Policy 8.2
Sexual Misconduct

Responsible Official: SVP and Dean for Campus Life
Administrating Division/Department: Campus Life
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Overview

Emory University (“Emory”) 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 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 sexual misconduct in its community and will take prompt action when misconduct occurs.

This Policy covers sexual misconduct committed by Emory students. Sexual misconduct is a form of sexual harassment that is prohibited under federal law and Emory’s Equal Opportunity and Discriminatory Harassment Policy (Emory Policy 1.3). Sexual misconduct can occur in many forms, including, but not limited to, sexual and gender-based harassment, non-consensual sexual intercourse, non-consensual sexual contact, dating violence, domestic violence, sexual exploitation and stalking.

Emory will take seriously every allegation or report of sexual misconduct received. Its response is intended to ensure that all parties involved receive appropriate support and fair treatment, and that allegations of sexual misconduct are handled in a prompt, thorough, and equitable manner. Concerns, complaints, or questions relating to this Policy may be directed to the staff members listed below:
Supria B. Kuppuswamy, J.D.
University Title IX Coordinator
Office of Title IX
201 Dowman Drive
Administration Building
Atlanta, GA 30322
Phone: (404) 727-8205
supria.kuppuswamy@emory.edu

or

Judith Pannell, Ed.D.
Title IX Coordinator for Students
Office of Title IX
201 Dowman Drive
Administrative Building
Atlanta, GA 30322
Phone: (404) 727-4079
judith.pannell@emory.edu

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

The following policies and procedures apply to situations in which a student is alleged to have engaged in sexual misconduct. Allegations of sexual misconduct not involving a student, or involving a student acting in an employment capacity, are primarily addressed through the Emory Policy 1.3. However, a student acting in an employment capacity may be subject to this Policy as well as any applicable employment policies.

The University Title IX Coordinator monitors and oversees Emory’s compliance with federal regulations concerning sexual harassment and discrimination. Upon receipt of a report of alleged sexual misconduct, the University Title IX Coordinator will monitor responsive action to ensure that the educational environment at Emory is free of discrimination and discriminatory harassment. Additionally, the University Title IX Coordinator monitors the steps taken, as appropriate, to remedy the effects of the sexual misconduct on the Complainant. This may include commencement of disciplinary proceedings against a Respondent.

This policy applies to sexual misconduct that occurs in connection with all academic, educational, extracurricular, athletic, and other programs of Emory, whether those programs take place in Emory facilities, at a program sponsored by Emory at another location, or elsewhere.
8.2.1. Reporting Sexual Misconduct

Reporting to the Police. Because sexual misconduct may constitute both a violation of Emory policy and criminal activity, persons having knowledge of a possible violation are strongly encouraged to report alleged sexual misconduct promptly to the Emory Police Department (EPD), or to local law enforcement authorities for incidents that occur off campus. Emory strongly encourages Complainants to report the incident, to seek assistance, and to pursue judicial action for their own protection and that of the entire campus community.

Confidential reporting (providing information without your name attached to it) is an available option with EPD through their TIPS line at (404) 727-TIPS/8477; however, investigative or criminal enforcement activity can be significantly limited in the case of anonymous reports. (Note: EPD’s TIPS line is a non-emergency telephone number; in the event of an emergency, please call 911). Regardless of whether a Complainant pursues a criminal complaint, Emory will investigate the incident in question and take appropriate responsive action to ensure that the educational environment is free of harassment, to prevent the recurrence of a hostile environment, and, as appropriate, to remedy the effects of the harassment.

When an individual elects not to, or is unable to, report an incident of sexual misconduct, Emory encourages other persons with knowledge of the incident to make a prompt and accurate report to the EPD. The wishes of the Complainant about confidentiality, if known, should be respected in making such a report.

Pursuant to Emory Policy 4.119, the Mandated Child Abuse Reporting Policy, unless there is an exception under Georgia law, Emory requires all personnel, including faculty, staff, students, as well as third-parties, to report suspected child abuse of which they are made aware in their capacity of employment or duties. Child abuse includes sexual abuse or exploitation of a person who is under eighteen (18) years old. Any uncertainty about whether reporting is required should always be resolved in favor of making a report to the EPD.

