

AGENDA
CONDUCT POLICIES

August 8, 2017

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August 8, 2017

1. Addition to the Policy Manual: 4.1.7 Sexual Misconduct Policy

The policy is being presented for review and approval. The policy prohibits specific forms of sexual misconduct by University System of Georgia students, faculty, or students, including, but not limited to, non-consensual sexual contact, domestic violence, dating violence, and stalking. The policy ensures that parties involved receive appropriate support and fair treatment, and that allegations of sexual misconduct are handled in a prompt, thorough, and equitable manner. These policies and procedures shall become effective Fall semester 2017 at all institutions.

4.1.7 Student Sexual Misconduct Policy

(Last Revised August 4, 2017)

In accordance with Title IX of the Education Amendments of 1972 (“Title IX”), the University System of Georgia (USG) does not discriminate on the basis of sex in any of its education programs or activities or in employment. The USG is committed to ensuring a safe learning and working environment for all members of the USG community. To that end, this Policy prohibits sexual misconduct, as defined herein.

In order to reduce incidents of sexual misconduct, USG institutions are required to provide prevention tools and to conduct ongoing awareness and prevention programming and training for the campus community. Such programs will promote positive and healthy behaviors and educate the campus community on consent, sexual assault, alcohol 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.

Reporting Structure

All Equal Opportunity directors and others having responsibility for coordination of Title IX (“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.

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. 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 either 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. 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, 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 touching (or penetrating) of a person's intimate parts (such as genitalia, groin, breasts, or buttocks); touching (or penetrating) a person with one's own intimate parts; or forcing a person to touch his or her own or another person's intimate parts.

Confidential Employees: Institution employees who have been designated by the Institution's Coordinator to talk with an alleged victim in confidence. Confidential Employees must only report that the incident occurred and provide date, time, location, and name of alleged 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 Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("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.

Respondent: 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 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: Unwelcome verbal, nonverbal, or physical conduct, based on sex or on 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 or educational decisions; or 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.

Sexual Misconduct: Includes, but is not limited to, such unwanted behavior as dating violence, domestic violence, nonconsensual sexual contact, 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 his or her safety or the safety of others or suffer substantial emotional distress. 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. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily, require medical or other professional treatment or counseling.

4.1.7.2 Reporting Sexual Misconduct

A complainant of sexual misconduct may, but need not, file a criminal complaint with law enforcement officials; file a misconduct report with a Responsible Employee or Coordinator; or file both. A report may be filed anonymously, although anonymous reports may make it difficult for the institution to address the complaint. Any individual who believes that he or she has been a victim of sexual misconduct is encouraged to report allegations of sexual misconduct promptly.

All reports of sexual misconduct alleged to have been committed by a student must be handled consistently with requirements set forth in Section 4.6.5, *Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings*.

All reports of sexual misconduct alleged to have been committed by a non-student member of the institution community will be addressed and/or resolved through the institution's and the Board of Regents' applicable policies for discipline of non-students.

4.1.7.2 (A) Institutional Reports

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

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. 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. 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.

The Coordinator shall refer to the System Director 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 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 would require transfer to the System Director, the Title IX Coordinator shall transfer oversight to the System Director or designee. The System Director shall have the discretion to retain oversight or transfer oversight to the institution.

4.1.7.2 (B) 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. The institution may assist the complainant in reporting the situation to law enforcement officials.

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.

4.1.7.2 (C) Anonymous Reports

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

4.1.7.2 (D) Retaliation

Anyone who, in good faith, reports what he or she 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 that he or she has been the target of retaliation for reporting, participating, cooperating in, or otherwise being associated with an investigation should immediately contact the Coordinator for the institution. Any person found to have engaged in retaliation in violation of this Policy shall be subject to disciplinary action.

4.1.7.2 (E) False Complaints

Individuals are prohibited from intentionally giving false statements to a system or 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 appropriate disciplinary action (up to and including suspension or expulsion) and adjudicated under the student conduct policy.

4.1.7.2 (F) 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.

4.1.7.3 Handling Reports of Sexual Misconduct

4.1.7.3 (A) Support Services

Once a student or employee makes a complaint or receives notice that a complaint has been made against him or her, or the coordinator otherwise learns of a complaint of sexual misconduct. The complainant, respondent and alleged victim (where applicable) should receive written information about support services, such as counseling, advocacy, housing assistance, academic support, disability services, health and mental services, and legal assistance, available at the student's institution.

Information on support services will be provided regardless as to whether an individual elects to go forward with filing a formal complaint of sexual misconduct or with notifying law enforcement. Information on support services will also be provided to students and employees, regardless of where the alleged misconduct occurs.

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

4.1.7.3 (B) Interim Measures

Interim measures may be undertaken at any point after the institution becomes aware of an allegation of sexual misconduct and should be designed to protect the alleged victim and the community.

Before an interim suspension is issued, the institution must make all reasonable efforts to give the respondent the opportunity to be heard, consistent with the provisions in Policy 4.6.5.

4.1.7.3 (C) Jurisdiction

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

4.1.7.3 (D) Advisors

Both the alleged victim and 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 for the express purpose of providing advice and counsel, pursuant to the provisions of Policy 4.6.5.

4.1.7.3 (E) Informal Resolutions

Allegations of sexual misconduct may be resolved informally, without a determination of misconduct, if all of the following are met:

- 1) When complainant(s) and respondent agree to an informal resolution;
- 2) When the initial allegation could not result in expulsion;
- 3) When the complainant(s) and respondent(s) agree to the terms of the informal resolution; and
- 4) When the investigator concludes that informal resolution is in the best interest of the parties and the institution's community.

