

# Georgia Cyber Academy Governing Board

## Employee Sexual Harassment Policy

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### Employee Sexual Harassment Policy

The intent of this policy is to comply with the Title IX federal regulations concerning sexual harassment. To the extent that additional requirements are specified in federal law or regulations, or to the extent Title IX federal regulations are revised, Georgia Cyber Academy (GCA) shall comply with such additional or revised requirements.

#### DEFINITIONS

**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to GCA's Title IX Coordinator or to any official or employee of GCA. This notice requirement is not met when the only GCA official or employee with actual knowledge is the respondent.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Days** for the purpose of this policy means "school days."

**Deliberately indifferent** means a response to sexual harassment that is clearly unreasonable in light of the known circumstances.

**Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that GCA investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a GCA education program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in GCA's nondiscrimination notice posted on its website. As used in this policy, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided by GCA) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this policy.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

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

3. "Sexual assault" - an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation; or

"Dating Violence"- sex-based violence committed by a person-

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship; or

"Domestic Violence"- sex-based violence which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or

"Sex-based Stalking" - engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

(A) fear for his or her safety or the safety of others; or

(B) suffer substantial emotional distress.

**Supportive measures** means 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 the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or GCA's educational environment, or deter sexual harassment. GCA shall presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The grievance process will be followed before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Supportive measures may include counseling, 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 locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. GCA shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of GCA to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## **NONDISCRIMINATION POLICY**

It is the policy of GCA to comply fully with the requirements of state law, Title IX and its accompanying regulations.

GCA prohibits discrimination based on sex and sexual harassment of employees by other employees, board members, students, volunteers, or others over whom GCA has authority in any GCA education program or activity. Education program or activity includes locations, events, or circumstances over which GCA exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

GCA shall respond promptly in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment against a person in an education program or activity.

GCA shall require that any individual designated and authorized as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. GCA shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will receive training on the definition of sexual harassment, the scope of GCA's education program or activity, how to conduct an investigation and grievance process including questioning, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. GCA shall ensure that decision-makers receive training on any technology to be used during questioning, and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. GCA also shall ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, shall not rely on sex stereotypes and shall promote impartial investigations and adjudications of formal complaints of sexual harassment.

Reports or complaints made to GCA regarding alleged sexual harassment in violation of Title IX shall be processed in accordance with the following process:

#### **GRIEVANCE PROCESS**

1. Reports or complaints may be verbal or written and may be made at any time (including during non-business hours), in person, by mail, by telephone, or by electronic mail using the contact information posted on the GCA website.
2. Any employee, applicant for employment, or other person wishing to report or file a complaint alleging a violation as described above shall promptly notify either the principal at his/her school or the Title IX Coordinator designated and authorized by GCA. Any employee who receives information alleging sexual harassment of an employee shall report it to the principal or Title IX Coordinator. If the alleged offending individual is the principal, the report or complaint should be made by the complainant to the Title IX Coordinator.
3. The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive measures as defined in this policy, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without

the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. GCA shall treat complainants and respondents equitably by following this grievance process before punishing the respondent or providing remedies to the complainant. Remedies will be designed to restore or preserve equal access to GCA's education program or activity. Such remedies may include the same individualized services described as "supportive measures." However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

**4. Formal Complaint.** Upon receipt of a formal complaint, GCA shall within 10 days provide the following written notice to the parties who are known:

(A) Notice of GCA's grievance process;

(B) Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice shall include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall inform the parties of any provision in the employee code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. The notice shall describe the range of or list the possible disciplinary sanctions and remedies that GCA may implement following any determination of responsibility.

(C) If, in the course of an investigation, GCA decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to paragraph (4)(B), GCA shall provide notice of the additional allegations to the parties whose identities are known.

**5. Dismissal of a formal complaint.** GCA shall investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined herein even if proved or did not occur in GCA's education program or activity or in the United States, then GCA shall dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of GCA's policies.

(A) GCA may dismiss the formal complaint or any allegations therein, if at any time during the investigation: A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer employed by GCA; or specific circumstances prevent GCA from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(B) Upon a dismissal required or permitted pursuant to paragraph (5), GCA shall promptly send written notice of and reason(s) for the dismissal simultaneously to the parties.

