



Policy 8.2

Sex and Gender-Based Harassment and Discrimination Policy

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| Responsible Official: | Office of the Provost |
| Administering Division/Department: | Department of Title IX |
| Effective Date: | August 14, 2020 |
| Last Revision Date: | September 28, 2023 |

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Overview

I. POLICY STATEMENT

It is the responsibility of every member of the University Community to foster an environment free of Sexual and Gender-Based Harassment and Discrimination. All members of the University Community are encouraged to take reasonable and prudent actions to prevent or stop such behavior.

Emory University ("Emory" or the "University") is committed to maintaining an environment that is free of unlawful harassment and discrimination. Pursuant to Emory's commitment to a fair and open campus environment and in accordance with federal law, Emory cannot and will not tolerate discrimination against or harassment of any individual or group based upon race, color, religion, sex, ethnic or national origin, gender, genetic information, age, disability, sexual orientation, gender identity, gender expression, veteran's status, or any factor that is a prohibited consideration under applicable law. Emory welcomes and promotes an open and genuinely diverse environment.



Title IX of the Educational Amendments of 1972 ("Title IX") protects people from sex discrimination in educational programs and activities at institutions that receive federal financial assistance. Emory fosters a safe learning and working environment that supports academic and professional growth of students, staff, and faculty. Accordingly, Emory does not tolerate Prohibited Conduct in its community and will take prompt action when it occurs.

The University adopts this Policy with a commitment to: (1) a safe and non-discriminatory educational and workplace environment; (2) eliminating, preventing, and addressing the effects of Prohibited Conduct; (3) fostering an



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Questions may also be directed to a Deputy Title IX Coordinator. Their names and contact information are listed at the end of this document.

Applicability

II. POLICY JURISDICTIONAL SCOPE AND APPLICABILITY

This Policy applies to Students, Employees, and Third Parties. This Policy covers acts of Prohibited Conduct committed by or against Students, Employees, and Third Parties when:

- A. Conduct falls within the definition of Title IX Misconduct (as defined in [Section III B](#)).
- B. Conduct occurs in a University Program or Activity, including, but not limited to, conduct that occurs on the University campus or other property owned or controlled by the University; conduct that occurs off campus, but in a University Program or Activity; in the context of University employment; or in the context of University-sponsored study abroad, research, field work, practical, or internship programs; (collectively “Prohibited Conduct”); or
- C. Conduct occurs outside of a University Program or Activity but poses a serious threat of harm, has a continuing adverse effect on, or creates a hostile environment for, Students, Employees, or Third Parties. In determining whether the University has jurisdiction over off- campus or online conduct that is not part of a University program or activity of the University, the University will consider the severity of the alleged conduct, the risk of ongoing harm, whether both parties are members of the University Community, impact on University programs or activities, and whether off-campus conduct is part of a series of actions that occurred both on and off campus (collectively, “Prohibited Conduct”).

Study-abroad programs and off-campus locations that are not within the University’s education program or activity are not covered by the Title IX regulations, but may constitute Prohibited Conduct under this Policy, and is subject the Non-Title IX Prohibited Conduct Procedure for Students (_____) and the Equal Opportunity and Harassment Policy 1.3. (_____).

Definitions

III. POLICY DEFINITIONS

Prohibited Conduct includes a range of behaviors focused on sex and/or gender. Prohibited Conduct can occur between strangers, acquaintances, or people who know each other well, including between people involved in a consensual relationship. Prohibited Conduct can be committed by anyone regardless of gender identity or sexual orientation and can occur between people of the same or different sex or gender.



Consensual sexual activity requires a **knowing, voluntary, and mutual decision by all participants involved. Any non-consensual sexual activity is Prohibited Conduct.** A person who initiates sexual activity is responsible for obtaining consent for that conduct.

The following are grounding principles:



- The alleged conduct was perpetrated against a person in the United States;
- The conduct took place within the University's Programs or Activities; and
- At the time a Formal Complaint is filed, the Complainant was participating in or attempting to participate in the University's programs or activities.

Conduct that does not meet this strict definition for Title IX Misconduct is still prohibited by this Policy if it otherwise constitutes Prohibited Conduct.

C. Student: "Student" means any person pursuing academic studies at the University. The term also includes:

- A person who, while not currently enrolled, was previously enrolled at Emory and who is reasonably anticipated to seek enrollment at a future date, or
- A person who has applied to or been accepted for admission to Emory and has accepted an offer of admission or may reasonably be expected to enroll, or
- A person enrolled in an Emory program on a credit or non-credit basis.

