SEXUAL MISCONDUCT POLICY

1. PRE AMBLE

Georgia State University is committed to providing a safe learning environment that supports the dignity of all members of the University community. The University strongly encourages members of the University community to promptly report instances of sexual misconduct. All reported instances of sexual misconduct shall be reviewed and responded to promptly, thoroughly and impartially. The University will not tolerate sexual misconduct and will take necessary steps to end reported sexual misconduct. This policy describes the actions that will be taken in instances of alleged sexual misconduct by students.

2. DEFINITIONS

Sexual Misconduct violates University policy and Federal civil rights law and may also be subject to criminal prosecution. Sexual Misconduct, as defined by this policy includes Sexual Exploitation, Sexual Harassment, Non-Consensual Sexual Contact, and Non-Consensual Sexual Intercourse, each as more fully defined below:

“Complainant” means any person(s) who initiates an alleged violation of the Student Code of Conduct and Administrative Policies and Procedures.

“Dean of Students” means the administrative officer bearing this or similar title and includes his/her designee.

“Effective Consent” means words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective Consent cannot be gained by Force, by ignoring or acting in spite of the objections of another, or by taking advantage of the Incapacitation of another, where the accused student knows or reasonably should have known of such Incapacitation. Effective Consent is also absent when the activity in question exceeds the scope of Effective Consent previously given. In addition, certain states have designated a minimum age under which a person cannot give “Effective Consent.”

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

“Force” means physical force, violence, threat, intimidation or coercion.

“Incapacitation” means the physical and/or mental inability to make informed, rational judgments. States of Incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol [or other drug] is involved, one does not have to be intoxicated or drunk to be considered Incapacitated. Rather, incapacitation is determined by how the alcohol consumed impacts a person’s decision-making capacity, awareness of consequences, and ability to make informed judgments. The question is whether the accused student knew, or a sober, reasonable person in the position of the accused student should have known, that the complainant was Incapacitated. Because Incapacitation may be difficult to discern, students are strongly encouraged to err on the side of caution; i.e., when in doubt, assume that another person is Incapacitated and therefore unable to give Effective Consent. Being intoxicated or drunk is never a defense to a complaint of Sexual Misconduct under this Policy.

“Non-Consensual Sexual Contact” means Sexual Contact that occurs without Effective Consent.

“Non-Consensual Sexual Intercourse” means Sexual Intercourse that occurs without Effective Consent.

“Sexual Contact” means the deliberate touching of a person’s intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas), or using Force to cause a person to touch his or her own or another person’s intimate parts.

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1 Sokolow, Brett A., Lewis, W. Scott, Schuster, Saundra K., NCHERM Institute on Responding to Campus Sexual Misconduct. 2010, p. 49.
"Sexual Exploitation" means taking sexual advantage of another person without Effective Consent, and includes, without limitation, causing or attempting to cause the Incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.

"Sexual Harassment" means unwelcome conduct, based on sex or on gender stereotypes, which is so severe or pervasive that it unreasonably interferes with a person’s University employment, academic performance or participation in University programs or activities and creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive. Sexual Harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual violence. In evaluating any complaint of Sexual Harassment, the perceived offensiveness of a particular expression, standing alone, is not sufficient by itself to constitute Sexual Harassment. The conduct in question must be objectively intimidating, hostile or offensive and interfere with a person’s right to equally participate in programs and activities of the University. The exclusive purpose of this Policy is to protect students from sex discrimination, consistent with both federal regulatory law and the requirements of the First Amendment to the United States Constitution.

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

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

3. REPORTING

Sexual misconduct by members of the University community should be immediately reported to one of Georgia State University’s Title IX coordinators as described below:

A. Sexual misconduct by students should be reported to the Dean of Students, Office of the Dean of Students, Suite 300, Student Center, 404/413-1515, deanofstudents@gsu.edu.

B. Sexual misconduct by faculty or staff should be reported to the Assistant Vice President of Human Resources, Office of Opportunity Development / Diversity Education Planning (ODDEP), 1 Park Place South, Suite 527, 404/413-2567.

