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
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Overview

Emory University is committed to maintaining an environment that is free of unlawful harassment and discrimination. Thus, in accordance with federal law and its commitment to a fair and open campus environment, Emory cannot and will not tolerate discrimination against or harassment of any individual or group based upon race, sex, color, religion, 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.

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 and does not tolerate sexual misconduct in its community and will take prompt action when misconduct occurs.

This Policy covers sexual misconduct committed by Emory University students. 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, intimate partner violence, sexual assault, and stalking.

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 staff members listed below:

Lynell Cadray
University Title IX Coordinator
Associate Dean/Chief Diversity Officer
1520 Clifton Road
Atlanta, GA 30322
Phone: 404-712-8541
Fax: 404-727-7980
lynell.cadray@emory.edu

Or
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 University 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 University Title IX Coordinator will monitor responsive action to ensure that the educational environment at Emory University 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 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 University Policy 4.119, 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 Title IX Coordinator either directly or through their relevant reporting structure. However, university 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 Coordinator. All members of the Emory University Community are encouraged to promptly report incidents of sexual harassment and discrimination.

Complaints under this sexual misconduct policy may be filed: (1) with the University Title IX Coordinator, (2) with the Title IX Coordinator for Students, or (3) with a Deputy Title IX Coordinator. The complaint may be made in a written or verbal format. A reporting form is available at sexualmisconductresources.emory.edu.

Retaliation prohibited. Federal regulations and university policy protect against retaliation directed at any individual who files a complaint or 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 sexual misconduct 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. 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, a complainant, or the university, a university investigation 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. Title IX Coordinator for Students will appoint an investigator to examine each complaint received. The investigator will conduct a prompt, thorough, and impartial investigation of the complaint. The
investigation may involve interviews of a complainant, respondent, or witnesses, collection of documents or other physical/electronic information, and other appropriate steps in conducting an investigation. 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 an investigator during the investigation, but the investigator has independent authority to conduct an investigation as best determined by the investigator. Neither a complainant nor respondent, or anyone on behalf of a complainant or respondent, is permitted to engage in any independent investigative activity that involves contacting individuals associated with the investigation and adjudication.

At the conclusion of the review, the investigator will submit a written Report of Findings to the Title IX Coordinator for Students and the University Title IX Coordinator detailing the information that was collected. The Title IX Coordinator for Students or University Title IX Coordinator may ask further clarifying questions of the complainant, respondent, or witnesses to supplement the Report of Findings.

The Title IX Coordinator for Students shall review the Report of Findings and determine whether there is sufficient information to support charging a student 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. If the Title IX Coordinator for Students determines that there is sufficient information that a student may have committed a violation of this Policy, then within 7 days after the report of findings 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 on 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, 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 and the Title IX Coordinator for Students determines there is sufficient information to proceed with a 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; (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. 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 the best interest of the university.

C. 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. The university’s ability to respond may be limited if a complainant wishes to remain anonymous. Also, no guarantees can be made to a complainant regarding confidentiality. 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 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. 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).

Authority to Impose Interim Restrictions. During the investigation and until resolution of allegations, the Title IX Coordinator for Students, University Title IX Coordinator, or designee, may issue interim restrictions, including, but not limited to, the following: no-contact or stay away orders between the complainant and the respondent, interim suspension, exclusion from areas of campus, or removal or relocation from residence halls, among other measures. Interim measures should not be construed to suggest that any decision has been made about the merits of the cases.

Acceptance of Responsibility. Within 5 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 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 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 an investigation supports moving forward with a hearing and the respondent does not accept responsibility for the alleged conduct, the Title IX Coordinator for Students will appoint a hearing panel of three individuals, drawn from a pool of faculty, staff, and 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 panel will occur within 5 days. The Title IX Coordinator for Students will appoint one member of the panel as its chairperson. The chairperson 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 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 hearing chairperson.