D. Employee: "Employee" means all regular instructional faculty, supplemental instructional faculty, research track faculty, visiting faculty, adjunct faculty, or any individual who has an appointment at the University, librarians, archivists, curators, and all regular and temporary staff.

E. Third Party: "Third Party" means all University contractors, guests, vendors, visitors, volunteers, and any individual who is participating in or attempting to participate in a University program or activity, but who is neither enrolled in an academic program and/or course at the University nor acting as a University Employee for purposes of alleged Prohibited Conduct (e.g., an individual who is participating in a summer camp; an individual who is attending a University program or activity by invitation or that is open to the public).

F. Complainant: "Complainant" is used to refer to a Student, Employee, or Third Party who is reported to have experienced Prohibited (including Title IX Misconduct). In some instances, the person who is reported to have experienced such Prohibited Conduct may not wish to participate in a University process. In those cases, the University may pursue an investigation and adjudication under this Policy without a (niversity process. In thtion)-ran academic pro



Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party during a grievance process.

- H. Respondent:** "Respondent" is defined as an individual who is reported to have committed Prohibited Conduct.
- I. The University's Programs or Activities:** "The University's Programs or Activities" are defined as (1) locations, events, and circumstances where the University exercises substantial control over the Respondent



Q. Grievance Procedure: “Grievance Procedure” is defined as the formal process by which the University evaluates a Complainant’s Formal Complaint as set forth in [Section XI](#).

Policy Details



touch any of these body parts under or over clothing; and the emission of ejaculate on the clothing or body of another person.

3. Sexual Exploitation (Prohibited Conduct)

Non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other purpose. Examples of sexual exploitation may include, but are not limited to: invasion of sexual privacy; prostituting an individual; non-consensual video- or audio-recording of sexual activity or circulation of such recorded material (i.e. revenge pornography); non-consensual photographing individuals who are partly undressed, naked, or engaged in sexual acts and transmitting or posting those photographs without an individual's consent; observing unsuspecting individuals who are partly undressed, naked, or engaged in sexual acts; knowingly transmitting a sexually transmitted disease (STD); exposing one's breasts, buttocks, or genitals without affirmative consent or inducing another to do the same; and inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

4. Sexual Harassment (Prohibited Conduct)

Unwelcome sexual advances, requests for sexual contact or favors, conduct based on gender stereotypes, or other verbal, non-verbal, physical, or visual conduct of a sexual nature constitutes sexual harassment when:

- i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic, co-curricular, or campus life activities or of an individual's employment;
 - ii. Submission to or rejection of such conduct by an individual is used as the basis for academic or student life or employment decisions affecting that individual;
 - iii. The conduct is so severe and/or pervasive that it unreasonably interferes with a person's University employment, academic performance, or participation in University programs or activities; or
 - iv. The conduct is so severe and/or pervasive that it creates an intimidating, hostile, demeaning, or offensive campus or living environment or employment setting.
- Depending upon the severity and/or pervasiveness of the conduct, sexual harassment may include, for example, subjecting a person to egregious, unwelcome sexual attention, physical or verbal advances, sexual flirtations or propositions, vulgar talk or jokes, degrading graphic materials or verbal comments of a sexual nature about an individual or his or her appearance, or the display of sexually suggestive objects outside a scholarly context and purpose.
 - Conduct of a sexual nature that falls within the definition of Sexual Activity, above, will typically be reviewed as alleged Sexual Assault or Sexual Exploitation, as applicable, but may also be reviewed as alleged Sexual Harassment. Examples of conduct that may constitute Sexual Harassment include, but are not limited to:
 - a. Unwanted intentional touching such as kissing, hugging, or sexual touching that otherwise does not typically constitute Sexual Assault, defined above;

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- A series of written, verbal, or electronic statements that disparage a person based on their actual or perceived sex, gender identity, gender expression, sexual orientation, or pregnancy;
- Threats of violence toward an individual based on their actual or perceived identity; within a protected class, or toward an entire sex, gender identity, gender expression, sexual orientation, or pregnancy status as a group; and/or
- Defacing University property, or another individual's property, with symbols or language intended or understood by a Reasonable Person to disparage or threaten a person or group based on sex, gender identity, gender expression, sexual orientation, or pregnancy.

