

Kennesaw State University Student Title IX/Sexual Misconduct Policy

As a recipient of federal funds, Kennesaw State University is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX), which prohibits discrimination on the basis of sex in education programs or activities. KSU is committed to providing programs, activities, and an educational environment free from sex discrimination. Sex discrimination involves treating someone unfavorably because of that person's sex. Sexual misconduct, as defined below, is a form of sex discrimination prohibited by Title IX.

Kennesaw State University ("KSU" or the "University") does not condone and will not tolerate sexual misconduct or sexually exploitative or harassing behavior of any kind. KSU is committed to providing programs, activities, and an educational environment free from sex discrimination. The University has implemented this policy and affirms its responsibility to:

- Respond promptly and effectively to sex discrimination, especially sexual harassment and sexual violence;
- Take immediate steps to eliminate the sexual harassment or sexual violence, prevent its recurrence, and address its effects; and
- Support all students with appropriate resources regardless of their status as complainant or accused.

Questions about this policy should be directed to the KSU Equal Employment Opportunity (EEO) and Title IX officer by telephone at (678) 797-2904. You may also visit the University's EEO website <http://www.kennesaw.edu/eo/index.html> for more information.

A student who is under the influence of alcohol or drugs in violation of the KSU Student Code of Conduct at the time of a sexual misconduct incident should not be reluctant to seek assistance for that reason. In order to encourage students to come forward, disciplinary violations against a student (or against a witness) for his or her use of alcohol or drugs will not be enforced if the student is making a good faith report of sexual misconduct.

A "student" for purposes of this policy is a person who is registered for classes or actively taking classes at the time the alleged misconduct occurred. This includes periods of time of academic recess if the student is registered for classes upon returning. Additionally, this covers an accused student if he/she is participating in a study abroad program sponsored and controlled by KSU.

There is no geographical limitation to this policy. This policy applies to any complaint of sexual misconduct against a student no matter the distance from campus.

Table of Contents

- I. Definition of Sexual Misconduct
- II. Reporting Sexual Misconduct
- III. Available Resources for Students
- IV. University Investigation of Sexual Misconduct Complaints
- V. Requests for Confidentiality/Not to Pursue Investigation or Resolution
- VI. Informal Resolution of Sexual Misconduct Complaints
- VII. Formal Resolution of Sexual Misconduct Complaints
- VIII. Appeal Procedures from Sexual Misconduct Panel Decisions

I. Definition of Sexual Misconduct

- A. **General definition.** Sexual misconduct encompasses a broad range of unwelcome behaviors that are committed without consent or by force, intimidation, coercion, or manipulation. The term includes, but is not limited to, criminal sexual assault, sexual harassment, sexual exploitation, and sexual intimidation as those behaviors are described later in this section. Sexual misconduct can be committed by men or women, and it can occur between people of the same or different sex.
- B. **Consent.** For purposes of this policy, consent is a freely and affirmatively communicated willingness to participate in particular sexual activity or behavior, expressed either by words or clear, unambiguous actions. “Non-consent” means without either explicit verbal consent or overt action clearly expressing consent. Such signals of consent must be mutual and ongoing, as well as offered freely and knowingly. If at any time during a sexual interaction any confusion or ambiguity should arise on the issue of consent, the sexual initiator should stop and clarify the other individual’s willingness to continue. Non-communication constitutes lack of consent.
- C. **Persons unable to give consent.** By definition, the following conditions cause a person to be unable to give consent:
 - 1. Persons who are asleep or unconscious;
 - 2. Persons incapacitated by drugs, alcohol, or medication;
 - 3. Persons who are unable to communicate consent due to a physical or mental impairment;
 - 4. Persons who have been threatened or coerced into giving their consent; or
 - 5. Persons under the age of 16.

Engaging in sexual activity with someone who is unable to give consent is considered by law and KSU to be sexual misconduct. Indications of consent are irrelevant if the person is incapacitated. When there is ambiguity about whether consent has been given, a student can be charged with, and found responsible for, committing a sexual assault or another form of sexual misconduct.

Examples of incapacitation include, but are not limited to, being highly intoxicated, passed out, or asleep. Consumption of alcohol, in and of itself, does not relieve a person of the responsibility to obtain ongoing consent.

