

# Procedure: 6.1.2p. [V.A.1, 6.1.1p] Sexual Harassment and Misconduct

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Last Reviewed: September 27, 2019; March 13, 2018  
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## I. PURPOSE:

It is the purpose of this procedure to ensure that all students within the Technical College System of Georgia (TCSG) and its colleges are provided access to a safe educational environment free from any discrimination on the basis of sex. To that end, this procedure prohibits sex discrimination of any kind, including sexual harassment and sexual misconduct (“prohibited conduct”). Sexual misconduct includes, but is not limited to, domestic violence, sexual violence, dating violence, sexual assault, sexual exploitation, and stalking.

All students and employees are expressly prohibited from engaging in any form of prohibited conduct in all interactions with each other, whether or not the interaction occurs during class or on or off campus. Visitors to campuses also shall not engage in prohibited conduct, and may be barred from campus.

Any student or employee who has engaged in prohibited conduct will be subject to disciplinary action up to and including expulsion or dismissal. Nothing in this procedure shall be interpreted to interfere with any person’s right to free speech as provided by the First Amendment to the Constitution of the United States of America.

TCSG strongly encourages all students and requires employees to report any instances of sexual harassment or sexual misconduct promptly and accurately. TCSG will not tolerate retaliation for having filed a good faith complaint or for having provided any information in an investigation. Any individual who retaliates against a complainant or witness in an investigation will be subject to disciplinary action, up to and including expulsion or dismissal.

Employee complaints of unlawful harassment or discrimination shall be conducted pursuant to the process outlined in the procedure governing Unlawful Harassment, Discrimination, and Retaliation in Employment.

## II. RELATED AUTHORITY:

20 U.S.C. §§ 1681 et seq.  
O.C.G.A. § 19-7-5  
Violence Against Women Reauthorization Act of 2013  
Campus Sexual Violence Elimination Act (Campus SaVE)  
Titles VI and VII of the Civil Rights Act of 1964  
Title IX of the Educational Amendments of 1972

## III. APPLICABILITY:

All work units and technical colleges associated with the Technical College System of Georgia.

#### **IV. DEFINITIONS:**

**Advisor:** the person who will attend the Hearing with a Party and conduct the oral cross-examination of the other Party and Witnesses. This person may also offer advice and support from the time the Notice of Formal Complaint is issued and may attend any meetings involved in the investigatory process, but may not speak on behalf of the party during such meetings. The Advisor may be chosen by the Party and is permitted to be, but need not be, an attorney. If either Party is unable to select an Advisor, TCSG will furnish an Advisor to the Party. The Advisors are intended to maintain Privacy and confidentiality to the extent permitted by law.

**Affirmative Consent:** affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the Affirmative Consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence or incapacitation mean Affirmative Consent. Affirmative Consent also cannot be procured by duress or intimidation, or by the use of anesthetizing or intoxicating substances. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time. Affirmative Consent may be based on a condition(s), e.g., the use of a condom, and that condition(s) must continue to be met throughout an activity, unless there is mutual agreement to forego or change the condition. When there is no Affirmative Consent present during sexual activity, the activity at issue necessarily occurred “against the person’s will.”

**Appeal Officer:** the Commissioner of TCSG or his designee, who will review the Parties’ appeals and issue the Notice of Outcome of Appeal.

**Clinical Site:** any off-campus location to which students or faculty are assigned for completion of program requirements including labs, internships, or practicums.

**Complainant:** the Party to the process who has allegedly experienced the alleged Title IX Prohibited Conduct at issue.

**Confidential Resource:** a person who, by law, is exempted from the obligation to report an allegation of conduct that could constitute Title IX Prohibited Conduct to any entity, including the College’s Title IX Coordinator or law enforcement in circumstances in which the reported conduct could be a crime (except, as to law enforcement, if the Complainant is a minor or if there is a belief that there is an imminent threat of harm to self or others).

**Confidentiality:** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses.

**Court Order:** any formal order issued by a state or federal court or authorized police officer that restricts a person’s access to another TCSG community member, such as an emergency, temporary or permanent restraining order.

**Dating Violence:** violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant, including sexual or physical abuse or the threat of such abuse, but excluding acts covered under the definition of Domestic Violence.