This definition addresses intentional conduct. It also includes conduct which results in negative effects even though such negative effects were unintended. Unwelcome behavior constitutes Gender-Based



Supportive Measures and other actions taken in accordance with this, or other University policies do not



- By any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of Georgia.

Clery Act Definition:

<https://www.law.cornell.edu/cfr/text/34/668.46>

- (5) **Dating violence:** Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Clery Act Definition:

<https://www.law.cornell.edu/cfr/text/34/668.46>

- (6) **Title IX Stalking:** Stalking, for purposes of [Title IX Misconduct], means engaging in a course of conduct on the basis of sex directed at a specific person that would



- v. Affirmative consent may be initially given, but it can be withdrawn at any time. When affirmative consent is withdrawn or can no longer be given, sexual activity must stop.
- vi. Previous relationships or previous affirmative consent for sexual activity is not affirmative consent to sexual activity on a different occasion.
- vii. The definition of affirmative consent does not vary based upon a participant's sex, sexual orientation, gender identity, gender expression or relationship status.
- viii. Affirmative consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, coercion, or from a person who is incapacitated.
- ix. Under Georgia law, minors under the age of 16 years are generally unable to provide affirmative consent, with narrow exceptions. See O.C.G.A. § 16-6-3, Statutory Rape.

2. Force

"Force" refers to the use of physical violence and/or imposing on someone physically to gain sexual access. Sexual activity that is forced is non-consensual.

3. Incapacitation

"Incapacitation" occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. A person who is incapacitated lacks the ability to understand a decision to participate in sexual activity.

- i. Incapacitation may be associated with a person's lacking consciousness or awareness; being asleep; being involuntarily restrained; having a disability that impedes affirmative consent; or if an individual otherwise cannot affirmatively consent due to other forms of mental or physical helplessness.
- ii. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to provide affirmative consent.
- iii. Alcohol and drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. It is the responsibility of each party to be aware of the intoxication level of the other party before engaging in sexual activity. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity. Being intoxicated, impaired, or incapacitated by alcohol or other drugs is never an excuse for Prohibited Conduct and does not diminish anyone's responsibility to obtain affirmative consent. The use of alcohol or other drugs never makes someone at fault for experiencing Prohibited Conduct.
- iv. Please see [Appendix E](#) to this Policy for a list of factors that will be considered in making a determination of whether the Complainant's incapacitation has rendered the Complainant unable to provide affirmative consent.

4. Coercion

"Coercion" is conduct that would reasonably place an individual in fear of immediate or future physical, emotional, or other harm and that is used to pressure someone to engage in sexual contact. Coercion can include manipulation, intimidation, unwanted contact, express or implied threats of harm. Coercion is more than an effort to persuade, entice or attract another person to engage in sexual activity. In



evaluating whether coercion was used, the University will consider whether pressure was applied and, if so, the frequency, intensity, and duration of the pressure, as well as the degree of isolation of the person being pressured. Sexual activity that is coerced is non-consensual.

5. Intimidation

"Intimidation" is the use of implied or overt threats that menace or cause reasonable fear to overcome an individual's freedom of will to choose whether or not to participate in sexual activity or provide affirmative consent. Affirmative consent obtained by intimidation is not valid.

6. Report

A "Report" of "Prohibited Conduct" or "Title IX Misconduct" occurs when a Student, Employee, or Third Party notifies the Department of Title IX of alleged misconduct and requests support and resources, but where there has not yet been a decision about whether to resolve the allegations through University administrative process.

V. REPORTING

As Sexual and Gender-Based Harassment and Discrimination may, in some instances, constitute a violation of University policy and constitute criminal activity, the University encourages individuals to report alleged Prohibited Conduct promptly to campus officials and to law enforcement authorities, where appropriate.

The University and criminal justice systems work independently from one another; a Complainant may proceed with a Title IX grievance procedure and the criminal justice process concurrently, though investigations for each process will be conducted separately. Law enforcement authorities do not determine whether a violation of this Policy has occurred, and the criminal justice system uses different standards related to proof and evidence. Any questions about whether a sp g viicncet1(vi)-1(olatioethe criminal)-1()1(j)l1(aw ensug)lby and-1(,)dssureto law enforcemetl



