



Topics in Higher Education Law

Marshall Chalmers, Associate General Counsel

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The Office of Legal Affairs

► What we do:

- Attorneys in the Office of Legal Affairs provide legal advice and counseling to the University through its administrators, faculty, and staff in the course of their duties on behalf of the University.
- In addition to providing legal counseling to the University, other areas of responsibility for the Office of Legal Affairs include:
 - policy interpretation and advice;
 - administration of certain of the University's grievance and dispute resolution procedures, contract review; and
 - management of actual or threatened litigation in which the University is involved - in conjunction with the Attorney General.
- The Office of Legal Affairs is also available to provide training and informative programs on legal issues applicable to units of the University.
- Note: Do not interact with outside attorneys who contact you. Refer them to Legal Affairs.

► What we do not do:

- The Office of Legal Affairs does not provide legal advice to administrators, faculty, staff, or students in their individual capacities.

► Takeaway: Always feel free to contact us! Much better to discuss a question than clean up a problem.

- Phone: (706) 542-0006
- Email: legal@uga.edu

OLA Attorneys and Staff

Attorneys

- **Mike Raeber** – General Counsel
- **Natalie Cox** – Associate General Counsel
- **Marshall Chalmers** – Associate General Counsel
- **Brooke Savage** – Assistant General Counsel
- **Haley Robison** – Assistant General Counsel
- **Amy BeMent** – Assistant General Counsel
- **Beth Bailey** – Senior Legal Counsel