**Decision-Maker:** a professional appointed by the TCSG Commissioner experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title

IX Procedure who will preside over the Hearing and will issue the Written Determination Regarding Responsibility

**Domestic Violence:** a felony or misdemeanor crime of violence committed: (i) by a current or former spouse or intimate partner of the Complainant; (ii) by a person with whom the Complainant shares a child in common; (iii) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Georgia; (v) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Georgia. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**Duress:** a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity to do or submit to something that they would not otherwise do or submit to. When deciding whether the act was accomplished by duress, all the circumstances, including the age of the Complainant and their relationship to the Respondent, are relevant factors.

**Employee:** any individual employed in a full or part time capacity in any TCSG work unit or technical college.

**Expert Witness:** a Witness identified by a Party or the Title IX Office that has special expertise in a technical matter, such as forensic evidence.

**Force:** an act is accomplished by force if a person overcomes the other person's will by use of physical force or induces reasonable fear of immediate bodily injury.

**Formal Complaint:** a document filed and signed by a Complainant or filed and signed by the Title IX Coordinator alleging Title IX Prohibited Conduct against a Respondent and requesting that TCSG investigate the allegations.

**Hearing:** a live hearing conducted with all Parties physically present in the same geographic location or with participants appearing virtually with technology enabling participants simultaneously to see and hear each other. During the Hearing, the Decision-Maker permits each Party's Advisor to ask the other Party and Witnesses all relevant questions and follow-up questions, including those challenging credibility. A recording or transcript of the hearing will be made.

**Hearing Coordinator:** the person who manages Hearings under this Title IX Procedure.

**Hearing File:** the information collected during the Investigation that is deemed relevant to be considered by the Decision-Maker.

**Hearing Schedule:** a time-table specific to each matter that schedules key dates for the matter after it has been charged.

**Human Resources Director:** the highest ranking employee responsible for the human resources function at a technical college or TCSG work unit.

**Incapacitation:** a state where a person lacks the ability to voluntarily agree (that is, to give Affirmative Consent) to sexual activity because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is

otherwise unaware that sexual activity is occurring, or is unable to appreciate the nature and quality of the act. Incapacitation is not necessarily the same as legal intoxication.

**Informal Resolution:** a voluntary process that the Parties may consent to participate in, as described in Section IV.F.

**Initial Report:** a report of conduct that may constitute Title IX Prohibited Conduct, which may be made by any individual, even if not the person alleged to have experienced the conduct. An Initial Report is made prior to a Formal Complaint, and triggers the Title IX Coordinator's obligation to contact the Complainant and inform the Complainant of Supportive Measures, as described in Section IV.A.1.

**Intimidation:** includes any threatening statement or conduct made with the intent to prevent or dissuade any Party or Witness from reporting or participating in the Title IX Procedure. Intimidation also includes the use of implied threats to overcome a person's freedom of will to choose whether or not to participate in sexual activity or provide affirmative consent.

**Investigation:** the phase of the Title IX Procedure when the Parties are invited to provide evidence and identify Witnesses to the Investigator related to the allegations in the Notice of Formal Complaint.

**Investigative Report:** a formal written document that fairly summarizes the relevant evidence gathered during the Investigation, including the parties' responses to the preliminary report.

**Investigator:** the person assigned by TCSG to investigate Formal Complaints under this Title IX Procedure. The Investigator shall have been trained on all elements of an Investigation as required by federal and state law.

**Menace:** a threat, statement, or act showing intent to injure someone.

**New Evidence:** evidence that was not available at the time of the charge decision, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter.

**Nonforcible Sexual Violations:** Any of the following acts:

1. Incest: nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Georgia law.
2. Statutory Intercourse Violation: nonforcible sexual intercourse with a person who is under the statutory age of consent of Georgia.

**Notice of Charge:** the formal notification issued by the Title IX Coordinator following an Investigation that the matter will be charged and will proceed to a Hearing.

**Notice of Dismissal:** the formal notification issued by the Title IX Coordinator following a determination that the matter does not meet the definitional or jurisdictional standards of Title IX and stating the reasons for dismissal.

**Notice of Formal Complaint:** the formal notification issued by the Title IX Coordinator that a Formal Complaint has been filed and including the details set forth in Section IV.C.1.

**Notice of Outcome of Appeal:** a written determination describing the Appeal Officer's final decision of a matter brought forward on appeal.

**Party/Parties:** the generic or collective term used to refer to Complainant(s) and Respondent(s).

**Preponderance of the Evidence:** the standard of proof used by the Investigator and the Decision-Maker. A finding by the Preponderance of the Evidence means that the credible evidence on one side outweighs the credible evidence on the other side, such that, as a whole, it is more likely than not that the alleged fact or conduct occurred. It does not mean that a greater number of Witnesses or documents is offered on one side or the other, but that the quality or significance of the evidence offered in support of one side is more convincing than the evidence in opposition.

