

## PROCEDURE DOCUMENT

Subject: <b>Sexual Misconduct Investigation and Adjudication Procedures for Students</b>			
Section <b>University-Wide</b>	Effective Date <b>1/14/19</b>	Last Reviewed	Revision Date <b>11/12/20</b>

### I. PROCEDURE PURPOSE

These procedures articulate the process for investigating and adjudicating allegations of Sexual Misconduct against a University student in a prompt, thorough, and equitable manner.

### II. DEFINITIONS

- A. **Complainant:** An individual who is alleged to have experienced conduct that violates this Policy.
- B. **Investigators:** Individual(s) trained in Title IX compliance who shall conduct a prompt, thorough, and equitable investigation of any alleged Sexual Misconduct.
- C. **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 Employee or Privileged Employee. Student employees who serve in a supervisory, advisory, or managerial role are in a position of authority for purposes of this Policy (e.g., teaching assistants, residential assistants, student managers, orientation leaders).
- D. **Respondent:** An individual who is alleged to have engaged in conduct that violates this Policy.
- E. **Sexual Misconduct:** Includes, but is not limited to, such unwanted behavior as Dating Violence, Domestic Violence, nonconsensual sexual contact, nonconsensual sexual penetration, Sexual Exploitation, Sexual Harassment and Stalking. These terms, along with all applicable underlying and related terms, are defined in the Sexual Misconduct Policy, each of which definitions is incorporated herein by this reference.

- F. **Title IX Coordinator:** The designated University official with primary responsibility for coordinating the University's compliance with Title IX and other federal and state laws and regulations relating to sex-based discrimination.
- G. **Title IX Hearing Panel:** Staff and/or faculty authorized and trained by the Title IX Coordinator to determine whether a Student has violated the sexual misconduct policy and to determine sanctions that will be imposed when a violation has occurred. Based on the needs and resources of each campus, a Title IX Hearing Panel will consist of at least three members, but no more than seven total members. This panel does not include students.
- H. **University Community:** Students, faculty, and staff, as well as contractors, vendors, visitors, and guests.

### III. PROCEDURES

#### A. Reporting Sexual Misconduct

Any individual who believes that they have been a victim of Sexual Misconduct is encouraged to report allegations of sexual misconduct promptly. 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 Title IX Coordinator; or file both. A report may be filed anonymously, although anonymous reports may make it difficult for the University to address the complaint.

##### 1. University Reports

- a. Complainants of Sexual Misconduct, who wish to file a report with the University, should notify a Responsible Employee or the Title IX Coordinator. Responsible Employees informed of Sexual Misconduct allegations involving any student should not attempt to resolve the situation, but must notify and report all relevant information to the Title IX Coordinator as soon as practicable. Employees with questions regarding their reporting obligations should refer to [LINK: Reporting Guidelines for Employees].
- b. Complainants are encouraged to report their complaints in writing, though oral complaints will 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 will be accepted regardless of when reported.
- c. Complaints should include as much information as possible – including: (1) the type of sexual misconduct experienced; (2) the name of the respondent; (3) the date(s), time(s), and place(s) of the sexual misconduct; (4) the name(s) of any individual(s) with knowledge of the incident; (5) whether any

tangible evidence has been preserved; and (6) whether a criminal complaint has been made.

## **2. Law Enforcement Reports**

Because Sexual Misconduct may constitute criminal activity, a Complainant also has the option, should the Complainant so choose, of filing a report with campus or local police, for the Complainant's own protection and that of the surrounding community. The institution may assist the Complainant in reporting the situation to law enforcement officials. Filing a criminal report does not automatically constitute an institutional report.

## **3. Anonymous Reports**

- a. Members of the UNG community can file anonymous reports of Sexual Misconduct at [www.ung.edu/SAVE](http://www.ung.edu/SAVE)
- b. Complainants should understand, however, that it will be more difficult for the University to investigate and to take action upon anonymous reports.

## **B. Confidentiality**

1. Where a Complainant requests that his or her identity be withheld or the allegation(s) not be investigated, UNG will consider, through the Title IX Coordinator, whether this request can be honored while still providing a safe and nondiscriminatory environment for the institution. Honoring the request may limit the institution's ability to respond fully to the incident and may limit the institution's ability to discipline the respondent.
2. Information from complaints will be shared only as necessary to investigate and to resolve the alleged sexual misconduct. The Title IX Coordinator will work with the appropriate institutional department to determine the need to issue a broader warning to the community in compliance with the Clery Act or to report activity to the authorities.