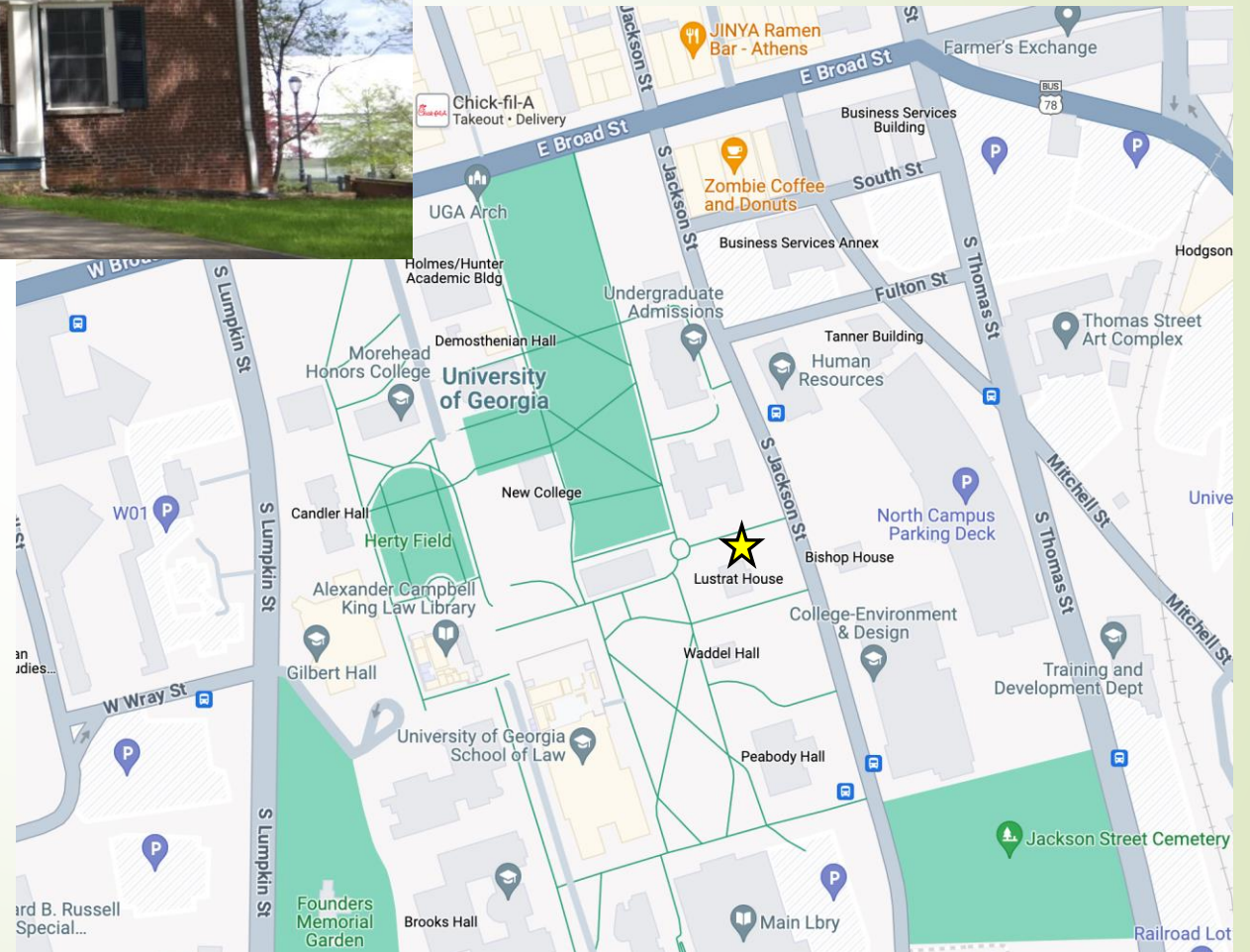
Staff

- **Lindsay Smith** – Legal Administrator
- **Jennifer Ziegenfuss** – Legal Specialist and Contract Coordinator
- **Naseem Tate** – Legal Specialist and Records Manager

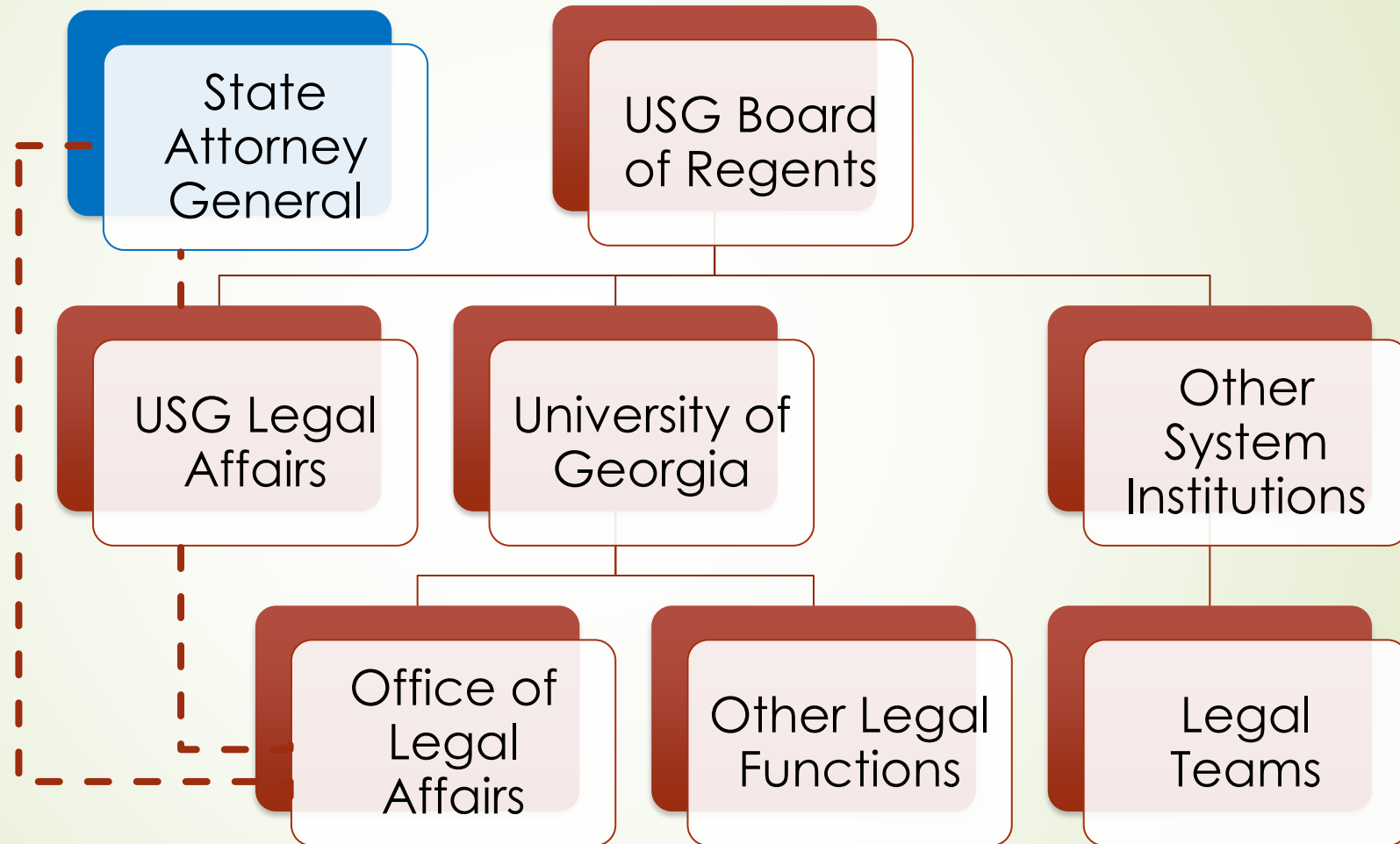


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Legal Structure of the USG System