**President:** the chief executive officer responsible for the management and operation of the technical college where the complainant and/or accused violator are enrolled or employed.

**Privacy:** means that information related to a complaint will be shared with only a limited number of TCSG employees who “need to know” in order to assist in the assessment, Investigation, and resolution of the report. All employees who are responsible for TCSG’s response to Title IX Prohibited Conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), and the privacy of employee records will be protected in accordance with Georgia law and TCSG policy.

**Rebuttal Evidence:** evidence presented to contradict other evidence in the Hearing File, which could not have been reasonably anticipated by a Party to be relevant information at the time of the Investigation.

**Remedies:** individualized measures implemented after a Hearing or as part of an Informal Resolution that are designed to restore or preserve equal access to College Programs or Activities, and may include Supportive Measures, but need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

**Respondent:** the person alleged to have engaged in Title IX Prohibited Conduct.

**Retaliation:** includes, but is not limited to, adverse action related to employment, academic opportunities, participation in TCSG and/or College programs or activities, or similar punitive action taken against an individual because that person has made an Initial Report or Formal Complaint, responded to a Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an Investigation, proceeding, or Hearing.

**Sanctions:** individualized measures implemented after a Hearing that may be disciplinary in nature.

**Sexual Assault:** any of the following acts:

1. Rape: penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
2. Sodomy: oral or anal sexual intercourse with another person:
  - forcibly and/or against that person’s will; OR
  - not forcibly or against the person’s will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
3. Sexual Assault with an Object: to use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person:
  - forcibly and/or against that person’s will; OR
  - not forcibly or against the person’s will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
4. Fondling: the touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification:

- forcibly and/or against that person's will (non-consensually); OR
- not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Stalking:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for the person's safety or the safety of others; or (ii) suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**Supportive Measures:** non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to TCSG Programs or Activities without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the TCSG educational environment, or deter sexual harassment. Supportive measures may include extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

**Title IX Prohibited Conduct:** the collective term used in this Title IX Procedure to refer to the conduct described in the definitions for Title IX Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking.

**Title IX Sexual Harassment:** conduct, on the basis of sex that satisfies one or more of the following:

1. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies a person equal educational access.
2. an employee of the college conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

**TCSG Compliance Officer:** the individual designated by the Deputy Commissioner to coordinate TCSG compliance with Title IX of the Educational Amendments of 1972 and other state and federal laws governing unlawful discrimination and harassment and educational access by disabled individuals.

**TCSG Program or Activity:** locations, events, or circumstances over which TCSG and/or the College exercised substantial control over both the alleged Respondent and the context in which the Title IX Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by TCSG and/or the College.

**Technical College System of Georgia:** all work units and technical colleges under the governance of the State Board of the Technical College System of Georgia.

**Title IX Coordinator:** an individual designated by the president of the college to ensure compliance with Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ 1681 et seq., and related federal regulations. The Title IX Coordinator may also be assigned the responsibility for compliance with other

state and federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the U.S. Department of Education.

**Violence:** the use of physical force to cause harm or injury.

**Visitor:** any third party (e.g. volunteer, vendor, contractor, member of the general public etc.) who conducts business or regularly interacts with a work unit or technical college.

**Witness:** a person asked to give information or a statement under this Title IX Procedure.

**Written Determination Regarding Responsibility:** the formal written notification issued by the Decision-Maker after a Hearing that includes: (i) identification of the allegations potentially constituting Title IX Prohibited Conduct; (ii) a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and Hearing held; (iii) findings of fact; (iv) conclusions about whether the alleged Title IX Prohibited Conduct occurred, applying the definitions set forth in this Title IX Procedure to the facts; (v) the rationale for the result as to each allegation; (vi) any disciplinary Sanctions imposed on the Respondent; (vii) whether Remedies or Supportive Measures will be provided to the Complainant; and (viii) information about how to file an appeal.