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 chairperson of the Council 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 panel to discuss procedural issues.
4. The university may require any student to attend and to give testimony relevant to the case under consideration. Signed, written statements of complainants from a respondent or from witnesses who cannot attend the hearing may be accepted at the discretion of the chairperson. The university may request the attendance of a faculty or staff member, or alternatively request that a faculty or staff member furnish a written statement.
5. Neither the complainant nor a respondent is permitted to have attorney representation during the proceedings set forth in this Policy, including at the hearing. However, a complainant or respondent may have an advisor, who is a current member of the Emory community (a faculty member, staff member, or a student) to provide advice and support to a student participating in the conduct process. An advisor may attend the hearing to provide advice and support to a student, but is not permitted to make statements to the hearing panel or question hearing participants. While in a hearing, the advisor’s advice and support must be provided in a manner that does not disrupt the hearing. If a respondent’s conduct is related to pending criminal proceedings, the Title IX Coordinator for Students has the sole discretion to permit an attorney for the
complainant or the respondent to attend the hearing as the student's advisor.
6. A complainant shall not be required to be physically present in the same room as the respondent, and at the discretion of the chairperson of the hearing panel, electronic participation by a complainant may constitute presence for purposes of any proceeding.
7. Panel members shall be required to disclose any conflicts of interest relating to the allegations or the proceeding.
8. Neither party shall be permitted to directly question each other or any witness at the hearing, but they may submit questions to the panel chairperson's consideration.
9. The panel chairperson will determine the admissibility of all evidence and testimony, as well as the relevance of all questions posed by members of the panel or submitted by either party. This determination shall be based on 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 all hearings (not including deliberations). The recording shall be the property of the university. 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.
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 panel shall deliberate to decide the case. The respondent shall be found responsible or not responsible for each charge by a majority vote of the panel.

The panel chairperson will submit a written report to the Title IX Coordinator for Students containing the panel's determination and rationale within 5 days of the conclusion of the hearing. If the panel concludes that, under a preponderance of the evidence standard, that the respondent violated this policy, then the Title IX Coordinator for Students shall be empowered to determine appropriate sanctions and remedies. 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.

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 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 appellate review panel of 3 members from a pool of trained faculty, staff, and students. The panel will review the materials within 10 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, and in its discretion, can hold an appellate hearing. 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: affirm the original finding and sanction; affirm the original finding but issue a new sanction, which may be of greater or lesser severity; remand the case back to the hearing body to correct a procedural or factual defect; or, dismiss 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 or dating violence, whether it happened recently or in the past. A full listing of support services may be found at sexualmisconductresources.emory.edu. 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. Amanda Yu, Director of the Center for Healthful Living, serves as the primary point of contact for students at Oxford College. http://www.oxford.emory.edu/life/support_services/health-education/wellness-resources/sexual-assault.dot.

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

Emory Trust Line 1-888-550-8850

Student Health Office 404.727.7551

Deputy Title IX Coordinators:

Candler School of Theology
Mary Lou Boice
Associate Dean, Admissions/Financial Aid
1531 Dickey Dr.
301 Candler School of Theology
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**Definitions**

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

**Coercion.** Coercion is inappropriate 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 that they do not want sex, wants to stop, or that going past a certain point of sexual interaction is unwanted, 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 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; and 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 that person for the purpose of harassing and intimidating him or her. 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.

Student. The term student means any person pursuing academic studies at the university. The term also includes: (1) a person not currently enrolled who was enrolled in the fall, spring, or summer term preceding the alleged violation, or (2) a person who, while not currently enrolled, was previously enrolled in Emory University and who is reasonably anticipated to seek enrollment
at a future date, (3) a person who has applied to or been accepted for admission to Emory university and has accepted an offer of admission or may reasonably be expected to enroll, or (4) a person enrolled in the Emory University Pre-College Program on a credit or non-credit basis.

[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)
- 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>Campus Life Central</td>
<td>404-727-4364</td>
<td><a href="mailto:kmoss@emory.edu">kmoss@emory.edu</a></td>
</tr>
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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.*