

Policy Title: Sexual Misconduct Policy

Policy Statement

Sexual Misconduct as defined by this policy is a violation of federal, state, university, and Board of Regents policy and may also be subject to criminal prosecution. Georgia College will not tolerate Sexual Misconduct and will provide resources and recourse for individuals whose rights may have been violated by an act of Sexual Misconduct by any member of the university community.

Definitions

“Complainant” means any person(s) who reports an alleged violation of the Sexual Misconduct Policy.

"Consent" means words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Consent cannot be gained by Force, by ignoring or acting in spite of the objections of another, or by taking advantage of the Incapacitation of another, where the accused knows or reasonably should have known of such Incapacitation. Consent to one activity does not imply consent to subsequent or future activities; furthermore, previous or current relationships do not imply consent to future sexual acts. A person always retains the right to revoke consent at any time during a sexual act. In addition, the state of Georgia has designated a minimum age of 16 under which a person cannot give “Consent.”

“FERPA” means the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99), a Federal law that protects the privacy of student education records. The law applies to Georgia College as a recipient of funds under an applicable program of the U.S. Department of Education. (For more information: <http://www.gsu.edu/registrar/FERPA.html>)

"Force" means physical force, violence, threat, intimidation or coercion.

"Incapacitation" means the physical and/or mental inability to make informed, rational judgments. States of Incapacitation includes, but is not limited to: sleep, blackouts, and flashbacks. Where alcohol [or other drug] is involved, one does not have to be intoxicated or drunk to be considered Incapacitated. Rather, Incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. The question is whether the accused knew, or should have known, that the complainant was Incapacitated. Because Incapacitation may be difficult to discern, it is strongly encouraged to err on the side of caution; i.e., when in doubt, assume that another person is Incapacitated and therefore unable to give Consent. The claim of being intoxicated or drunk is not a defense for a respondent to a complaint of Sexual Misconduct under this Policy.

"Non-Consensual Sexual Contact" means Sexual Contact that occurs without Consent.

"Non-Consensual Sexual Intercourse" means Sexual Intercourse that occurs without Consent.

“Sexual Assault” includes Non-Consensual Sexual Contact and Non-Consensual Sexual Intercourse.

"Sexual Contact" means the deliberate touching of a person's intimate parts (including but not limited to: genitalia, groin, breast or buttocks, or clothing covering any of those areas), however slight, or using Force to cause a person to touch his or her own or another person's intimate parts.

"Sexual Exploitation" is any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Examples include, but are not limited to:

- a) Causing or attempting to cause the Incapacitation of another person in order to gain a sexual advantage over such other person
- b) Causing the prostitution of another person
- c) Recording, photographing, or transmitting images of private sexual activity and/or the intimate parts (including, but not limited to genitalia, groin, breasts or buttocks) of another person without consent or beyond the consent given
- d) Allowing third parties to observe private sexual acts
- e) Engaging in voyeurism
- f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.

"Sexual Harassment" means unwelcome conduct, based on sex or on gender stereotypes, which is so severe or pervasive that it unreasonably interferes with a person's University employment, academic performance, or participation in University programs or activities and creates a working, learning, program, or activity environment that a reasonable person would find intimidating, hostile or offensive. The conduct in question must be objectively intimidating, hostile, or offensive, and interfere with a person's right to equally participate in programs and activities of the University. This Policy is meant to protect students and employees from sex discrimination, and is to be implemented consistent with federal regulatory law, academic freedom, and the requirements of the First Amendment to the United States Constitution. There are generally two types of Sexual Harassment: Quid Pro Quo and Hostile Work Environment. Examples of behavior that may constitute sexual harassment include, but are not limited to:

- a) Unwelcome sexual advances
- b) Requests for sexual favors
- c) Unwelcome or derogatory comments of a sexual nature or based on gender
- d) Presence of sexual suggestive visual material
- e) Unwelcome or unwanted physical contact that is sexual in nature
- f) Telling lies or spreading rumors about a person's personal or sex life

"Sexual Intercourse" means penetration (anal, oral or vaginal), however slight, by a penis, tongue, finger, or an inanimate object by a man or woman upon a man or woman.

"Sexual Misconduct" is a broad term encompassing "Sexual Exploitation," "Sexual Harassment," "Non-Consensual Sexual Contact," and "Non-Consensual Sexual Intercourse," as defined in this Policy. Sexual Misconduct can occur between strangers or acquaintances, and even people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex.

