

# THE CITY UNIVERSITY OF NEW YORK

## Sample Sexual Misconduct Curriculum for Employees

Updated August 2018



# CUNY's Commitment

- CUNY's policies prohibit sex discrimination and sexual misconduct (sexual harassment, gender-based harassment and sexual violence) against any CUNY student, employee or visitor.
- Sexual harassment, a form of sex discrimination, is illegal under federal, state and city laws and will not be tolerated within CUNY.
- We are committed to promoting a safe and secure academic environment for all members of our community.
- All students, faculty, staff and visitors are expected to maintain a working and learning environment free from harassment and discrimination.

# CUNY's Goals

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

# Legal Obligations

- Title IX of the Education Amendments of 1972 is a federal law that prohibits sex discrimination on college campuses. It states:
  - “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal Financial Assistance.”
- New York State Labor Law: Amendment to the law including obligation that all employers create a policy and training aimed at addressing and preventing sexual harassment.
- New York State Enough is Enough:
  - 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.
  - 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

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

Sexual Harassment  
Gender-Based Harassment  
Sexual Violence  
Sexual Assault  
Domestic/Intimate Partner/Dating Violence  
Stalking

# Sexual Misconduct: Policies, Prevention And Resources

- Definitions of sexual harassment, gender-based harassment and sexual violence, including sexual assault, dating/intimate partner/domestic violence, and stalking
- Policies and procedures- overview of changes to policy and other related policies
- Reporting incidents of sexual misconduct
- Confidentiality / Privacy – awareness of who may and may not keep matters confidential
- Awareness and prevention

# What is Sexual Misconduct and Sex Discrimination?

- Sexual harassment, gender-based harassment and sexual violence, collectively referred to as “sexual misconduct”, are forms of sex discrimination prohibited by the policy.
- Sex Discrimination is treating an individual differently or less favorably because of sex, including sexual orientation, gender or gender identity (including transgender status), as well as pregnancy, childbirth and related conditions. Examples of sex discrimination include giving a student a lower grade, or failing to hire or promote an employee, based on their sex.

# What Is Sexual 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.



# Some Examples Of Sexual Harassment

Sexual Harassment can include unwanted

- Sexual comments, teasing, or jokes
- Inappropriate or unwelcome physical contact, such as touching, groping, patting, pinching, hugging, kissing, or brushing up against an individual's body
- Sexual slurs, demeaning words, or other verbal abuse
- Graphic or sexually suggestive comments
- Inquiries or discussions about sexual activities
- Pressure to accept social and/or electronic invitations, to meet privately, to date, or to have sexual relations
- Sexually suggestive letters or other written or visual communications, including emails, texts, snapchats, photos and other social media communications

# What Is Gender-Based Harassment?

- 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.

# Dating/intimate partner/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. Determining whether violence constitutes dating violence is based on facts presented by complainant.
  - 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.
- **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.

# What is Sexual Violence?

- Sexual violence is an umbrella term that includes sexual assault as well as dating, domestic and intimate partner violence and certain forms of stalking.
- Sexual assault is a crime. Sexual assault is any form of sexual contact 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 assault can be a form of sexual harassment.

# Stalking

- **Stalking** is:
  - intentionally engaging in a course of conduct directed at a specific person that is likely to cause reasonable fear of harm to the another person or someone close to them; or
  - is likely to cause such person to reasonably fear that her/his employment, business or career is threatened.
  - 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 this Policy. Stalking that lacks a sexual or gender-based nexus may be addressed under the Code of Conduct.

# Stalking

- The determination as to whether conduct is stalking can only be determined after examining all relevant facts. One incident on its own may not rise to the level of stalking, but if that one incident is severe enough, it may. Stalking behavior includes but is not limited to:
  - Repeated contact of the complainant by phone, mail, email, social media, etc.
  - Initiating contact with complainant after told to stop.
  - Appearing at places the complainant frequents on or off campus.

# CUNY's Policies And Procedures Against Sexual Misconduct and Sex Discrimination

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

# CUNY's Policies

- Policy on Sexual Misconduct
- Policy on Domestic Violence and the Workplace

## Related Policies:

- Policy on Equal Opportunity and Nondiscrimination
- Policy on Workplace Violence
- Policy on Reasonable Accommodations and Academic Adjustments



# POLICY ON SEXUAL MISCONDUCT

- “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:

- an athletic coach may not engage in an intimate relationship with a student on his/her team.
- A professor may not engage in an intimate relationship with a student in his/her course.

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.