A 2015 Report from the NACUA Journal of College and University Law

- ▶ The issues reported by higher education attorneys as being highest in the frequency and amount of *time to assist department chairs* were issues of: (1) agreements, contracts and grants (including contract review) involving faculty, (2) state and federal compliance, and (3) FERPA questions.
- ▶ The top three faculty-related legal issues that attorneys reported as having the highest adverse impact on institutional legal liability or risk management efforts, as well as how essential it was for *chairs to receive training*, were (1) sexual harassment by faculty, (2) discrimination and harassment claims by students, and (3) discrimination other than sexual harassment, with the very close (4) fourth category of state and federal compliance.
- ▶ The top three legal issues attorneys reported *chairs found to be the most difficult* were (1) state and federal compliance, (2) faculty non-collegiality and interpersonal problems, and (3) discrimination other than sexual harassment.



2015 NACUA JCUL Report – Issues

► Faculty-Related Topics

- Sexual harassment
- Other discrimination claims
- Non-collegiality, intimidation, and other interpersonal problems
- Tenure and promotion
- Alcohol and drug abuse
- Misuse of institutional or grant resources
- Faculty work performance issues
- Conflict of interest/commitment
- Research misconduct
- Agreements, contracts, grants
- Academic freedom/First Amendment
- Intellectual Property Rights
- Federal and State regulatory compliance

► Student-Related Topics

- Discrimination claims
- Grade appeals, academic probation, dismissal issues
- FERPA issues
- Parent complains and requests



It's 3am... do you know where your policies and procedures are?

SAFE HARBOR: Follow Policies and Procedures!

Contract Review and Signature Authority

- Contracts broadly fall into two categories:
 - (1) Procurement contracts subject to regulation by the Department of Administrative Services; and
 - (2) All other contracts.
- **Procurement Contracts** – Generally, the authority to sign contracts for the purchase or lease of goods and services for the operations of an institution has been delegated to the University Procurement Office. This includes so-called “zero dollar” contracts.
- **All Other Contracts** - Signature authority delegated by USG to President and sub-delegated by President to Provost and other administrators.
 - <https://legal.uga.edu/guidance/contract-processing>
- Signing a contract without properly delegated authority may subject the signatory to personal liability!
- Virtually every contract must be reviewed by the Procurement Office, the Office of Legal Affairs, and/or the Office of Research.



Family Educational Rights and Privacy Act (FERPA)

- ▶ Grants students three categories of rights:
 - ▶ Control over disclosure of their education records
 - ▶ Right to review their education records
 - ▶ Right to request amendment of their education records to correct errors
- ▶ Education records are broadly defined to include those **records** that are (1) **directly related** to a **student**, and (2) **maintained** by an **educational agency or institution**.
 - ▶ **“record”** means any information recorded in any way, including but not limited to handwriting, print, computer media, video, audio, film, microfilm and microfiche.
- ▶ Exceptions to education records includes the “sole possession” exception, excludes records kept in the sole possession of the maker, if used only as a personal memory aid, and not accessible or revealed to any other person.
- ▶ Sharing a student’s education records requires the student’s written consent unless an exception applies.
- ▶ Directory information is defined by the Registrar and can be disclosed without consent, but be careful, because students have the right to opt out of sharing directory information.

The Open Records Act

- ▶ Very broad - applies to all “public records” unless subject to specific exemption
- ▶ “Public records” include any records prepared or received by the University (including emails, text messages, and drafts)
- ▶ Examples of public records:
 - ▶ University business on UGA email
 - ▶ Personal communications using UGA email
 - ▶ University-related communications using personal email
 - ▶ Personnel files
- ▶ Not included: Personal communications on personal email
- ▶ All requests for records pursuant to the Georgia Open Records Act should be directed to Bob Taylor, Open Records Manager, in the Division of Marketing and Communications at (706) 542-8090 or by email at ugaopenrecordsrequest@uga.edu.
 - ▶ The University must respond to Open Records Requests within three business days of receipt.

