Policy 8.2
Sexual Misconduct

This policy version was not current at the time of printing. Please see http://policies.emory.edu/8.2 for the current version.

Responsible Official: SVP and Dean for Campus Life
Administering Division/Department: Campus Life
Effective Date: May 24, 2007
Last Revision: May 24, 2013

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Overview

This Policy covers sexual misconduct committed by Emory University students and supersedes Policy 8.2. Sexual misconduct is a form of sexual harassment that is prohibited under federal law and the Emory University Equal Opportunity and Discriminatory Harassment Policy (Policy 1.3). Sexual misconduct can occur in many forms, including, but not limited to, sexual harassment, domestic violence, dating violence, sexual assault, and stalking. Emory University does not tolerate sexual misconduct in its community.

The university will take seriously every allegation or report of sexual misconduct received. Emory University’s 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 Emory University Title IX Coordinator:

Danielle Dempsey-Swopes
Director, Equal Opportunity Programs and Title IX Coordinator
201 Dowman Drive
Administration Bldg Ste 305
Atlanta, GA 30322
Phone: (404) 727-9867
Fax: (404) 712-9108
ddempsey-swopes@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 university’s Equal Opportunity and Discriminatory Harassment Policy (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 Title IX Coordinator monitors and oversees Emory University’s compliance with federal regulations concerning sexual harassment and discrimination. Upon receipt of a report of alleged sexual misconduct, the Title IX Coordinator will monitor responsive action that is handled by each school/program under the applicable code of student conduct, to ensure that the educational environment at Emory University is free of discrimination and discriminatory harassment. Additionally, the 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 the applicable disciplinary process against a respondent.

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

Policy Details

8.2.1. Reporting Sexual Misconduct

Reporting to the police. Because sexual misconduct may constitute both a violation of University 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, or to local law enforcement authorities for incidents that occur off campus. The university strongly encourages survivors who have been sexually assaulted to report the assault, 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 the Emory Police Department through the TIPS line ((404)727-TIPS/8477); however, investigative or criminal enforcement activity can be significantly limited in the case of anonymous reports. Regardless of whether a complainant pursues a criminal complaint, the university will investigate the incident in question and take appropriate responsive action to ensure that the educational environment at Emory is free of harassment and to prevent the recurrence of a hostile environment, and, as appropriate, to remedy the effects of the harassment.

Pursuant to Emory University’s Mandated Child Abuse Reporting Policy, unless there is an exception under Georgia law, Emory University requires all Emory University Personnel, including faculty, staff, students and 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 Emory Police Department.

Reporting Sexual Misconduct for University Action. Every university employee who is informed about an allegation of sexual misconduct involving any student is required to notify a Deputy Title IX Coordinator or the Title IX Coordinator either directly or through their relevant reporting structure. Generally, university employees who serve in a professional role in which communication is privileged under Georgia law (e.g., medical providers, therapists, clergy, and some rape crisis center personnel) are not bound by this requirement, except as required by law. All members of the Emory University Community are encouraged to promptly report incidents of sexual harassment and discrimination; however, reports may be filed at any time.

Complaints under this sexual misconduct policy may be filed: (1) according to the established conduct code procedures applicable to the respondent, (2) with a Deputy Title IX Coordinator appointed within each school or program, or (3) with the University’s Title IX Coordinator. A written or verbal complaint can be made directly to a Deputy Title IX Coordinator or to the Title IX Coordinator.

Retaliation prohibited. Federal regulations and university policy protect against retaliation directed at any individual who files a complaint under this policy or participates in an investigation of a complaint. A complaint of retaliation may be initiated with the Title IX Coordinator for any retaliatory actions resulting from the filing of a complaint under this policy.