## **V. ATTACHMENTS:**

Attachment 6.1.1p.a1. Sources of Counseling, Advocacy and Support  
Attachment 6.1.1p.a2. TCSG Usage for Statement of Equal Opportunity

## **VI. PROCEDURE:**

### **A. Administration and Implementation**

1. Each college president shall designate one or more officials to serve as the Title IX Coordinator and post contact information for the coordinator and the TCSG's Statement of Equal Opportunity in electronic or written college publications and academic materials as described in the TCSG Usage for Statement of Equal Opportunity (e.g. bulletin boards, the college website, catalogs, student and employee handbooks, orientation materials, and flyers). The college president will ensure the designated officials have received appropriate training.
2. Instructors/administrators must take ongoing proactive steps to ensure educational opportunities (to include classrooms, clinics, labs, programs, etc.) and student activities (clubs, sports, etc.) are accessible and free from any type of sex discrimination or harassment.
3. The Compliance Officer will coordinate training programs and monitor the colleges to ensure the correct administration and implementation of this procedure, and will ensure that proactive or corrective measures have been taken to prevent sex discrimination and sexual misconduct. The training materials will be posted on the college's website or made available for members of the public to inspect.
4. Colleges are required to provide sexual harassment and sexual violence prevention training to students and employees and to provide programs for ongoing awareness training as required by VAWA and the Clery Act. As of the effective date of this procedure, colleges have been provided the Haven training modules for this purpose and are required to incorporate the training in new student and employee orientation activities.

5. Each technical college shall publish a list of local sources for counseling, support and advocacy in conjunction with the publishing of this procedure. (See attachment for sample format) Individuals who report sexual violence, sexual assault, stalking or dating/domestic violence will be provided with and/or referred to the list of resources.

## B. Reporting and Management Action

1. All students are encouraged to report incidents of sex discrimination and sexual misconduct against themselves or others to the Title IX Coordinator at the technical college. The Title IX regulations define "sexual harassment" to include three types of misconduct on the basis of sex which jeopardize the equal access to education that Title IX is designed to protect. These types of misconduct include: any instance of quid pro quo harassment by a TCSG and/or College employee; any conduct on the basis of sex that in the view of a reasonable person is so severe and pervasive and objectively offensive that it effectively denies a person equal access to a TCSG and/or College education program or activity; and any instance of sexual assault, dating violence, domestic violence, or stalking (collectively "Title IX Prohibited Conduct," as defined in this Procedure). Students may find contact information for the Title IX Coordinator on the technical college website, and in the student handbook and college catalog. Complaints may also be emailed to [unlawfulharassment@tcsgeu.edu](mailto:unlawfulharassment@tcsgeu.edu).
2. To utilize this procedure, a Complainant must file a Formal Complaint which is defined herein as a document filed and signed by a Complainant or filed and signed by the Title IX Coordinator alleging Title IX Prohibited Conduct against a Respondent and requesting that TCSG investigate the allegations.
3. Any allegation of sex discrimination, sexual misconduct or retaliation against employees must be reported to the Human Resources Director and the Title IX Coordinator.
4. All allegations of sex discrimination and sexual misconduct on one of TCSG's college campuses or clinical locations must be reported to the Title IX Coordinator regardless of whether the allegations involve students or employees. All students, faculty, staff, and others participating in TCSG and/or College programs and activities in the United States are subject to this Title IX Procedure. If the allegations do not fall within the jurisdiction under this procedure, they may be referred and processed under the student code of conduct procedure.
5. Students have the right to file (or not to file) a criminal complaint for sexual violence with the local law enforcement authorities before, during, or after filing a complaint with the college. The investigation under this procedure shall not be unreasonably delayed to await the outcome of any criminal investigation. Sexual violence reports made to the Title IX Coordinator will be investigated and adjudicated separately from any criminal complaints. A student may request that the Title IX Coordinator and/or the Investigator assist the student with notifying local law enforcement authorities. If a technical college's campus law enforcement receives a complaint alleging sexual harassment and/or sexual misconduct as defined in this procedure, the Title IX Coordinator for the college shall be immediately notified so that appropriate action may be taken by the Title IX Coordinator regarding the complaint.
6. If a student filing a complaint alleging sexual misconduct requests confidentiality, anonymity or asks that the complaint not be pursued, the college must inform the complainant that its ability to respond may be limited, that retaliation for filing a complaint is prohibited, and that steps to prevent harassment and retaliation will be taken. Consistent with the request, all reasonable steps to investigate and respond to the complaint should be made and other steps to limit the effects or recurrence of the alleged misconduct will be taken.
  - a. Regardless of a student's request for confidentiality, anonymity of a complaint, or a request that a complaint not be pursued, if the complaint includes allegations of sexual assault,



sexual violence, domestic violence, dating violence, or stalking, the Title IX Coordinator must report the incident to campus law enforcement for inclusion in the college's Annual Security Report ("ASR"). The complainant should be informed that their name will not be disclosed to campus law enforcement if they have requested confidentiality during the processing of the complaint.