4. RETALIATION

Retaliation against any member of the University community who makes a report of sexual misconduct or cooperates in the review of such report is strictly prohibited and is a violation of the Sexual Misconduct Policy. Retaliation includes intimidation, harassment, threats, or other adverse action or speech. Retaliation of any kind should be promptly reported to one of Georgia State University’s Title IX coordinators as described below:

A. Retaliation by students should be reported to the Dean of Students, Office of the Dean of Students, Suite 300, Student Center, 404/413-1515, deanofstudents@gsu.edu.

B. Retaliation by faculty or staff should be reported to the Assistant Vice President of Human Resources, Office of Opportunity Development / Diversity Education Planning (ODDEP), 1 Park Place South, Suite 527, 404/413-2567.
5. REVIEW PROCESS

A. Review and Charges
The Dean of Students will conduct a timely review of all complaints of sexual misconduct, including interviewing individuals identified in the complaint to determine whether there is sufficient basis to believe that a violation of the Sexual Misconduct Policy may have occurred. Absent extenuating circumstances, this review shall take place within sixty (60) calendar days of receipt of the complaint. Based upon the findings of fact during the review, the Dean of Students may choose to initiate Student Code of Conduct and/or Sexual Misconduct Policy charges, as necessary. The Dean of Students' ability to proceed may be limited if the complainant is reluctant to participate in any aspect of the process.

B. Interim Action
In an effort to support the individuals involved during the review process, the Dean of Students may take interim action as appropriate. Examples of interim action include:
   (1) Imposing a restriction that requires the students to have no contact with each other throughout the process.
   (2) Directing appropriate University officials to alter students’ academic, housing or employment arrangements, while minimizing the burden of any arrangements on the complainant.
   (3) Other interim actions that may be taken by the Dean of Students are stated in Section IIIB6 of the Student Code of Conduct.

C. Informal Resolution
Members of the University community who have experienced sexual misconduct by a student may request mediation as an informal resolution. Mediation is not an option in instances involving allegations of sexual assault, rape, or other behavior believed by the Dean of Students to jeopardize the safety of the University community. At any point during an informal resolution process, the complainant may elect to terminate the informal process, and initiate a Formal Resolution through the Sexual Misconduct Policy.

6. FORMAL RESOLUTION

A. Due Process Meeting
   (1) A student who is charged with a violation of the Sexual Misconduct Policy ("referred student") must meet with the Dean of Students for a due process meeting within five (5) business days from the signed receipt of the formal notification from the Dean of Students. Referred students must elect a hearing option for resolving the case within the same five (5) business day time frame.

   (2) If a student does not contact the Dean of Students for the preliminary meeting, the Dean of Students may proceed with the case at his/her discretion.

   (3) At the due process meeting the referred student will be provided with the following:
      a) an explanation of the charges;
      b) a copy of the Student Code of Conduct;
      c) a copy of the complaint, if requested;
      d) review of the students’ due process rights:
         • the right to a notice in writing of any charges;
         • the right to a fair hearing before a hearing panel, not including those who brought the charges;
      e) an explanation of the judicial process;
         • the opportunity to admit responsibility for the alleged violation, which requires choosing to have the Dean of Students resolve the case administratively in lieu of a hearing;
         • the opportunity to deny responsibility for the alleged violation and choose between having the Dean of Students resolve the case administratively or having a formal hearing;
         • the opportunity to appear in person at a hearing or not to appear with assurance that the failure to appear shall not be construed as indicative of responsibility;
         • the opportunity to select an advisor of his or her choice to accompany the referred student during the formal hearing;
         • the opportunity to call witnesses to present information on his or her behalf;
         • the opportunity upon request to a list of witnesses who will appear against him or her;
         • the opportunity to receive a copy of the record of a hearing;
         • and, the opportunity to appeal as indicated in this policy.
   (4) A referred student may choose (1) to waive a hearing and have the Dean of Students resolve the case; or (2) to have a hearing before the Sexual Misconduct Board.
(5) The Family Educational Rights and Privacy Act protects students’ privacy rights of their records. If charges are initiated and the referred student selects the Sexual Misconduct Board as the method of adjudication, the Sexual Misconduct Board hearing is closed to the public.

