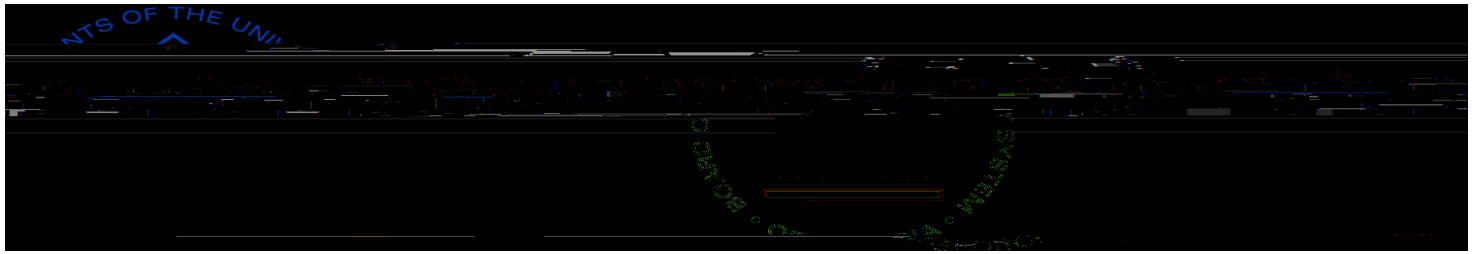
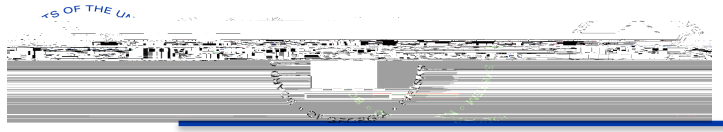


