

## H. Sexual Misconduct Policy

***Georgia State University is a public institution in the University System of Georgia. The policy set forth has been reviewed and approved by the Board of Regents and applies to all Georgia State University students.***

### 4.1.7 Sexual Misconduct Policy

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 Title IX 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 Title IX Coordinator. Responsible Employees include any administrator, supervisor, faculty member, or other person in a position of authority who is not a Confidential 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, 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 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 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 the Student Code of Conduct.

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.

#### **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 of the Student Code of Conduct.

#### **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 the Student Code of Conduct.

#### **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 the Student Code of Conduct.

**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 the Student Code of Conduct.

All sexual misconduct adjudication involving an employee respondent, shall be addressed utilizing the institution's employment policies and procedures.

### Support Service/Resources

On and off campus support services/resources listed below are available to students who have been the victim of Sexual Misconduct. Additional resources may be found at [victimassistance.gsu.edu/sexual-violation](http://victimassistance.gsu.edu/sexual-violation).

#### On-Campus Support Services/Resources

##### Confidential Employees

Counseling and Testing Center  
[Counseling.gsu.edu](http://Counseling.gsu.edu)

Student Health Clinic  
[health.gsu.edu](http://health.gsu.edu)

Student Victim Assistance  
[victimassistance.gsu.edu](http://victimassistance.gsu.edu)

##### Incident Report

office of the Dean of Students  
Sexual Misconduct by Students  
[deanofstudents.gsu.edu](http://deanofstudents.gsu.edu)

Human Resources- Administration  
Sexual Misconduct by faculty/staff/contractors  
[odaa.gsu.edu](http://odaa.gsu.edu)

Law Enforcement Report  
GSU Police Department  
[safety.gsu.edu](http://safety.gsu.edu)

#### Off-Campus Support Services/Resources

Atlanta Bar Association  
229 Peachtree St. NE, Suite 400  
Atlanta, GA 30303  
404-521-0777\_  
[www.atlantabar.org](http://www.atlantabar.org)

Grady Rape Crisis Center  
*Sexual Assault Nurse Examiner (SANE)*  
80 Jesse Hill Drive  
Atlanta, GA 30303  
404-616-4861\_  
[www.gradyhealth.org](http://www.gradyhealth.org)

DeKalb Medical Center - Hillandale  
*Sexual Assault Nurse Examiner (SANE)*  
2801 DeKalb Medical Parkway  
Lithonia, GA 30058  
404-501-8000

Gwinnett Sexual Assault Center  
*Sexual Assault Nurse Examiner (SANE)*  
770-476-7407\_  
[www.gsac-cac.org](http://www.gsac-cac.org)

Tapestri  
3939 Lavista Road, Suite E  
Tucker, GA 30084  
404-299-2185\_  
[www.tapestri.org](http://www.tapestri.org)

Women's Resource Center to End Domestic Violence  
Address Confidential  
404-688-9436\_  
[www.wrcdv.org](http://www.wrcdv.org)

Criminal Justice Coordinating Council  
104 Marietta St NW, Suite 440  
Atlanta, GA 30303  
404-657-1956\_  
[www.cjcc.georgia.gov](http://www.cjcc.georgia.gov)

Day League (formerly DeKalb Rape Crisis Center)  
204 Church Street  
Decatur, GA 30030  
404-377-1428\_  
[www.dayleague.org](http://www.dayleague.org)

DeKalb Medical Center – North  
*Sexual Assault Nurse Examiner (SANE)*  
2701 North Decatur Road  
Decatur, GA 30033  
404-501-1000

United4Safety (LGBTQQI)  
1530 DeKalb Avenue  
Atlanta, GA 30307  
404-688-2524 ext. 112\_  
[www.thehealthinitiative.org](http://www.thehealthinitiative.org)

Partnership Against Domestic Violence  
Address Confidential  
404-873-1766 (Fulton) 770-963-9799 (Gwinnett)  
[www.padv.org](http://www.padv.org)

#### National Crisis Hotlines

National Sexual Assault Hotline  
1-800-656-HOPE (4673)

National Domestic Violence Hotline  
1-800-799-7233

### **Sexual Assault Victims Bill of Rights**

In compliance with Section 485 of the Higher Education Act of 1965 (20 U.S.C. 1092(f), as amended by the Student Right-to-Know and Campus Security Act, Public Law 101-542, as amended by the Higher Education Technical Amendments of 1991, Public Law 102-26 (April 9, 1991) and 102-325 (July 23, 1992), and the Campus Sexual Assault Victims' Bill of Rights Act of 1991, victims of campus-related sexual assaults shall be accorded the following rights by all Georgia State University campus officers, administrators and employees.

1. The right to have any and all sexual assaults against them treated with seriousness, the right to be treated with dignity, and the right for campus organizations that assist such victims to be accorded recognition.
2. The right to have sexual assaults committed against them investigated and adjudicated by the duly constituted criminal and civil authorities of the governmental entity in which the crimes occurred and the right to the full and prompt cooperation and assistance of campus personnel in notifying the proper authorities. The foregoing shall be in addition to any campus disciplinary proceedings.
3. The right to be free from any kind of pressure from campus personnel to: (1) not report crimes committed against them to civil/criminal authorities or to campus law enforcement/disciplinary officials; or (2) report crimes as lesser offenses than the victims perceive them to be.
4. The right to be free from any kind of suggestion that campus sexual assault victims not report, or under-report, crimes because: (1) victims are somehow "responsible" for the commission of crimes against them; (2) victims are contributorily negligent or assumed the risk of being assaulted; or (3) by reporting crimes, the victim would incur unwanted personal publicity.
5. The same right to legal assistance, or ability to have others present, in any campus disciplinary proceeding that the institution affords the referred; and the right to be notified of the outcome of such proceeding.
6. The right to full and prompt cooperation from campus personnel in obtaining, securing, and maintaining such information (including a medical examination) as may be necessary to the proof of criminal sexual assault in subsequent legal proceedings.
7. The right to be made aware of and assisted in exercising any options as provided by State and Federal laws or regulations with regard to mandatory testing of sexual assault suspects for communicable diseases and with regard to notification to victims of the results of such testing.
8. The right to counseling from any mental health services previously established by the institution, or by other victim-service entities, or by victims themselves.
9. After campus sexual assaults have been reported, the victims of such crimes shall have the right to require that campus personnel take the necessary steps or actions reasonably feasible to prevent any unnecessary or unwanted contact or proximity with alleged assailants, including immediate relocation of the victim to safe and secure alternative housing, and transfer of classes if requested by the victims.
10. In addition to the above rights, students, whether sexual assault victims or not, have a right to habitability in campus accommodations for which the college receives any compensation, direct or indirect. Habitability shall mean an environment free from sexual or physical intimidation, or any other continuing disruptive behavior that is of such a serious nature as would prevent a reasonable person from attaining their educational goals. Substantiated violations of the above listed habitability provisions shall be corrected by campus personnel by relocations, if reasonably possible, of the complainant to an acceptable, safe and secure alternative location as soon as practicable, unless the conditions of nonhabitability demonstrate the necessity of immediate action by campus personnel.

