



## **Sexual Misconduct**

### **I. Introduction**

In accordance with federal and state law including, Title IX of the Education Amendments of 1972 (“Title IX”) and Title VII of the Civil Rights Act of 1964 (Title VII), Albany State University (ASU) prohibits discrimination on the basis of sex in any of its education programs or activities or in employment. ASU is committed to ensuring the highest ethical conduct of the members of its community by promoting a safe learning and working environment. To that end, this Policy prohibits sexual misconduct, a form of sex discrimination, as defined herein.

In the event that any information contained within this policy conflicts with any Board of Regents (BOR) policy, the BOR policy controls

### **II. Purpose**

ASU is committed to reducing incidents of sexual misconduct, providing prevention tools, conducting ongoing awareness and prevention programming, and training the campus community in accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) and the Violence Against Women Act (“VAWA”). Prevention programming and training will promote positive and healthy behaviors and educate the campus community on consent, sexual assault, sexual harassment, alcohol and drug use, dating violence, domestic violence, stalking, bystander intervention, and reporting.

When sexual misconduct does occur, all members of the ASU 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 ASU in reporting and addressing sexual misconduct. This Policy applies to all members of the ASU community. This Policy is not intended to infringe or restrict rights guaranteed by the United States Constitution including free speech under the First Amendment, or the due process clauses of Fifth and Fourteenth Amendments.

#### *Reporting Structure*

The Title IX Coordinator (“Coordinator”) at ASU will shall have a direct reporting relationship to both the institution’s President or the President’s designee and University of Georgia’s (USG) System Director for Equity and Investigations (“System Director”). The President of each (USG) 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.

### **III. Definitions**

**Community** – Students, faculty, and staff, as well as contractors, vendors, visitors and guests.

**Complainant** – An individual who is alleged to have experienced conduct who violates this Policy.

**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 a 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. The existence of such relationship shall be determined based on the totality of the circumstances including, without limitation to: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

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 or any state of unconsciousness, 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 the touching of a person's intimate parts (for example, genitalia, groin, breasts, or buttocks); touching a person with one's own intimate parts; or forcing a person to touch his or her own or another person's intimate parts. This provision also includes "Fondling" as defined by the Clery Act.

**Nonconsensual Sexual Penetration** – Any penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part; or contact between the mouth of one person and the genitals or anus of another person. This provision also includes "Rape, Incest, and Statutory Rape" as defined by the Clery Act.

**Confidential Employees** – Institution employees who have been designated by the institution to talk with a Complainant or Respondent in confidence. Confidential Employees must only report that the incident occurred and provide date, time, location, and name of the 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 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.

**Reasonable Person** – An individual who is objectively reasonable under similar circumstances and with similar identities to the person being evaluated by the institution.

**Reporter** – An individual who reports an allegation of conduct that may violate this Policy but who is not a party to the complaint.

**Respondent** – An 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 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).

**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 or capturing of the 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 (Student on Student)** – Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes), determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to participate in or to benefit from an institutional education program or activity in violation of Title IX.

**Sexual Harassment (Other than Student on Student)** – Unwelcome verbal, nonverbal, or physical conduct, based on sex (including gender stereotypes), that may be any of the following:

- 1) Implicitly or explicitly a term or condition of employment or status in a course, program, or activity;
- 2) A basis for employment or educational decisions; or
- 3) 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 to benefit from an institutional program or activity.

ASU also prohibits unwelcome conduct determined by a Reasonable Person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an ASU education program or activity in violation of Title IX.

**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.

**Stalking** – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

- 1) 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.
- 2) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily, require medical or other professional treatment or counseling.

#### **IV. Policy**

##### *Reporting Sexual Misconduct*

ASU encourages the reporting of all sexual misconduct as soon as possible. While there is no statute of limitations on an institution's ability to respond to a report, the ability to respond diminishes with time as information and evidence may be more difficult to secure.

### *Institutional Reports*

An institutional report occurs when the institution has notice of a complaint. That notice occurs in two instances:

- 1) When a Responsible Employee receives a complaint; or
- 2) When the Title IX Coordinator or their designee receives a complaint.

Any individual may make a report, but the institution does not have notice of the report until information is known to a Responsible Employee or the Coordinator. The report may be made directly to the Coordinator in multiple formats to include: writing, email, phone, letter, fax, interview, or other method that provides the basis of the complaint of sexual misconduct. There is no specific information required to constitute a report; however, the report should contain as much information as can be provided. Reporting options should be included on the Title IX website.