Appellate Decision Makers Refresher Training Fall 2020

Na'Tasha Webb-Prather
System Director for Equity & Investigations
Legal Counsel

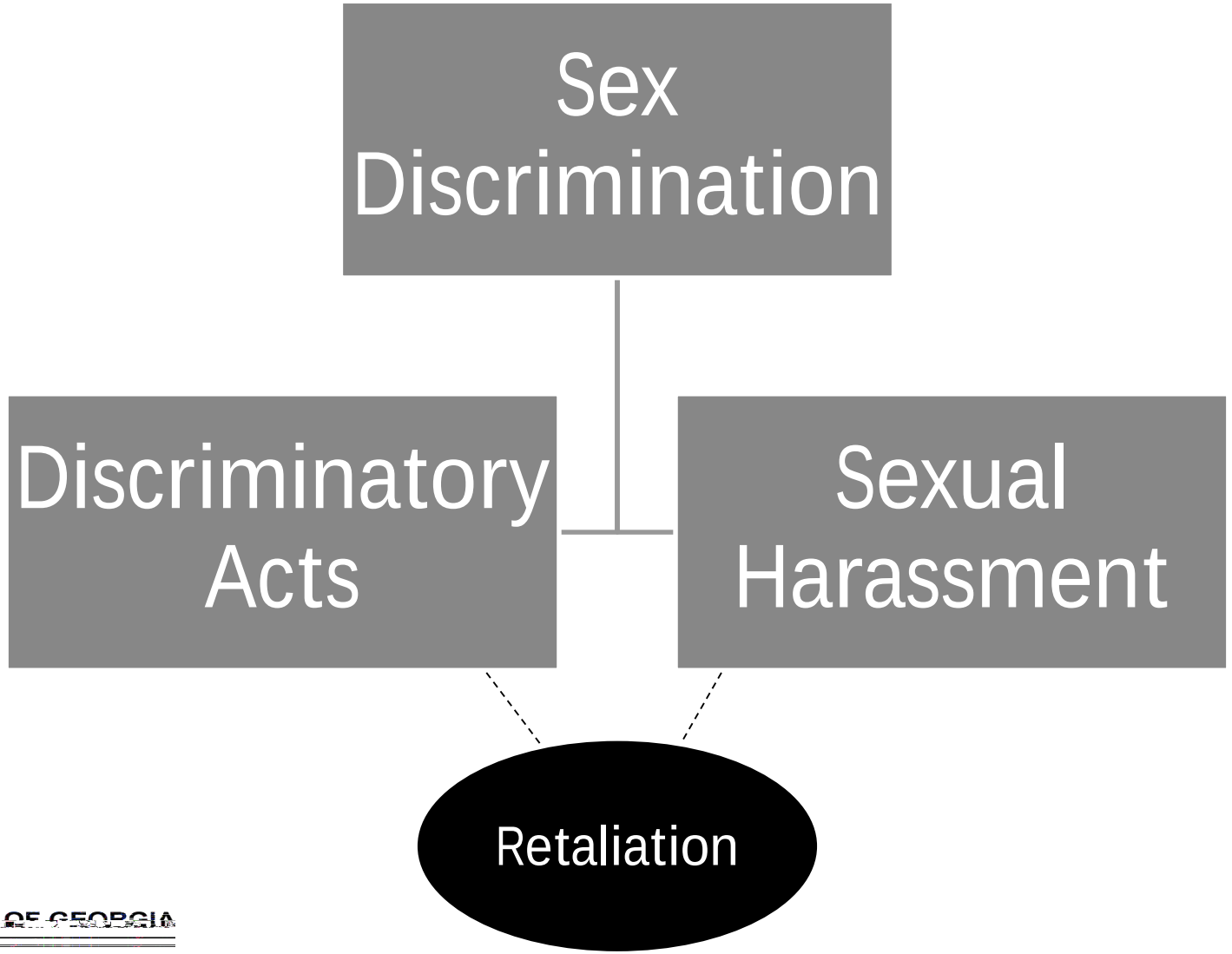


The law states that:

"No person in the United States shall, on the basis of

2011 & 2014

Obama Guidance


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.

106.30

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

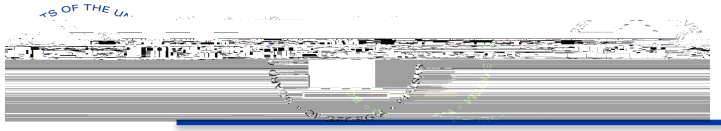
(iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in VAWA