Reporting Sexual Misconduct for University Action. Every Emory employee who is informed about an allegation of sexual misconduct involving any student is required to notify a Title IX Coordinator either directly or through their relevant reporting structure. However, employees who serve in a professional role in which communications are afforded confidential status under the law (e.g., medical providers, therapists, and professional and pastoral counselors) are not bound by this requirement but may, consistent with their ethical and legal obligations, be required to report limited information about incidents without revealing the identities of the individuals involved, to a Title IX Coordinator or Deputy Title IX Coordinator. All members of the Emory community are encouraged to promptly report incidents of sexual harassment and discrimination.

Complaints under this sexual misconduct policy may be filed with: (1) the University Title IX Coordinator, (2) the Title IX Coordinator for Students, or (3) a Deputy Title IX Coordinator. The complaint may be made in a written or verbal format.

Retaliation Prohibited. Federal regulations and Emory policy protect against retaliation directed at any individual who files a complaint, is involved in the adjudicatory process under this Policy in good faith, or participates in an investigation of a complaint. A complaint of retaliation may be initiated with the Title IX Coordinator for Students for any retaliatory actions resulting from the filing of a complaint under this Policy. Retaliation is adjudicated under the guidelines of this Policy.

8.2.2. Investigation and Adjudication

The Title IX Coordinator for Students is primarily responsible for coordinating responses to complaints of possible violations of this Policy, directly overseeing the investigation and adjudication of complaints, and coordinating possible remedial actions or other responses designed to reasonably minimize the recurrence of the alleged conduct as well as mitigate the effects of the harassment. The Title IX Coordinator for Students will ensure prompt, fair, and impartial investigations and resolutions of complaints alleging violations of this Policy. Emory will endeavor to complete the investigation and resolution of a complaint in a prompt and timely manner; the Title IX Coordinator for Students will keep the parties apprised of the status of their case on a periodic basis.

The procedures for institutional disciplinary action will be conducted by Emory faculty, staff and graduate/professional students(1) who receive annual training on this Policy and the skills necessary to complete their roles in the Title IX process. These trained individuals will handle matters under this Policy promptly and equitably.

When conducting the investigation, Emory’s primary focus will be on addressing the sexual misconduct and not on other Emory alcohol or other drug policy violations that may be discovered or disclosed. Emory encourages reporting sexual
misconduct, and seeks to remove any barriers to reporting. Emory recognizes that a student who has been drinking or using drugs at the time of the incident may be hesitant to make a report because of potential Conduct Code consequences for the student who reports. An individual who reports sexual misconduct, either as a Complainant or a third-party witness, will not be subject to disciplinary action by the University for personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. At the conclusion of the investigation, the Title IX Coordinator for Students may initiate an educational discussion or recommend other educational or therapeutic remedies regarding alcohol or other drugs for the reporting student(s).

The Complainant and Respondent may each be assisted by an advisor of choice during any investigative or other meeting that an Emory official schedules with a Complainant or Respondent. The principal role of an advisor is to serve as a support to a Complainant or Respondent, and not as a representative or advocate in interactions with Emory officials.

The filing of a sexual misconduct complaint under this Policy is independent of any criminal investigation or proceeding. Except in cases where it is determined that a sexual misconduct proceeding might impede a criminal investigation or otherwise not be in the best interests of the law enforcement agency, a Complainant, or Emory, Emory will not wait for the conclusion of any criminal proceedings to commence its own investigation and take needed interim measures.

Investigation of a Complaint and Notice of Charges of Alleged Policy Violation. The Title IX Coordinator for Students will appoint a team of investigators to examine each complaint received. The investigators will conduct a prompt, thorough, and impartial investigation of the complaint. The investigation may involve interviews of a Complainant, Respondent, or a witness / witnesses; collection of documents or other physical/electronic information; and other appropriate steps as needed. Individuals who are interviewed during the investigation will be advised that the matter is confidential and that retaliation is prohibited by this Policy. A Complainant and Respondent may both provide information and suggestions to the investigators, but the investigators have independent authority to conduct the investigation using their best judgment.