Complainants, or anyone with knowledge of sexual misconduct, may file a report with a Responsible Employee or the Coordinator. That Responsible Employee must provide a complete reporting of all information known to them to the Coordinator. Responsible Employees informed about sexual misconduct allegations should not attempt to resolve the situation, but must notify and report all relevant information to the Coordinator as soon as practicable

Upon receipt of an institutional report, the Coordinator will contact the Complainant. That contact will discuss the availability of supportive measures, the invitation to discuss their wishes with respect to implementation of supportive measures, and explain the process of filing a complaint. An institutional report does not automatically prompt an investigation.

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.

The Coordinator shall notify the System Director of 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 support services or 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 could lead to the Respondent's suspension or expulsion, the Title IX Coordinator shall notify the System Director or designee. The System Director shall have the discretion oversee the handling of the complaint.

### *Confidential Reports*

Confidential Employees or Privileged Employees may receive reports of sexual-based misconduct without the requirement to report that information to the Coordinator, except as dictated by law or professional standards. Upon request by the Complainant, Confidential Employees and Privilege Employees may make a report to the Coordinator within the degree of specificity dictated by the Complainant.

Nothing in this provision shall prevent an institution staff member who is otherwise obligated by law (i.e., the Clery Act) to report information or statistical data as required.

#### *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.

#### *Anonymous Reports*

Each institution shall provide a mechanism by which individuals can report incidents of alleged sexual misconduct anonymously. Individuals should understand, however, that it will be more difficult for the institution to respond and to take action upon anonymous reports.

#### *Complaint Consolidation*

Each institution may consolidate complaints as to allegations of sexual misconduct against more than one Respondent, by more than one Complainant against one or more Respondents, or cross-complaints between parties, where the allegations of sexual misconduct arise out of the same facts or circumstances.

Parties shall have the opportunity to request or object to the consolidation; however, the institution shall have the authority to make the final determination. For the purpose of this Policy consolidation may occur during the investigation and/or the adjudication phases of the sexual misconduct process.

#### *Complaint Dismissal*

Each institution is permitted, but not required, to dismiss complaints on the following grounds:

- 1) The alleged conduct, even if proved, would not constitute sexual misconduct;
- 2) The Complainant notifies the Coordinator in writing that they would like to withdraw the complaint;
- 3) The Respondent is no longer enrolled or employed by the institution; or
- 4) There are circumstances that prevent the institution from gathering evidence sufficient to reach a determination regarding the complaint.

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.

#### *Retaliation*

Anyone who has made a report or complaint, provided information, assisted, participated or refused to participate in any manner in the sexual misconduct Process, shall not be subjected to retaliation. Anyone who believes that they have been subjected to retaliation should immediately contact the Coordinator or their designee. Any person found to have engaged in retaliation in violation of this Policy shall be subject to disciplinary action.

### *False Complaints*

Individuals are prohibited from knowingly making false statements or knowingly submitting false information to a system or institution official. Any person found to have knowingly 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 appropriate institutional process.

### *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 a student during an investigation concerning the consumption of drugs or alcohol will not be used against the particular student in a disciplinary proceeding or voluntarily reported to law enforcement; however, students may be provided with resources on drug and alcohol counseling and/or education, as appropriate. Nevertheless, these students may be required to meet with staff members in regards to the incident and may be required to participate in appropriate educational program(s). The required participation in an educational program under this amnesty procedure will not be considered a sanction.

Nothing in this amnesty provision shall prevent an institution staff member who is otherwise obligated by law (the Clery Act) to report information or statistical data as required.

### *Responding to Reports of Sexual Misconduct*

#### 1) Support Services

- a. 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 also be listed on the institution's Title IX website.

#### 2) Interim Measures

- a. 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 ASU 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.

#### 3) Jurisdiction

- a. Emergency removal should only occur where necessary to maintain 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.
- b. Each institution shall take necessary and appropriate action to protect the safety and well-being of its community. Sexual misconduct allegedly committed is addressed by this Policy when the misconduct occurs on institution property, or at institution-sponsored or affiliated events, or off-campus, as defined by other Board or institution student conduct policies.
- 4) Advisors
    - a. Both the Complainant and the 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. The advisor may accompany the party to all meetings and may provide advice and counsel to their respective party throughout the sexual misconduct process, including providing questions, suggestions and guidance to the party, but may not actively participate in the process except as outlined in BOR 6.7.4 (D). All communication during the sexual misconduct process will be between the institution and the party and not the advisor. With the party's permission, the advisor may be copied on all communications.
  - 5) Informal Resolutions
    - a. Allegations of sexual misconduct may be resolved informally. The Complainant, the Respondent, and the institution must agree to engage in the informal resolution process and to the terms of the informal resolution. The Complainant(s) and the 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.
  - 6) Timeframe
    - a. Efforts will be made to complete the investigation and resolution within 120 business days. Temporary delays and limited extensions may be granted by the institutions for good cause throughout the investigation and resolution process. The parties will be informed in writing of any extension or delay and the applicable reason. The institution shall keep the parties informed of the status of the investigation.