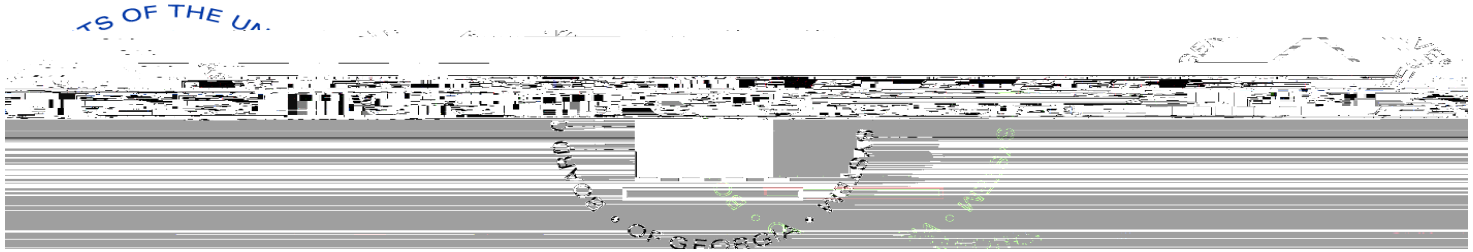
-

activity in the United States

tates

- Institution property





Updated Sexual Misconduct Policy

Sexual Misconduct Policy

Title IX

Other Sexually Based Behavior

Definitions of Prohibited Conduct

Title IX Jurisdiction

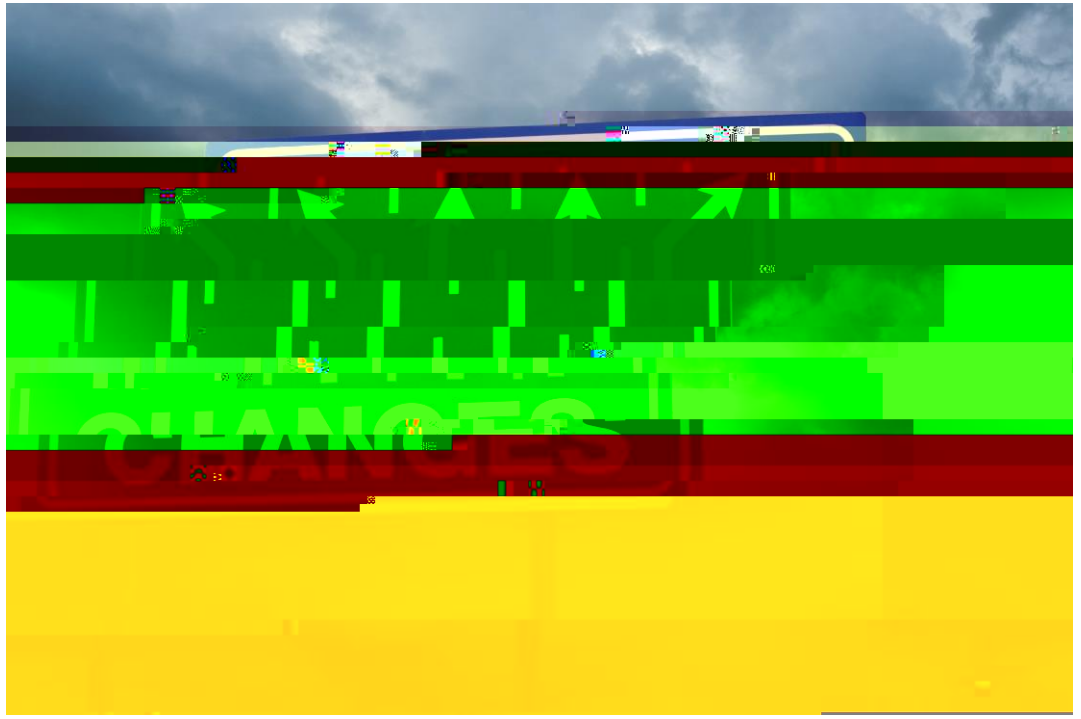
Provisions on Retaliation, Amnesty, False Statements

Timeframe for Completion

Role of Advisors

The Employee Adjudication Process

More...



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Scope of Sexual Misconduct

Jurisdictional reach of Sexual Misconduct

Responsible/Confidential/Privileged Employee designations

Definition of consent and incapacitation

Standard of evidence

System Office oversight

Support services and Interim measures

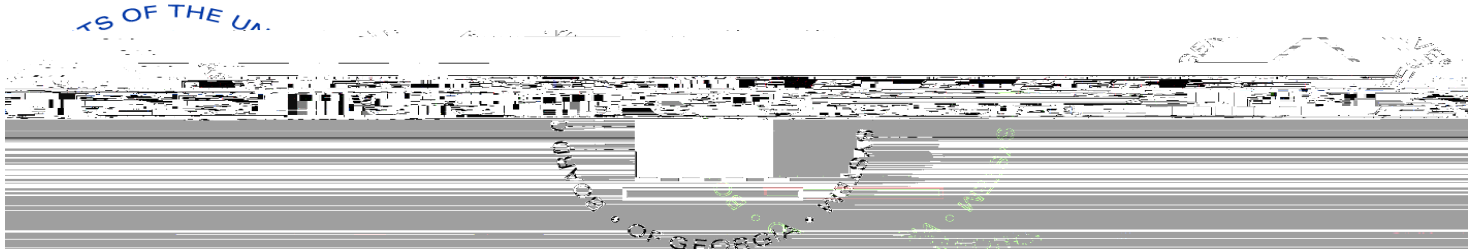
Be a neutral decision maker who gives a fair and unbiased review of the matter

Adhere to current policy provisions

- Definitions and standards
- Procedural rights

Reasonably prompt review of the matter

- Communication with the involved parties
- Communication with the Title IX Coordinator



Prohibited Conduct: Definitions & Jurisdiction

Sexual Misconduct	Dating Violence
	Domestic Violence
	Sexual Exploitation
	Sexual Harassment
	Stalking
	Nonconsensual Sexual Contact
	Nonconsensual Sexual Penetration

committed by a person who is or has been in a
with the alleged
victim.