7. Colleges may weigh a request for confidentiality, anonymity or a request they not pursue a complaint considering the following factors: the seriousness of the alleged conduct, the complainant's age, and the respondent's right to receive information about the allegations if the information is maintained as an "education record" under FERPA. The college must inform the complainant if the request cannot be granted and the reasons for the denial.
8. Reports concerning all prohibited conduct referenced in this procedure will be processed confidentially to the extent permitted by law; communications regarding complaints will be disseminated to others on a need-to-know basis to ensure that necessary steps are taken to protect the community as a whole and that appropriate corrective actions are considered and taken.
9. If an allegation of sex discrimination or sexual misconduct is made to an employee not designated to receive such reports, the employee receiving the complaint must report the allegation to the Title IX Coordinator. The College must take corrective actions to stop harassment to which it has notice, prevent recurrence of the harassment, and remedy the effects on the complainant promptly and effectively. The College will be deemed to have notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. A responsible employee includes any employee who has the authority to take action to redress the harassment, who has a duty to report the harassment to the Title IX Coordinator, or who a student could reasonably believe has this authority or responsibility, including instructors and staff at the college.
10. Allegations of any sexual conduct involving individuals under the age of 18 must also be reported as an allegation of child abuse as outlined in O.C.G.A. § 19-7-5.
11. Supportive measures must be offered to the complainant by the college president or the Title IX Coordinator or his/her designee before the final outcome of an investigation and until final resolution of the allegations if failure to take the interim measures would constitute an immediate threat to the safety and well-being of the complainant, the respondent, or other members of the college, or to ensure equal access to the college's programs and activities. Supportive measures may include: adjustments to academic workload (including extending deadlines); adjustment to class or work schedules; no contact orders; and suspensions, transfers or reassignments in order to prevent further harassment, discrimination, sexual violence or retaliation, to facilitate the investigation, or to implement preventive or corrective actions under this procedure; informal resolutions or discretionary dismissals
12. Discretionary Dismissal.
  - a. TCSG and/or the College may dismiss the Formal Complaint if:
    - i. the Respondent is no longer enrolled or employed by TCSG and/or the College;
    - ii. specific circumstances prevent TCSG and/or the College from gathering sufficient evidence to reach a determination; or
    - iii. the Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw the Formal Complaint or allegations therein.
  - b. A Complainant may notify the Title IX Coordinator at any time that the Complainant does not wish to proceed with the Investigation and/or Hearing process. If such a request is received, the Title IX Coordinator will inform the Complainant that the TCSG and/or the

College's ability to respond to the allegation may be limited if the allegations are withdrawn.

- c. The Title IX Coordinator will consider the relevant factors in reaching a determination as to whether to terminate the Investigation and/or Hearing process. In the event that the Title IX Coordinator determines that the Investigation will continue, the Title IX Coordinator will notify the Complainant of that determination. The Title IX Coordinator will include in that notification a statement that the Complainant is not required to participate in the Investigation and/or Hearing process but that the process will continue. In the event that the Title IX Coordinator determines that the Investigation will be terminated, both Parties will be notified.

### C. Investigations

1. All complaints of prohibited conduct under this procedure will be reported immediately to the Investigator who will be responsible for conducting the investigation in a fair, prompt, and impartial manner.
2. The Investigator shall disclose to the TCSG Compliance Officer any relationship with the parties that could call into question his/her ability to be objective prior to taking any action with respect to the investigation. The TCSG Compliance Officer will reassign alternate individuals if necessary.
3. The Investigator shall send written notice to both parties of the allegations upon receipt of a formal complaint.
4. Either the complaining party or the respondent may challenge the Investigator or designee to recommend corrective action on the grounds of personal bias by submitting a written statement to the TCSG Compliance Officer setting forth the basis for the challenge no later than 3 business days after the party reasonably should have known of the alleged bias. The TCSG Compliance Officer will determine whether to sustain or deny the challenge.
5. The investigation should be completed within 45 business days of the receipt of the complaint by the Investigator. The investigator will notify the parties and the Title IX Coordinator, in writing (typically by email), if extraordinary circumstances exist requiring additional time.
6. The parties will be notified within 5 business days of receipt of the complaint by the Investigator if the complaint does not specify facts sufficient to allege sex discrimination, harassment, sexual violence or retaliation, or if the allegations of sexual misconduct did not occur in the college's education program or activity against the complaining party while he or she was located in the United States, and that a formal investigation will not be conducted pursuant to this procedure, although a referral and investigation may be made by the Title IX Coordinator as to some or all of the matter for consideration under other applicable TCSG policy or procedure, if any. The complaining party may appeal the decision in writing to the president within 5 business days of receiving the notice. The president's decision will be final.
7. Individuals designated to investigate or recommend corrective actions in response to allegations of sexual misconduct will be trained annually to conduct investigations in a manner that protects the safety of complainants, promotes fairness of the process and accountability.
8. Investigations will be conducted by gathering relevant information and interviewing appropriate witnesses.
  - a. It is important that all parties preserve any documents or other evidence which may pertain to the investigation.
  - b. Any medically related evidence is best preserved by trained medical personnel.