After the investigation, the investigators will submit a written Report of Investigation to the Title IX Coordinator for Students detailing the information that was collected. The Title IX Coordinator for Students may ask the investigators further clarifying questions of the Complainant, Respondent, or witness(es) to supplement the Report of Investigation. The Title IX Coordinator for Students will then provide the draft of the Report of Investigation to the parties and will allow them to submit written statements responding to or clarifying information found in the report prepared by the investigators; any material submitted by the parties will be attached to the Report of Investigation as appendices, and the Report of Investigation will be finalized.

The Title IX Coordinator for Students shall review the finalized Report of Investigation and determine whether there is sufficient information to support charging the Respondent with a violation of this Policy. If a determination is made that the available information will not support a violation, then the student will not be charged and the case is closed. If the Title IX Coordinator for Students determines that there is sufficient information that a Respondent may have committed a violation (or violations) of this Policy, then within 7 business days after the Report of Investigation is completed or supplemented, a written “Notice of Charges of Policy Violation” (“Notice of Charges”) will be provided to the Respondent and the Complainant with summary information that supports the charge(s).

Input from the Complainant Regarding the Method of Resolution. Early in the investigation, the Title IX Coordinator for Students will seek to determine how the Complainant wishes to proceed – whether the Complainant wishes to pursue a formal resolution, an informal resolution, or does not wish to pursue resolution of any kind.

A. If the Complainant wishes to proceed with a formal resolution and the Title IX Coordinator for Students determines there is sufficient information to proceed with the sexual misconduct disciplinary process, then a hearing will be conducted as outlined in Section 8.2.3 (Hearing Procedures) of this Policy.

B. If the Complainant wishes to proceed with an informal resolution, the Title IX Coordinator for Students may elect to initiate an informal resolution process. However, a Complainant (a) should never be required to work out a problem or resolve an issue directly with the Respondent without school involvement; and (b) must be advised of the right to end the informal process at any time and to begin to pursue a formal complaint process. Additionally, a Complainant and Respondent must mutually consent to use of the informal resolution process. The Title IX Coordinator for Students may elect not to pursue an informal resolution process if it is deemed not in the best interest of the involved parties or in Emory’s best interest.

Even if the Complainant does not wish to pursue resolution, requests that no action be taken, or requests that the complaint remain confidential or elects not to participate in the process, Emory has an obligation to respond to reports of sexual misconduct. Emory’s ability to respond may be limited if a Complainant wishes to remain anonymous. No guarantees can be made to a Complainant regarding confidentiality, but the Title IX Coordinator for Students, or their designee, will consider every request for confidentiality and significant weight will be given to honoring that request in determining a response to the report of sexual misconduct. In all cases, information will be treated with discretion and privacy but cannot always be handled confidentially.

A request for confidentiality will be considered in the dual contexts of Emory’s legal obligation to ensure a living and learning environment free from sexual misconduct and the due process rights of the Respondent to be informed of the
allegations and their source. The Complainant’s request may be weighed against the following factors in considering how to respond: the seriousness of the alleged sexual misconduct, the Complainant’s age, whether there have been other complaints of sexual misconduct against the same Respondent, and the Respondent’s right to receive information about the allegations if the information is maintained by Emory as an “education record” under Family Educational Rights and Privacy Act (FERPA). Please note: in cases involving a pattern of conduct by the Respondent, the use of weapons, or drugs to limit a Complainant’s capacity, Emory is required to move forward with a formal process.