Includes sexual or physical abuse

Includes threats of such abuse

The existence of a covered relationship is based on the totality of the circumstances

Engaging in a directed at a specific person that

or the safety of others OR suffer

.

of another for , or for the benefit or advantage of anyone other than the one being exploited.

Examples include:

- 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

Any with another person of a .

Includes:

Touching of another's intimate parts (genitalia, groin, breasts, buttocks)

Touching a person with one's own intimate parts; or

Forcing a person to touch his or her own or another person's intimate parts

Any of another's body parts without the person's consent.

Includes:

Penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part

Contact between the mouth of one person and the genitals or anus of another person

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

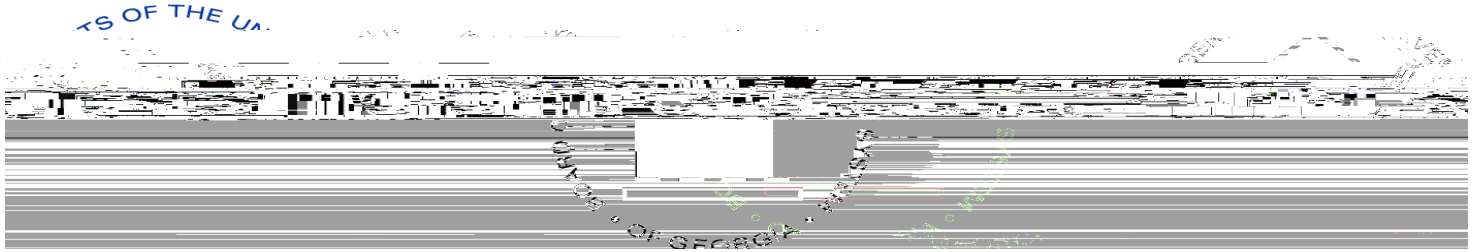
, based on sex

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

Implicitly or explicitly a employment status

in a course program or activity

employment or educ0of



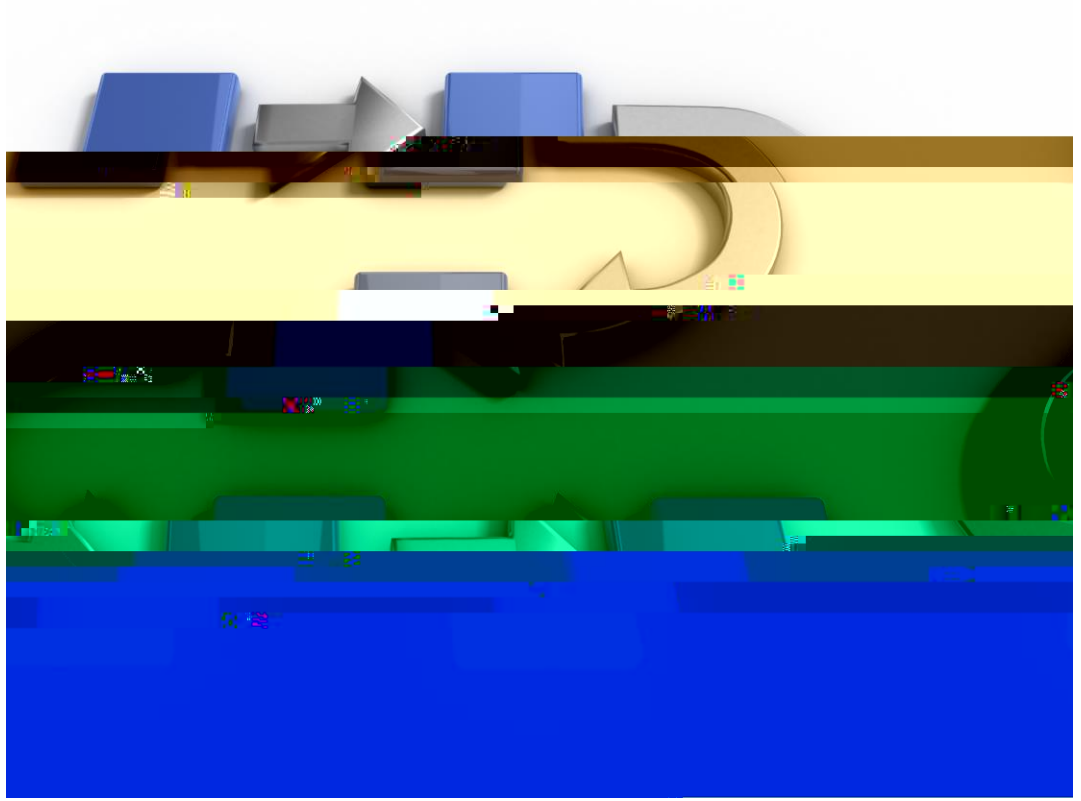
Overview of the Complaint Process

A report of misconduct has been made

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

- Formal Complaint under Title IX
- Sexual Misconduct Complaint

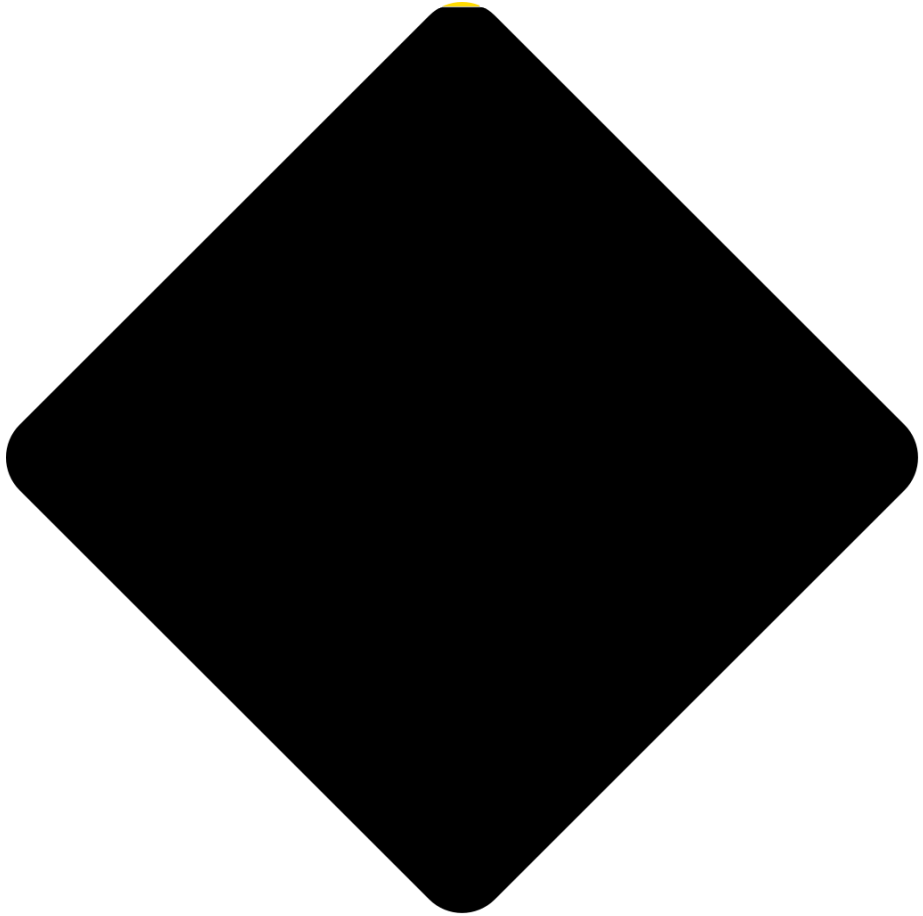
Notice of the investigation has been sent to the parties