## **C. Resources**

The Title IX Coordinator will review available on and off campus resources (e.g. mental health counseling and law enforcement) for the both the Complainant and the Respondent in their initial meeting.

## **D. Initial Evaluation**

1. Regardless of how the University becomes aware of alleged sexual misconduct, the Title IX Coordinator shall ensure a prompt, fair and impartial review and resolution of complaints alleging sexual misconduct. Where a report

of sexual misconduct has been made, the Title IX Coordinator shall review the complaint to determine whether the allegation(s) describes conduct in violation of UNG's Sexual Misconduct Policy.

2. The Title IX Coordinator should dismiss an allegation of Sexual Misconduct against a student when:
  - a. The alleged conduct, even if proved, would not constitute sexual misconduct;
  - b. The Complainant notifies the Coordinator in writing that they would like to withdraw the complaint;
  - c. The Respondent is no longer enrolled or employed by the institution; or
  - d. There are circumstances that prevent the institution from gathering evidence sufficient to reach a determination regarding the complaint.

However the Respondent may still be subject to University action if the alleged behavior violates another policy.

The parties shall receive simultaneous written notice of the dismissal and the reason(s) for the dismissal. The parties shall have a right to appeal the institution's decision to dismiss the complaint.

3. If an allegation(s) describes conduct, that if true, could constitute a violation of UNG's Sexual Misconduct Policy, the Title IX Coordinator will assign an Investigator(s) to investigate the complaint.
4. Any report that involves allegation(s) of sexual misconduct that could lead to the suspension or expulsion of the respondent(s) in an initial violation must be promptly reported to the University System of Georgia Title IX Coordinator.

#### **E. Support Services**

Once the Title IX Coordinator has received information regarding an allegation of Sexual Misconduct the parties will be provided written information about support services. Support services are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without charge that are made available to the Complainant and Respondent before or after the filing of a complaint or where no complaint has been filed. Support services include counseling, advocacy, housing assistance, academic support, disability services, health and mental services, and other services, available at the student's institution. Available support services should be listed on UNG's website at <https://ung.edu/sexual-assault-and-violence-education/resources.php>

## **F. Interim Measures**

1. Interim measures may be implemented at any point after the institution becomes aware of an allegation of sexual misconduct and should be designed to protect any student or other individual in the USG community. Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the campus community, or deter Sexual Misconduct and retaliation. Interim measures must be provided consistent with the provisions in applicable Board and institutional policies and procedures.
2. The Title IX Coordinator or his/her designee should evaluate whether interim protective measures are needed before the final outcome of an investigation and until final resolution of the allegations. Interim measures are appropriate if there is an immediate threat to the safety and well-being of the complainant or other members of the institution, or to ensure equal access to the institution's education programs and activities. Before any such measures are instituted, however, the Title IX Coordinator will, where practicable, provide the respondent with an initial opportunity to respond to the allegations and to the imposition of any interim protective measures specifically.
3. An interim suspension will only occur where necessary to promote safety and should be limited to those situations where the Respondent poses a serious and immediate danger or threat to persons or property. In making such an assessment, the institution should consider the existence of a significant risk to the health or safety of the Complainant or the campus community; the nature, duration, and severity of the risk; the probability of potential injury; and whether less restrictive means can be used to significantly mitigate the risk.
4. Before an interim suspension is issued, the institution must make reasonable efforts to give the Respondent the opportunity to be heard on whether the Respondent's presence on campus poses a danger. If an interim suspension is issued, the terms of the interim suspension take effect immediately. The Respondent shall receive notice of the interim suspension and the opportunity to respond to the interim suspension.  
Within three business days of receiving a challenge the institution will determine whether the interim suspension should continue.

## **G. Impartial Investigation.**

1. Throughout any investigation and resolution proceeding, a party shall receive written notice of the alleged Sexual Misconduct, shall be provided an opportunity to respond, and shall be allowed the right to remain silent or otherwise not participate in or during the investigation and resolution process without an adverse inference resulting. If a party chooses to remain silent or

otherwise not participate in the investigation or resolution process, the investigation and resolution process may still proceed, and policy violations may result.