# 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
  - provide reasonable accommodations to victims of domestic violence
  - Honor orders of protection to safeguard our employees; bring all orders of protection to the attention of Campus Public Safety.
  - promoting the health and safety of all its employees
  - participating in the fight to end domestic violence

# Policy on Reasonable Accommodations and Academic Adjustments

- Policy provides guidelines when students, employees or visitors request an accommodation or academic adjustments.
- The following procedures apply to reasonable accommodations and academic adjustments in connection with:
  - [a disability](#),
  - [pregnancy, childbirth, or a medical condition related to pregnancy or childbirth](#),
  - [religious practices](#), and
  - [status as a victim of domestic violence, sex offense or stalking](#).
- CUNY will thoroughly review all requests on a case-by-case basis and engage in a cooperative dialogue or interactive communicative process with the requester in accordance with applicable law.
- CUNY need not provide a requested accommodation that would constitute an undue hardship or that is not reasonable under the circumstances. CUNY prohibits retaliation against individuals for requesting reasonable accommodations or academic adjustments, appealing decisions concerning such requests, or for making or participating in claims of discrimination.

# Sexual Misconduct Complaint Process

Where to file a complaint of sexual misconduct, investigation, and some considerations to keep in mind

# 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

### **Employees should report to:**

- Title IX Coordinator
- Director of Human Resources
- Office of Public Safety

# If the Incident Happened Off-Campus, Can I Still File a Complaint?

- CUNY is committed to investigating incidents of sexual misconduct that occur both on and off campus.
- In matters where the Respondent is a CUNY employee or 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 Complainant with assistance and support services.

# What Happens After A Complaint of Sexual Misconduct Is Made?

- 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 and orders of protection.
- All students and employees are encouraged, though not required, to report incidents of sexual violence and sexual harassment to the NYPD. Public Safety will help the complainant make the report.
- The Campus will comply with and assist in the enforcement of court orders of protection.



# Student Interim and Supportive Measures

- Where appropriate, the College will implement **interim and supportive measures** to keep employees, our students, and the campus community safe.
- **For students, examples may include:**
  - Security escort
  - Class rescheduling/reassignment
  - On campus counseling for students
  - Academic assistance
  - No Contact Order between Complainant and accused

# Employee Interim and Supportive Measures

- Employees who are victims of sexual misconduct may be eligible for reasonable accommodations, including:
  - Modifying work schedules
  - Granting breaks or providing leave
  - Moving to different office space
  - Reconfiguring work spaces/equipment
  - Providing assistive technology/equipment
  - Free confidential support services through CUNY's Work/Life Program

# Employees Required to Report Incidents of Sexual Misconduct

- CUNY employees and students are encouraged to speak with college employees about incidents of sexual misconduct.
- Responsible employees are **required** to report all complaints of sexual misconduct, whether from a student or an employee, to the Title Coordinator.
  - **Only** certain employees can promise that a student's allegations of sexual misconduct will remain confidential.

# Responsible Employees- Private

“Responsible Employees” are employees **REQUIRED** to report incidents of sexual misconduct to their Campus Title IX Coordinator. Nonetheless, they will keep the matters **private**.

- 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
- Faculty or staff advisors to student groups
- Managers and Supervisors
- SEEK/College Discovery staff (all)
- College Childcare Center staff (all)
- Directors of “Educational Opportunity Centers” affiliated with CUNY colleges

# Responsible Employees

- While Responsible Employees cannot keep the information they learn **confidential**, they will keep the information **private**
- Employees who are not designated “Responsible Employees” are **strongly encouraged** to report any possible sexual harassment or sexual violence.
  - Faculty are not considered Responsible Employees-exception being faculty, such as Chair, who hold an administrative role.
  - Keep in mind that Responsible employees are required to report, even if they learn of an allegation of sexual misconduct through a third party or, in some cases, as a rumor.

# Privacy / Confidentiality

- **Confidentiality** means the commitment to not share ANY information with others except as required by law (i.e. instances such as risk of death or serious bodily harm).
- On the other hand, ensuring that a matter is **private** means that the CUNY employee will only reveal information about a report of sexual misconduct with those who need to know the information in order to carry out their responsibilities.

# Confidentiality - Employees

- Employees who wish to report an incident confidentially should contact support services available through CUNY's Work/Life Program, that is administered by an independent company.
- Employees can report misconduct, confidentially if they choose, to the Office of General Counsel at <http://www.cuny.edu/about/administration/offices/la/fillablereportmisconduct.pdf>.