- c. Students are encouraged to seek medical services both for treatment and preservation of any medical evidence.
- 9. Both the complaining party and the respondent (the parties) will be given equal opportunity to identify witnesses and offer evidence in person or in writing. Best efforts will be made to interview all witnesses identified by the parties. If a witness identified by either party is not interviewed during the investigation, an explanation for the decision not to interview the witness should be documented in the investigatory report. Both parties will be given timely notice of meetings at which one or the other or both parties may be present. Both the complaining party and the respondent may be accompanied by an advisor of his or her choice during any meetings involved in the investigatory process in which the advisee is also eligible to be present. However, the advisor may not speak on behalf of the party.
- 10. Any evidence collected during the investigation should be maintained in accordance with the record retention requirements below. Personally-identifiable information, including, but not limited to home address, telephone number, student ID or social security number should not be maintained in investigative records.
- 11. A report of investigation will be provided to the college's Title IX Coordinator within five (5) business days of completion of the investigation. The Title IX Coordinator will provide both parties simultaneously with a copy of the report and any supporting evidence. The parties shall be given ten (10) calendar days from receipt of the report to respond to the report and the supporting evidence, which must be considered by the Investigator before finalizing the report. Any information prohibited from disclosure by law or policy will be redacted from any documents prior to distribution. With regard to complaints of sexual misconduct, disclosures made to comply with the Violence Against Women Reauthorization Act ("VAWA") do not constitute a violation of FERPA.
- 12. If the Investigator determines that all or some of the allegations made in the complaint are substantiated and that the conduct at issue constitutes a violation of this or other applicable procedure, the Title IX Coordinator shall forward the report to the appropriate officials at the college for further action in accordance with the provisions below and the college's Student Code of Conduct and Disciplinary Procedure or the Positive Discipline Procedure for employees.

#### D. Hearings

- 1. Format of Hearing:
  - a. Hearings may be conducted with all Parties physically present in the same geographic location or, at the discretion of the Decision-Maker, any or all Parties, Witnesses, and other participants may appear at the live Hearing virtually, with technology enabling participants simultaneously to see and hear each other.
  - b. At the request of either Party, TCSG will provide for the Hearing to occur with the Parties located in separate rooms with technology enabling the decision-maker(s) and Parties to simultaneously see and hear the Party or the Witness answering questions.
- 2. Recording of Hearing:
  - a. Hearings will be transcribed or recorded through audio or audiovisual means, and TCSG and/or the College will make the transcript or recording available to the Parties for inspection and review upon request.
- 3. Role of Advisor:
  - a. If a Party does not have an Advisor present at the Hearing, TCSG and/or the College will provide, without fee or charge to that Party, an Advisor of TCSG and/or the College's

choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.

4. Role of the Decision-Maker:
  - a. The Decision-Maker will:
    - i. be a professional appointed by the TCSG Commissioner who is experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure;
    - ii. preside over the Hearing and will issue the Written Determination Regarding Responsibility;
    - iii. be identified to the Parties before the Hearing at least three calendar days prior to the Hearing.
  - b. Conflict of Interest:
    - i. No person who has a conflict of interest may serve as the Decision-Maker.
    - ii. A conflict of interest exists if the Decision-Maker has prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with one of the Parties or Witnesses, or has some other source of bias.
    - iii. Either Party may assert, in writing, that a Decision-Maker has a conflict of interest.
    - iv. A request to recuse a Decision-Maker based on a conflict must be submitted to the Hearing Coordinator within 1 business day's receipt of the name of the Decision-Maker.
    - v. A determination will be made by the Commissioner or his designee whether a Decision-Maker has a conflict of interest, and if so that Decision-Maker will be replaced by an alternate.
  - c. At the Hearing, the Decision-Maker will:
    - i. Permit Cross-examination. At the Hearing, the Decision-Maker will permit each Party's Advisor to ask the other Party and any Witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the Hearing must be conducted directly, orally, and in real time by the Party's Advisor of choice and never by a Party personally. The Parties may, however, jointly agree in advance to waive oral cross-examination and instead submit written cross-examination to the Decision-Maker to conduct the examination. Even if the Parties so agree, the Parties are still required to have a Advisor present at the Hearing. The Decision-Maker has discretion to otherwise restrict the extent to which Advisor may participate in the proceedings.
    - ii. Determine Relevance of Questions. Only relevant cross-examination and other questions may be asked of a Party or Witness. Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
    - iii. Provide Rape Shield Protections for Complainants. The Decision-Maker will prohibit any questions and evidence about the Complainant's sexual predisposition or prior sexual behavior as not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
    - iv. Exclude Statements, as Relevant, in Reaching a Determination Regarding Responsibility. If a Party or Witness does not submit to cross-examination at the live Hearing, the Decision-Maker must not rely on any statement of that Party or Witness in reaching a determination regarding responsibility. The Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a Party's or Witness's absence from the live Hearing or refusal to answer cross-examination or other questions.