- a. Counseling and Psychological Services (CAPS) - Atlanta Campus / Counseling and Career Services (CCS) – Oxford Campus:** Both CAPS and CCS offer professional, licensed counselors who provide mental health counseling to students.
- b. Office of Spiritual and Religious Life – Atlanta and Oxford Campuses:** These Offices have chaplains and clergy members who provide pastoral counseling in their professional roles.
- c. Student Health Services (SHS) – Atlanta and Oxford Campuses:** A disclosure may be made to healthcare providers in their caregiving roles.
- d. Emory Ombuds Office - Atlanta and Oxford Campuses:** The Ombuds Office is a confidential resource for faculty, staff, and students.
- e. Faculty and Staff Assistance Program (FSAP):** A disclosure may be made to a licensed mental health professional within FSAP.
- f. Office of Respect:** The Office of Respect provides confidential support for Emory students who have or are experiencing interpersonal harm (including, but not limited to, sexual assault,



reports and complaints. The University Title IX Coordinator does not act as an advocate but as neutral resource available to all

The University Title IX Coordinator is also responsible for referring individuals and employees to available resources, offering support

with confidentiality concerns. The University Title IX Coordinator also designates Deputy Title IX Coordinators within each of the University's

The Department of Title IX will reveal information about its investigation and adjudication of Prohibited Conduct only to those with

C. Reporting to the Emory Police Department (EPD) \ Oxford Police Department (OPD) or Law Enforcement

Students, Employees, and Third Parties have the option to file a complaint directly with EPD or OPD, as appropriate, or other appropriate

In an emergency situation, Students and Employees should call 911 to be directed to the closest law enforcement agency

Atlanta Campus

Emory Police Department: 7-0111 (on-campus) or (404) 727-0111 (off-campus)
Atlanta Police Department: (404) 614-0244

Oxford Campus

Emory Police Department: 7-0111 (on-campus) or (404) 727-0111 (off-campus)
Newton County Sheriff's Office: (678) 652-1403

Students, Employees, and Third Parties may also provide information to the EPD on an anonymous basis by utilizing the TIPS line

Please note, the Emory Police Department's and Atlanta Police Department's anonymous TIPS lines are not for emergency



Respondent's disciplinary history, and the parties' rights under the Family Educational Rights and Privacy Act (FERPA). The Title IX Coordinator will promptly notify the impacted Student, Employee, or Third Party making a request for confidentiality whether the University will be able to honor the



Supportive Measures may also be requested by and made available to Respondents, witnesses, and other impacted members of the University community. Requests for supportive measures shall be submitted in writing to the University Title IX Coordinator, who will consider these requests on a case-by-case basis.

While the Title IX Coordinators will ultimately serve as the point of contact for any party requesting Supportive Measures, Supportive Measures may, in the first instance, be requested directly from the [Confidential Resources](#) set forth above regardless of whether the Title IX Misconduct or other Prohibited Conduct is otherwise reported to the University or law enforcement. Ultimately, the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

To determine the appropriate Supportive Measure(s) to be implemented, the University conducts an individualized assessment based on the unique facts and circumstances of a situation. Supportive Measures will not be disciplinary or punitive in nature and will not unreasonably burden, or unreasonably interfere with the educational pursuits of, the other party. Whether a possible Supportive Measure would unreasonably burden the other party is a fact-specific determination that takes into account the nature of the educational programs, activities, opportunities and benefits in which an individual is participating.

Examples of Supportive Measures include:

- Academic support services and accommodations, including the ability to reschedule classes, exams and assignments, transfer course sections, or withdraw from courses without penalty;



Promptly after the dismissal, the Title IX Coordinator will refer the matter to the appropriate department and/or academic unit for consideration through the following channels and applicable policies:

A. For Employees:

Prohibited Conduct as defined by this policy will be transferred to the Office of Equity and Inclusion when the matter involves an employee. The Office of Equity and Inclusion will adjudicate this matter pursuant to the University's Equal Opportunity and Discriminatory Harassment Policy 1.3.

B. For Students:

Prohibited Conduct as defined by this policy will be adjudicated in conformity with the Non- Title IX Prohibited Conduct Grievance Procedure located in [Appendix B](#) of this policy when the matter involves students.