# 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.



# Privacy v. Confidentiality during the Investigation Process

- After a report of an alleged incident of sexual misconduct is made to the Title IX Coordinator, a complainant may request:
  - that the matter be investigated only to the extent possible without further revealing her/his identity or any details regarding the incident being divulged further;
  - that no investigation into a particular incident be conducted; or
  - that an incident not be reported to outside law enforcement.
- In all such cases, the Title IX Coordinator will weigh the complainant's request against the college's obligation to provide a safe, non-discriminatory environment for all students, employees and visitors, including the complainant.

# Investigation Process

- For investigations, the Title IX Coordinator will investigate a complaint in a fair, thorough and impartial manner, generally within 60 days:
  - Parties and Witnesses interviewed
  - Credibility assessments
  - Documents reviewed
- Reasonable Determination **based on** evidence presented
- Investigation report must be submitted to College President within days of the investigation ending. President will review the report and authorize appropriate remedial action, if warranted

# Informal Resolution

- Informal Resolution cannot be used in instances involving sexual assault.
- The Title IX Coordinator must finish the investigation before turning to the informal resolution process.
- The Title IX Coordinator can offer the complainant and respondent the opportunity to participate in informal resolution instead of the formal investigatory and adjudicatory process.
- Parties have the right to end the process at anytime.
- Even if both parties agree to the resolution, the Title IX Coordinator must sign-off on the resolution for it to be final.

# Filing an External Complaint

- The following federal, state, and local agencies enforce laws against sexual misconduct or sex discrimination. If you are a victim of sexual misconduct or sex discrimination, you may file an external complaint with these agencies, or you may file litigation in a court of competent jurisdiction. Depending on the forum, the time that you have to file may vary based on the applicable statutes of limitations.
- New York City Commission on Human Rights,  
• <http://www1.nyc.gov/site/cchr/index.page>
- New York State Division on Human Rights,  
• <http://www.dhr.ny.gov>
- U.S. Equal Employment Opportunity Commission,  
• <http://www.eeoc.gov>
- United States Department of Justice,  
• <http://www.justice.gov/>
- United States Department of Education, Office for Civil Rights,  
• <http://www2.ed.gov/ocr>

# Disciplinary Process

Employee and Student disciplinary process for violations of the Policy on Sexual Misconduct

# 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.
- The disciplinary process will depend on the employee's underlying title and accompanying contract.

# Student Discipline

- The College is required to follow the procedures in the Policy on Sexual Misconduct before disciplining a student.
- If, after investigation, it is determined that an employee or 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.

# How Does The Student Disciplinary Hearing Work?

- During the hearing, a College representative presents the evidence, including witness testimony, against the accused student.
- Both the complainant and the accused have the right to be present during the hearing and to have an advocate present.
- The College must prove the alleged misconduct by a preponderance of the evidence.
  - This means the College must prove that it is more likely than not that the accused student engaged in the alleged misconduct.
- Both the complainant and the accused will be notified of the outcome of the hearing in writing.



# 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.

# Managers and Supervisors

-As Responsible Employees, managers and supervisors are **mandated** to report complaints or incidents of sexual misconduct, including sexual harassment, to the Title IX Coordinator

- As Agents of institution– Can be held personally liable
- Sanctions will be enforced against Managers and Supervisors who knowingly allow sexual misconduct or sexual harassment to continue
- Model Behavior expected of Employees

❖ **NO RETALIATION!**

# 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

# What Is Retaliation?

- 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.

# Preventing Sexual Misconduct

Understanding Affirmative Consent &  
Bystander Intervention

# Affirmative Consent

Affirmative Consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity.

Consent can be withdrawn at any time.

Consent can be given by words or actions, as long as they create clear permission regarding willingness to engage in the sexual activity.

# Affirmative Consent (Cont'd)

Each person must clearly communicate his/her willingness and permission to engage in sexual activity.

- A person who is drunk or high may not be able to consent.
- Having sex with a person who is passed out, or slides in and out of consciousness, is rape.
- Failure to resist or say “no,” does not equal consent.
- Silence does not constitute consent.
- Past consent to sexual relations does not constitute consent to subsequent sexual activity.
- A person’s appearance or dress does not communicate consent.
- During an encounter, a person may consent to certain sexual acts and not to others.
- A person under 17 years old cannot consent to sexual intercourse under New York law.

# Bystander Intervention

- CUNY expects that all other community members, including faculty, students and visitors will take reasonable and prudent actions to prevent or stop an act of sexual harassment, gender-based harassment or sexual violence that they may witness, including calling 911 or campus public safety.
- Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.
- Community members who take action will be supported by the college and protected from retaliation.



