

THE CITY UNIVERSITY OF NEW YORK Students

Policy and Procedure On Sexual Misconduct
Including Off – Campus Activities
2019



CUNY's Goals

- Prevent sex discrimination/sexual misconduct on our campuses and off-campus domestically and abroad
 - **One incident is one too many.**
- Provide clear policies and procedures on addressing sex discrimination/sexual misconduct
- Provide and promote education and awareness of staff and student obligations and available resources
- Appropriately respond to students and employees who complain of sex discrimination/sexual misconduct
- Encourage, though not require, victims to report to law enforcement
- Provide an adjudication process that is fair to both complainant and accused

New York Legislation “Enough is Enough”

- Definition of Affirmative Consent
- Colleges must have trained individuals available 24/7 to receive complaints. They must be able to provide information on evidence preservation and be aware of CUNY Policies/procedures.
- Student Bill of Rights must be provided to students at the time a report is made.
- Reporting Individuals must receive immediate notice of:
 - Right to report or not to report to law enforcement
 - Right to report to institution
 - Right to be protected from retaliation
 - Right to assistance and resources provided by the institution

Sexual Misconduct: Policies, Prevention And Resources

- Definitions of sexual misconduct, sexual harassment, gender-based harassment and sexual violence, including sexual assault, dating/intimate partner/domestic violence, and stalking
- Reporting incidents of sexual misconduct
- Confidentiality – awareness of who may and may not keep matters confidential
- Awareness and prevention
- Interim and Supportive Measures
- Student Bill Of Rights
- Resources
- Chaperone Responsibility

Sexual Misconduct Filing a Complaint

All individuals who believe that they have experienced or witnessed sexual misconduct are strongly encouraged to report the incident to campus authorities

Students should report to:

- Title IX Coordinator
- Office of Public Safety
- Office of the Vice President for Student Affairs and/or Dean of Students
- Residence Life staff in CUNY owned or operated housing
- Students will be assisted in reporting all cases involving any form of sexual violence and/or stalking to the NYPD. If they wish to do so.

Employees should report to:

- Title IX Coordinator
- Director of Human Resources
- Office of Public Safety
- Employees will be assisted in reporting all cases involving any form of sexual violence and/or stalking to the NYPD if they wish to do so

With matters involving off-campus domestic overnight trips or study abroad trips, the International Education Liaison, and or Chaperone is commonly the first party to learn of a complaint. Please remember to immediately contact the campus Title IX Coordinator, Public Service Officer or Chief Student Affairs Officer.

All CUNY community members are advised that if they experience or observe a sexual assault, call 911 immediately.

Chaperones

- During Off - Campus over night trips chaperones will be available to assist students.
- There should be one chaperone assigned for every five students on off-campus overnight trips.
- Chaperones should be CUNY employees who have successfully completed the employee E-SPARC online training.
- In the event that a non-CUNY employee is a chaperone, they must adhere to all CUNY policy and procedures.
- Chaperones are considered Responsible Employees under the Policy on Sexual Misconduct and may be the first individual to learn of a complaint.
- The Chaperones for this group are: **(INSERT NAME OF CHAPERONES HERE)**
- Chaperones are required to:
 - Immediately inform the trip leader **(INSERT TRIP LEADER NAME HERE)**, International Education Liaison, campus Title IX Coordinator, and campus Public Safety Officer of any reports of sexual misconduct;
 - Provide complainant with Student Bill of Rights (found in CUNY's Policy on Sexual Misconduct); and
 - If the complainant wishes to do so, discuss option of filing a complaint with law enforcement – issues should to be examined.

Chaperones- Available Interim and Supportive Measures

- Chaperones should work with the campus Title IX Coordinator, Public Safety Officer and Chief Student Affairs Officer who may assist in providing the student with:
- Immediate interim measures
 - Housing arrangements- if incident occurs within the same living arrangement/dorm, may be required to remove one of the parties from the location
 - Return travel
 - Re-arrange work duties: Assist in ensuring complainant does not have to work or interact with the respondent
 - Assist in arranging an escort for medical services or, upon consultation, to law enforcement;
- Remind complainants about CUNY's Alcohol/Drug Use Amnesty Policy; and
- Chaperones are prohibited from drinking while on duty

Sexual Misconduct

Other Forms of Notice

- Even when no formal complaint is made by an alleged victim, a chaperone can learn of an incident of sexual misconduct in a number of other ways:
- A student, friend or family member can report an incident to school officials;
- A chaperone can witness an incident;
- A chaperone can learn in an indirect manner: on social media (Twitter, Facebook), or may overhear individuals discussing an incident; and
- The behavior may be openly practiced and/or well-known on campus (i.e. Yale: fraternities yelling “no means yes, yes means anal” in front of women’s centers).