Keywords

Sexual Misconduct; Sexual Assault; Sexual Harassment; Sexual Exploitation

Reason for the Policy

Georgia College is committed to providing a safe environment that supports the dignity of all members of the University community.

Federal law prohibits discrimination based on gender; this includes Sexual Misconduct. Specific laws and/or acts include Section 703 of Title VII of the Civil Rights Act of 1964 as amended, Title IX of the

Education Amendments of 1972, The Jeanne Clery Act of 1990, and The Violence Against Women Act (VAWA) of 1994 (reauthorized 2000, 2005, 2013). A description of each of these laws/acts can be found in Addendum A.

Sexual harassment is prohibited under the Policies of the University System of Georgia Board of Regents, which can be found at http://www.usg.edu/policymanual/section8/policy/C224/#p8.2.16_sexual_harassment.

Proposed Outcome

This policy aims to set in place a process for handling incidents of Sexual Misconduct on the Georgia College campus in keeping with federal legislation and guidelines. The implementation of this policy will assist victims by clearly delineating the process for reporting misconduct on campus as well as resources available. Additionally the policy will assist in staying in compliance with federal and state laws and guidelines as well as Board of Regents policy. As noted in the AAUP Campus Sexual Assault: Suggested Policies and Procedures published in February 2013, “sound campus policy and procedures should aim to eliminate sexual assault and its devastating consequences,” this policy seeks to do just that - eliminate all forms of Sexual Misconduct on Georgia College’s campus.

Applicability of the Policy

This policy applies to all Georgia College employees and students. This policy is in effect regardless of location (including but not limited to: study abroad and conferences).

Persons of any sex can be capable of Sexual Misconduct; Sexual Misconduct can occur between people of the same gender. It can occur among "couples" involved in romantic relationships. The requirements of this policy are blind to the sexual orientation or preference of individuals engaging in sexual activity. The Georgia College policy on Sexual Misconduct reflects the serious intent of Georgia College to provide resources and recourse for individuals whose rights may have been violated by an act of Sexual Misconduct.

There is no statute of limitations for Sexual Misconduct at Georgia College. Individuals can be accused/charged with one or more of these offenses for their behavior in a single incident. None of these forms of Sexual Misconduct will be tolerated at Georgia College.

Related Policies

This policy shall replace the “Sexual Harassment” entry in the current Georgia College & State University Policies, Procedures, and Practices Manual.

USG Policy on Sexual Harassment:

http://www.usg.edu/policymanual/section8/policy/C224/#p8.2.16_sexual_harassment

Georgia College Amnesty Policy: <http://www.gcsu.edu/studentlife/handbook/adminpolicies.htm>

Procedures

Policy implementation is the responsibility of the Title IX Coordinator. More information on Title IX including the name and contact information of the Title IX coordinator can be found at: www.gcsu.edu/equity/titleixinformation.htm. Assistance with policy implementation is the responsibility of the Office of Institutional Equity and Diversity, the Women’s Center, Legal Affairs, Human Resources, and Student Affairs.

The University strongly encourages members of the University community to promptly report instances of Sexual Misconduct. All reported instances of Sexual Misconduct shall be reviewed and responded to promptly, thoroughly and impartially.

For all allegations of Sexual Misconduct the following procedures are in effect:

I. Notification and Review

A. Reporting

Incidents reported to campus officials should be forwarded to a Title IX Coordinator within 3 days of receiving the complaint. Reporting Sexual Misconduct to a Title IX Coordinator can begin the University's investigation of the issue and serves as a form of official documentation of the incident.

B. Review and Charges

The Title IX Coordinator will conduct a timely review of all complaints of Sexual Misconduct to determine if there is reasonable cause to believe GC policy was violated.

C. Interim Action

In an effort to support the individuals involved during the review process, the university through the Title IX Coordinator may take interim action as appropriate. Examples of interim action include:

- (1) Imposing a restriction that requires the parties to have no contact with each other throughout the process.
- (2) Directing appropriate University officials to alter the parties' academic, housing or employment arrangements, while minimizing the burden of any arrangements on the complainant.
- (3) Other interim actions that may be taken by the University as deemed necessary.

D. Assess Duty to Warn

Title IX Coordinator(s) along with Public Safety should determine whether there is a duty to warn the campus according to Clery Act guidelines.