Authority to Impose Interim Restrictions and Provide Accommodations. During the investigation and until resolution of allegations, the Title IX Coordinator for Students, or their designee, may issue interim restrictions, including, but not limited to the following: a no contact order (NCO) between the Complainant and the Respondent; interim suspension; temporary exclusion from areas of campus; removal from or relocation to another residence hall, changes in academic/course schedules; or limiting participation in certain events, gatherings, or activities, among other measures. Interim measures should not be construed to suggest that any decision has been made about the merits of the case. Appeals of interim measures must be submitted in writing to the University Title IX Coordinator within 7 business days from the day the parties are notified about the interim restriction. The University Title IX Coordinator will review the materials within 5 business days of receipt of the appeal and may affirm the original restriction; modify the restriction, which may be of greater or lesser severity; or dismiss the original restriction. The University Title IX Coordinator’s determinations on any interim restrictions are final and not appealable. Both parties shall receive simultaneous written notice of the outcome of the appeal.

Accommodations may be provided to individuals involved, regardless of whether formal conduct proceedings are instituted, including academic/course schedule changes; housing reassignments; safety escorts; safety/crime prevention briefings, and other protective or safety measures.

Both interim restrictions and accommodations are considered on a case-by-case basis by the Title IX Coordinator for Students.

Acceptance of Responsibility. Within 5 business days after receipt of the “Notice of Charges,” the Respondent has an opportunity to accept or not accept responsibility for the charge(s). If a Respondent is charged and accepts responsibility for having violated this Policy, the Title IX Coordinator for Students will determine the appropriate sanction within 5 business days and send written notification of the sanction imposed and the appeal process to the Complainant and Respondent. The sanction determination is appealable to the University Title IX Coordinator within 7 business days of the notice of sanction. The University Title IX Coordinator’s determination shall be final and not appealable.

8.2.3. Hearing Procedures

If the Respondent does not accept responsibility for the alleged conduct, the Title IX Coordinator for Students will appoint a hearing board of three individuals, drawn from a pool of faculty, staff, and graduate/professional students with appropriate knowledge and training, to determine if the Respondent is responsible for violations in the Notice of Charges. The appointment of the hearing board will occur within 10 business days of the Respondent’s denial of Responsibility. The Title IX Coordinator for Students will appoint one member of the board as its chair. The Title IX Coordinator for Students will select the date, time, and location of the hearing, and will provide notice to all parties. 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 period or extraordinary circumstances as determined by the chair.

In hearings conducted under this Policy:

1. Both parties shall be given similar and timely access to information that will be used at the hearing and be given the substantially equivalent opportunities to present relevant evidence and witnesses.

2. The proceedings shall be non-adversarial in nature. The chair of the hearing board is empowered to take such steps as may be necessary to preserve the non-adversarial character of the hearing.

3. 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.

4. Emory may require any student to attend and to give testimony relevant to the case under consideration. Signed, written statements from a Complainant, a Respondent, or from witnesses who cannot attend the hearing may be accepted at the discretion of the chair. Emory may request the attendance of a faculty or staff member, or alternatively request that a faculty or staff member furnish a written statement.

5. The Complainant and Respondent are both permitted to have an advisor of choice present at the hearing. If an advisor attends the hearing, the advisor is permitted to quietly provide advice and support to their student but cannot be directly involved in the hearing or disrupt the hearing. Accordingly, an advisor is not permitted to make statements to the hearing board or to question the opposing party or witnesses. The chair has discretion to place limitations or
conditions on the advisor’s presence or participation, and in extreme cases, where an advisor fails to adhere to this Policy and disrupts a hearing, the advisor can be dismissed from a hearing. Any cost associated with the participation of an advisor is the sole responsibility of the student seeking the advisor’s assistance.

6. Neither party is required to be physically present in the same room, and at the discretion of the chair, electronic participation by either party may constitute presence for purposes of any hearing.

7. Hearing board members shall be required to disclose any conflicts of interest relating to the allegations or the hearing.

8. Neither party shall be permitted to directly question each other or any witness at the hearing, but they may submit questions to the chair for their consideration. The chair will determine whether specific, requested questions can be asked. If a specific question from a party cannot be asked, the chair will note the reason for its omission in the post-hearing report.

9. The chair will determine whether the hearing board can properly weigh or take into consideration any evidence offered by a party or witness based upon relevance. Rules of evidence applicable to criminal or civil court proceedings will not apply.