Coordination with Other Offices

- Complaints involving Employees and/or Students involve a great deal of coordination between departments to ensure that the appropriate interim services are provided.
- Even though the incident may occur while on an off-campus trip, the student/employee's Title IX Coordinator will coordinate with other offices and perform an investigation.
- The chaperone will assist by gathering all information learned while on the off-campus trip, and providing it to the campus Title IX Coordinator or the Public Safety Office.

Responsibilities of Title IX Coordinator

- Title IX Coordinator's are responsible for:
 - Investigating all matters
 - Interview available witnesses, including both complainant and respondent (if available) once back on campus.
 - Generating a report that is provided to the president
 - Assist in providing interim services (discussed in next slide)
 - Provide notices to complainant and respondent informing them of the status of the complaint
 - The Title IX coordinator will perform these tasks, taking into account the issues that arise when an incident occurs on a off-campus CUNY sponsored trip and not on a CUNY campus

What Is Sexual Misconduct, Sexual Harassment, Gender- Based Harassment and Sexual Violence?

What is Sexual Misconduct

- Sexual Misconduct is sexual harassment, gender-based harassment and sexual violence, as defined in CUNY's Policy on Sexual Misconduct, and is prohibited on our campuses.
- Sexual Misconduct also encompasses Intimate Partner Violence, which includes both Dating and Domestic Violence.

What Is Harassment?

- Sexual harassment is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic and electronic communications, or physical conduct that is sufficiently serious to adversely affect an individual's participation in employment, education or other CUNY activities.
- Gender-based harassment is unwelcome conduct of a nonsexual nature based on actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes that is sufficiently serious to adversely affect an individual's participation in employment, education or other CUNY activities.

What is Sexual Violence?

- Sexual violence is an umbrella term that includes: (1) sexual activity without affirmative consent, such as sexual assault rape/attempted rape, and forcible touching/fondling; (2) dating, domestic and intimate partner violence; (3) stalking; and (4) voyeurism.
- All of these terms are defined in CUNY's Policy on Sexual Misconduct.

Sexual Assault & Sexual Activity

- Sexual assault is any form of sexual activity that occurs without consent and/or through the use of force, threat of force, intimidation, or coercion.
- Sexual assault can be committed when someone has not given or is unable to give consent, for example, because of intoxication.
- Sexual Activity is:
 - contact between the penis and the vulva or the penis and the anus;
 - contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
 - penetration, however slight, of the of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Affirmative Consent

- Affirmative Consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.
- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- In order to give consent, one must be of legal age (17 years or older).
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

Affirmative Consent Cannot be Given When:

- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, being involuntarily restrained, or if the individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- Consent may be initially given but withdrawn at any time. When consent is withdrawn or no can longer be given, sexual activity must stop.

Dating and Domestic Violence

- Dating Violence is violence or sexual assault committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the reporting party's statement and with consideration of the length of the relationship and the frequency of the interaction between the persons involved in the relationship. Dating violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct. A relationship may be romantic or intimate regardless of whether the relationship was sexual in nature. Dating violence includes the threat of sexual or physical abuse.
- Domestic Violence is any violence or sexual assault committed by (i) a current or former spouse or intimate partner of the victim; (ii) a person with whom the victim shares a child; (iii) a person who cohabits or cohabited with the victim as a spouse or intimate partner; or (iv) anyone else covered by applicable domestic violence laws. Domestic violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct.

Stalking

- Stalking is intentionally engaging in a course of conduct directed at a specific person that:
 - is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
 - is likely to cause such person to reasonably fear that her/his employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.
- Where stalking is directed at an individual with whom the perpetrator has, had, or sought some form of sexual or romantic relationship, it will be addressed under CUNY's Policy on Sexual Misconduct.

CUNY's Policies And Procedures Against Sexual Misconduct

Report all incidents of sexual misconduct to your Title IX Coordinator,
Director of Public Safety, or

Chief Student Affairs Officer (for students) or Director of Human Resources
(for employees)

CUNY's Policies

- Policy on Sexual Misconduct and Sex Discrimination
- Policy on Domestic Violence and the Workplace
- Related Policies
- Policy on Equal Opportunity and Nondiscrimination
- Policy on Workplace Violence

POLICY ON SEXUAL MISCONDUCT AND SEX DISCRIMINATION

- Every member of the CUNY community, including students, employees and visitors, deserves the opportunity to live, learn and work free from sexual harassment, gender-based harassment and sexual violence.
- The University has professionals and law enforcement officers who are trained to assist student victims in obtaining help, including immediate medical care, counseling and other essential services, as well as reporting to law enforcement.