D. Examples of Sexual Misconduct. Sexual misconduct may vary in its severity and consists of a range of behaviors or attempted behaviors. Sexual misconduct includes, but is not limited to, the following examples of prohibited conduct as further defined below:

1. sexual assault (paragraph E)
2. sexual harassment (paragraph F)
3. sexual exploitation (paragraph G)

E. Definition of sexual assault. Sexual assault is a form of sexual misconduct and represents a continuum of conduct that includes non-consensual sexual contact between an individual and another person.

Examples of sexual assault under this policy include, but are not limited to, the following behaviors, if non-consensual:

- Sexual intercourse;
- Any sexual touching, including penetration, with any object. Sexual touching is contact of a sexual nature, however slight;
- Touching of intimate body parts such as mouth, genitalia, groin, breast, buttocks, inner thighs, or any clothing covering them;
- The removal of another person's clothes;
- Touching a person with one's own intimate body parts;
- Compelling another to touch one's intimate body parts.

F. Definition of sexual harassment. Sexual harassment is a form of misconduct that includes verbal, written, or physical behavior of a sexual nature, directed at someone, or against a particular group, because of that person's or group's sex, or based on gender stereotypes, when that behavior is unwelcome. Sexual harassment may include unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome conduct of a sexual nature where:

1. Submission to or tolerance of such conduct is made either an explicit or implicit term or condition of employment or student admission, enrollment, participation, or programming;
2. Submission to or tolerance or rejection of such conduct is used as a basis for employment or for academic, athletic, or other educational decisions affecting an individual;
3. The conduct has the purpose or effect of substantially interfering with an individual's work or academic, athletic, or other educational performance; or
4. The conduct creates an intimidating, hostile, or offensive work or educational environment.

If in the past a person has welcomed sexual advances or other harassing conduct (whether sexual or otherwise) by active participation in or encouragement of such activity, he/she should specifically inform the alleged harasser if such conduct is no longer welcome in order for any subsequent conduct to be deemed unwelcome. However, failure to give such notice does not prevent KSU officials from taking appropriate corrective and/or disciplinary action against the alleged harasser for his/her behavior.

G. Definition of sexual exploitation. Sexually exploitative behavior, which occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own benefit, or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material via email or other channels to non-consenting students/groups; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD), including HIV, to another.

II. Reporting Sexual Misconduct

The University takes all incidents of sexual misconduct seriously. **If you or someone you know may be the victim of sexual assault or other sexual misconduct, you are strongly urged to immediately report the incident.** The incident can be reported 24 hours a day, seven days a week to the KSU Police/Department of Public Safety (campus extension 6666 or off campus at 770-423-6666). The incident may also be reported to the Cobb County Police Department (770-499-3911). **In an emergency, dial 9-1-1.**

Any student, faculty, staff or third party to the University is strongly encouraged to report to the KSU EEO/Title IX Officer a complaint of sexual misconduct where the accused is a student of KSU. The report may be made by telephone at (678) 797-2614, by email at eeo@kennesaw.edu,

or in person at KSU as soon as reasonably possible to report any sexual misconduct believed to have occurred.

There is no geographical limitation to this policy. This policy applies to any complaint of sexual misconduct against a student no matter the distance from campus.

A. Timing of Complaints and Availability of Procedures

The University will hear complaints of sexual misconduct when the accused is a student. Students are encouraged to report incidents of sexual misconduct as soon as reasonably possible in order for KSU officials to obtain as much evidence and to conduct a thorough and impartial investigation. Failure to report incidents in a timely manner may result in loss of witness testimony or evidence and may impair the University's ability to enforce this policy.

If not reported directly to KSU Police/Department of Public Safety, statistical data will be reported to the KSU Police/Department of Public Safety under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act").

Persons, including students, who are victims of sexual misconduct by a student, may elect to take the following actions:

1. File a criminal report with the KSU Police/Department of Public Safety. The KSU police will discuss with the victim the possibility of conducting a criminal investigation and filing criminal charges.
2. File a formal complaint with the EEO/Title IX officer to request that the incident be adjudicated by a KSU Sexual Misconduct Panel pursuant to the procedures set forth in this policy.
3. Pursue an informal resolution, which may include mediation of the complaint conducted by the Department of Student Conduct and Academic Integrity (SCAI) in appropriate cases. **Informal mediation will never be used in cases involving allegations of sexual assault.** Both the complainant and accused (party/parties) must agree to engage in informal mediation, and either party can end the informal mediation process at any time, for any reason. The SCAI Office has the discretion to determine if it would be inappropriate to informally mediate any particular sexual misconduct complaint.