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
- Cross complaints

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



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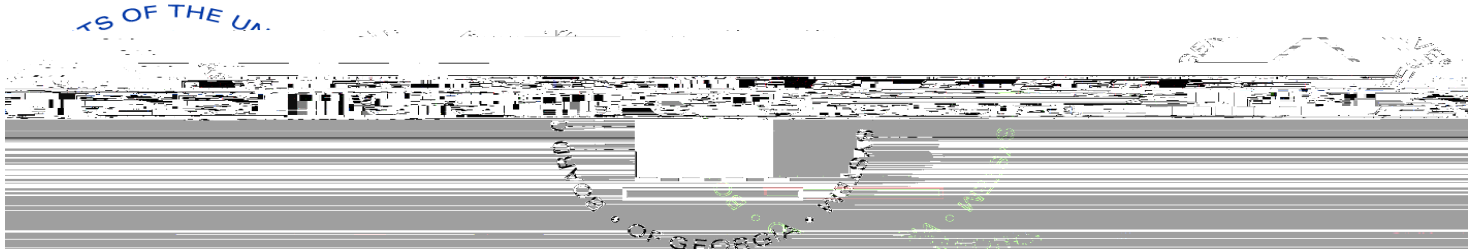
106.45(b)(3)

Required	Permissive
Conduct alleged would not constitute Sexual Harassment as defined, even if proved	Complainant notifies in writing desire to withdraw the complaint
education program or activity	The Respondent is no longer enrolled or employed at the institution
Outside of the United States	Specific circumstances prevent the gathering evidence sufficient to reach a determination

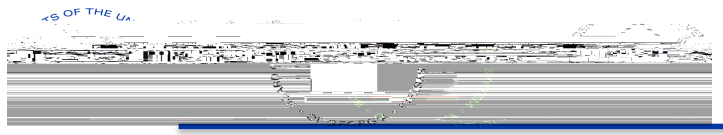
Any Sexual Misconduct complaint may be dismissed if:

- The alleged conduct, even if proved, would not constitute Sexual Misconduct
- The Complainant requests in writing to withdraw
- The Respondent is no longer enrolled or employed
- There are circumstances that prevent the gathering of sufficient evidence to reach a determination

Must provide written notice to both parties with opportunity to appeal



The Investigation Process



106.45(b)(5)

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

Information protected by legal privilege, may not be accessed, disclosed or relied upon unless a waiver is obtained

predisposition or prior sexual behavior are not relevant, UNLESS used to prove:

- Someone other than the Respondent committed the conduct OR
- Offered to prove consent between the parties

106.45(b)(5)(vi)

Parties have a right to review the investigation report prior to its finalization

Parties have a right to receive a copy of all directly related information

Procedurally can occur simultaneously or at different times

10 calendar days to review

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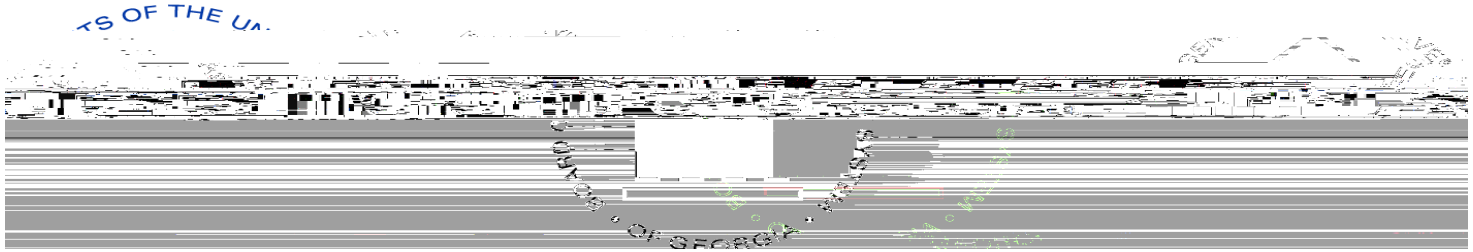
106.45(5)(vii)