Grievance and Disciplinary Review

- ▶ A grievance is available for the following:
 - ▶ Regular employees who believe they have been harmed by any action that violates policies of either the University of Georgia or the Board of Regents of the University System of Georgia; or
 - ▶ Regular staff employees seeking to challenge termination, suspension, demotion, or salary reduction in accordance with the “Conduct While Employed” policy.
- ▶ Numerous exceptions to what can be grieved.
- ▶ Policy and related forms available on OLA website
- ▶ Generally, requires two levels of appeal prior to review by the Grievance Committee
- ▶ Review is conducted by a three-person Grievance Committee with an attorney from OLA serving as the Grievance Coordinator
- ▶ Underscores importance of (1) documentation, and (2) policy compliance.

Campus Safety

➤ **Campus Police**

- Call 911 from anywhere on campus
- Close interaction with OLA, EOO, BARC, and UGA Administration
- If in doubt, call police – not an accusation, just a report of facts

➤ **Workplace Violence**

- Workplace violence, for the purpose of this policy includes, but is not limited to: intimidation, bullying, stalking, threats, physical attack, property damage, or domestic and family violence. This includes acts of violence committed by or against UGA employees. Such incidents may also involve student, clients, visitors, or vendors.
- Report to UGA's Human Resources Office of Faculty and Staff Relations (FS&R) and/or Campus Police as appropriate.

➤ **Threats or Concerning Behavior**

- Employee Threat Assessment and Response Team (ETART)
- Behavioral Assessment and Response Committee (BARC)

Programs Serving Minors

- ▶ A “**Program/Activity**” is defined as: “Any academic, admissions, athletic, educational, research, service, leadership, or recreational program serving one or more Minors, including, but not limited to, camps, clinics, conferences, workshops, tutoring, mentoring, group lessons, seminars, competitions, internships or experiential learning, conducting or viewing research, pre-enrollment visits, after-school programs, or other enrichment opportunities.”
- ▶ **This Policy applies broadly to all Programs/Activities serving one or more Minors, including those:**
 - ▶ Offered by departments or units of the University at a University Facility or sponsored by the University at other locations;
 - ▶ Offered by the University’s registered student organizations at a University Facility or sponsored by University registered student organizations at other locations; or
 - ▶ Offered by Third Parties utilizing a University Facility.
- ▶ **This Policy does not apply to:**
 - ▶ Programs/Activities for Minors enrolled in undergraduate or graduate academic coursework;
 - ▶ Events or visits to campus where Minors are supervised by their parent/guardian;
 - ▶ Events at the University that are open to the general public or invited guests where parents/guardians are expected to provide supervision of Minors;
 - ▶ Minor employees; and
 - ▶ University of Georgia employees or students hosting family members, friends, or other guests.

Programs Serving Minors

- ▶ **Requirements of the Policy:**
 - ▶ Approval
 - ▶ Registration/Inventory
 - ▶ Background Checks
 - ▶ Training
 - ▶ Code of Conduct
 - ▶ Record Retention
- ▶ **Policy Owner:** Brian Stone, Director of Compliance for Programs Serving Minors
- ▶ **Policy Contact:** programsforminors@uga.edu
- ▶ **Website:** programsforminors.uga.edu
- ▶ **Phone Number:** 706-542-7255



Mandatory Reporter Policy

Summary of the Policy:

- ▶ All University employees and volunteers acting in the scope of their employment who have reasonable cause to believe that child abuse has occurred shall immediately (but in no case later than 24 hours) make a report or confirm that a report has been made to ALL of the following:
 - ▶ The UGA Police Department (UGAPD) at 706-542-2200 or 911 (emergency);
 - ▶ Their supervisor, program director, or other responsible University official; AND
 - ▶ The Georgia Division of Family and Children Services (DFCS) at 1-855-GACHILD.
- ▶ If you have reasonable cause to believe child abuse has occurred, DO NOT attempt to investigate the matter further or gather additional information before reporting.
- ▶ **Definitions:**
 - ▶ **Child/Minor:** Any person under the age of 18.
 - ▶ **Child Abuse:** Non-accidental physical injury, neglect, exploitation, sexual abuse, or sexual exploitation.