10. There shall be a single verbatim record, such as a tape recording, of the hearing (not including deliberations). The recording shall be Emory property. Documentation of sexual misconduct proceedings, including written findings of facts, transcripts, and any audio recordings, are maintained in accordance with the applicable Emory document retention records.

11. For all cases, the standard that shall be used to determine whether a violation was committed is “preponderance of the evidence”, i.e., it is more likely than not that sexual misconduct occurred.

12. After all admissible evidence has been reviewed, the hearing board shall deliberate to decide the case. The Respondent shall be found responsible or not responsible for each charge by a majority vote of the board. The chair will submit a written report to the Title IX Coordinator for Students containing the hearing board’s determination and rationale within 10 business days of the conclusion of the hearing. If the hearing board concludes that, under a preponderance of the evidence standard, the Respondent violated this Policy, the hearing board will provide a sanction recommendation to the Title IX Coordinator for Students. The Title IX Coordinator for Students shall be empowered to affirm this sanction and/or determine an alternate sanction and remedy. Both parties shall receive simultaneous written notice of the outcome of the hearing, sanctions and remedies imposed, and the process and deadline for submitting an appeal by either party.

Emory may impose a range of sanctions and protective measures following a final determination of a violation of this Policy. The sanctioning decision will be informed by the degree to which the behavior was intentional, irresponsible, or without knowledge. Factors pertinent to the determination of what sanction applies include, but are not limited to, the nature of the conduct at issue, prior disciplinary history of the Respondent (shared with the hearing board only upon a finding of responsibility for the particular allegation), the Respondent’s willingness to accept responsibility for their actions, previous University response to similar conduct, and the interests of the University.

The broad range of sanctions includes:

- Expulsion (Students found responsible for engaging in actual or attempted nonconsensual sexual intercourse, or who are found responsible for repeated sexual misconduct, should be prepared to be permanently separated from Emory);
- Suspension for an identified time frame or until satisfaction of certain conditions, or both;
- Temporary or permanent separation of the parties (e.g. only: change in classes, reassignment of residence, no contact orders, limiting geography where parties may go on campus) with additional sanctions for violating orders;
- Successful completion of sexual or relationship sensitivity training/awareness education program / bystander intervention training;
- Successful completion of alcohol and other drug awareness and abuse prevention program;
- Counseling or mentoring;
- Volunteering / community service requirements;
- Educational programs
• Loss of Emory privileges;
• Delays in obtaining administrative services and benefits from Emory (e.g. only: holding transcripts; delaying registration, graduation, or receipt of diploma);
• Additional academic requirements relating to scholarly work or research on sexual misconduct or sexual misconduct on university campuses;
• Financial restitution (payments) to any individual(s) who were injured or impacted by the Respondent’s conduct; 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.

8.2.3.1. 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 original hearing, because such information was not known or knowable to the person appealing during the time of the hearing.

2. To allege a procedural error within the hearing process that may have substantially impacted the fairness of the hearing.

3. To allege that finding was inconsistent with the weight of the information.

Appeals must be submitted in writing to the University Title IX Coordinator within 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 appoint an appeals panel of 3 members from a pool of trained faculty, staff, and graduate/professional students. The appeals panel will review the materials within 10 business days of receipt of the appeal. The panel will examine all documentation of the hearing to determine if there is a reasonable basis for changing the outcome. The panel will issue a written determination of the appeal, or may request that the University Title IX Coordinator take appropriate steps in the appeal, which may include: affirming the original finding and sanction; affirming the original finding but issuing a new sanction, which may be of greater or lesser severity; remanding the case to a new hearing panel to correct a procedural or factual defect; or, dismissing the case if there was a procedural or factual defect that cannot be remedied by remand. The panel’s determinations are final and not appealable. However, the outcome of a remanded case may again be appealed under this provision. Both parties shall receive simultaneous written notice of the outcome of the appeal.