Must fairly summarize relevant evidence

An objective evaluation of the information [inculpatory and exculpatory]

Sample report sections still apply

Final report provided to the parties at least 10 days calendar days prior to the hearing



Formal Adjudication

All matters not informally resolved will be heard by a Hearing Panel

Hearing Panels comprised of trained faculty and staff

Title IX matters not informally resolved will be heard by a single decision -maker or panel

Sexual Misconduct matters not informally resolved will be resolved according to established institutional procedures

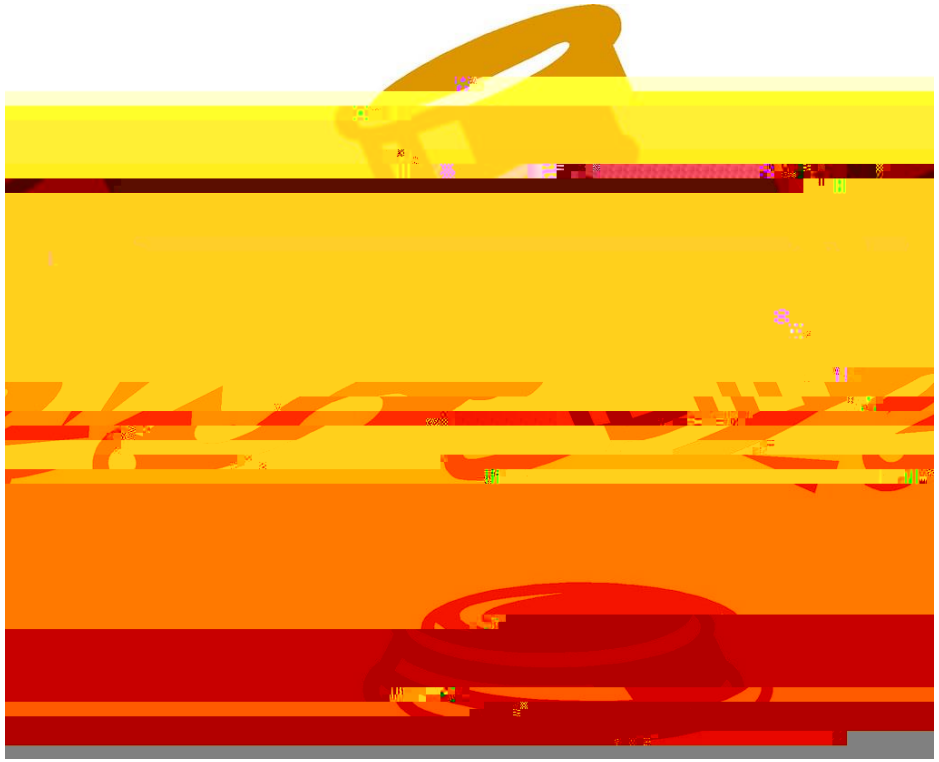
- Institutions may choose to offer a hearing or utilize single decision -maker

Considered a decision -maker

Responsible for facilitating the hearing process

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

Responsible for determining issues of relevancy



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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

106.45(b)(6)

Provide advice, counsel, and support to a party

Perform cross examination of other party and other witnesses

*Note: Institution required to provide if party does not have their own

Provide advice, counsel, and support to a party

May not actively participate in the hearing process

May provide written questions to the Hearing Panel to read aloud

At least 10 days prior to the hearing parties must receive:

- The finalized investigation report
- Notice of the hearing date, time, and modality
- Notice of decision -maker(s)