Students who elect not to pursue any of the above options may nonetheless do any of the following:

1. Seek counseling;
2. Request a rearrangement of class schedule and/or on-campus housing;
3. Request a no-contact directive;

4. Request the Department of SCAI address the complainant’s concerns with the accused.

In an effort to eliminate sexual misconduct and encourage reporting, the acknowledgment of use of alcohol or drugs in violation of the KSU Student Code of Conduct by a student bringing a complaint of sexual misconduct shall not be a basis for a separate charge of misconduct against the student.

B. Retaliation and Related Misconduct

No person shall be subject to coercion or reprisal for action taken in good faith to seek advice concerning a sexual misconduct grievance, to file a grievance, or to serve as a witness, Panel member, or representative in the investigation and hearing of a grievance. Acts or threats of retaliation are a violation of the KSU Student Code of Conduct and will be adjudicated accordingly.

C. False Reports

An allegation that is both intentionally false and malicious may be a violation of the KSU Student Code of Conduct and will be investigated and adjudicated accordingly.

D. Reporting Procedures for Sexual Misconduct by Faculty or Staff

If you or someone you know may be the victim of sexual misconduct by a member of the University’s faculty or staff, you may also report such conduct to the University’s EEO/Title IX Officer; however, complaints will follow the procedures outlined in the KSU’s Sexual Harassment Policy located in the KSU Employee and/or Faculty Handbook.

III. Available Resources for Students

For in-depth information about what to do immediately following a sexual assault, and for the many resources KSU and the greater community provide, please consult “Resources” on the Women’s Resource and Interpersonal Violence Prevention Center website located here: <http://www.kennesaw.edu/studentssuccessservices/WRC/index.html>

A. Medical or Counseling Services

Service	Phone	Location
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WellStar Kennestone Hospital	(770) 793-5000	677 Church Street Marietta, GA 30060
WellStar Cobb Hospital	(770) 732-4000	3950 Austell Road Austell, GA 30106
KSU's Women's Resource & Interpersonal Violence Prevention Center	(770) 794-7858	Main Campus
KSU Counseling and Psychological Services Hours of Operation: Monday-Thursday - 8:00a.m. - 6:00p.m. Friday – 8:00a.m. - 5:00p.m.	(770) 423-6600	Main Campus
The Georgia Crisis & Access Line- After hours Counseling and Psychological Services	1-800-715-4225	
KSU Student Health Services Hours of Operation: Monday, Tuesday, Thursday, Friday – 8 a.m. -5:30 p.m.; Wednesday 9 a.m.-5:30 p.m.	(770) 423-6644	Main Campus
YWCA of NW Georgia Crisis Line 24-hour, 7 days a week	(770) 427-3390	48 Henderson Street Marietta, GA 30064

B. General Services

Service	Phone	Location
KSU Police/Department of Public Safety	(770) 423-6666	Main Campus
Cobb County Police Department	(770) 499-3911	Headquarters: 140 North Marietta Pkwy. Marietta, GA 30060
Department of Residence Life	(770) 420-4388	Main Campus
Center for Young Adult Addiction and Recovery (recovery@kennesaw.edu)	(678) 797-2538	Main Campus
EEO/Title IX Officer	(678) 797-2904	Main Campus

IV. University Investigation of Sexual Misconduct Reports

KSU will undertake an appropriate inquiry of all reports of alleged sexual misconduct involving students, regardless of whether the person making the complaint wishes to pursue resolution of any kind. The specific steps in KSU's inquiry will vary depending on the nature of the allegations; the information available to KSU officials; whether the person complaining of the sexual misconduct (the "complainant") elects to pursue criminal charges, files a formal complaint with the EEO/Title IX officer, or requests KSU not to pursue action; and other factors.

KSU officials will communicate with the complainant prior to conducting an investigation or taking any remedial action.

A. Interim Measures

Upon receiving a report and making the appropriate inquiries, the EEO/Title IX officer, in collaboration with the dean of Student Success and/or appropriate academic dean, may take interim and non-disciplinary measures before the final outcome of an investigation or hearing, if any. These interim and non-disciplinary measures include, but are not limited to, a no-contact order, alteration of class schedules, or a change in housing arrangements.

