, and coordinating possible remedial actions or other responses reasonably designed to minimize the recurrence of the alleged conduct as well as mitigate the effects of any misconduct. The Title IX Coordinator will ensure prompt, fair, and impartial investigations and resolutions of complaints alleging violations of the sexual misconduct policy. The Title IX Coordinator shall be responsible for ensuring any individual participating in the investigation, resolution, or appeal of any sexual misconduct case has received regular training on issues pertaining to sexual misconduct.
2. The Title IX Coordinator shall designate an investigator to conduct a prompt, thorough, and impartial investigation into each complaint received. The investigation shall consist of interviews of the complainant, alleged victim, respondent, and witnesses, and the collection and review of documents or other physical or electronic information, as well as other steps, as appropriate.
3. Unrelated charges and cases shall be investigated separately, unless the respondent consents to having them aggregated.
4. The respondent shall be provided with written notice of the complaint, pending investigation, possible charges, possible sanctions, and available support services. The notice should also include the identity of the Title IX Coordinator and any investigator(s) involved. Notice shall be provided via institution email. If confirmation of receipt is not received by the Title IX Coordinator or the investigator, the Title IX Coordinator or the investigator shall engage in other measures to ensure notice is received by the respondent. A copy shall also be provided to the alleged victim via the same means.
5. The investigator will timely begin the investigation and will schedule an initial interview with the complainant, alleged victim, respondent and any known relevant witnesses. The investigator should retain written notes and/or obtain written or recorded statements from each interview. The investigator shall also keep a record of any proffered witnesses not interviewed, along with a brief, written explanation.
6. Each party shall have three (3) business days to submit a written statement to supplement the notice of complaint and the verbal interview. 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 documents – whether written or electronic – in support. If respondent has not otherwise responded, a non-written response will be considered a general denial of the alleged misconduct.
7. Based on this response and other relevant information, the investigator shall continue to interview witnesses for both sides, to re-interview parties where necessary, and to collect and review documents or other physical or electronic information, as well as other steps, as appropriate.
8. Where the respondent is a student, the respondent has the right to remain silent during the investigation and resolution process, without an automatic adverse inference resulting. If the respondent chooses to remain silent, the investigation may ultimately still proceed and policy violation charges may still result, which may be resolved against the respondent.

9. The respondent and/or alleged victim may challenge the participation of the investigator on the grounds of personal bias by submitting a written statement to the Title IX Coordinator setting forth the basis for the challenge no later than three (3) business days after the party reasonably should have known of the bias. The Title IX Coordinator will determine whether to sustain or deny the challenge, and if sustained, to appoint a replacement.
10. At the conclusion of the investigation, the investigator will issue to the parties a written report setting forth charges and possible sanctions, as well as an explanation of the evidence against the respondent.
11. The parties shall have at least three (3) business days to respond to the report in writing. The respondent's written response should outline his or her plea in response to the charge(s), and where applicable, his or her defense(s), and the facts, witnesses, and documents – whether written or electronic – in support.
12. The investigator shall, as necessary, conduct further investigation and update the report as warranted by the response(s), and will update the report as necessary.
13. Upon completion of the investigation, the investigator will review the evidence with the Title IX Coordinator. The Title IX Coordinator will ensure policies have been followed.
14. The Title IX Coordinator will contact the alleged victim(s) and the respondent(s) and schedule an opportunity to meet with each party individually. During these meetings, the Title IX Coordinator shall review the report with the parties (individually). Should the report be acceptable to all parties, an informal resolution may be made, which would not require the parties to move to the hearing phase of these procedures. If, however, the parties agree on the conduct, but not on the sanctions, then the sanctions shall be addressed by the hearing panel.
15. Allegations of sexual misconduct involving a student that are brought against an institution's faculty or staff will be investigated as outlined above, but will be further addressed and/or resolved through the institution's applicable employment policies, and in accordance with the procedures for dismissal outlined in the Board of Regents Policy including procedures for appealing such decisions.
16. Where the respondent(s) is a student, a hearing, as well as corresponding procedures/rights to appeal, shall be set and administered as set forth below, and a final report shall be provided to all parties, which will also provide a date, time, and location for a hearing on the matter.
17. The final report should also be provided to the panel for their consideration in adjudicating the charges brought against the respondent. The investigator may testify as a witness before the panel regarding the investigation and findings, but shall otherwise have no part in the hearing process and shall not attempt to otherwise influence the panel outside of providing testimony during the hearing.