Recommended : Engage institutional advisor

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

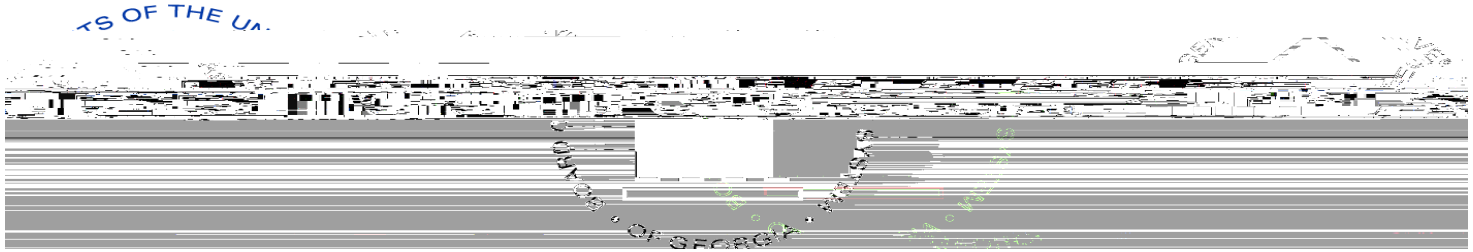
Hearings may be conducted in -

Decisions regarding student

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, discrimination

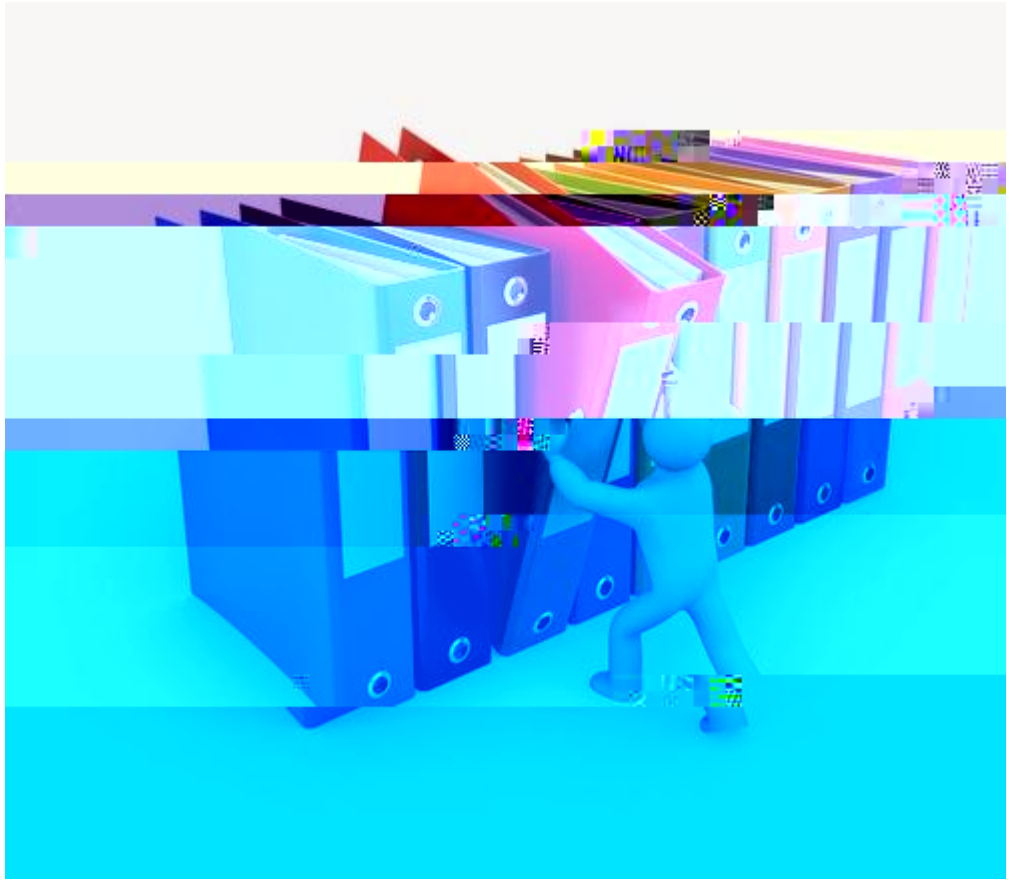
Ex. Charging individuals for code of conduct violations that arise out of the same facts or circumstances

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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