Related Links

- [Policy 1.3: Equal Opportunity and Discriminatory Harassment Policy \(http://policies.emory.edu/1.3\)](http://policies.emory.edu/1.3)
- [Policy 4.119: Mandated Child Abuse Reporting \(http://policies.emory.edu/4.119\)](http://policies.emory.edu/4.119)
- [Policy 8.16: Title IX Reporting Exception for Research \(http://policies.emory.edu/8.16\)](http://policies.emory.edu/8.16)

Contact Information

| Subject | Contact | Phone | Email |
|-------------------------|---|--------------|--|
| Clarification of Policy | Nicole Babcock University Title IX Coordinator | 404-727-8205 | nicole.babcock@emory.edu |

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- a)** Notice of the University's Title IX grievance process, including an informal resolution process.
- b)** Notice of the allegations potentially constituting Title IX Misconduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include: the identities of the parties involved in the incident, if known; the conduct allegedly constituting Title IX Misconduct; and the date and location of the alleged incident, if known.

The written notice will also include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made



- Matters in which the Respondent is an Employee will be referred to the Department of Equity and Inclusion.
- b) The University may dismiss a Formal Complaint, or any allegations therein, at any time during the investigation or hearing, if:
- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
 - The Respondent is no longer enrolled or employed by the University; or
 - Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
 - The University retains discretion on a case-by-case basis to dismiss a Formal Complaint based on any of the above reasons. Just because one or all of the conditions above are satisfied, does not mean the University will automatically dismiss the Formal Complaint. Instead, the University will determine if such a decision is appropriate under the circumstances.

Written Notice of Dismissal:

Upon dismissal, the University will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties. The parties are entitled to appeal the dismissal under the appeal procedures set forth below.

Appeal Procedure for Dismissals:

Challenges to dismissals must be submitted in writing to the University Title IX Coordinator within seven (7) business days from the day the parties are notified about the dismissal. The University Title IX Coordinator will review the materials within five (5) business days of receipt of the challenge and may affirm or deny the original decision. The University Title IX Coordinator's determinations on dismissals are final and not appealable. Both parties shall receive simultaneous written notice of the outcome of the appeal.

2. Rights and Responsibilities with Parties

The Title Coordinators, or their designees, will conduct an intake meeting to inform the Complainant and the Respondent of their rights and responsibilities, the prohibition against retaliation, further provide information about supportive measures, discuss the Title IX Misconduct allegations, and provide information about the investigative and adjudication processes.



3. Threat Assessment

After the initial assessment, if the Title IX Coordinators determine the available information provides a rational basis for concluding that there may be an immediate threat to the Complainant or the University Community, the Title IX Coordinators will contact the Emory Threat Assessment Team ("TAT"). If TAT believes an immediate threat is present, they will determine what type of action should be taken.

For more information about the Threat Assessment Team, please see <http://emergency.emory.edu/threat-assessment/index.html>

4. Methods of Resolution

a) Informal Resolution

At any time after a Formal Complaint has been signed, and before a determination of responsibility has been reached, the parties may voluntarily agree to participate in an informal resolution facilitated by Emory University that



resolution process will not be used for or against either party (and the Hearing Officer and Appeal Officer may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to



exchanges, timelines, receipts, photographs, etc.

i. Rights of the Parties

- a) Advisor. The Complainant and the Respondent may be accompanied to any meeting or hearing by one advisor of their choice through the course of the Title IX process. The advisor may be any person, including an attorney.

Complainants and Respondents may consult with their advisors in drafting any written submissions that are allowed under this Policy; the written submission, however, must be from the Complainant or Respondent and not the advisor. Advisors, if present, shall be restricted to consulting with their advisees. Advisors may not intervene in a meeting or address the investigator unless invited to do so. Any violation of University policies committed by an advisor may lead to the exclusion of that advisor from the process. That includes, but is not limited to, any act of retaliation or breach of privacy committed by an advisor.

Each party has a responsibility to notify their advisor of the time, date and location of any meeting or disciplinary proceeding. Proceedings will not be unduly delayed to accommodate an advisor.

The University offers trained Title IX advisors for Complainants and Respondents. The University Title IX advisors support the Complainant or Respondent through the investigation and adjudication process. Individuals interested in utilizing a University Title IX advisor should submit a request in writing to the appropriate Title IX Coordinator.