E. Reporting Expectations

Faculty, staff, and administrators receiving disclosures of Sexual Misconduct are:

- a. Expected to follow the provisions outlined in this policy and direct individuals to this policy.
- b. Expected to comply with the University Harassment Policy, which states that any student, faculty member, or employee who knows of, or receives a complaint of discrimination or harassment should report the information or complaint to a supervisor and/or the Director of Human Resources or the Director of Institutional Equity and Diversity.
- c. Expected to complete the Incident Form (available online) on each disclosed incident and return to the Title IX Coordinator.
- d. Encouraged to immediately refer individuals to the Women's Center, which can be reached at extension (478) 445-8156 or (478) 445-9291.

II. Confidentiality

A. Confidentiality

Different people on campus have different reporting responsibilities, and different abilities to maintain confidentiality, depending on their roles at the university. In all cases, while confidentiality cannot be guaranteed, the privacy of the complainant will be maintained by restricting the exchange of information regarding a case to a "need to know" basis.

B. Federal Statistical Reporting Obligations

Certain campus officials have a duty to report Sexual Misconduct for federal statistical reporting purposes in keeping with the Clery Act.

III. Investigation

A. Investigator

The Title IX Investigator (or their designee) will fully investigate the allegation of Sexual Misconduct, including interviewing individuals identified in the complaint to determine whether there is sufficient basis to believe that a violation of the Sexual Misconduct Policy may have occurred.

B. Timeframe

Absent extenuating circumstances, this review should take place within sixty (60) calendar days of receipt of the complaint. The Title IX Coordinator's ability to proceed may be limited if the complainant is reluctant to participate in any aspect of the process.

C. Report

Upon the completion of the Investigation, the Title IX Coordinator shall draft a report of the investigation detailing conversations, findings of facts, notes pertaining to creditability, and other relevant information. This report may be shared with those with a "need to know." Individuals with a "need to know" will depend upon each case.

IV. Retaliation

Retaliation against any member of the University community who makes a report of Sexual Misconduct or cooperates in the review of such report is strictly prohibited and may lead to further disciplinary action. Retaliation includes intimidation, harassment, threats, or other adverse action or speech. Retaliation of any kind should be promptly reported to a Title IX coordinator.

V. Special Provisions

A. University as Complainant:

As necessary, Georgia College reserves the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the victim of misconduct.

B. Amnesty (Good Samaritan Policy)

The University wishes to encourage victims to report incidents of Sexual Misconduct and therefore reserves the right to waive disciplinary charges relating to drugs and alcohol against victims for circumstances surrounding the incident. The Amnesty Policy can be viewed at <http://www.gcsu.edu/studentlife/handbook/adminpolicies.htm>.

VI. Victim Assistance and Support

A. Students, faculty, and staff may utilize the Women's Center for assistance following Sexual Misconduct. Services offered by the Women's Center include: support groups, hospital escorts, safety planning, judicial proceeding escorts, coordination of reporting, individual support, reviewing campus policies and procedures. The Women's Center may be reached at (478) 445-8156 or (478) 445-9291.

B. Students, faculty, and staff may receive confidential assistance through an off-campus agency such as Crisis Line and Safe House of Central Georgia's 24-hour hotline at (478) 745-9292. Students may also receive confidential assistance from University Counseling Services at (478) 445-5331.

For instances where the accused is a student the following additional procedures are in effect:

I. Hearing Process

The Student Code of Conduct will guide the hearing and discipline process.

II. Outcomes

The outcome of a campus hearing is part of the educational record of the accused student, and is protected from release under a federal law, FERPA. However, the University observes any legal exceptions allowed under federal or state law.

For instances where the accused is a faculty, staff or third party the following additional procedures are in effect.

I. Following the recommendation(s) of the investigation, the Progressive Discipline Process will be followed in determining appropriate sanctions, if any, for faculty and staff in keeping with Board of Regents policy governing staff and faculty employment.

II. Complaints against third parties will be forwarded to the employer of the individual. Third party entities may also be trespassed from the University campus.

III. Outcomes

Complainants who bring any sort of Sexual Misconduct complaint against a faculty, staff, or third party entity may be informed of the outcome and sanction.

Guidelines

- Victims of Sexual Misconduct should be informed of all their reporting option including filing a criminal report with Campus Police.
- Victims of Sexual Misconduct should be informed about the advocacy services provided by the Women's Center including: support groups, hospital escorts, safety planning, judicial proceeding escorts, coordination of reporting, individual support, reviewing campus policies and procedures.