8.2.4. Support Services and Options for Students Going Through the Sexual Misconduct Process

A variety of support resources are available on campus and in the community to assist students in dealing with sexual misconduct, whether it happened recently or in the past. A full listing of support services, including healthcare, counseling, advocacy or peer support, and other resources may be found at: http://sexualmisconductresources.emory.edu.

The Office of Respect at the Atlanta campus provides education, advocacy, and support for Complainants, as well as their friends and families: http://respect.emory.edu

Support Hotline (24/7): (470) 270-5360
Office: (404) 727-1514

Heather Jones, Case Manager / Health Educator is the primary point of contact for Complainants, as well as their friends and families, at Oxford College. (heather.jones2@emory.edu / (770) 784-8394)

Respondents should contact the Office of Title IX for referral to support resources.

8.2.5. Contact Information
All Emergencies (any campus/location):  9-1-1
Emory Police Department: (404) 727-6111
Emory Police Department TIPS line (non-emergency number): (404) 727-8477 (TIPS)
Emory HelpLine (non-emergency number): (404) 727-4357 (HELP)

Atlanta campus
Counseling and Psychological Services (CAPS): (404) 727-7450
Student Health Services: (404) 727-7551 (press 1)
Office of Spiritual and Religious Life: (404) 727-6226 or 404-727-4070

Oxford campus
Counseling and Career Services (CCS):  (770) 784-8394
Student Health Services:  (770) 784-8376
Office of Spiritual and Religious Life: (770) 784-8392

Deputy Title IX Coordinators:
Candler School of Theology
Dr. Anne Burkholder
Associate Dean, Professor
Candler School of Theology
1531 Dickey Dr., Room 301
Atlanta, GA 30322
Phone: (404) 727-1351
anne.burkholder@emory.edu

Emory College of Arts and Sciences
Blaire Wilson
Assistant Director
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301 Dowman Dr., Room 307
Atlanta, GA 30322
Phone: (404) 727-8928
blaire.wilson@emory.edu

Goizueta Business School
Harriet Ruskin
Director, International Programs
Goizueta Business School
1330 Clifton Rd., Room 212
Atlanta, GA 30322
Phone: (404) 727-6644
harriet.ruskin@emory.edu

Laney Graduate School
Donna Lynch Cunningham
HR Manager
Laney Graduate School
Administration Building
201 Dowman Drive, Suite 209
Atlanta, GA 30322
Nell Hodgson Woodruff School of Nursing
Arnita Howard
Assistant Dean for Student Affairs and Diversity Initiatives
Nell Hodgson Woodruff School of Nursing
1520 Clifton Rd., Room P10
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Oxford College
Rhiannon Hubert
Asst. Dean for Campus Life / Director, Student Involvement & Leadership
Candler Hall / Student Center
100 Hamill Street
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Rollins School of Public Health
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School of Law
Katherine Brokaw, J.D.
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School of Medicine
Dr. J. William “Bill” Eley
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jeley@emory.edu

(1) Emory Graduate/Professional students are only allowed to serve as hearing board or appeals panel members.
**Definitions**

**Affirmative Consent.** Affirmative consent is a knowing, voluntary, clear, and mutual agreement among all participants to engage in specific sexual activity.

a. Affirmative consent can be given by words or actions, as long as those words or actions express willingness to engage in the sexual contact or activity. It is important not to make assumptions. If there is confusion or ambiguity, participants in sexual activity should stop and verbally clarify each person’s willingness to continue. A person who wants to engage in a specific sexual activity is responsible for obtaining affirmative consent for that activity.

b. Affirmative consent to one form of sexual activity does not imply affirmative consent to other forms of sexual activity.

c. Affirmative consent to engage in sexual activity with one person does not imply affirmative consent to engage in sexual activity with another person.

d. Silence or the lack of resistance, in and of itself, does not demonstrate affirmative consent. Again, it is important not to make assumptions; if confusion or ambiguity arises during a sexual interaction, each participant should stop and verbally clarify the other’s willingness to continue engaging in the sexual contact or activity.

e. Affirmative consent may be initially given, but can be withdrawn at any time. When affirmative consent is withdrawn, or can no longer be given, sexual activity must stop.

f. Previous relationships or previous affirmative consent for sexual activity is not affirmative consent to sexual activity on a different occasion.

g. The definition of affirmative consent does not vary based upon a participant’s sex, sexual orientation, gender identity, gender expression or relationship status.

h. Affirmative consent cannot be procured using physical force, compulsion, threats, intimidating behavior, coercion, or from a person who is incapacitated.

i. 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.