University Title IX advisors may guide and assist the Complainant or the Respondent by:

- Connecting them to support services as needed;
- Clarifying questions about the investigation and adjudication process;
- Assisting in the reporting of any instance of retaliation;
- Providing general support during what can be a stressful process;



- Attending meetings or proceeding throughout the investigation and adjudication process; and
-



investigation, the University will send the parties and their advisors evidence directly related to the allegations in electronic format, at least 10 days prior to any hearing, for the parties to inspect, review, and respond to the evidence.

d) Report of Investigation. At the conclusion of the investigation, the investigator will prepare a draft Report of Investigation that fairly summarizes relevant evidence, which they will provide to the Title IX Coordinator. After reviewing the draft Report of Investigation, the University Title IX Coordinator may direct the investigator to ask further clarifying questions of the Complainant, Respondent, or witness(es) to supplement the Report of Investigation. The Title IX Coordinator will then send to the parties and their advisors, the report of investigation, in electronic format, with at least 10 business days for the parties to respond. The information provided by the parties in response to the Report of Investigation will be included in the Report of Investigation as an appendix, and the Report will then be finalized. In the event the determination is made to dismiss the Formal Complaint (see below), that information will be included in the Report of Investigation.

2. Live Hearings

The University's grievance process shall provide for a live hearing. Within 5 business days of Final Report of Investigation, the Title IX Coordinator will select the date, time, and location of the hearing in consultation with the Hearing Officer, and will provide notice to both parties. The Hearing Officer will be trained in Title IX procedures and will preside over the hearing.

All parties shall be given at least 10 business days' notice in advance of the hearing date, absent agreement by the parties to shorten the time or extraordinary circumstances as determined by the Hearing Officer. Extraordinary circumstances may include, but are not limited to: fall/spring/summer/holiday breaks; circumstances in which critical witnesses are unavailable; and other extenuating circumstances.

Hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the University must provide for the hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.



- i.** Advisors at the Live Hearing. If a party does not have an advisor present at the hearing, the University shall provide without fee or charge to that party, an advisor of the University's choice to conduct cross-examination on behalf of that party.
- ii.** Standard of Evidence. The level of proof required to determine whether or not a Respondent is responsible for the allegations shall be preponderance of the evidence, i.e., it is more likely than not that alleged conduct occurred.
- iii.** Relevance. Although the determination of relevance of testimony and information is in the discretion of the Hearing Officer, certain categories of evidence will rarely, if ever, be relevant. These include character evidence, polygraph and other generally unreliable or unproven scientific evidence, speculation, and the like. The Hearing Officer has broad discretion to determine the relevance of evidence.
- iv.** Role of the Hearing Officer/Decision-Maker.
 - a)** Pre-Hearing Procedures and Ground Rules. The Hearing Officer (and/or the Department of Title IX) may establish pre-hearing procedures relating to issues such as scheduling, hearing procedures, witness and advisor participation and identification, structure, advance determination of the relevance of certain topics, and other procedural matters. The Hearing Officer will communicate with the parties prior to the hearing with respect to these issues and establish reasonable, equitable deadlines for party participation/input.
 - b)** Decorum. The Hearing Officer also has wide discretion over matters of decorum at the hearing, including the authority to excuse from the hearing process participants who are unwilling to observe rules of decorum.
 - c)** Determine Relevance of Questions. At the hearing, both parties will be given the opportunity to ask cross-examination questions of the other party through their advisors; however, only relevant cross-examination



3. Hearing Procedures

- i. The Hearing Officer shall call the hearing to order and state the date and time.
- ii. The Hearing Officer shall ask for identification of the parties attending the hearing for the record. If the Complainant and/or the Respondent fails to appear at the hearing, and such party was provided proper notice of the hearing as set forth above, then absent extenuating circumstances, the Hearing Officer will proceed to determine the resolution of the complaint.
- iii. The Hearing Officer shall state the conditions of the hearing including:
 - 1) There shall be a single verbatim record, such as a tape recording, of all hearings (not including deliberations). The recording shall be the property of the University. Documentation of the proceedings, including the written decision, transcripts, and any audio recordings, are maintained in accordance with the applicable University document retention records. Reasonable care will be taken to create a quality audio recording and minimize technical problems; however, technical problems that result in no recording or an inaudible one cannot, by itself, serve as a basis to overturn an outcome upon appeal by a party.
 - 2) Rules of evidence applicable to courts of law will not apply.
 - 3) The hearing shall be non-adversarial in nature. The Hearing Officer shall be empowered to take all steps as necessary to preserve the non- adversarial character of the proceeding.
 - 4) The hearing shall be closed, with participation limited to the Respondent, Complainant, Advisors, and/or Witness(es). Witnesses will remain outside the hearing until asked to provide information.
 - 5) The University may request that a non-party student or a faculty/staff member attend the hearing and give testimony relevant to the case under consideration.
 - 6) Both parties have the right to be present for the entire hearing,



except for deliberations or recesses for the hearing board to discuss procedural issues. Neither party shall be required to be in the

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The University's ability to take appropriate corrective action against a Third Party will be determined by the nature of the Third Party's relationship to the University. The Title IX Coordinator will determine the appropriate manner of resolution in accordance with the University's commitment to a prompt and equitable process and consistent with state and federal law, regulations, guidance, and this Policy.