### *Responding to Reports of Sexual Harassment Pursuant to Title IX*

The implementing Title IX regulations require special handling of complaints of sexual harassment, as defined in the regulations and listed below. The following section outlines the required specialized handling of these matters that may differ from an institution's handling of sexual misconduct, as defined in this Policy. Unless expressly mentioned in this section, other provisions of this Policy shall apply to all alleged sexual misconduct.

Other Title IX sex-discrimination allegations are handled pursuant to other applicable Board and/or institutional policies.

#### 1) Definition of Sexual Harassment

Under Title IX sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- a) An employee conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct



- b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
- c) "Sexual assault" as defined by the Clery Act and "dating violence," "domestic violence," and "stalking" as defined by the VAWA Amendments.

## 2) Jurisdiction

Alleged misconduct is addressed by Title IX when the misconduct occurs against a person in the United States on institution property, or at institution-sponsored or affiliated events where the institution exercises substantial control over both the Respondent and the context, or in buildings owned or controlled by a student organization that is officially recognized by the institution.

## 3) Formal Complaints

A Formal Complaint is a written document filed by the Complainant or signed by the Coordinator alleging sexual harassment, as defined by Title IX and its implementing regulations, against a Respondent and requesting that the institution open an investigation. In order to file a Formal Complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the institution occurring within the United States at the time of the filing.

## 4) Informal Resolution

Formal Complaints may be resolved informally, except in the instance of an allegation by a student against an institution employee. The following must be met in order to proceed with the informal resolution process:

- a. The parties have received written notice of the allegations
- b. The parties have received written explanation of the informal process to include, but not limited to:
  - i. Written agreement of the parties to initiate the informal resolution process;
  - ii. Written notice that the parties may withdraw from the process at any time prior to the agreement of the terms of the resolution;
  - iii. Written notice that the final resolution precludes any further institutional actions on the allegations
- c. The institution has agreed to engage in the informal resolution process.

## 5) Advisors

Both the Complainant and the 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. The advisor may accompany the party to all meetings and may provide advice and counsel to their respective party throughout the sexual misconduct process but may not actively participate in the process except to conduct cross-examination at the hearing. If a party chooses not to use an advisor during the investigation, the institution will provide an advisor for the purpose of conducting cross-examination on behalf of the relevant party.

All communication during the sexual misconduct process will be between the institution and the party and not the advisor. The institution will copy the party's advisor prior to the finalization of the investigation report when the institution provides the parties the right to inspect and review directly related information gathered during the investigation. With the party's permission, the advisor may be copied on all communications.

### *Investigations*

All sexual misconduct investigations involving a student Respondent, shall follow the investigation process set forth in Section 4.6.5, Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings.

All sexual misconduct investigations involving an employee Respondent, shall be addressed utilizing Board and institutional employment policies and procedures.

### *Hearings, Possible Sanctions and Appeals*

All sexual misconduct hearings, sanctions, and appeals involving a student Respondent, shall follow the hearing and resolution process set forth in this Policy and Section 4.6.5, Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings.

All sexual misconduct adjudication involving an employee Respondent, shall be addressed utilizing Board and institutional employment policies and procedures.

## **V. Exceptions**

None unless otherwise officially directed.

## **VI. Applicability**

ASU Campus Community  
ASU Faculty and Staff  
ASU Students

## **VII. Accountability**

Albany State University Title IX Coordinator  
Albany State University Office of Student Conduct  
Albany State University Human Resources

## **VIII. Contacts**

Albany State University Title IX Coordinator

## **IX. References**

Title IX of the Education Amendments of 1972  
Violence Against Women Reauthorization Act of 2013  
Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act

Board of Regents Policy Section 4.6.5, Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings  
Board of Regents Human Resources Administrative Practice Manual Prohibit Discrimination & Harassment

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