B. Administrative Resolution
If the referred student waives the right to a formal hearing and elects to have their case resolved administratively, the following process will be followed:
(1) The Dean of Students, in his or her sole discretion, may decide to personally resolve the case or designate another to hear the matter.
(2) The Dean of Students will meet with the student and determine whether it is more likely than not that a violation of the Sexual Misconduct Policy has occurred and, if so, the appropriate disciplinary sanction to apply.
(3) Witnesses will be interviewed and further information may be gathered to determine responsibility.
(4) In determining the sanction, the Dean of Students will consider any mitigating or aggravating factors, including any prior violations of the Student Code of Conduct.
(5) The Dean of Students will inform the referred student and the complainant of the decision in writing. The written decision will include a statement of the charges, the determination, and the sanction to be imposed, if any, and their right to appeal.

C. Membership of the Sexual Misconduct Board
The Sexual Misconduct Board shall be comprised of five faculty members identified from the membership of the Senate Committees on Student Discipline and Student Life and Development, five students from the Student Judicial Board and three staff from Staff Council. Annual training will be provided to the Sexual Misconduct Board.

D. Sexual Misconduct Board Hearing
If the referred student selects the Sexual Misconduct Board as the method of adjudication, the following process will be followed:

(1) Composition of the Hearing Panel
   a) The Sexual Misconduct Board hearing, as set forth in the Sexual Misconduct Board procedures, will be conducted by a Hearing Panel comprised of two faculty, two students and one staff. The Dean of Students will identify the chair of the Hearing Panel.
   b) The Sexual Misconduct Board will establish its own rules to govern the selection process for the members of each Hearing Panel.

(2) Pre-Hearing Procedures
   a) The Hearing Panel members will be notified in writing of their selection.
   b) The chairperson will convene the Hearing Panel as soon as possible following receipt of the referred student’s selection of a hearing route.
   c) The chairperson, who may be assisted by the Dean of Students, will prepare and send a written notice to the referred student and the complainant no less than five (5) business days prior to the date set for the hearing. The notice will be delivered personally or by mail directed to the addresses furnished by the referred student and the complainant. The notice will include:
      • A statement of the date, time, location and nature of the hearing;
      • A written statement of the charges which specifies the allegations of misconduct in sufficient detail to enable the referred student and the complainant to respond;
      • A list of the names of all Hearing Panel members, and the university address of the chairperson.
   d) If the referred student or the complainant cannot attend the hearing on the date scheduled for the hearing due to extraordinary circumstances, he/she must notify the Hearing Panel chairperson in writing, no later than three (3) business days prior to the hearing. The chairperson will determine whether to approve or deny the request to reschedule the hearing.
   e) The University shall present the case on behalf of the complainant. If the complainant does not want to participate in the formal resolution process, the University reserves the right to present the case in his/her absence.
   f) No later than three (3) business days prior to the hearing, the parties will exchange the following information in writing:
      • A list of the names of the witnesses who may be called to speak at the hearing;
      • A concise summary of the anticipated statements of each witness;
Copies of all documents or notarized statements to be presented at the hearing; and,
The name and title of the person who will present the information on behalf of the university, and the name of the advisor, if any, who will be present to assist either student.

g) The referred student or the complainant may challenge the participation of any member of the Hearing Panel on the grounds of personal bias by submitting a written statement to the chairperson setting forth the basis for the challenge no later than three (3) business days prior to the hearing. The chairperson will determine whether to sustain or deny the challenge. If the challenge is sustained, a replacement member will be appointed to serve on the Hearing Panel. If a challenge is filed against the chairperson, the Dean of Students will rule on the challenge.

h) Members of the university community will be expected to comply with any request or directive issued by the chairperson in connection with a disciplinary proceeding, unless compliance would result in significant personal hardship or substantial interference with normal university functions.

(3) Hearing Procedures

a) All hearings regarding sexual misconduct charges against individual students or student organizations will be closed in accordance with FERPA. The deliberation stage of all hearings shall also be closed.

b) The chairperson will preside at the hearing and will rule upon all procedural matters. The formal rules of evidence will not apply, although objections to the introduction of specific statements or documents may be considered by the chairperson. Information regarding prior misconduct will not be considered for the purpose of determining responsibility, but may after a finding of responsibility has been made, be considered for purposes of determining appropriate sanctions. The chair may establish reasonable limits upon the time allotted to the referred student and the complainant for oral presentation and presentation of witnesses.

c) The University will present the information which supports the charges, and will have the burden of showing that a violation of the Sexual Misconduct Policy was more likely than not to have been committed by the referred student.

d) The referred student will present statements or written information on his/her own behalf.