Arrest and Convictions Policy

- Any current employee who is arrested, is the subject of a warrant, or charged with a crime (other than a minor traffic offense) shall report such incident to the Office of Legal Affairs within 72 hours of the employee becoming aware of such charge, warrant, or, in the case of an arrest, release from incarceration.
- Policy available on the OLA website.
- Two options to report:
 - Use the "Online Arrest Report Form" on the OLA website under the Forms menu
 - Contact OLA via telephone

The Copyright Act

- ▶ **USG Copyright Resources** - <https://www.usg.edu/copyright/>
- ▶ **Basics of Copyright:**
 - ▶ Copyright provides the creators of “original works of authorship” that are “fixed in any tangible medium of expression” with a set of limited exclusive rights, including the right to copy, distribute, and perform their works.
 - ▶ Books, journals, photographs, art, music, sound recordings, computer programs, websites, and many other materials are within the reach of copyright law. Also protectable are motion pictures, dance choreography, and architecture. If you can see it, read it, hear it, or watch it, chances are it is protectable (or already protected) by copyright law.
 - ▶ As a general rule, the author is the initial owner of the copyright in the work. If you wrote the book or took the photograph, you are the copyright owner. If you created the work as an employee, acting within the scope of your employment, the work may be a “work made for hire.” In that event, the employer is the copyright owner.
- ▶ **Fair Use** - https://www.usg.edu/copyright/the_fair_use_exception
- ▶ **University’s IP Policy** - <https://research.uga.edu/documents/intellectual-property/>



Questions?



Thank you!

Expect

Respect



Equal Opportunity Office

**Committed to a Fair
and Respectful
Environment for
Living, Work & Study**



The Equal Opportunity Office

EEO is responsible for ensuring that UGA complies with all applicable laws and policies regarding discrimination and harassment on the basis of race, sex (including sexual harassment and pregnancy), gender identity, sexual orientation, ethnicity or national origin, religion, age, genetic information, disability or veteran status.



The Equal Opportunity Team



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Equal Opportunity and Civil Rights

- Title IX
- Title VI
- Title VII
 - The Pregnancy Discrimination Act
- Pregnant Workers Fairness Act
- The Americans with Disabilities Act
- Section 504 & 508 of the Rehabilitation Act
- Equal Pay Act
- Age Discrimination in Employment Act
- Age Discrimination Act
- Genetic Information Nondiscrimination Act
- Affirmative Action



Policies

- Non-Discrimination and Anti-Harassment (NDAH) Policy
 - Title IX
 - Title VII
 - Title VI
 - The Equal Pay Act
 - The Age Discrimination Act
 - The Age Discrimination in Employment Act
 - Genetic Information Nondiscrimination Act
 - Americans with Disabilities Act
 - Rehabilitation Act
 - Executive Order 11246
 - Pregnant Workers Fairness Act
- Sexual Misconduct Policy
 - Title VII
 - Title IX
 - Violence Against Women Act
 - Clery Act



The NDAH Policy

- The University prohibits harassment of or discrimination against any person because of race, color, sex (including sexual harassment and pregnancy), sexual orientation, gender identity, ethnicity or national origin, religion, age, genetic information, disability, or veteran status by any member of the University Community
 - on campus
 - in connection with a University program or activity
 - in a manner that creates a hostile environment for any member of the University Community.
- Prohibited Consensual Relationships Provision



Consensual Relationships

- Faculty and staff, including graduate teaching assistants, cannot date or have a sexual relationship with ANY student they currently supervise, teach, or evaluate in any way.
- Employees cannot date or have a sexual relationship if either employee supervises, evaluates, or in any other way directly affects the terms or conditions of the other's employment.
- “Directly affects” => one employee is above the other employee in a vertical line of authority extending through one or more organizational levels of supervision or management.



The Sexual Misconduct Policy

- The University System of Georgia (USG) prohibits discrimination on the basis of sex in any of its education programs or activities or in employment. The USG is committed to ensuring the highest ethical conduct of the members of its community by promoting a safe learning and working environment.
- Prohibited conduct includes:
 - sexual harassment
 - sexual exploitation
 - Stalking
 - dating violence
 - domestic violence
 - nonconsensual sexual contact
 - nonconsensual sexual penetration



Responsible Employees

- Any administrator, supervisor, faculty member, or other person in a position of authority who is not a Privileged Resource Employee or Support Resource Employee (a “Responsible Employee”) who knows of, or receives a complaint of, potential discrimination or harassment or potential violation of the Prohibited Consensual Relationship provision must fully report the information or complaint to the EOO promptly.
- Student employees who serve in a supervisory, advisory, or managerial role are Responsible Employees and in positions of authority for purposes of this Policy (e.g., teaching assistants, residential assistants, student managers, orientation leaders, etc.) and must also promptly report discrimination or harassment to EOO.
- If a Complainant reports discrimination or harassment to a Responsible Employee but wants to maintain confidentiality, the Responsible Employee or person in a position of authority must relay the request for confidentiality when reporting the alleged discrimination or harassment to EOO.