B. Concurrent Investigations and Criminal Proceedings

1. Complaints of sexual misconduct may constitute not only a violation of University policy but also a violation of Georgia criminal statutes. KSU encourages students to promptly report sexual misconduct to the KSU Police/Department of Public Safety at (770) 423-6666. The standards for finding a violation of criminal law are different from the standards for finding a violation of KSU's Sexual Misconduct Policy, so criminal investigative findings shall not be determinative of whether sexual misconduct has occurred.

¹ SCAI ensures proper handling of alleged violations of the KSU Student Code of Conduct and promotes campus awareness of issues related to student conduct and academic integrity. However, if a violation includes an offense that constitutes Sexual Misconduct, whether that act occurs on or off campus, the initial formal complaint will be assessed and investigated, if warranted, under the direction of KSU's EEO/Title IX officer or designee and subsequently handled according to the procedures set forth in this policy and heard by the SCAI office.

2. KSU's Police/Department of Public Safety, upon receiving a complaint of sexual misconduct that constitutes a possible violation of Georgia state law, will alert the KSU EEO/Title IX Officer that a complaint has been made and will assist in implementing immediate steps deemed necessary to protect the complainant. Steps could include a change in housing or the implementation of a no-contact directive to the alleged offender. The KSU Police/Department of Public Safety will inform the complainant of his/her right to file a Title IX complaint and will also share with the EEO/Title IX Officer the name of the complainant and that the complainant has lodged a criminal sexual misconduct complaint. Under Georgia law, the name of the victim of a sexual assault may not be made public.

3. The EEO/Title IX Officer will document that a complaint of sexual misconduct has been brought to the attention of the KSU Police/Department of Public Safety and note what immediate steps have been taken to protect the complainant. The commencement of the Title IX sexual misconduct investigation will pause while the Police/Department of Public Safety conducts initial fact finding in the matter. Such initial fact finding typically should take three to 10 calendar days. The Title IX sexual misconduct investigation will not be delayed until the conclusion of a criminal investigation or criminal proceeding. Depending on the ongoing nature of the criminal investigation, the Police/Department of Public Safety may share pertinent information with the EEO/Title IX Officer at the conclusion of the initial fact finding.² Regardless of whether information is able to be shared or not, at the completion of the KSU Police/Department of Public Safety's initial fact finding, the Title IX sexual misconduct investigation will resume and will be completed within 60 days, unless reasonable cause is documented as to why it should take longer.

4. If the EEO/Title IX Officer receives the complaint, the officer or designee will advise the complainant of his/her right to report the incident to personnel within the KSU Police/Department of Public Safety for the purposes of initiating a criminal investigation. In collaboration with the KSU Dean of Student Success, the EEO/Title IX Officer may determine the necessary steps to protect the complainant, which could include a change in housing or the implementation of a no-contact directive to the alleged offender. If the complainant declines participation in a law enforcement process, the EEO/Title IX Officer shall refer the necessary data to the Clery compliance officer in the KSU Police/Department of Public Safety.

² The KSU Police/Department of Public Safety may be required to disclose some facts regarding the reported misconduct if the information requires the distribution of a "Timely Warning" under the Clery Act.

C. Options for Resolution of Sexual Misconduct Complaint

There are generally three options by which persons, including students, who are victims of sexual misconduct by a student, may seek resolution. The University will not participate in a complainant's decision on a particular resolution and will make no recommendation for such purposes. As detailed more specifically below, complainants may decide to pursue a formal resolution, which will be adjudicated by the Sexual Misconduct Panel pursuant to the procedures set forth in this policy. Complainants may decide to pursue an informal resolution or may request KSU not pursue any resolution or action.

V. Requests for Confidentiality/Not to Pursue Investigation or Resolution

KSU's ability to respond to a sexual misconduct complaint, to prevent its recurrence, or to address its effects may be severely limited if the complainant requests confidentiality, does not provide the name of the alleged perpetrator, or asks that the report not be pursued. In cases where the complainant requests confidentiality or requests KSU not to pursue an investigation, the EEO/Title IX Officer or his/her designee will conduct a preliminary assessment of the alleged sexual misconduct and may weigh the complainant's request against the following factors, including, but not limited to: the severity of the alleged sexual misconduct, the complainant's age, or whether there have been other complaints or reports of sexual misconduct against the same accused student. The EEO/Title IX Officer may determine that, in the interest of providing a safe and nondiscriminatory environment for students, it is necessary for KSU to act on information it has received.