POLICY ON SEXUAL MISCONDUCT

Student-Employee Relationships

- Faculty members and other employees are prohibited from engaging in consensual intimate relationships with students for whom they have a professional responsibility. For example:
- Chaperones have a professional responsibility for students participating in an off-campus program and as such are prohibited from engaging in an intimate relationship with the students under their watch.

POLICY ON SEXUAL MISCONDUCT

- Supervisors are strongly discouraged from engaging in consensual intimate relationships with non-student employees they supervise.
- Supervisors are required to report any such relationships to their supervisors.
- For example, a student employee who has a supervisory role on an off-campus trip, may violate the Policy if they engage in a consensual intimate relationship with a student on that trip.

Policy On Domestic Violence and the Workplace

- Domestic violence can spill over into the workplace, compromising the safety of both victims and co-workers and result in lost productivity, increased health care costs, increased absenteeism, and increased employee turnover.
- CUNY is committed to
 - full compliance with all applicable laws governing domestic violence in the workplace
 - promoting the health and safety of all its employees
 - participating in the fight to end domestic violence

Responsible Employees

“Responsible Employees” are REQUIRED to report incidents of sexual misconduct, they include:

- Title IX Coordinator and her/his staff
- Office of Public Safety employees (all)
- Vice President for Student Affairs and Dean of Students and all staff housed in those offices
- Residence Life staff in CUNY owned or operated housing, including Resident Assistants (all)
- College President, Vice Presidents and Deans
- Athletics Staff (all)
- Faculty Athletics Representatives
- Department Chairpersons/Executive Officers
- Human Resources staff (all)
- University Office of the General Counsel employees (all)
- College/unit attorney and her/his staff
- College/unit labor designee and her/his staff
- International Education Liaisons/Study Abroad Campus Directors and Field Directors
- Faculty/staff members at times when they are leading or supervising students on off-campus trips, this includes chaperones
- Faculty or staff advisors to student groups
- Employees who are Managers (all)
- SEEK/College Discovery staff (all)
- College Childcare Center staff (all)
- Directors of “Educational Opportunity Centers” affiliated with CUNY colleges
- Chaperones on off-campus trips

All Other Employees

- Employees who are not designated “Responsible Employees” are strongly encouraged to report any possible sexual harassment or sexual violence.
- Only certain employees (to be discussed later) can promise that a student’s allegations of sexual misconduct will remain confidential.

Off Campus Incidents of Sexual Misconduct

- CUNY is committed to investigating incidents of sexual misconduct that occur both on and off campus.
- In matters where the Respondent is a CUNY student, but the Complainant is not a member of our community, CUNY will investigate and, if there is a finding of responsibility, move forward with disciplinary charges, where appropriate.
- In matters where the Complainant is a member of the CUNY community, but the Respondent is not, CUNY will provide the Complainant with assistance and support services.

What Happens After A Complaint of Sexual Misconduct Is Made?

- All student complaints of sexual misconduct are promptly investigated by the Title IX Coordinator, or his/her designee, with assistance from Public Safety and Student Affairs where appropriate.
- All employee complaints of sexual misconduct are promptly investigated by the Title IX Coordinator, or his/her designee with assistance from Public Safety and Human Resources where appropriate.
- The Public Safety Director is notified of all complaints of sexual misconduct.
- Complaints relayed to Chaperones during the trip will be reported to the complainant's campus Title IX Coordinator, Public Safety Officer and Rodney Pepe-Souvenir, the University Title IX Director.

How Long Does the Investigation Take?

- Whenever possible, the investigation should be completed in 60 calendar days. If it is not possible to complete the investigation in that time, both parties are notified of the status.
- The Title IX Report will be generated within 30 days after the investigation is completed.
- The college Title IX Coordinator will provide both the complainant and respondent with periodic written status updates of the investigation.
- When requested to do so by law, CUNY is only permitted to suspend its investigation for 10 days. If law enforcement requests an investigation be suspended for a longer period of time, it must be in writing and both parties will be notified.

CUNY's Disciplinary Process – Employee and Students

For additional information regarding the disciplinary process, please refer to CUNY's Policy on Sexual Misconduct

Disciplinary Process: How are Penalties Imposed?

- When it is determined that a student or employee engaged in sexual misconduct, the College will take all necessary steps to pursue discipline in accordance with the applicable procedures in CUNY's Bylaws and in its employment contracts.
- There are different processes for students, staff and faculty members.

Student Discipline

- The College is required to follow the procedures in CUNY's Policy on Sexual Misconduct before disciplining a student.
- This is applicable even on off-campus trips.
- If, after investigation, it is determined that a student engaged in sexual harassment, gender-based harassment and/or sexual violence, disciplinary charges will be brought by the College.
- If disciplinary charges are brought, and the accused student contests the charges or the requested penalty, a hearing will be held before the Faculty-Student Disciplinary Committee.
 - Each school will have a special disciplinary panel designated for sexual violence cases.
 - The members of that panel will receive special training.
- In certain circumstance, an emergency suspension may be imposed.
 - In these cases, the disciplinary hearing must take place within 12 calendar days.