# Bystander Intervention

## How can employees and students intervene?

- Call 911/public safety.
- Take a picture of the perpetrator if possible.
- Separate the two people if it appears they are too drunk or if one might take advantage of the other.
- Help a friend to leave a risky situation and go home safely.
- Suggest a friend take a phone number and call the next day.
- Use the Circle of 6 App. It's Free. <http://www.circleof6app.com/downloads/>
  - Need help getting home? Need an interruption? Two touches lets your circle know where you are and how they can help. Icons represent actions so that no one can tell what you're up to.
- Create a diversion
  - Suggest a friend leave a party for a new venue.
  - Tell a friend that someone else is waiting to speak to him/her.
  - Tell a friend you need advice in private.
  - Tell a friend you feel sick and need assistance.

# Resources

# Off Campus Resources – Family Justice Centers

## NYC Family Justice Center Bronx

- 198 East 161st Street,  
(718) 508-1222

## NYC Family Justice Center Brooklyn

- 350 Jay Street
- (718) 250-5111 and  
select 6

## NYC Family Justice Center Manhattan

- 80 Centre St.
- (212) 602-2800

## NYC Family Justice Center Queens

- 126-02 82nd Avenue,  
Kew Gardens
- (718) 575-4500

# Off Campus Resources

## HANDOUT

**NYPD Sex Crimes Hotline**      212-267-RAPE (24 hours)

### Rape Crisis and Domestic/Intimate Partner Violence Services

**RAINN:** Rape, Abuse & Incest Network, <http://www.rainn.org/>

Online Hotline provides live, secure, anonymous crisis support for victims of sexual assault, their friends, and families.

The Online Hotline is free of charge and is available (24 hours)

**NYC Rape Crisis Hotline**      212-673-3000\*

**Safe Horizon: Rape and Sexual Assault Hotline**    800-621-4673\*

[www.safehorizon.org](http://www.safehorizon.org)

**Safe Horizon: Domestic Violence Hotline**      212-577-7777\*

**NYC Gay and Lesbian Anti-Violence Project**      212-714-1141\*

**New York Women Against Rape**                      212-777-4000

**New York Asian Women’s Center**                    888-888-7702\*

**NYC Alliance Against Sexual Assault**              212-229-0345

**NYS Victim Information and Notification Everyday**

888-VINE-4NY

**NYS Crime Victim’s Board**      718-923-4325

**Urban Justice Center:** legal services & advocacy for survivors of

**Domestic Violence**    646-602-5600, [www.urbanjustice.org](http://www.urbanjustice.org)

**Women’s Survival Space (Brooklyn)**                  718-439-4612

### Programs For Abusers

**Safe Horizon Alternatives to Violence Program:**

Provides educational groups in English and Spanish for perpetrators of domestic violence.      718-834-7471

**STEPS: Alternatives to Incarceration** provides programs for

adolescent male batterers      212-662-7914

**Sexual Abuser Treatment Referral Line:** 1-802-247-3132, Mon.-Fri. 9am-4:30pm.

### Rape Crisis Centers (affiliated with hospitals)

#### **Bronx**

**North Central Bronx Hospital: Sexual Assault Treatment Program** 718-519-5722

#### **Brooklyn**

**Coney Island Hospital: Rape Crisis Program**

**Long Island College Hospital: Rape Crisis Intervention/Victims of Violence Program** 718-616-4209, or 800.tel.rape\* 718-780-1459

#### **Manhattan**

**Beth Israel Medical Center: Rape Crisis & DV Intervention Program**

**Bellevue Hospital Center: Rape Crisis Program**

**Columbia Presbyterian Hospital: Domestic and Other Violence Emergencies**

**Harlem Hospital: Center for Victim Support**

**Mt. Sinai Medical Center: Sexual Assault Violence Intervention (SAVI)**

**St. Luke’s Roosevelt Hospital: Crime Victims Treatment Center**

**St. Vincent’s Hospital: Rape Crisis Program** 212-420-4516

#### **Queens**

**Elmhurst Hospital: Borough Crisis Center**

**Queens Hospital Center**      718-736-1288, 718-883-3090

#### **Staten Island**

**St. Vincent’s Medical Center**                              718-876-3044

### District Attorney’s Offices

**Bronx: Crime Victims Assistant Unit:**                      718-590-2115

**Brooklyn: Victim Services Unit**                              718-250-3820

**Manhattan: Victim Assistance Center**                      212-335-8900

**Queens: Crime Victims Advocate Program**              718-286-6818

**Staten Island**                                                      718-876-6300