If the Respondent is a University Employee and/or Student but acting outside their Employee/Student capacity, the Third-Party Procedures may apply. The Title IX Coordinator will determine which Procedures apply based upon the facts and circumstances, such as whether the Respondent's status as a Third Party or Employee/Student predominates in the context of the Prohibited Conduct.

5. Appeals

Both parties have the right to appeal the University's dismissal of a Formal Complaint, or any allegations therein, and the outcome of the hearing on the following grounds:

- Procedural irregularity that affected the outcome of the matter, which may include, but is not limited to, failure to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- The Title IX Coordinator, investigator(s), or members of the hearing board had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that affected the outcome of the matter.

Appeals may be submitted in writing by a Complainant or Respondent to the appropriate University Title IX Coordinator. Appeals must be filed within seven (7) business days of the date that the Title IX Coordinator sends the parties the written determination.

Upon receipt of an appeal the University Title IX Coordinator shall:

- 1) Notify the other party in writing.
- 2) Give the non-appealing party seven (7) business days from the date the party receives notice to submit a written statement challenging the appeal.



- 3) Appoint an appeal officer with appropriate knowledge and training to determine if there is a reasonable basis for changing the outcome of a hearing or the sanction imposed.

The appeal officer will review the materials within 10 business days of receipt of the appeal, examining all documentation of the hearing to determine if there is a reasonable basis for changing the outcome. The appeal officer will issue a written determination of the appeal and the rationale for the result, or may request that the Title IX Coordinator take the following steps:

- Affirm the original finding and sanction;
- Affirm the original finding but issue a new sanction, which may be of greater or lesser severity;
- Remand the case back to the hearing board or a new hearing board to correct a procedural or factual defect; or
- Dismiss the case if there was a procedural or factual defect that cannot be remedied by remand.

The appeal officer's determinations are final and not appealable. However, the outcome of a remanded case may again be appealed under this provision. Procedures on remand to the hearing board will be directed and communicated to the parties by the Title IX Coordinator and will, to the extent possible, comply with analogous, original time frames for the Hearing Board's resolution.

Both parties shall receive simultaneous written notice of the outcome of the appeal. The determination regarding responsibility becomes final on the date that the Title IX Coordinator provides the parties with the written decision of the result of the appeal.

This appeal process is specifically to challenge the outcomes in the Title IX process and does not alter or limit the ability for an employee to appeal an employment action under any other applicable policy.

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b) Sanctions

Emory may impose a range of sanctions and protective measures following a



- Removal from leadership/supervisory positions within the University community;
- Revocation of honors or awards;
- Loss of University privileges (i.e., using University athletic facilities, parking on campus, using the campus library, utilizing the dining hall);
- Community service;
- Reprimand;
- Restitution;
- Warning; and
- Any other discretionary sanctions that are directly related to the violation or conduct and that are aimed at eliminating sexual misconduct, preventing its recurrence, and addressing its effects on the Complainant and, if warranted, the University community.

c) Appeals

Both parties shall have the right to appeal the outcome on any of the following grounds:

- 1) To consider new information, sufficient to alter the decision, or other relevant facts not brought out in the investigation because such information was not known or knowable to the appealing party during the investigation.
- 2) To allege a significant procedural error within the investigative process that may have substantially impacted the fairness of the investigation, the decision, and/or the sanction.
- 3) To allege that the sanction imposed is overly excessive or insufficient based upon the weight of the information considered by University Title IX Coordinator

Appeals must be submitted in writing to University Title IX Coordinator within seven (7) business days from the day the parties are notified about the outcome of the case. Upon receipt of an appeal, the University Title IX Coordinator will send a copy of the appeal to the other party, who will have seven (7) business days to file a response, if the party chooses to do so.