The alleged victim(s) and 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.

4.1.7.3 (F) Timeframe

Efforts will be made to complete the investigation within a reasonable timeframe, which will be determined based upon the allegations, availability of witnesses and/or evidence, etc. in a particular case. When the timeframe will extend past the reasonable timeframe, the parties will be informed of the delay and the reason for the delay. The investigator shall keep the parties informed of the status of the investigation.

4.1.7.4 Investigations

All sexual misconduct investigations involving a student respondent, whether overseen by the institution's Coordinator or the System Director, shall follow the investigation process set forth in Section 4.6.5, *Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings*.

4.1.7.5 Hearings, Possible Sanctions and Appeals

All sexual misconduct hearings, sanctions, and appeals involving a student respondent, whether overseen by the institution's Coordinator or the System Director, shall follow the investigation process set forth in 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 the institution's employment policies and procedures.

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2. Addition to the Policy Manual: 4.6.5 Student Conduct

The policy is being presented for review and approval. This policy, if approved, will establish uniform, system-wide procedural standards for investigations and resolutions (including student conduct hearings) of alleged student conduct violations, including those violations related to sexual misconduct. Each institution will be required to incorporate these procedures into their respective codes of student conduct, which will become effective Fall semester 2017 at all institutions.

4.6.5 Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings

(This policy will take effect Fall Semester, 2017)

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.

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.

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 or alleged victim requests that his or her identity be withheld or the allegation(s) not be investigated, the institutions should consider whether or not such request(s) can be honored while still providing 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.

2. **Retaliation:** Anyone who, in good faith, reports what she or he believes to be student misconduct 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 appropriate department or individual(s) for that institution. Any person found to have engaged in retaliation in violation of the student conduct policy shall be subject to disciplinary action, pursuant to the institution's policy.
3. **False Complaints/Statements:** 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 appropriate disciplinary action (up to and including suspension or expulsion) and adjudicated under the student conduct policy.
4. **Amnesty:** Students should be encouraged to come forward and report violations of the law and/or student code of conduct notwithstanding their own improper use of alcohol or drugs. Any student(s) who voluntarily and in good faith reports information to college or university faculty or staff prior to any investigation concerning use 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 in regard 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 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 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 alleged victim (where applicable), as parties to these proceedings, shall have the right to have an advisor (who may or may not be an attorney) of his or her choosing, and at his or her 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 his or her 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. The institution shall not prohibit family members of a party

from attending the hearing if the party requests such attendance, but may limit each participant to having two family members present.

Initial Evaluation of Student Conduct Reports: Regardless of how an institution becomes aware of 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.

Where a report of student misconduct alleges sexual misconduct or other forms of harassment and/or discrimination, the report will be referred to and the investigation will be conducted through or as directed by the appropriate office trained and equipped to investigate such matters.

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 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 will 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 oversight from the System Director, then the institution shall report that case to the System Director or her designee prior to proceeding.

Interim Measures

Interim measures may be provided by the institution at any point during an investigation and should be designed to protect the alleged victim and the community. 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. Upon request, the respondent will have an opportunity to be heard by the respective conduct officer, Title IX Coordinator, or System Director, as appropriate, within three business days in order to 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. Additionally, in any investigation involving allegations of sexual misconduct, timely notice of meetings shall be provided to each party of any meeting at which the complainant, respondent or alleged victim may be present. Timely and equal access to information that will be used during the investigation will be provided to the complainant, respondent and alleged victim (where applicable).

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 alleged victim 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 alleged victim 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 alleged victim (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 alleged victim (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 he or she contests 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 alleged victim (where applicable); however, the alleged victim (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 his/her 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. However, all cases involving charges of sexual misconduct that go to a hearing shall be heard by a panel of staff and/or faculty. Sexual misconduct panel members shall receive appropriate annual training as directed by the System Director or Coordinator and required by the Clery Act. If an administrative hearing is requested, the respondent shall use his or her 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, complainant, and alleged victim (where applicable) at least five business days prior to the hearing. Notice shall be provided via institution email where applicable. Additionally, the following standards will apply to any such hearing:

The respondent 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. Both 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 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.

1. Where the hearing officer or panel determines that a party or witness is unavailable and unable to be present due to extenuating circumstances, the hearing officer or panel may establish special procedures for providing testimony from a separate location. In doing so, the hearing officer or 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 panel will disregard or discount the testimony.

In sexual misconduct cases, the hearing officer reserves the right to allow a party to testify in a separate room, so long as 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.

2. Formal civil rules of evidence do not apply to the investigatory or resolution process.
3. 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.
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 alleged victim (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 in support of the sanction. The same form will be completed, regardless of whether the student opts for a hearing panel or an administrative proceeding.

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 hearing panel, hearing officer or administrator that found that a policy violation occurred 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.

4.6.5.3 Appeals

Where the sanction imposed includes a suspension or expulsion (even for one held in abeyance), the following appellate procedures must be provided. The alleged offender (and in cases involving sexual misconduct or other forms of discrimination and/or harassment, the alleged victim) 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 for the above reasons in any case where sanctions are issued, even when 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 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 his/her designee.

The appeal shall be a review of the record only, and no new meeting with the respondent or any alleged victim is required. The Vice President, or his or her designee, may affirm the original finding and sanction, affirm the original finding but issue a new sanction of 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 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 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 and the alleged victim (where applicable) within a reasonable time period. The President’s decision shall be the final decision of the institution.

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Should the respondent or alleged victim (where applicable) wish to appeal the President's decision, he or she may request review by the Board of Regents in accordance with the Board of Regents' Policy on Discretionary Review.

4.6.5.4 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.