8.2.2. Investigation and Adjudication

The Title IX Coordinator and Deputy Title IX Coordinator(s) receive complaints of possible violations of this policy and oversee the investigation and possible remedial actions, including adjudication through the student disciplinary process that applies to the respondent (as determined by the student’s “career” as indicated in OPUS), or other remedies designed to reasonably minimize the recurrence of such conduct as well as mitigate the effects of the harassment. The Deputy Title IX Coordinator for each school/program, or a designee (including a conduct officer), will ensure prompt, fair and impartial investigations and resolutions of complaints alleging violations of this Policy. In most cases, an investigation will be completed within 60 days; however, a longer period may be needed in some more complex cases. When conducting the investigation, the university’s primary focus will be on addressing the sexual assault and not on other Emory university alcohol or drug policy violations that may be discovered or disclosed.
The filing of a sexual misconduct complaint under this policy is independent of any criminal investigation or proceeding, and except in cases where it is determined that a conduct proceeding might impede a criminal investigation or otherwise not be in the best interests of the law enforcement agency or a complainant, a university investigation will not wait for the conclusion of any criminal proceedings to commence its own investigation and take needed interim measures.

Consistent with the specific conduct code that applies to the respondent, a preliminary investigation will likely commence with a meeting with the complainant to hear or clarify the account of the incident, and to discuss the investigation process and possible remedies, including the disciplinary process. A formal investigation may be launched under the applicable conduct process, or, when circumstances warrant, an independent investigator may be appointed to investigate the complaint at the discretion of the Title IX Coordinator. An investigation may involve interviews of witnesses and other collection of information. After an initial investigation, the conduct officer, Deputy Title IX Coordinator, or a designee may ask further clarifying questions of the complainant, respondent, or witnesses.

Early on in the preliminary investigation, the Deputy Title IX coordinator, conduct officer, or a designee will seek to determine how the complainant wishes to proceed – whether the complainant wishes to pursue a formal resolution, seeks to resolve the allegation informally, or does not wish to pursue resolution of any kind.

A. If the complainant wishes to proceed with a formal resolution, the established conduct process that applies to the respondent will govern the proceedings, provided, the Title IX Procedural Elements set forth below are incorporated into the conduct procedures. Any appeals will be handled under the relevant conduct code provisions.

B. If the complainant wishes to proceed with an informal resolution, the established conduct process that applies to the respondent, relating to informal resolution (e.g., mediation) will govern the proceedings, if such process exists. However, a complainant (a) should never be required to work out a problem or resolve an issue directly with the respondent without school involvement; (b) must be advised of the right to end the informal process at any time and to begin to pursue a formal complaint process; and (c) should be notified that mediation is not appropriate, even on a voluntary basis, for sexual assault allegations. Additionally, a complainant and respondent must mutually consent to use of the informal resolution.

C. Even if the complainant does not wish to pursue resolution, requests that no action be taken, or requests that the complaint remain confidential, Emory has an obligation to respond to reports of sexual misconduct. No guarantees can be made to a complainant regarding confidentiality; however, practically speaking, the university’s ability to respond may be limited if a complainant wishes to remain anonymous. A complainant’s request regarding the confidentiality of reports of sexual misconduct will be considered in determining an appropriate response; however, such request will be considered in the dual contexts of the university’s legal obligation to ensure a learning environment free from sexual misconduct and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation, although the university will comply with requests for confidentiality to the extent possible. 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 the University as an “education record” under Family Educational Rights and Privacy Act (FERPA).

A determination will be made on whether to proceed with the disciplinary process based on sufficient information to believe that a policy violation may have occurred. Should a determination be made not to proceed with the disciplinary process, the complainant may meet with the Deputy Title IX Coordinator to review that decision.

During the investigation and until resolution of the matter, interim restrictions may be issued as deemed appropriate by the Deputy Title IX Coordinator, conduct officer or a designee, including, but not limited to the following: no-contact or stay away orders between the complainant and the accused, interim suspension, exclusion from areas of campus, or removal or relocation from residential areas, among other interim measures.

8.2.3. Hearing procedures

If an investigation supports moving forward with a hearing, the hearing will be conducted in accordance with the particular conduct code to which the respondent is bound. Every effort will be made to pursue the conduct process in a timely manner.

