

THE CITY UNIVERSITY OF NEW YORK Title IX/Enough is Enough

Policy On Sexual Misconduct-
Student Training

Updated August 2018

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

New York Legislation

“Enough is Enough”

- Affirmative Consent- definition has been modified and clarified in the new policy
- 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
- 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 Harassment, Gender-Based Harassment and Sexual Violence?

Sexual Harassment

Gender-Based Harassment

Dating/intimate partner/domestic violence

Sexual Violence

Sexual Assault

Stalking

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.

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 set of behavior 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.
 - Appearing at complainant's home.

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**

CUNY's Policies

- Policy on Sexual Misconduct and Sex Discrimination
 - Title IX Protocol and Enough is Enough
 - Policy on Domestic Violence and the Workplace
- Related Policies
- Policy on Equal Opportunity and Nondiscrimination
 - Policy on Reasonable Accommodations and Academic Adjustments

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 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

Policy on Reasonable Accommodations and Academic Adjustments

- Policy provides guidelines when students request an accommodation or academic adjustments. Requests for accommodations can also be done in an informal.
- 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 in accordance with applicable federal, state and New York City law. 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 Violence

Important considerations to keep in mind if you or someone you know is the victim of sexual violence

Effects of Sexual Violence- Trauma

- Trauma disrupts the central nervous system and overwhelms a person's ability to cope. It often results in feeling vulnerable, helpless, and afraid. It interferes with relationships and fundamental beliefs about oneself, others, and one's place in the world.
- Individuals deal with trauma differently; some victims may withdraw into themselves and not want to discuss the traumatic event, others may have a “socially abnormal” reaction and laugh when describing the traumatic event.

Effects of Sexual Violence

- Victims of sexual violence may react in a number of ways and there is no prescribed definition of what a victim does or looks like.
- If you or someone you know has been the victim of sexual violence, important to abstain from judgment and try to be cognizant of preconceived notions
 - Recantation
 - Refusal to report the incident, even if violence is ongoing
 - Remaining in the relationship

Cultural Competency

- Cultural competence involves understanding and appropriately responding to the unique combination of cultural variables—including ability, age, beliefs, ethnicity, experience, gender, gender identity, linguistic background, national origin, race, religion, sexual orientation, and socioeconomic status—each quality effects how an individual will react to trauma.
- A victim's culture and background may effect their willingness to report an incident of sexual misconduct, entirely or in part.

Cultural Competency

- Some victims may be uncomfortable reporting sexual violence or be fearful of law enforcement depending on race, class, gender, sexuality, religion, immigration status, disability and more.
- It's okay to not always understand. Be ready to listen.
- Don't assume that victims have the same experiences and beliefs as you.
 - A victim may or may not believe in God. Don't attempt to comfort a victim using religion.
- Remind victims: "You are safe here."

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.

Filing a Complaint of Sexual Misconduct

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

Sexual Misconduct :

Where can I File 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. Students are never required to report to NYPD and CUNY will not report to NYPD without their consent.

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

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 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?

- 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.
- 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.

What Happens After A Complaint of Sexual Misconduct Is Made (cont'd)?

- Where appropriate, the College will implement **interim and supportive measures** to keep employees, our students, and the campus community safe.
- **For students**
 - Security escort
 - Class rescheduling/reassignment
 - On campus counseling for students
 - Academic assistance
 - No Contact Order between Complainant and accused
- **For employees**
 - Security escort
 - Office relocation
 - Free confidential support services through CUNY's Work/Life Program
 - No contact order
- College is able to help enforce court issued Orders of Protection for both employees and students.

Order of Protection (OOP)

The Campus will comply with and assist in the enforcement of all known court orders of protection.

An **Order of Protection** (OOP) is a court order, authorized by a judge, informing an individual to stay away from a complainant.

- The college does not have the ability to grant an OOP but public safety will help enforce an order.
- OOP can either be “full” orders, informing the individual to stay away entirely, or “partial” orders where communication or inappropriate behavior is prohibited.

Employees Required to Report Incidents of Sexual Misconduct

- Students are encouraged to speak with a CUNY employees about incidents of sexual misconduct
- Important to understand that some college employees are **required** to report allegations of sexual misconduct.
 - **Only** certain employees can promise that a student's allegations of sexual misconduct will remain confidential. **RESPONSIBLE EMPLOYEES** are required to report all complaints of sexual misconduct to the Title IX Coordinator.

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
- Employees who are Managers (all)
- 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 - 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

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.

Overview of Investigatory Process

What a student can expect when
there is an investigation of sexual
misconduct

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.

How Long Does the Investigation Take?

- Whenever possible, the investigation is completed in 60 calendar days. If it is not possible to complete the investigation in that time, both parties are notified of the status.
- Title IX Report generated within 30 days investigation is completed. President will issue their decision as to whether discipline is warranted after the Report is completed.
- The college Title IX Coordinator will provide both the complainant and respondent with periodic written status updates of the investigation.
- Under Enough is Enough, when there is a parallel law enforcement investigation, 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.

Conflicts

- If a complainant or respondent believes that any individual involved in the investigatory or adjudication process has a conflict of interest, he or she may make a request to the Chief Student Affairs Officer to have the person removed.
 - The request must be in writing within five days of the complaint or respondent's notification that the individual is to be involved.
 - Request must include a detailed description of the conflict.
- If the Chief Student Affairs Officer determines that a conflict does exist, he or she will take immediate steps to address the conflict in order to ensure an impartial and fair process.

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.

Closure of a Complaint

- If the Title IX Coordinator substantiates the factual allegations, the President may refer the matter for discipline. For students, the matter would be referred to Student Affairs/Conduct, for employees, Human Resources.
- After the investigation and investigatory report are complete, the Title IX Coordinator will notify both complainant and respondent, at the same time, of the outcome.

Student Conduct Process

Conduct process for incidents
involving sexual misconduct

Student Conduct Procedures

- Student conduct procedures can now be found in the Policy on Sexual Misconduct rather than Article XV of CUNY Bylaws.
- Even if there is a finding of responsibility by the Title IX Coordinator, the College cannot impose a penalty directly (unless there is agreed upon mediation or informal resolution), rather it is up to the Faculty Student Disciplinary Committee to decide the penalty.

Student Discipline

- 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.
- While the Complainant is not required to testify during the hearing, the complainant should be aware that if he or she does not participate, it may be harder for the College to meet its burden of proof.

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.

Who May The College Require To Testify At The Disciplinary Hearing?

- Students are not required to testify at disciplinary hearings, although they may be encouraged to do so.
 - However, if student-witnesses refuse to testify at the hearing, it may be less likely that fact finder(s) will find the conduct occurred or impose the penalty the College seeks.
- Employees may be required to testify.
 - Cooperation with investigation is required of all employees.

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.

How Are Penalties Imposed- Employee?

- When it is determined that an 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 and penalties staff and faculty members depending on their employment contract.

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 – 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.

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.