**Aiding, Facilitating, Encouraging, Concealing, or Otherwise Assisting.** Aiding, facilitating, encouraging, concealing, or otherwise assisting in a violation (or attempted violation) of this Policy is prohibited by this Policy.

**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.

**Complainant.** The Complainant is the person reporting or making an allegation or complaint of sexual misconduct. Where a third-party has reported alleged sexual misconduct, the person alleged to have been subjected to sexual misconduct also will be referred to as the Complainant.

**Complaint.** A communication or statement lodged with the Office of Title IX alleging a violation under this Policy; a complaint filed by a party, which can be verbal or written, indicates that the party would like to initiate formal or informal Title IX proceedings as per this Policy.

**Dating Violence.** The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, psychological, sexual, technological, or economic abuse directed toward a person with whom one is or has been in a social relationship of a romantic or sexually intimate nature that does not constitute domestic violence. Whether there is or was such a relationship will be determined based on, among other factors, the parties’ statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the parties involved in the relationship. Dating violence includes behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, or physically injure someone. Dating violence can be a single act or a pattern of behavior in relationships. Dating violence is sometimes called intimate partner violence.

**Domestic Violence.** The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, psychological, sexual, technological, or economic abuse directed toward (1) a current or former spouse or intimate partner; (2) a person with whom one shares a child; or (3) anyone who is protected from the Respondent’s acts
under the domestic or family violence laws of Georgia. This includes behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, or physically injure someone. Domestic violence can be a single act or a pattern of behavior in relationships. Domestic violence is also sometimes called intimate partner violence.

**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.

**Gender-Based Harassment.** Includes harassment based upon gender, sexual orientation, gender identity or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature when:

a. 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;

b. Submission to or rejection of such conduct by an individual is used as the basis for academic or student life decisions affecting that individual;

c. 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

d. The conduct is so severe and/or pervasive that it creates an intimidating, hostile, demeaning, or offensive campus or living environment.

**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.

a. 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.

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.

i. Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol or drugs. 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 sexual misconduct 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 sexual harassment/misconduct.

ii. Please see Appendix C to this Policy for a list of factors that will be considered in deciding of whether the Complainant’s incapacitation has rendered the Complainant unable to provide affirmative consent.

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

**Non-Consensual Sexual Contact.** Any intentional sexual touching, without a person’s affirmative consent. Intentional sexual touching includes deliberate contact, under or over clothing, with the breasts, buttocks, groin, or genitals, or conscious and willful touching another with any of these body parts; making another person touch any of these body parts under or over clothing; and the emission of ejaculate on the clothing or body of another person.

**Non-Consensual Sexual Intercourse.** Any form of vaginal, anal, or oral penetration by a penis, object, tongue, or finger without a person’s affirmative consent; or oral copulation (mouth-to-genital contact or genital-to-mouth contact) without a person’s affirmative consent, no matter how slight the penetration or contact.

**Report.** A report of sexual misconduct is when a party notifies the Office of Title IX of alleged misconduct and requests support and resources, but where there has not yet been a decision about whether to proceed through the Title IX process.

**Respondent.** The Respondent is the person alleged to have committed or perpetrated the sexual misconduct. Respondents are entitled to a presumption that there is no violation of this Policy throughout the disciplinary process unless the Respondent chooses to accept responsibility for a violation or until they are found responsible for a violation of this Policy via the hearing process.