Requests for Confidentiality

- The University strongly supports an individual's interest in confidentiality, particularly in instances involving sexual misconduct. When a Complainant requests their identity be withheld or the allegation(s) not be investigated, the University will consider, through the EOO Director/Title IX Coordinator, whether this request can be honored while still complying with other laws, regulations, or policies and providing a safe and nondiscriminatory environment for the University.
- Honoring the request may limit the University's ability to respond fully to the incident and may limit the University's ability to discipline the Respondent.
- The Complainant will be informed of any decision to act contrary to the request for confidentiality or no investigation before any disclosures are made and before an investigation begins.



Confidential Resources

- **Privileged Resource Employee:** Employees working in one or more of the groups listed below are not required to report patient or client disclosures of harassment or discrimination to EOO:
 - University Health Center CAPS (Counseling and Psychiatric Services)
 - University Health Center Medical Clinicians
 - UGA Psychology Clinic
 - UGA Center for Counseling and Personal Evaluation
 - Aspire Clinic
 - UGA Family Violence Clinic
 - Veterans Legal Clinic
 - Wilbanks Child Endangerment and Sexual Exploitation Clinic
 - UGA First Amendment Clinic
- **Support Resource Employee:** These employees may talk to an alleged victim in confidence and generally report to the University only that the incident occurred (date, time, location and perpetrator, if known) without revealing information that will personally identify the alleged victim. Disclosures to these employees will not automatically trigger an investigation against the alleged victim's wishes; provided, however, that these employees are required to fully disclose to EOO any report where there is a threat of danger to the community (including to the alleged victim):
 - University Health Center RSVP (Relationship and Sexual Violence Prevention)
 - University Ombudspersons
 - Student Care and Outreach



Pregnant and Parenting Students

- Reasonable accommodations and/or adjustments are required under Title IX
- Students are allowed to continue classes or extracurricular activities
- Accommodations are typically reasonable unless they:
 - Alter or remove essential requirements of the course
 - Fundamentally alter the nature of the program
 - Impose undue financial or administrative burden
 - Pose a threat to others
- Reasonable adjustments for pregnant students may include:
 - a larger desk
 - breaks during class, as needed
 - permitting temporary access to elevators
 - rescheduling tests or exams
 - excusing absences due to pregnancy or related conditions
 - submitting work after a deadline missed due to pregnancy or childbirth
 - providing alternatives to make up missed work



Accommodations

- The University of Georgia is committed to providing equal educational and employment opportunities and access for qualified individuals with disabilities, including students, job applicants, employees, and users of UGA's public accommodations and services.
- EOO houses the ADA Coordinator and enforces policies/procedures, including oversight for complaints and appeals, for:
 - Applicants, Students, and Employees with Disabilities
 - Service Animals
 - Access to Electronic and Information Technology
 - Disability Discrimination and Harassment
- Student Disability Resources:
 - The Disability Resource Center's primary commitment is to assist the University of Georgia in educating and serving students with disabilities who qualify for admissions.
- Employee Disability Resources
 - Human Resources manages all requests for accommodations from supervisors and employees.



Equal Opportunity and Hiring

- To affirm the commitment of the University of Georgia to the principles of equal opportunity and diversity in its efforts to select the best qualified candidates in all its hiring and promotion decisions.
- To ensure compliance with equal employment opportunity laws and affirmative action guidelines the general rule is that all faculty and administrative appointments require a search.
- There are some exceptions that should be used on a limited basis.
- All search exceptions require University approval.



Your Part of the Partnership

- Know the policies
- Follow the policies
- Report alleged violations – you are a Responsible Employee
- DO NOT investigate
- DO NOT promise confidentiality
- Remember that almost everyone is a member of a protected category
- Remember all conduct is not protected under the First Amendment and/or Academic Freedom
- Attend (and have your faculty attend) Search Committee Training
- Know resources available on campus



Contact Us

VISIT OUR WEBSITE

<https://eoo.uga.edu/>

OR EMAIL

ugaeoo@uga.edu

OR PHONE

706-542-7912