**6. Consolidation of formal complaints.** GCA may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

**7. Investigation of a formal complaint.** After providing written notice to the parties of the receipt of a formal complaint, GCA shall have 15 days to investigate. When investigating a formal complaint and throughout the grievance process, GCA shall—

(A) Assume the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility and not place such burdens on the parties provided that GCA cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless GCA obtains that party's voluntary, written consent to do so;

(B) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; (C) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence; (D) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, GCA may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;

(E) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate;

(F) Provide both parties an equal opportunity to inspect and review any non-privileged evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which GCA does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, GCA shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties shall have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. GCA shall make all such evidence subject to the parties' inspection and review available at any meeting to give each party equal opportunity to refer to such evidence during the meeting, including for purposes of cross-examination; and

(G) Create within 5 days an investigative report that fairly summarizes relevant evidence, and at least 10 days prior to the determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

(H) Reported sexual harassment determined not to be sexual harassment as defined under Title IX may be investigated in accordance with Policy GAAA.

**8. Questions.** After GCA has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) shall afford a 10 day period for each party to have the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are 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. GCA shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The decision-maker(s) shall explain to the party proposing the questions any decision to exclude a question as not relevant.

**9. Determination regarding responsibility.** The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), shall, within 10 days of the conclusion of the question and answer period, issue a written determination regarding responsibility. To reach this determination, GCA shall apply the preponderance of the evidence standard of evidence to formal complaints against students, to formal complaints against employees and to all complaints of sexual harassment.

The written determination shall include—

(A) Identification of the allegations potentially constituting sexual harassment as defined in this policy;

(B) 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, and methods used to gather other evidence;

(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of GCA's policies to the facts;

(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions GCA imposes on the respondent, and whether remedies designed to restore or preserve equal access to GCA's education program or activity will be provided by GCA to the complainant; and

(F) GCA's procedures and permissible bases for the complainant and respondent to appeal.

(G) GCA shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that GCA provides the parties with the written

determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(H) The Title IX Coordinator is responsible for effective implementation of any remedies.

10. **Appeals.** GCA shall offer both parties 10 days after a decision for an appeal from a determination regarding responsibility, and from a GCA's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(D) As to all appeals, GCA shall:

(i) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

(ii) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

(iii) Ensure that the decision-maker(s) for the appeal complies with the training standards set forth in this policy;

(iv) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

(v) Issue a written decision describing the result of the appeal and the rationale for the result; and

(vi) Provide the written decision simultaneously to both parties within 10 days of the receipt of the appeal.

11. **Informal resolution.** GCA shall not require as a condition of employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this policy. Similarly, GCA shall not require the parties to participate in an informal resolution process and shall not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility GCA may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that GCA—

(A) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing

to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

(B) Obtains the parties' voluntary, written consent to the informal resolution process.

**12. Recordkeeping.** GCA shall maintain for a period of seven years records of—

(A) Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to GCA's education program or activity;

(B) Any appeal and the result therefrom;

(C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. GCA shall make these training materials publicly available on its website, or if GCA does not maintain a website, shall make these materials available upon request for inspection by members of the public.

(i) For each response required under GCA's process for responding to a sexual harassment formal complaint, GCA shall create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, GCA shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to GCA's education program or activity. If GCA does not provide a complainant with supportive measures, then GCA shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit GCA in the future from providing additional explanations or detailing additional measures taken.

**13. Confidentiality.** GCA shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by federal or state law or regulations, or to carry out the purposes of Title IX requirements, including the conduct of any investigation or judicial proceeding arising thereunder.

**14. Retaliation Prohibited.**

(a) No GCA or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under Title IX. Intimidation, threats, coercion, or discrimination, including charges against an individual for employee code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.



Complaints alleging retaliation may be filed in accordance with the procedures specified in Policy GAAA.

(b) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under subparagraph (a).

(c) Charging an individual with an employee code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited under subparagraph(a); provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

#### **15. Time Frame.**

GCA shall allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

**NOTICE:** GCA is required by Title IX and its implementing regulations to notify employees, students, parents or legal guardians, applicants for admission and employment, and professional organizations holding professional agreements with GCA that GCA does not discriminate on the basis of sex in the operation of its education programs or activities, including admissions and employment.

Contact information for GCA's Title IX Coordinator is located on its website and in all handbooks or catalogs that GCA makes available to employees, students, parents or legal guardians, applicants for admission and employment, and professional organizations holding professional agreements with GCA.

Inquiries about Title IX and its implementing regulations may be referred to GCA's Title IX Coordinator, to the Assistant Secretary of the U.S. Department of Education, or both.