

EQUITY & CIVIL RIGHTS COMPLIANCE

1 PARK PLACE, STE. 527
ATLANTA, GA 30303

PHONE: 404-413-2561
FAX: 404-413-3295



**Employee Title IX Sexual Misconduct Cases
Procedures for Panel Hearing, Disciplinary Action, and Appeal¹**

A. Panel Hearing

1. All Georgia State University employee Title IX Sexual Misconduct cases shall be heard by a panel of three (3) members of the institution's faculty and/or staff (the "Panel"). All institutional participants in the sexual misconduct resolution process shall receive appropriate annual training as directed by the University System of Georgia Director or Coordinator and required by the Clery Act and Title IX.
2. The Hearing Officer will promptly notify Complainant and Respondent (the "Parties") of the composition of the Panel. The Complainant and Respondent each are authorized to request one (1) proposed member of the Panel be removed from the Panel for any reason, but such party must submit his/her request in writing to the Hearing Officer **within five (5) days** of the notice of Panel composition. Failure to meet this deadline forfeits such party's authorization to request removal of a Panel member.
3. In no case shall a hearing to resolve a sexual misconduct allegation take place before the investigation report has been finalized. The investigator may testify as a Witness regarding the investigation and findings but shall otherwise have no part in the hearing process and shall not attempt to otherwise influence the proceedings outside of providing testimony during the hearing. All directly related evidence shall be available at the hearing for the parties and their advisors to reference during the hearing.
4. Notice of the date, time, and location of the hearing as well as the designated Hearing Officer shall be provided via email at least 10 calendar days prior to the hearing. Parties may attend the hearing with their advisor.
5. Hearings shall be conducted in-person or via video conferencing technology.

¹ See [USG HRAP Policy on Prohibit Discrimination and Harassment](#) for further reference.

6. Attendance at the hearing is limited to Panel members, the Hearing Officer, Complainant and Complainant's Advisor, and Respondent and Respondent's Advisor. Witnesses may be present only while testifying.
7. At all times participants in the hearing process, including parties, a party's advisor, and institution officials, are expected to act in a manner that promotes dignity and decorum throughout the hearing. Participants are expected to be temperate and respectful to others, and to follow procedural formalities outlined by this Policy.
8. The institution reserves the right to remove any participant from the hearing environment.
9. Each advisor is to serve only in an advisory capacity and may not present evidence or serve as an advocate or spokesperson, with the exception of conducting cross-examination on behalf of the party they advise, as set forth in 13(e) below.
10. Formal civil rules of evidence do not apply to the resolution process and the standard of evidence shall be a preponderance of the evidence.
11. The Hearing Officer will preside at the hearing and will rule upon all procedural matters, in consultation with the Title IX Coordinator, as necessary. The Hearing Officer will follow these procedures with flexibility and in an atmosphere of collegiality so that the Panel is able to receive sufficient information on which to base its recommendation.
12. Each institution shall maintain documentation of the investigation and resolution process, which may include written findings of fact, transcripts, audio recordings, and/or video recordings. Any documentation shall be maintained for seven years.
13. Additionally, the following standards shall apply:
 - a. The parties shall have the right to present witnesses and evidence at the hearing.
 - b. Where a party or a witness is unavailable, unable, or otherwise unwilling to participate in the hearing, including being subject to cross-examination, the Panel shall not draw an adverse inference against the party or witness based solely on their absence from the hearing or refusal to subject to cross-examination.
 - c. Relevant facts or evidence that were not known or knowable to the parties prior to the issuance of the final investigative report shall be admissible during the hearing.

