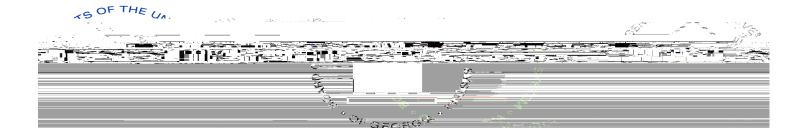


### Hearing Panelist Refresher Training

Fall 2020

-Prather

System Director for Equity & Investigations Legal Counsel



### The law states that:



Sex Discrimination

Discriminatory Acts Sexual Harassment

Retaliation

A recipient with of in an against a person , must respond promptly in a manner that is not deliberately indifferent.

Conduct on the basis of sex that satisfies one or more of the following:

(i)An conditioning education benefits on participation in unwelcome sexual conduct (i.e quid pro quo); or

(ii)

or

(iii) Sexual assault (as defined in the Clery



activity in the United States

- Institution property
- Institution sponsored or affiliated



## Updated Sexual Misconduct Policy

# Sexual Misconduct Policy

Title IX

Other Sexually Based Behavior



Definitions of Prohibited Conduct

Title IX Jurisdiction

Provisions on Retaliation, Amnesty,

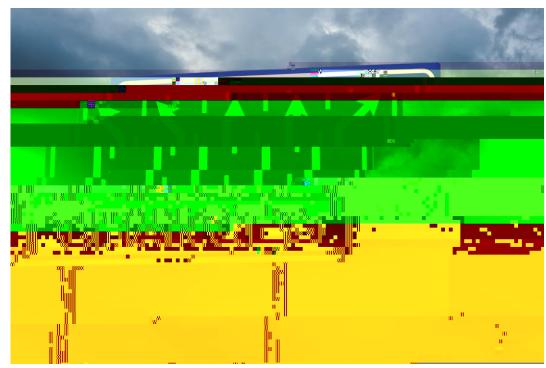
False Statements

Role of Advisors

Adjudication Process

Timeframe for Completion

More...



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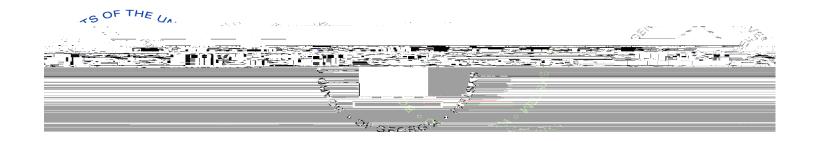
Scope of Sexual Misconduct

Jurisdictional reach of Sexual Misconduct

Responsible/Confidential/Privileged Employee designations

Definition of consent and incapacitation





### Prohibited Conduct: Definitions & Jurisdiction

## Sexual Misconduct Domestic Violence

Dating Violence

Sexual Exploitation

Sexual Harassment

Stalking

Nonconsensual Sexual Contact

Nonconsensual Sexual Penetration



### committed by:

a current , former spouse or

a person whom a person who is with the alleged victim

with or cohabitated





LININGERSITY SYSTEM OF GEODGIA

of another for , or for the benefit or advantage of anyone

Examples include:

other than the one being exploited.

Non-consensual photos, videos, or audio of sexual activity

Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity was consensual

Intentionally and inappropriately exposing one's breast, buttocks, groin, or genitals in non-consensual circumstances



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Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes),

to participate in or to benefit from an institutional education program or activity



, based on sex

(including gender stereotypes) that may be any of the following:

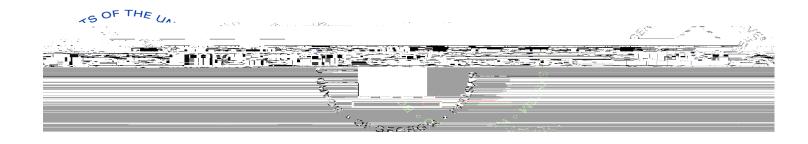
Implicitly or explicitly a employment status in a course program or activity

employment or education decisions; OR



#### activity the United States

- Institution property
- Institution sponsored or affiliated events [substantial



# Overview of Complaint Process

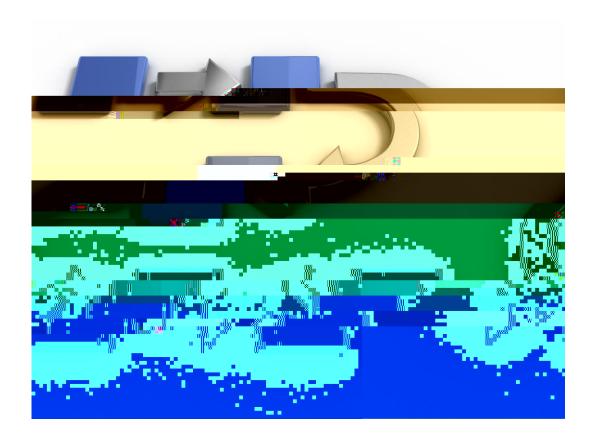
A report of misconduct has been made

The Complainant or the Title IX Coordinator has initiated the formal investigation process