5. Hearing Process:
  - a. The Investigator will be available to answer any questions from the Decision-Maker about the Investigation.
  - b. The Decision-Maker may meet with the Parties and Witnesses for the purpose of making findings of fact.
  - c. The Parties and Witnesses may not speak to matters beyond the scope of the Hearing File (for example, by raising potential misconduct allegations that go beyond the scope of the charged conduct).
  - d. Parties and Witnesses must not disclose or reference information to the Decision-Maker that was excluded from the Hearing File.
  - e. The Decision-Maker may ask questions of the Parties and/or Witnesses.
  - f. Parties are permitted to listen to Witnesses as they are speaking to the Decision-Maker. The Decision-Maker is not obligated to speak to all Witnesses.
  - g. Written Determination Regarding Responsibility:
    - i. The Decision-Maker shall issue a Written Determination Regarding Responsibility within 10 business days of the hearing, applying the Preponderance of the Evidence standard (as required by Georgia law), which shall include:
      - identification of the allegations potentially constituting Title IX Prohibited Conduct;
      - a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and Hearings held;
      - findings of fact;
      - conclusions about whether the alleged Title IX Prohibited Conduct occurred, applying the definitions set forth in this Title IX Procedure to the facts;
      - the rationale for the result as to each allegation;
      - any disciplinary Sanctions imposed on the Respondent;
      - whether Remedies or Supportive Measures will be provided to the Complainant; and
      - information about how to file an appeal.
    - ii. Sanctions:
      - The Decision-Maker may ask the Parties to submit Sanctions statements at the conclusion of the Hearing.
      - The Decision-Maker may also consult with TCSG and/or College personnel, including the Human Resources Director or Vice President of Student Affairs, regarding any Sanctions and Remedies appropriate to the specific Respondent and Complainant under the circumstances of the case.
      - The Sanction determination will be provided to the Title IX Coordinator who will be responsible for implementing the Supportive Measures and/or Remedies, including the continuation of any Supportive Measures and/or any additional or on-going accommodations for both Parties.
    - iii. The Title IX Coordinator will cause the Written Determination Regarding Responsibility to be sent to the Parties.
    - iv. The Title IX Coordinator will provide copies of the Written Determination Regarding Responsibility and Sanctions and/or Remedies (if any) for the purpose of maintaining records as follows:
      - For students, to the Office of Student Affairs
      - For staff, to Human Resources
      - For faculty, to the Office of Academic Affairs
    - v. The Decision-Maker must explain decisions on responsibility and Sanctions (if applicable) and Remedies with enough specificity for the Parties to be able to file meaningful appeals.

- vi. The consideration of whether Remedies and Sanctions go into immediate effect or are temporarily delayed pending appeal or some combination thereof, will be determined on a case-by-case basis by the Title IX Coordinator.
- vii. The Written Determination Regarding Responsibility becomes final:
  - if an appeal is not filed, the date on which an appeal would no longer be considered timely; or
  - if an appeal is filed, on the date that TCSG and/or the College provides the Parties with the written determination of the result of the appeal.