- d. The admissibility of any facts or evidence known or knowable by the parties prior to the issuance of the final investigative report, and which were not submitted during the investigation, shall be determined by the Hearing Officer in compliance with the obligation to provide both parties an equal opportunity to present and respond to witnesses and other evidence. The Hearing Officer may consult with the Title IX Coordinator in making such determinations.
- e. The parties shall have the right to confront any witness, including the other party, by having their advisor ask relevant questions directly to the witness. The Hearing Officer shall limit questions raised by the advisor when they are irrelevant to determining the veracity of the allegations against the Respondent(s). In any such event, the Hearing Officer shall err on the side of permitting all the raised questions and must document the reason for not permitting any particular questions to be raised. The Hearing Officer may consult with the Title IX Coordinator in making such determinations.
- f. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior shall be deemed irrelevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct or consent between the parties during the alleged incident.
- g. Decision maker(s) shall not access, consider, disclose, or otherwise use a party's records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional made in connection with the party's treatment unless the party has provided voluntary written consent. This also applies to information protected by recognized legal privilege.
- h. All relevant evidence, including hearsay, may be admitted. The Panel may exclude information the Hearing Officer determines to be immaterial or irrelevant.
- i. Following a hearing, the parties shall be simultaneously provided a written decision via email of the hearing outcome and any resulting disciplinary or administrative actions. The decision must include the allegations, procedural steps taken through the investigation and resolution process, findings of facts supporting the determination(s), determination(s) regarding responsibility, and the rationale for any disciplinary or other administrative action.

B. Disciplinary Action

In determining the severity of sanctions or corrective actions, the following should be considered: the frequency, severity, and/or nature of the offense; history of past conduct; an offender's

willingness to accept responsibility; previous institutional response to similar conduct; strength of the evidence; and the wellbeing of the university community. The institution will determine disciplinary action and issue notice of the same, as outlined in 13(i) above.

C. Appeals

Either Party (Complainant or Respondent) shall have the right to appeal the outcome of the hearing on any of the following grounds:

- (1) To consider new information that is sufficient to alter the decision, or other relevant facts not brought out in the original investigation (or hearing), because such information was not known or knowable to the person appealing during the time of the investigation (or hearing);
- (2) To allege a procedural error within the investigation or hearing process that may have substantially impacted the fairness of the process, including, but not limited to, whether any hearing questions were improperly excluded or whether the decision was tainted by a conflict of interest or bias by the Title IX Coordinator, investigator(s), or administrative decision maker(s); or
- (3) To allege that the finding was inconsistent with the weight of the information.

Either Party may appeal the Panel's decision by submitting an appeal to the University President at president@gsu.edu, with copies to the Title IX Coordinator at TitleIX@gsu.edu and the Director of Employee Relations at employeerelations@gsu.edu, **within five (5) business days** of the date of the Panel's final written decision. The appeal (i) must be in writing, (ii) must set forth in detail the grounds for the requested review, which must be one or more of the three reasons for appeal outlined above; and (iii) must attach all materials that the appellant wishes to have considered in the appeals process. The appeal may be made to the President **solely** on the three grounds set forth above. The President's review will consider only the record; no new evidence will be considered, and no new meeting with either Party is required.

The University will notify the non-appealing Party of the appeal, provide that Party with a copy of the appeal, and allow for an opportunity for the non-appealing party to respond in writing. The non-appealing Party's response must be submitted to the institution within **five (5) business days** of the date of Notification of Appeal. If a response is submitted by the non-appealing Party, the institution will provide copies of the original appeal and information submitted by the non-appealing Party to the Appellate Officer and the Parties.

The President may (i) affirm the original finding and sanction (if any), (ii) affirm the original finding but issue a new sanction of greater or lesser severity (if any), (iii) remand the case back to the decision maker to correct a procedural or factual defect, or (iv) reverse or dismiss the case if there was a procedural or factual defect that cannot be remedied by remand.

The University will inform Parties of any change to the results of a disciplinary process that occurs prior to the time that such results become final and when such results become final. The President may consult with the Title IX Coordinator for clarification on questions of procedure or rationale, if needed. Documentation of all such consultations will be maintained. Sanctions of all types will not be imposed, in full or in part, while an appeal is pending at the institutional level.

The President shall issue a written decision informing the Parties of the outcome of the appeal and including a rationale for this decision. This decision shall be provided simultaneously to the Parties by no later than **seven** (7) business days after the President receives all appellate submissions, barring exigent circumstances. Copies of the President's decision will be provided to the Title IX Coordinator at TitleIX@gsu.edu, the Director of Employee Relations at employeerelations@gsu.edu, and other parties, as applicable. The President's decision shall be the final decision of the institution. Should the Respondent or Complainant wish to appeal the President's decision, they may request review by the Board of Regents in accordance with the [Board of Regents' Policy on Discretionary Review](#).

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