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BOARD OF REGENTS OF
THE UNIVERSITY SYSTEM OF GEORGIA

September 13, 2021

Presidents
University System of Georgia
sent via email

Dear Presidents:

The Board of Regents of the University System of Georgia (USG) met on September 9, 2021, in Atlanta, Georgia. During this meeting, revisions were made to the following Board of Regents (BOR) policies:

Student Affairs

➤ **Board Policy 4.6.5 Standards for Institutional Student Conduct Investigation & Disciplinary Proceedings**

Board of Regents' Policy 4.6.5, Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings, establishes the minimum procedures that USG institutions must follow when investigating and resolving student disciplinary matters, including alleged violations of the Sexual Misconduct Policy. The revisions to Board Policy 4.6.5 were based upon the Department of Education's recent guidance regarding the 2020 Title IX regulations. The revisions address guidance to institutional hearing panels and clarify institutional appellate authority.

The effective date of this policy revision is September 9, 2021. Attached as an Exhibit is a document that shows the language added / deleted from this policy. Please share widely with the appropriate offices at your institution to include Academic Affairs, Student Affairs, Business and Finance, Title IX leads, Legal Affairs, Audit and Compliance.

Sincerely,

Teresa McCartney
Acting Chancellor

cc: Tracey Cook, Executive Vice Chancellor for Strategy and Fiscal Affairs
Dr. Tristan Denley, Executive Vice Chancellor for Academic Affairs
Ashley Jones May, Chief of Staff and Vice Chancellor for External Affairs
Claire Arnold, Vice Chancellor for Internal Audit, Chief Audit Officer
Dr. John Fuchko, III, Vice Chancellor for Organizational Effectiveness
Dr. Juanita Hicks, Vice Chancellor for Human Resources

Sandra Neuse, Vice Chancellor for Real Estate and Facilities
Dr. Joyce Jones, Vice Chancellor for Student Affairs
Edward Tate, Vice Chancellor of Legal Affairs and Secretary to the Board
Dr. Martha Venn, Vice Chancellor for Academic Affairs
Mike Coverson, Director of Safety and Security
Josiah Heidt, Legal Counsel
Sarah Wenham, Director of Student Enrolment Services
Brandi Williams, Interim System Director for Equity and Investigations
Wesley Horne, Director of Ethics and Compliance
Institutional Provosts
Institutional Vice Presidents of Student Affairs
Institutional Title IX Leads
Institutional Legal Officers
Institutional Effectiveness Leads
Institutional Audit Directors

Exhibit
BOARD OF REGENTS POLICY MANUAL
Revised Policies with Markup
Meeting of September 9, 2021

Revision to BOR Policy Manual: Section 4.6.5 Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings

REVISED POLICY LANGUAGE

4.6.5 Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings

4.6.5.4 Process for Investigating and Resolving Sexual Misconduct Reports

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.

4.6.5.6 Appeals

Appeals may be made **allowed** 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, 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 President 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 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 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 or their designee’s decision shall be simultaneously issued in writing to the parties within a reasonable time period. The President or their designee’s decision shall be the final decision of the institution.

Should the Respondent or Complainant (where applicable) wish to appeal the final institutional 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.