**Responsible Employee (also called a “Mandatory Reporter”).** A responsible employee is any University employee who has the authority to take action to redress the harassment; who has the duty to report sexual harassment or any other misconduct by students or employees to school officials; or an individual who a student could reasonably believe has this authority or responsibility. At Emory, responsible employees include all faculty and staff
members who are not considered to be confidential.

**Retaliation.** Any adverse action or threatened action, taken or made, personally or through a third party, against someone who has filed a sexual harassment/misconduct complaint (a Complainant), has been the subject of a sexual harassment/misconduct complaint (a Respondent), or any other individual who engages with the University in connection with a sexual harassment/misconduct complaint. All individuals and groups of individuals, not just a Respondent or Complainant, are prohibited from engaging in retaliation.

a. Retaliation includes directly or indirectly threatening, intimidating, harassing, or any other conduct that would discourage a reasonable person from engaging in activity protected under this Policy, such as seeking services; receiving protective measures and accommodations; reporting sexual harassment/misconduct; and/or participating in an investigation or adjudication.

b. Retaliation includes maliciously and purposefully interfering with, threatening, or damaging the academic or professional career of another individual before, during or after the investigation and resolution of a report of sex- and gender-based harassment/misconduct under this Policy.

c. Retaliation may be present even where there is a finding of “no responsibility” on the allegations.

d. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are determined not to be accurate. Filing a counter complaint, counter appeal, or conduct complaint through processes established by University policy does not in itself constitute retaliation, unless it is determined that the filing was without a reasonable basis and made in bad faith.

**Sexual Exploitation.** 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.

**Sexual Harassment.** 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:

a. 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;

b. Submission to or rejection of such conduct by an individual is used as the basis for academic or student life decisions affecting that individual;

c. 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

b. The conduct is so severe and/or pervasive that it creates an intimidating, hostile, demeaning, or offensive campus or living environment

**Stalking.** Engaging in a course of conduct directed at a specific person (or persons) that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer significant mental suffering or anguish. Course of conduct means two or more acts, including acts in which a person 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 a person’s property. Stalking does not require an overt threat.

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

a. 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
b. 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

c. A person enrolled in an Emory program on a credit or non-credit basis.

Related Links

- Current Version of This Policy: [http://policies.emory.edu/8.2](http://policies.emory.edu/8.2)
- Policy 1.3: Equal Opportunity and Discriminatory Harassment Policy (http://policies.emory.edu/1.3)
- Policy 4.119: Mandated Child Abuse Reporting (http://policies.emory.edu/4.119)

Contact Information

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<thead>
<tr>
<th>Subject</th>
<th>Contact</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy Posting</td>
<td>Lynell Cadray</td>
<td>404-727-2611</td>
<td><a href="mailto:lynell.cadray@emory.edu">lynell.cadray@emory.edu</a></td>
</tr>
</tbody>
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Revision History

- Version Published on: Sep 26, 2016 (Kuppuswamy for Cadray, revisions of definitions, ECAS coordinator)
- Version Published on: Sep 26, 2016 (location of Judith Pannell, replace 2 deputies)
- Version Published on: Jul 14, 2016 (school of medicine deputy info changed)
- Version Published on: Jul 13, 2016 (new Deputies for Laney and Oxford)
- Version Published on: Sep 15, 2015
- Version Published on: Nov 25, 2014 (based on community feedback)
- Version Published on: Nov 03, 2014
- Version Published on: Oct 08, 2014 (annual review of policy)
- Version Published on: May 27, 2014 (changed Lynell's address)
- Version Published on: May 23, 2014 (updated University Title IX coordinator's name, deputy names)
- Version Published on: Sep 25, 2013 (summer 2013-Centralized Sexual Misconduct)
- Version Published on: May 24, 2013
- Version Published on: Aug 16, 2012 (change coordinator & program names)
- Version Published on: Nov 28, 2007 (last paragraph-updated contact information)
- Version Published on: Mar 24, 2007
- Version Published on: Mar 28, 2007 (Original Publication)

*Emory University policies are subject to change at any time. If you are reading this policy in paper or PDF format, you are strongly encouraged to visit policies.emory.edu to ensure that you are relying on the current version.*