Each conduct proceeding involving a violation of this policy shall include the following Title IX Procedural Elements. If the applicable policy does not expressly include these elements, they shall be deemed incorporated into the policy and will be applied accordingly.

i. Due process rights of a respondent shall be balanced with the Title IX rights of a complainant alleging sexual misconduct.

ii. A “preponderance of the evidence” standard is used in considering the available evidence.

iii. 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, including character
witnesses.

iv. Fact-finders or decision-makers involved in the hearing shall be required to disclose any conflicts of interest relating to the allegations or the proceeding.

v. Parties shall not be permitted to personally question each other at conduct hearings, but may do so through written questions presented through a member of the hearing body if otherwise permitted by the applicable conduct code.

vi. A complainant shall not be required to be physically present in the same room as the respondent, and electronic participation by a complainant may constitute presence for purposes of any proceeding.

vii. Unless otherwise expressly permitted by the applicable conduct code, parties shall not be permitted to have attorneys present at the conduct hearings. However, each party may have an advisor/support person present for proceedings, consistent with the applicable conduct code.

viii. Documentation of conduct proceedings, including written findings of facts, transcripts, and any audio recordings, are maintained in accordance with the applicable university document retention records.

ix. Parties shall receive simultaneous written notice of the outcome of the hearing and any appeal process, regardless of whether it concludes that a violation of the sexual misconduct policy was committed.

x. The complainant will be notified of any sanctions imposed on the respondent where the sanction directly relates to the complainant, consistent with FERPA.

xi. Any appeal process shall include the right of appeal by either a complainant or an accused, with a final right of appeal to a school/program Dean. Unless otherwise conflicting with the applicable conduct policy, grounds for appeals may include: 1) new information (available after a hearing) of a nature that the verdict or sanction may have been different; 2) procedural errors within the hearing process which may have substantially affected the fairness of the hearing; and 3) the finding was inconsistent with the weight of the information.

8.2.4 Support Services and Options for Survivors of Sexual Misconduct

A variety of support resources are available on campus and in the community to assist students in dealing with sexual or dating violence, whether it happened recently or in the past. The Respect Program, in the Office of Health Promotion, Campus Life, http://studenthealth.emory.edu/hp/programs/respect_program/, provides education, advocacy, and support for students who have been affected by sexual and relationship violence as well as their friends and families. The Respect Program also offers services for Oxford students by working closely with Amanda Yu, Director of the Center for Healthful Living. http://www.oxford.emory.edu/life/support_services/health-education/wellness-resources/sexual-assault.dot. Students of all genders who have been affected by interpersonal violence can get information and support, talk about all options available to Emory University students, accompaniment regarding medical treatment, counseling, and reporting; reporting options, academic and residential relief, and referral to various resources on and off campus including legal, medical, and counseling. Confidentiality will be respected to the greatest extent possible. However, federal law may require that certain information be forwarded to campus officials. The Respect Program Student Resource Guide provides detailed information about resources available to students dealing with sexual or dating violence. http://studenthealth.emory.edu/hp/documents/pdfs/pdfs_respectresource.pdf

8.2.5 CONTACT INFORMATION

All Emergencies (any campus/location) 9-1-1

Emory Police Department 404.727.6111 or 404.727.8005

Emory Police Department TIPS line 404.727.8477/TIPS

Title IX Coordinator:

Danielle Dempsey-Swopes
Director, Equal Opportunity Programs and Title IX Coordinator
201 Downman Drive
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Deputy Title IX Coordinators:

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cstrate@emory.edu
Definitions

**Allegation.** A statement by a complainant that he or she believes an act of sexual misconduct has occurred.

**Coercion.** Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When a person makes clear he or she does not want sex, he/she wants to stop, or that he/she does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Complainant.** The person making an allegation or complaint of sexual misconduct.