2. Until a final determination of responsibility, the Respondent is presumed to have not violated the Sexual Misconduct Policy. Prior to the finalization of the investigation report, timely and equal access to information directly related to the allegations that has been gathered during the investigation and may be used at the hearing will be provided to the Complainant, the Respondent, and a party's advisor (where applicable).
3. Formal judicial rules of evidence do not apply to the investigation process, additionally the standard of review throughout the Sexual Misconduct process is a preponderance of the evidence.
4. The parties shall be provided with written notice of the: report/allegations with sufficient details, pending investigation, possible charges, possible sanctions, available support services and interim measures, and other rights under applicable institutional policies. For the purposes of this provision sufficient details include the identities of the parties involved, if known, the conduct allegedly constituting Sexual Misconduct, and the date and location of the alleged incident, if known. This information will be supplemented as necessary with relevant evidence collected during the investigation. The notice should also include the identity of any Investigator(s) involved. Notice should be provided via institution email to the party's institution email.
5. Upon receipt of the written notice, the parties shall have at least three business days to respond in writing. In that response, the Respondent shall have the right to admit or deny the allegations, and to set forth a defense with facts, witnesses, and supporting materials. A Complainant shall have the right to respond to and supplement the notice. Throughout the Sexual Misconduct process the Complainant and the Respondent shall have the right to present witnesses and other inculpatory and exculpatory evidence.
6. If the Respondent admits responsibility, the process may proceed to the sanctioning phase or may be informally resolved, if appropriate.
7. An Investigator shall conduct a thorough investigation and should retain written notes and/or obtain written or recorded statements from each interview. The Investigator shall also keep a record of any party's proffered witnesses not interviewed, along with a brief, written explanation of why the witnesses were not interviewed.
8. An Investigator shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional made in connection with the party's treatment unless

the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.

9. The initial investigation report shall be provided to the Complainant, the Respondent, and a party's advisor (if applicable). This report should fairly summarize the relevant evidence gathered during the investigation and clearly indicate any resulting charges or alternatively, a determination of no charges. For purposes of this Policy, a charge is not a finding of responsibility.
10. The Complainant and the Respondent shall have at least 10 calendar days to review and respond in writing to the initial investigation report and directly related information gathered during the investigation. The Investigator will review the Complainant's and the Respondent's written responses, if any, to determine whether further investigation or changes to the investigation report are necessary.
11. The final investigation report should be provided to the Complainant, the Respondent, and a party's advisor, if applicable, at least 10 calendar days prior to the hearing. The final investigation report should also be provided to all Hearing Panel members for consideration during the adjudication process.

#### **H. Resolution Types – Informal and Formal (Hearing)**

1. The Respondent and the Complainant, as parties to the matter, may have the option of selecting informal resolution as a possible resolution in certain cases where the parties agree, and it is deemed appropriate by the institution.
2. The Respondent and Complainant have the option to end informal resolution discussions and request the formal resolution process at any time before the terms of an informal resolution are reached. However, matters resolved informally shall not be appealable.
3. Where a matter is not resolved through informal resolution a hearing shall be set. All Sexual Misconduct cases shall be heard by a panel of faculty and/or staff. All institutional participants in the Sexual Misconduct resolution process shall receive appropriate annual training as directed by the System Director or Coordinator and required by the Clery Act and Title IX.
  - a. In no case shall a hearing to resolve a Sexual Misconduct allegation take place before the investigation report has been finalized. The Investigator may testify as a witness regarding the investigation and findings but shall otherwise have no part in the hearing process and shall not attempt to otherwise influence the proceedings outside of providing testimony during the hearing. All directly related evidence shall be available at the hearing for the parties and their advisors to reference during the hearing.

- b. The Hearing Panel follows the hearing guidelines set forth in [The Student Code of Conduct](#).

**I. Appeal**

Both the Complainant and the Respondent have the right to appeal the findings of the Title IX Panel under the guidelines set forth in [The Student Code of Conduct](#).

**IV. POLICY REFERENCE**

The procedures above are part of the operational implementation of the University of North Georgia's Sexual Misconduct Policy and are in compliance with that policy.

**V. REVIEW AND RESPONSIBILITY**

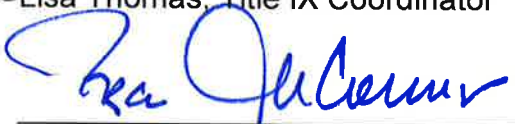
Responsible Party: Title IX Coordinator

Review: Every three years (or more frequently if needed)

**VI. APPROVAL**

  
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 Lisa Thomas, Title IX Coordinator

11/10/2020  
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 Date

  
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 Mac McConnell, Senior Vice President for Business & Finance

11/10/20  
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 Date

**REVISION/REVIEW LOG**

Revision Number	Approved Date	Description of Changes
01		Changes made throughout document to align with USG policy changes.