The University Title IX Coordinator will appoint an appeal officer with appropriate knowledge and training whose job it is to determine if there is a reasonable basis for changing the outcome or the sanction imposed. The appeal officer will review the materials within ten (10) business days of receipt of the appeal, examining

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VI. OXFORD CAMPUS

| | Seeking information and support | Obtaining counseling | Seeking accommodations or interim measures | Bringing a formal Title IX complaint or criminal charges |
|---|---------------------------------|----------------------|--|--|
| Counseling and Career Services (CCS) 770-784-8394 https://oxford.emory.edu/life/campus_life/counseling_career.html <i>*Confidential Resource*</i> | X | X | | |
| Student Health Services 770-784-8376 https://oxford.emory.edu/life/campus_life/student_health_services.html <i>*Confidential Resource*</i> | X | X | | |
| Office of Spiritual and Religious Life (Chaplain Lyn Pace) 770-784-8392 https://oxford.emory.edu/life/campus_life/religious.html <i>*Confidential Resource*</i> | X | X | | |
| Emory Hillandale Hospital (Lithonia) 280 DeKalb Medical Parkway Lithonia, GA 30058 404-501-8000 <i>*Confidential Resource*</i> | X | X | | |
| Health Educator & Coordinator of Student Support (Alex Miller-Knaack) 770-784-4776 alexandra.miller-knaack@emory.edu | X | | X | X |
| Emory Police Department 404-727-6111 http://police.emory.edu/ Deputy Title IX Coordinators (Oxford) | X | | | X |



emergency number): 404-727-TIPS (8477) <https://police.emory.edu/services/index.html>

Emory Trust Line (allows for anonymous and confidential reporting 24/7):
1-888-550-8850 <http://iad.emory.edu/compliance/trustline/index.html>

Emory Public Safety's Victim and Survivor Resources:
<https://police.emory.edu/services/victims.html>

DeKalb County Day League (formerly DeKalb Rape Crisis Center; services DeKalb, Newton, and Rockdale Counties):
404-377-1428 for 24-hour confidential crisis line / 404-377-1429 for free counseling service
<http://www.dayleague.org/>

Georgia's 24-hour Domestic Violence Hotline: 800-334-2836

Georgia Legal Aid: <https://www.georgialegalaid.org/>

Georgia Network to End Sexual Assault (GNESA): <http://www.gnesa.org/>

VIII. Center for Changing our Campus Culture (nan9.r2c8 Ceng9ire (<http://lwww./>



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APPENDIX E

CONSIDERATIONS OF INCAPACITATION

For determining whether incapacitation impacts consent, the following explanations should be considered as guideposts for determinations; however, not all factors need to be present to support a finding:

The question of incapacitation does not need to rely on medical expertise/judgment or the legal standard of intoxication. The determination of incapacitation from drugs or alcohol can be properly based on objective and reasonably apparent indications.

Incapacitation is a state beyond impairment or intoxication and therefore it is important to identify how and to what extent a person's ability to make a decision about sexual activity was affected.

Incapacitation, by definition, means that a person's decision-making ability was affected, so much so that a person does not have awareness of consequences; have the ability to make informed, rational judgments; or the capacity to appreciate the nature and quality of the act.

Mental and/or physical helplessness may result in incapacity. Mentally helpless means a person is rendered temporarily incapable of appraising or controlling one's own conduct. Physically helpless means a person is physically unable to verbally or otherwise communicate consent or unwillingness to an act.

Consider whether the person against whom Prohibited Conduct is alleged to have occurred was asleep, unconscious, or unaware that sexual activity was occurring.

Consider whether there were common and obvious warning signs that show that a person may have been incapacitated during the relevant time frame or approaching incapacitation. Although every individual may show signs of incapacitation differently, and the impact of alcohol and other drugs varies from person to person, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence.

A person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know whom you are with?" (Who, what, where, when, why?)





resources provided by the Department of Title IX are also provided for incoming graduate student orientations.

- Returning students on the Atlanta campus (in fraternities, sororities, and student organizations), are invited to request an Active Bystander Skills (ABS) two-hour workshop, a training originally created/named by Emory students during the 2014-2015 academic year. A cohort of upper-level students ("ABS Trainers") receives advanced education each semester to facilitate these ABS workshops, making students the peer leaders of this initiative. The Office of Respect, in collaboration with Emory Athletics, has also received Step Up!, a nationally-recognized bystander intervention training, to act as a layered educational experience for our student athletes.

Other Training and Education Initiatives

- Division of Campus Life and Residence Life personnel routinely receive training in sexual assault response, sexual consent, healthy relationships, among other topics requested, at a minimum, on an annual basis.
- Emory Title IX officials and department of Human Resources engage in awareness building of Emory's



social media campaigns, and awareness events to highlight necessary dialogue on the