e) All information, including hearsay, is admissible. The Hearing Panel may exclude information during the Hearing if it is clearly immaterial or irrelevant. The Hearing Panel will determine, during deliberations, the weight or credibility of the information.

f) Both the referred student and complainant may be assisted throughout the proceeding by an advisor. The advisor may only communicate with his or her respective party and not directly to the hearing panel or other parties involved.

g) Each party is responsible for insuring the appearance of their witnesses at the hearing or obtaining written, signed statements from their witnesses.

h) Witnesses will be excluded from the hearing, except during their specific witness testimony.

i) Witnesses may only be questioned by the hearing panel.

j) A record shall be made of the hearing. A copy of the record is available to the referred student and complainant at the cost of making the reproduction.

k) Any falsification of information or false testimony by any party or witness may subject that party or witness to disciplinary action in accordance with the Student Code of Conduct.

l) If, during the course of a hearing, new information is introduced which indicates that additional violations of the code have occurred, the Hearing Panel has the discretion to find the referred student responsible.

m) Upon the conclusion of the evidence stage of the hearing, the Hearing Panel will adjourn to review the information and make a determination of responsibility and appropriate sanctions, if any.

n) After deliberating, the Hearing Panel shall make a non-binding recommendation to the Dean of Students within five (5) business days of the hearing regarding the responsibility for the violation(s) and appropriate sanction(s).

o) The Dean of Students shall then make a final decision concerning responsibility for the violation(s) and the imposition of sanctions, if any, within five (5) business days of the receipt of the recommendation.

p) The Dean of Students will inform the referred student and the complainant of the decision in writing. The written decision will include a statement of the charges, the determination, the sanctions to be imposed, if any, and their right to appeal.
E. Sanctions

(1) Students or student organizations who are found to be responsible for a violation of the Sexual Misconduct Policy will be subject to one or more sanctions, which may be imposed on a temporary or permanent basis.

(2) Sanctions take effect as soon as they are imposed by the Dean of Students following a determination of student responsibility for a Code violation and remain in effect unless and until overturned on appeal.

(3) Repeated violations of the Code may result in the imposition of progressively more severe sanctions, although any sanction may be imposed as appropriate under the circumstances.

(4) Sanctions for Individuals:
   a) Written Reprimand: A written statement that the student has violated regulations and notice that continuation or repetition of Code violations may result in more severe action.
   b) Educational Sanctions: Sanctions assigned by the Dean of Students such as community service, letters of apology, educational workshop, essays or research papers.
   c) Disciplinary Probation: Removal of the student from good disciplinary standing. Additional restrictions may also be imposed. Probation will last for a stated period of time and until specific conditions, if imposed, have been met. Any violation of these rules, the conditions of probation or other University rules committed during the probationary period will subject the student to further discipline, including suspension or expulsion.
   d) Restitution: Reimbursement for damage or loss caused to others.
   e) Suspension: Temporarily banned from attending classes and/or other student privileges for a defined period of time. Course credit earned at other institutions while on suspension may not be transferred to GSU. Students who are placed on suspension (including interim suspension) will be administratively withdrawn from their courses and assigned grades of W or WF (depending on whether they have exceeded their maximum number of withdrawals allowed).
   f) Expulsion: Termination of student status in the University community. This means that a student is permanently banned from all classes, services, events, and property owned or controlled by Georgia State University.
   g) Transcript Annotation: Temporary for a period of five years or permanent, as designated.

(5) Sanctions for Student Organizations:
   a) Written Reprimand: A written statement that the student organization has violated regulations and notice that continuation or repetition of Code violations may result in more severe action.
   b) Restrictions: Restriction of some or all of the organization’s activities or privileges, including, but not limited to, use of university facilities, social or recruitment activities.
   c) Suspension of University Charter: Temporary severance of the organization’s relationship with the University for a specific period of time. The period of time and any requirements which must be satisfied prior to re-registration must be specified.
   d) Recommendation for Charter Revocation: An official request to a national office that the local chapter’s charter be revoked.
   e) Revocation of University Charter: Permanent severance of the organization’s relationship with the University.
   f) Educational Sanctions: Sanctions specified by the Dean of Students such as alcohol awareness programs, risk management programs, community service, letters of apology, education workshops, essays or research papers.
F. Appeals

The complainant and the referred student may appeal the final determination. Grounds for appeals are limited to new information that was not presented at the hearing, procedural errors or that the sanction is disproportionate to the violation.