Notice of the investigation has been sent to the parties

The assigned investigator(s) have made preliminary determinations

The parties and the institution have been unable to reach an informal resolution



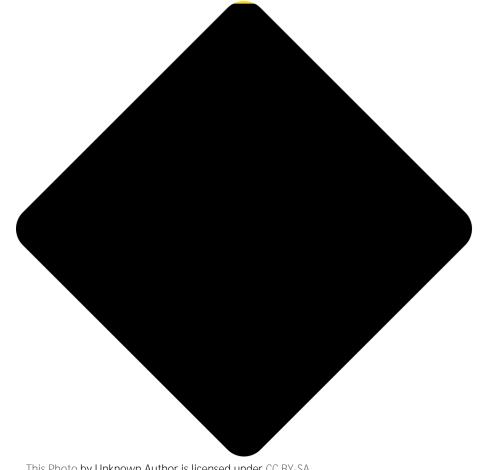


Permissible consolidation when allegations arise out of the same facts or circumstances:

Against more than one Respondent

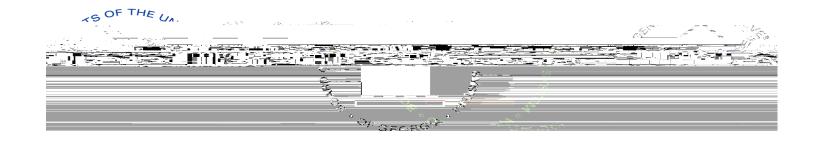
By more than one Complainant against one or more Respondents Crosscomplaints

Parties must have the opportunity to object; institution makes final determination









## The Formal Adjudication Process

#### 106.45(b)(6)

The Final Rule mandates a bifurcated process

Final determinations of responsibility and sanctions are made by decision-makers

CANNOT be the Title IX Coordinator or assigned investigator

New due process considerations

Crossexamination

Relevancy determinations

Impact of party or witness refusal to submit to cross-examination

Institutions can establish rules of decorum



Serves as a neutral decision-maker

Makes a final determination of responsibility

Makes a final determination regarding sanctions and other administrative action that may be appropriate

Must articulate determinations in a written decision



#### Considered a decision-maker

Responsible for facilitating the hearing process

Scheduling
Selection of panel members
Facilitating advisor selection
Any pre-meetings with parties
Conducts the hearing

Responsible for determining issues of relevancy



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At the request of either party, the parties must be permitted to be in separate rooms

Hearings may be conducted in-person or via videoconferencing

Ensure decision-makers receive training on how to use technology

Have available all directly related information

Institutions permitted to establish rules of decorum

All hearings must be recorded



# The burden of proof AND burden of gathering evidence is on the institution

Parties are permitted to present evidence and call witnesses to advance their claims and defenses

In Title IX Hearings that may include fact or expert witnesses

Permitted to establish the weight given to certain types of evidence





Relevant information relates to the incident at issue

Relevant information provides sufficient value in making the overall determination

Questions and information regarding the

or sexual predisposition unless to prove

Someone else other than the Respondent committed the alleged misconduct Consent between the parties



Legally privileged information is protected

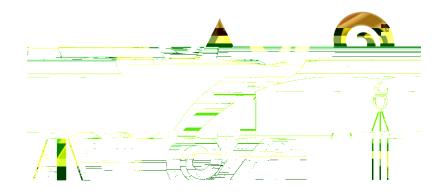
their voluntary, written consent

Duplicative evidence may be deemed irrelevant

If an individual does not submit to cross examination, at a Title IX hearing, their statements cannot be relied upon



Decisions regarding student and employee alleged misconduct are based on a preponderance of the evidence



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106.45(b)(7)

Provided to both parties simultaneously must include:

The allegations

The procedural steps from the complaint through determination

Findings of fact supporting the determination

Determinations regarding responsibility, sanctions (and remedies) along with the supporting evidence and rationale

Information on the appeals process





### Additional Provisions

#### 106.71

: Reporters, Complainants, Witnesses, Respondents, even those who choose to not participate

: Intimidation, threats, coercion,

#### disc rimination

Ex. Charging individuals for code of conduct violations that arise out of the same facts or circumstances Ex. Not keeping the identity of the Complainant, Respondent, or any witnesses confidential



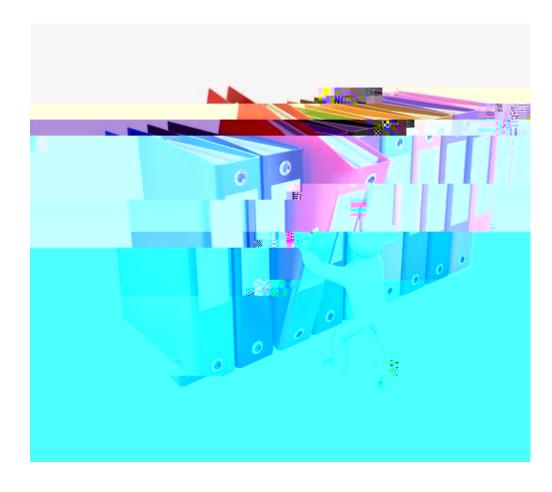
#### 106.45(b)(10)

# 7-year records retention mandate:

Reports [supportive measures, why not deliberately indifferent and what measures taken to restore or preserve equal access]

Investigations [determinations, recording of hearing, sanctions and remedies implemented]

Appeals
Informal resolutions [results]
Training materials



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