**Complaint.** A formal notification, either orally or in writing, of the belief that sexual misconduct has occurred.

**Consent.** Consent is clear, unambiguous, and voluntary agreement between participants to engage in specific sexual activity. Consent is active, not passive, and is given by clear actions or words. Consent may not be inferred from silence, passivity, or lack of active resistance alone. A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Being intoxicated does not diminish one’s responsibility to obtain consent. In some situations, an individual may be deemed incapable of consenting to sexual activity because of circumstances or the behavior of another, or due to their age.[1] Examples of such situations include, but are not limited to, incompetence, impairment from alcohol and/or other drugs, fear, unconsciousness, intimidation, coercion, confinement, isolation, or mental or physical impairment.
**Force.** The use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes resistance or produces consent. There is no requirement that a person has to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Incapacitation.** Incapacity can result from mental disability, sleep, involuntary physical restraint, or from intentional or unintentional taking of alcohol and or other drugs. An incapacitated person does not have the ability to give knowing consent. Sexual activity with a person who one should know to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated, constitutes a violation of this policy. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of the use of alcohol and/or drugs on another’s ability to give consent.

**Intimate Partner Violence (IPV).** Physical, sexual, or psychological harm by a current or former partner or spouse. This type of violence can occur among heterosexual or same-sex couples, whether cohabitating or not, and does not require sexual intimacy. IPV can vary in frequency and severity, can occur on a continuum, and can include acts of physical violence, sexual violence, threats of physical or sexual violence, or psychological or emotional violence. Psychological or emotional violence is a broad term that results in trauma to a victim caused by acts, threats of acts, or coercive tactics, and can include acts of humiliation, intimidation, isolation, stalking, and harassment.

**Non-Consensual Sexual Contact.** Any intentional sexual touching by a person upon a person, that is without consent and/or by force. Sexual Contact includes, but is not limited to, intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice, with any object.

**Non-Consensual Sexual Intercourse.** Any sexual intercourse, however slight, by a person upon a person, that is without consent and/or by force. Intercourse includes, but is not limited to, vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

**Respondent** refers to the person against whom the allegation or complaint of sexual misconduct is made.

**Sexual Exploitation** occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to the following:

- invasion of sexual privacy;
- prostituting another student;
- non-consensual video or audio-taping of sexual activity;
- going beyond the boundaries of consent;
- observing unsuspecting individuals who are partly undressed, naked, or engaged in sexual acts;
- knowingly transmitting an STI or HIV to another student;
- exposing one’s breasts, buttocks, groin, or genitals, in non-consensual circumstances; inducing another to expose their breasts, buttocks, groin, or genitals;
- sexually-based stalking and/or bullying may constitute a form of sexual exploitation, as well as a form of sexual harassment, as discussed above.

**Sexual Harassment.** 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 or creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive. Sexual harassment may include, for example, an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention or advances; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence or sexual assault; intimate partner violence; stalking; gender-based bullying.

**Sexual Misconduct.** Sexual misconduct encompasses sexual harassment, non-consensual sexual contact (or attempts to commit same); non-consensual sexual intercourse (or attempts to commit same), and sexual exploitation. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by persons of any gender or sex, and it can occur between people of the same or different sex.
Stalking. Behavior where a person follows, places under surveillance, or contacts another person without the consent of the other person for the purpose of harassing and intimidating the other person. The term “contact” means to make or attempt to make any communication, including, but not limited to, communication in person, by telephone, by mail, by broadcast, by computer or computer network, or by any other electronic device. “Harassing and intimidating” refers to communication directed at a person that causes emotional distress because of a reasonable fear for the person’s safety or safety of others, and which serves no legitimate purpose. It does not require that an overt threat of death or bodily injury be made.

[1] In Georgia, minors under the age of 16 years are generally unable to provide consent, with narrow exceptions. See Georgia Code Ann. § 16-6-3, Statutory Rape.

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](http://policies.emory.edu/1.3))

Contact Information

<table>
<thead>
<tr>
<th>Subject</th>
<th>Contact</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy Posting</td>
<td>Campus Life Central</td>
<td>404-727-4364</td>
<td><a href="mailto:kmoss@emory.edu">kmoss@emory.edu</a></td>
</tr>
</tbody>
</table>

Revision History

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.