Hearings

1. The hearing will be conducted by the Title IX Coordinator and/or his/her designee(s). The Panel must be composed of at least three (3) members.
2. The investigator shall not serve on the Panel.
3. No student shall serve on the Panel.
4. Both the alleged victim and respondent shall have the opportunity to present witnesses and evidence to the Panel. Both parties shall have the right to confront

any witnesses, including the other party, by submitting written questions to the Title IX Coordinator and/or his or her designee for consideration. Witness testimony, if provided, shall pertain to knowledge and facts directly associated with the case being heard. Advisors may actively assist in drafting questions. The 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 Panel shall err on the side of asking all submitted questions, and must document the reason for not asking any particular questions.

5. The Title IX Coordinator reserves the right to allow a party to testify in a separate room, when determined to be necessary. Where such a determination is made, special measures must be put in place to ensure no party is unfairly disadvantaged by this procedure. A party must still give testimony in the presence of the Panel, and the opposing party must have the opportunity to view the testimony remotely and to submit follow-up questions.
6. Similarly, where the Title IX Coordinator determines that a witness or party necessary to the proceedings is unavailable and unable to be present due to exigent circumstances (e.g., on a study abroad program, medical restrictions on travel, etc.), he or she may establish special procedures for providing testimony from a separate location. In doing so, the Title IX Coordinator must determine there is a valid basis for the unavailability, ensure proper sequestration in a manner that ensures the testimony has not been tainted, and make a determination that such an arrangement will not unfairly disadvantage any parties. Should it be reasonably believed that a party or witness who is not physically present has presented tainted testimony to the Panel, the Panel will disregard the testimony of that witness.
7. The standard of review shall be a preponderance of the evidence; however, any decision to suspend or to expel a student must also be supported by substantial evidence at the hearing.
8. The civil rules of evidence do not apply to the investigatory or resolution process.
9. Both the respondent and alleged victim shall be provided a written report via institution email of the outcome and any resulting sanctions. The written report must summarize the evidence in support of the sanction. The report should include details on how to appeal, as outlined below.

Possible Sanctions

The severity of sanctions or corrective actions may depend on the severity, frequency and/or nature of the offense, history of past discriminatory, harassing, or retaliatory conduct, the respondent's willingness to accept responsibility, previous institutional response to similar conduct, and the institution's interests. The Panel will determine the sanction after review of the investigatory findings.

The broad range of sanctions includes but is not limited to: 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 orders; required participation in sexual or relationship 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 on sexual misconduct; financial restitution; or any other discretionary sanctions directly related to the violation or conduct.

4.7.1.6 Appeals

Parties 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, because such information was not known or knowable to the person appealing during the time of the hearing; (2) to allege a procedural error within the hearing process that may have substantially impacted the fairness of the hearing, including but not limited to whether any hearing questions were improperly excluded or whether the decision was tainted by bias; or (3) to allege that the finding was inconsistent with the weight of the information. Appeals may be made by the alleged offender for the above reasons in any case where sanctions are issued – even those in which such sanctions are held "in abeyance," such as probationary suspension or expulsion.

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 (5) business days of the date of the final report.

Where the respondent or alleged victim appealing the outcome is a student, the appeal should be made to the Vice President for Student Affairs or his/her designee. The appeal shall be a review of the record only, and no new meeting with the respondent or alleged victim will be held. The non-appealing party shall be given the opportunity to respond to the appellant's submission. The applicable Vice President, or his/her 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 Title IX Coordinator 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/her designee shall then issue a decision in writing to both the respondent and alleged victim simultaneously within a reasonable time period.

The decision of the Vice President or his/her designee may be appealed in writing within five (5) 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 the Title IX Coordinator 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 issued in writing to both the respondent and alleged victim and shall be issued within a reasonable amount of time. The President's decision shall be the final decision of the institution.

Should the respondent or alleged victim wish to appeal the President's decision, he or she may appeal to the Board of Regents in accordance with the Board of Regents Policy 8.6.

4.1.7.7 Recusal / Challenge for Bias

Any party may challenge the participation of any institution official or employee 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 written challenge should be submitted within a reasonable time after the individual 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.