Forms

The attached General Complaint Form Form (Addendum B), also available from the Women's Center, the Office of Institutional Equity and Diversity, and/or Legal Affairs shall be completed by the person taking the complaint and returned to the Title IX Coordinator following a report of Sexual Misconduct. An online form will also be made available at the same office's websites.

Contacts

Policy created by: the Sexual Misconduct/Title IX Task Force (including representatives of: the Women's Center, Office of Institutional Equity and Diversity, Legal Affairs, Human Resources, Student Affairs, and Campus Police).

Title IX Coordinator: Appointed by the President

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Addendum A

Applicable Laws and/or Acts

Section 703 of Title VII of the Civil Rights Act of 1964 as amended provides that “it shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.”

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in federally assisted education programs and activities. Long-standing legal authority establishes that harassment of students can be a form of sex discrimination covered by Title IX.

Harassment of any student or employee on the basis of sex violates federal laws.

Sexual harassment is also prohibited under the Policies of the University System of Georgia Board of Regents, which can be found at

http://www.usg.edu/policymanual/section8/policy/C224/#p8.2.16_sexual_harassment.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 requires institutions to disclose campus crime statistics on an annual basis. For more information on the Clery Act please visit <http://clerycenter.org>

The Violence Against Women Act (VAWA) of 1994 (reauthorized 2000, 2005, 2013) is a comprehensive legislative package designed to end violence against women and covers crimes such as domestic violence, sexual assault, and stalking. The 2013 reauthorization included the Campus Sexual Violence Elimination (SaVE) Act, which outlines several new requirements for colleges and universities related to sexual assault, domestic violence, and stalking.

Furthermore, agencies of the United States federal government and state of Georgia have issued guidance on various rules and laws that places an expectation on college campuses to have a policy in place which protects the campus community from Sexual Misconduct.

The Board of Regents of Georgia prohibits sexual harassment of employees or students. The full text of the BOR policy can be viewed at the following site:

http://www.usg.edu/policymanual/section8/policy/C224/#p8.2.16_sexual_harassment.

For reference to the pertinent state statutes on sex offenses, please see the Georgia Legal Code which can be accessed from <http://www.lexisnexis.com/hottopics/gacode/>.

Addendum B

Georgia College General Complaint Form

1. Type of Complaint:
 EEO (Discrimination) EEO (Retaliation) Hostile Environment Sexual Assault
 Sexual Harassment Ethics/Integrity Other (specify: _____)
2. Are you reporting an incident that happened to you or an incident discussed with you?
 Incident happened to me. Signature: _____
 Incident was discussed with me by the Complainant
 Incident was discussed with me by a friend of the Complainant
3. Reporter: _____ Phone: _____
4. Did incident occur while the Complainant was employed by or enrolled at Georgia College? Yes No
5. Complainant's Name: _____ Phone: _____
6. Complainant's Gender: _____ Race: _____ Age: _____
7. Complainant's Residence: _____
 Residence Hall Greek House Off-Campus Apt. Campus Apt. Other
8. Briefly describe incident (continue on back of form if necessary):

9. Location of incident: On Campus (check appropriate response below)
 Residence Hall Greek House Other Campus Building Outdoors
 Automobile Classroom Outside of Milledgeville Other : _____
10. Please give date(s)/time(s) of incident(s): _____
11. Was the incident/assault associated with an organized event (campus sponsored or not)?
 No Yes (specify: _____)
12. Was either party under in influence of alcohol or other drugs at the time of the incident?
Complainant: Alcohol? Yes No Unsure Drugs? Yes No Unsure
Respondent: Alcohol? Yes No Unsure Drugs? Yes No Unsure
13. Was a weapon used in the incident? Yes (specify: _____) No N/A
14. Status of Respondent(s):
 Student Faculty Staff No campus role Unknown
15. Respondent's Name: _____ Phone: _____
16. Respondent's Gender: _____ Race: _____ Age: _____ Respondent's Residence: _____
17. Describe the nature of the relationship of the Complainant and the Respondent:
 Stranger Professor Student Supervisor Coworker
 Friend Relative Romantic Other (specify: _____)
18. Other individuals at Georgia College the Complainant or Respondent have talked with about this incident:
 Friend Faculty member Staff member Other (specify: _____)

Signature of person completing form: _____ Date: _____