#### E. Corrective Actions

1. Colleges will take all reasonable steps to prevent unlawful retaliation against complainants and any other individuals participating in investigations under this procedure.
2. If prohibited conduct is determined to have occurred following the investigation, steps shall be taken to prevent a recurrence and to correct the discriminatory effects on the complaining party and others as appropriate.
  - a. Steps may include, but are not limited to mandating training or evaluation, disciplinary sanctions, policy implementation, issuing no-contact orders, or reassignment of students or employees.
  - b. Disciplinary sanctions for students are defined in TCSG Procedure governing Student Discipline and may include: reprimand, restriction, disciplinary probation, disciplinary suspension, and disciplinary expulsion.
  - c. Disciplinary sanctions for employees are defined in TCSG's Positive Discipline Procedure and may include: formal reminders, decision making leave, or dismissal.
3. The severity of sanctions or corrective actions may depend on the severity, frequency and/or nature of the offense, history of past discriminatory, harassing, or retaliatory conduct, the respondent's willingness to accept responsibility, previous college response to similar conduct, and the college's interests in performing its education mission.
  - a. Should recommended disciplinary sanctions involve academic suspension or expulsion, the matter must be referred to the Vice President for Student Affairs, as provided by the college's Student Code of Conduct and Disciplinary Procedure.
4. Even in the absence of sufficient evidence to substantiate a finding that sex discrimination, sexual misconduct or retaliation has occurred, colleges are expected to address any inappropriate conduct and take all reasonable steps to prevent any future sex discrimination, harassment, sexual violence or retaliation.
5. Individuals who are responsible for conducting investigations, under this procedure, may not also serve as reviewing officials or Decision-Makers in the appeal of sanctions arising from an investigation.

#### F. Appeals

1. Appeal of a Written Determination Regarding Responsibility
  - a. Submission of Appeal
    - i. Both Parties have the right to an appeal from a Written Determination Regarding Responsibility on the bases set forth below.
    - ii. Appeals may be submitted by a Complainant or Respondent in writing to the Hearing Coordinator, who will forward the appeal to a designated Appeal Officer to decide the appeal.
    - iii. The Appeal Officer will be the Commissioner of TCSG or his designee.

- iv. Each Party may submit a written appeal of up to 6,000 words in length, which will be shared with the other Party.
  - v. The Parties must submit the appeal to the Commissioner within ten (10) calendar days from the receipt of the Written Determination Regarding Responsibility (if any).
- b. Grounds for appeal are limited to the following:
- i. Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the appealing Party?
  - ii. Was there any substantive new evidence that was not available at the time of the decision or Hearing and that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
  - iii. Did the Title IX Coordinator, Investigator(s), or Decision-Maker have a conflict of interest or bias for or against Complainants or Respondents that affected the outcome of the matter?
  - iv. For matters that proceeded to Sanctioning and imposition of Remedies, are the Sanction and/or Remedies ones that could have been issued by reasonable persons given the findings of the case?
- NOTE: In composing appeals, Parties should format their arguments following these four grounds as the organizational structure.
- c. Receipt of Appeal
- i. Upon receipt of a Party's appeal, the Hearing Coordinator will share it with the other Party.
  - ii. Each Party may submit a response to the other Party's appeal (no more than 3,000 words).
  - iii. Each Party must submit this response to the Commissioner within 10 calendar days after the other Party's appeal has been shared.
  - iv. The appealing Party will have access to the other Party's response to the appeal, but no further responses will be permitted.
- d. Response to Appeal
- i. The Title IX Coordinator is permitted, but not required, to file a response to a Party's appeal to respond to concerns relating to procedural irregularities or bias in the Investigation and Hearing process.
  - ii. The Title IX Coordinator may submit one response for each Party that files an appeal (that raises a procedural irregularity).
  - iii. Each response by the Title IX Coordinator should be no more than 1,500 words.
  - iv. The Parties will have access to the Title IX Coordinator's response(s) to the appeal, but no further responses will be permitted.
- e. Appeal Decision
- i. The Appeal Officer will provide the Notice of Outcome of Appeal no later than ten (10) business days after receipt of all appeal documents.
  - ii. As needed, the Appeal Officer will consult with the Title IX Coordinator regarding the management of ongoing Remedies.
  - iii. The Appeal Officer may reject the appeal in whole or in part, issue a new decision regarding responsibility, issue new or revised Sanctions and Remedies, or refer the matter to a new Decision-maker.

**VII. RECORD RETENTION:**

Documents relating to formal complaints including investigations, the investigatory report, witness statements, evidence, dispositions and the complaint itself shall be held for 7 years after the graduation of the student or the date of the student's last attendance. Any of the documents containing confidential information shall be held in a secure location under the custody and control of the Investigator, Vice President of Student Affairs or the President's designee. Documents pertaining to employees that are maintained by the Office of Human Resources shall be maintained in a secure

location and in accordance with the Georgia Archives records retention schedule, but in no case fewer than 7 years.