1. To the Vice President for Student Affairs: Appeals of the decisions of the Dean of Students, including the dismissal of complaints for lack of sufficient information, may be made in writing to the Vice President for Student Affairs within five business days after the decision is made. Grounds for appeals are limited to new information that was not presented at the hearing, procedural errors, or that the sanction is disproportionate to the violation. The Vice President has the authority to remand, reverse or change the decision; decrease, increase or add sanctions; and, make new charges. Absent extenuating circumstances, the Vice President will make a decision on the appeal within 15 calendar days.

2. To the President: Appeals of the decision of the Vice President for Student Affairs may be made to the President of the University within five business days after the vice president’s decision is made. The President has the authority to remand, reverse or change the decision; decrease, increase or add sanctions; and, make new charges. The President’s decision shall be final at the University level. Absent extenuating circumstances, the President will make a decision on the appeal within 15 calendar days.

3. To the Board of Regents: Should the aggrieved person be dissatisfied with the decision of the University President, he or she may apply to the Board of Regents of the University System of Georgia, without prejudice to his or her position, for a review of the decision. The application for review must be submitted in writing to the executive secretary of the Board within a period of 20 calendar days following the decision of the President. This application for review shall state the decision complained of and the redress desired. A review by the Board is not a matter of right but is within the sound discretion of the Board.

4. In the event any position in the appeal route is vacant, the appeal should be directed to the individual at the next level of appeal.

(See next page for Sexual Assault Victims Bill of Rights.)
GEORGIA STATE UNIVERSITY
SEXUAL ASSAULT VICTIMS BILL OF RIGHTS

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

1. The right to have any and all sexual assaults against them treated with seriousness, the right to be treated
with dignity, and the right for campus organizations that assist such victims to be accorded recognition.

2. The right to have sexual assaults committed against them investigated and adjudicated by the duly
constituted criminal and civil authorities of the governmental entity in which the crimes occurred and the
right to the full and prompt cooperation and assistance of campus personnel in notifying the proper
authorities. The foregoing shall be in addition to any campus disciplinary proceedings.

3. The right to be free from any kind of pressure from campus personnel to: (1) not report crimes committed
against them to civil/criminal authorities or to campus law enforcement/disciplinary officials; or (2) report
crimes as lesser offenses than the victims perceive them to be.

4. The right to be free from any kind of suggestion that campus sexual assault victims not report, or under-
report, crimes because: (1) victims are somehow “responsible” for the commission of crimes against them;
(2) victims are contributorily negligent or assumed the risk of being assaulted; or (3) by reporting crimes,
the victim would incur unwanted personal publicity.

5. The same right to legal assistance, or ability to have others present, in any campus disciplinary proceeding
that the institution affords the referred; and the right to be notified of the outcome of such proceeding.

6. The right to full and prompt cooperation from campus personnel in obtaining, securing, and maintaining
such information (including a medical examination) as may be necessary to the proof of criminal sexual
assault in subsequent legal proceedings.

7. The right to be made aware of and assisted in exercising any options as provided by State and Federal
laws or regulations with regard to mandatory testing of sexual assault suspects for communicable diseases
and with regard to notification to victims of the results of such testing.

8. The right to counseling from any mental health services previously established by the institution, or by other
victim-service entities, or by victims themselves.

9. After campus sexual assaults have been reported, the victims of such crimes shall have the right to require
that campus personnel take the necessary steps or actions reasonably feasible to prevent any unnecessary
or unwanted contact or proximity with alleged assailants, including immediate relocation of the victim to safe
and secure alternative housing, and transfer of classes if requested by the victims.

10. In addition to the above rights, students, whether sexual assault victims or not, have a right to habitability in
campus accommodations for which the college receives any compensation, direct or indirect. Habitability
shall mean an environment free from sexual or physical intimidation, or any other continuing disruptive
behavior that is of such a serious nature as would prevent a reasonable person from attaining their
educational goals. Substantiated violations of the above listed habitability provisions shall be corrected by
campus personnel by relocations, if reasonably possible, of the complainant to an acceptable, safe and
secure alternative location as soon as practicable, unless the conditions of nonhabitability demonstrate the
necessity of immediate action by campus personnel.

Approved – Administrative Council, October 12, 2011