Employee Discipline

- The procedures for imposing discipline on many CUNY employees are governed by collective bargaining agreements. In many instances, discipline cannot be imposed without a hearing before a neutral fact finder who is not employed by the College.
- Complainant and accused will receive periodic written status updates.
- The complainant and accused will be informed in writing of the outcome when the disciplinary procedure is complete.
- While these proceedings are pending, the College will take all reasonable measures to separate the complainant from the accused.
- Complainant will receive periodic updates regarding the status of the disciplinary process.

Possible Penalties

- Disciplinary penalties can include:
- **For Students**
- Probation, suspension, expulsion
- Removal from dorm and/or extracurricular activities including athletics
- Campus ban
- **For Employees** (depending on collective bargaining agreements)
- Reprimand, suspension or termination of employment
- Demotion
- Fine or restitution
- Campus ban
- Continued no contact order
- College may also take other measures not governed by CBAs, such as removal from discretionary positions

Retaliation for Reporting Sexual Misconduct

- Retaliation is adverse treatment of an individual because he/she made a sexual misconduct complaint, opposed sexual misconduct, or cooperated with an investigation.
- Retaliation is illegal.
- No individual, including the accused, may directly, or through a third-party, intimidate, threaten or coerce the complainant or any other participant in the investigation/disciplinary process including witnesses, panel members, and investigators.
- The College will seek to discipline anyone found to have engaged in retaliation.

Reporting Misconduct: Confidentiality v. with Privacy

CUNY strongly encourages all students to report incidents of sexual misconduct to the College. While only some employees may maintain confidentiality, all are strongly encouraged to maintain individual privacy to the greatest extent possible. Chaperones on off-campus trips will provide information on a needs to know basis.

Confidentiality v. with Privacy

- Confidentiality is the commitment not to share any identifying information with others, except as required by law in emergency circumstances (such as risk of death or serious bodily harm). Confidentiality may only be offered by individuals who are not legally required to report known incidents of Sexual Misconduct to college officials. Licensed mental health counselors, medical providers & pastoral counselors may offer confidentiality.
- Privacy is the assurance that the college will only reveal information about a report of Sexual Misconduct to those who need to know the information in order to carry out their duties or responsibilities or as otherwise required by law. Individuals who are unable to offer the higher standard of confidentiality under law, but who are still committed to not disclose information more than necessary, may offer privacy.

Confidentiality - Students

- Only certain employees can promise that a student's allegations of sexual misconduct will be handled confidentially.
 - Counselors or other staff members in campus Counseling Center
 - Nurse, nurse practitioner or other staff member in campus Health Office/Wellness Center
 - Pastoral counselor if one is available at the campus
 - Staff member of Women's Center, if available at the campus
- All other staff are either required or strongly encouraged to report.

Confidentiality – The Clery Act

- The Clery Act (a federal law) requires college campuses to track and report certain crime statistics, including incidents of sexual violence.
- All college officials who have significant responsibility for student and campus activities are required to report these crime statistics to Public Safety.
- Although the incident must be reported, the identity of the complainant/victim will not be reported.
- Licensed or certified mental health professionals acting in this professional capacity are exempt from this reporting requirement.

Alcohol Use

- On college campuses, alcohol is often involved in sexual violence and date rape.
- Alcohol consumption is not an excuse for sexual misconduct.
- A person who is intoxicated may be incapacitated. However, a person may be intoxicated without being incapacitated.
- On off-campus trips alcohol is banned from students rooms
- While away on off-campus trips students are to adhere to the NYS legal drinking age of 21.

CUNY's Drug/Alcohol Use Amnesty Policy

- Students who are victims of, or observe sexual misconduct while under the influence of drugs or alcohol, should report the incident and seek medical help.
- Students will not be disciplined for their drug or alcohol use.
- This policy does not protect students from discipline for other misconduct such as sexual assault, drug sales, causing or threatening physical harm, damaging property or hazing.
- Similarly, NY's Good Samaritan Law protects from arrest and prosecution individuals who call 911 when they witness or suffer from a medical emergency involving drugs or alcohol.

Protect Yourself

- If you choose to drink, be responsible. Drinking alcohol greatly increases the risk of sexual assault.
- Know what is in your drink, regardless of whether it contains alcohol.
 - Open a can yourself
 - Make your own drink
 - Avoid punch bowls
 - Otherwise, drugs that incapacitate you can be added to your drink.
 - Jungle Juice
 - Nutcrackers

Title IX Coordinators, Public Safety Directors, Chief Student Affairs Officers



Title IX Coordinators

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Chief Student Affairs Officers

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