In cases where the complainant files a formal complaint and seeks a formal resolution, or where KSU is required to conduct a formal investigation, KSU cannot keep the complainant's identity from the accused student. A charge of sexual misconduct is a serious offense and the accused student has the right to know the identity of the complainant/alleged victim. However, KSU may provide options during the hearing before the Sexual Misconduct Panel for questioning without confrontation, including using a room divider, using separate hearing rooms, or using technology such as Skype.

VI. Informal Resolution of Sexual Misconduct Complaints

A complainant may elect to pursue an informal resolution to a sexual misconduct complaint. An informal resolution is designed to resolve complaints quickly, efficiently, and to the mutual satisfaction of all parties involved. Informal resolutions include, but are not limited to,

mediation of the complaint conducted by staff of the SCAI Department in appropriate cases. **Informal mediation will never be used in cases involving allegations of sexual assault.** Both the complainant and accused must agree to engage in informal mediation. Either party can end the informal mediation process at any time, for any reason, and begin the process to pursue a formal resolution. The SCAI Department has the discretion to determine if it would be inappropriate to informally mediate any particular sexual misconduct complaint.

VII. Formal Resolution of Sexual Misconduct Complaints

A complainant may elect to pursue a formal resolution, which involves a hearing before the Sexual Misconduct Panel, as more particularly described within Appendix A of this policy. Any student who is a complainant or an accused student in a disciplinary proceeding before the Sexual Misconduct Panel has all of the rights described in the hearing procedures set forth in Appendix A of this policy.

VIII. Imposition of Sanctions

Standards. Unless specifically limited by a provision of this policy, the KSU Student Misconduct Panel may consider possible sanctions in any case in which a complainant elects to pursue a formal resolution and where a violation is found or admitted. The Panel should attempt to fairly fit the sanction(s) to the violation(s) as seen in total context. Possible sanctions include those available under the KSU Student Code of Conduct and may involve, but are not limited to, the following:

1. **Expulsion:** permanent severance of one's relationship with the University;
2. **Probated expulsion:** further convictions of major offenses, as specified by the Panel, shall result in expulsion;
3. **Suspension:** temporary severance of one's relationship with the University;
4. **Probated suspension:** notice to the student that further convictions of major offenses, as specified by the Panel, shall result in suspension;
5. **Suspension from on-campus housing arrangements;**
6. **Disciplinary probation:** notice to the student that any further major disciplinary violation may result in suspension; this action might also include one or more of the following: the setting of restrictions on social activities, the issuing of a reprimand, or other restrictions as determined;
7. **Restrictions:** exclusion from enjoying or participating in social activities or from holding office in University organizations;
8. **Reprimand:** Oral reprimand: an oral disapproval issued to the student. Written reprimand: a written disapproval issued to the student;

9. Other educational or developmental sanctions.

The sanctions of expulsion, probated expulsion, or suspension, involving loss or interruption of educational opportunity, are appropriate only when the violator's continued membership in the KSU community is judged to (i) fundamentally be at variance with the integrity of its educational mission, (ii) pose a specific threat to the minimal internal order of the community, or (iii) pose a specific threat to his/her own emotional health.

IX. Appeal Procedures from Sexual Misconduct Panel Decisions

See Section VII of the SCAI Misconduct Procedures.

<https://web.kennesaw.edu/scai/content/scai-misconduct-procedures#7>

Students may also file a complaint with the U.S. Department of Education's Office of Civil Rights (OCR). If the student uses the University's sexual misconduct complaint process but decides to also file an OCR complaint, he/she must file the complaint with the OCR within 60 days after the last act of the KSU grievance procedure. If a complainant does not use the University's sexual misconduct complaint process and wishes to instead file the complaint with OCR, the complainant must do so within 180 days for the alleged discrimination.

For further information about sex discrimination and your rights under Title IX contact the OCR as shown below.

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg
400 Maryland Avenue, SW
Washington, DC 20202-1100

Telephone: 800-421-3481
FAX: 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov