

## **SEXUAL MISCONDUCT POLICY**

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# Kingsborough Community College

## VALUES

- RESPECT** Civility, acceptance, appreciation, and support of individual differences
- DIVERSITY** The proactive fostering of greater inclusion and ultimately equity at every level of college life
- INTEGRITY** Fair and ethical standards in all policies, procedures, and practices
- EXCELLENCE** High quality teaching, student services, administration, and community engagement; and high standards for student achievement
- ACCOUNTABILITY** Taking responsibility for our actions and outcomes
- INNOVATION** Creative thinking and approaches that enhance learning and support continuous improvement

# CUNY Policies

## ***Policy on Equal Opportunity and Nondiscrimination***

“Diversity, inclusion, and an environment free from discrimination are central to the mission of the University.”

“It is also the University’s policy to provide reasonable accommodations when appropriate to individuals with disabilities, individuals observing religious practices, employees who have pregnancy or childbirth-related medical conditions, or employees who are victims of domestic violence/stalking/sex offenses.”

## ***Policy on Sexual Misconduct***

“Every member of [CUNY’s] community, including students, employees and visitors, deserves the opportunity to live, learn and work free from sexual harassment, gender-based harassment and sexual violence.”

# Protected Civil Rights Categories

- Age
- Race
- Color
- Disability
- Sex (including pregnancy)
- Religion/Creed
- Gender/Gender Identity
- Sexual Orientation
- National Origin/Ethnicity
- Military/Veteran Status
- Partnership Status
- Marital Status
- Credit History
- Prior Record Arrest or Conviction
- Victims of Domestic Violence/Sex Offense or Stalking
- Alienage, Immigration or Citizenship Status
- Predisposing Genetic Information
- Unemployment Status
- Familial/Caregiver Status

# Policy on Sexual Misconduct

- ❖ Sexual Harassment
- ❖ Gender-based Harassment
- ❖ Sexual Violence:
  - Sexual Assault
  - Domestic/Intimate Partner/Dating Violence
  - Stalking
  - Voyeurism
- ❖ **NO Retaliation**

# Scenario



Don Juan likes to joke around in the office. As such, he is generally well-liked. However, Don Juan likes to talk about his sex life and makes jokes about sexual topics. Also, he has given various “nick names” to his co-workers. For example, he calls Joe “sweet cheeks,” Mary “honey pie,” and Sue “Big Ho.”

Does CUNY Policy prohibit Don Juan’s conduct? How would you address this matter, if you were Sue? If you were Don Juan’s supervisor?

# What Is Sexual Harassment?

Sexual harassment is any **unwelcome** conduct of a sexual nature, including sexual advances, and requests for sexual favors, that creates an intimidating, hostile, or offensive environment because of gender.

*The **effect** of the conduct will be evaluated based on the perspective of a **reasonable person** in the position of a **Complainant**.*

- Sexual harassment is considered a form of **employee misconduct** and an employee who engages in such conduct, or managerial and supervisory personnel who knowingly allow such behavior to continue, **shall be subject to discipline** in accordance with applicable rules, policies and collective bargaining agreements.

## Examples of Sexual Harassment:

- 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 communication, including email, text, Snapchat, photo and other social media communications



# Gender-based Harassment

- Unwelcome conduct of a **nonsexual** nature based on an individual's actual or perceived gender, including conduct based on **gender identity, gender expression or non-conformity with gender stereotypes**
- Examples:
  - Intentionally using the wrong pronoun to identify a transgender individual
  - Mocking a person's appearance
  - Malicious "gossip" about a transgender individual
  - Refusing to Allow Individuals to Use Single-Sex Facilities Consistent With Their Gender Identity

# What is Sexual Violence?

Consists of:

- Sexual assault, such as rape/attempted rape, forcible touching, fondling, groping, grabbing and rubbing
- Dating, intimate partner, domestic violence
- Stalking /Cyberstalking
- Voyeurism (unlawful surveillance, violation of right to privacy in connection with person's body and/or sexual activity)

# Sexual Assault

- 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.
- Rape, attempted rape, forcible touching, criminal sexual act, and sexual abuse.
- 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.

# Dating / Intimate Partner / Domestic Violence

- Dating/Intimate Partner/Domestic violence includes:
  - a **pattern of coercive conduct** that can include physical, psychological, sexual, economic and emotional abuse perpetrated by one person **against an intimate partner**.
  - a single incident of sexual assault.
  - does not need to be sexual in nature.
  - **CUNY Policy On Domestic Violence and Workplace** (nondiscrimination, reasonable accommodations for victims)

# Stalking

- **Stalking is a crime**
- Stalking is a **course of conduct** directed at a specific person with whom the perpetrator currently has, previously had, or desires to have **some form of sexual or romantic relationship** -- that causes that person reasonable **fear or distress**
- Stalking includes repeated behaviors that harass or threaten the victim, such as following a person, appearing at a person's home or place of business, or sending harassing calls, messages or photos
- Stalking **includes cyberstalking** – using electronic forms of communication, including social media
- Stalking does **not** have to be sexual in nature

# Incident Reporting

If you experience or observe sexual misconduct/violence, you can contact the Title IX Coordinator, Human Resources Office, or Public Safety Office

**or**

**Call 911 immediately!**

**Also, PRESERVE evidence!!**

# ANYONE

## Can be a Victim of Sexual Misconduct

- Victims include those of any:
  - gender
  - gender identity
  - sexual orientation
  - physical or mental ability
  - religious affiliation
  - citizenship status
  - Race / class, or
  - Educational level
- Sexual misconduct can also occur between members of the same sex/gender.

# What Is Affirmative Consent?

Consent is a **knowing, voluntary and mutual decision** among all participants to engage in agreed upon sexual activity. Consent can be given by words or actions, as long as they create **clear permission** to engage in the sexual activity. 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.



## Regarding Consent:

- Past consent to sexual relations does **not constitute** consent to subsequent relations
- Consent to one form of sexual activity does **not imply** consent to other forms
- A person's appearance/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
- **CUNY Policy prohibits** faculty members and other employees from engaging in consensual intimate relationships with **students** for whom they have a **professional responsibility**
- **CUNY Policy strongly discourages** consensual intimate relationships between a **supervisor and supervisee**. Such relationships must be disclosed to the supervisor's supervisor

# Reporting a Sexual Misconduct Complaint

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

Please view **CUNY's Title IX Webpage** “Enough is Enough: Combating Sexual Misconduct at <http://www1.cuny.edu/sites/title-ix/campus/university/>.

## **Employees can report to:**

- Title IX Coordinator
- Director of HR
- Office of Public Safety

## Sexual Misconduct Complaints:

- Complaints are promptly investigated by the Title IX Coordinator, or his/her designee, with assistance from Public Safety and Human Resources.
- All students and employees are encouraged, though not required, to report all incidents of sexual violence to the **NYPD**. Public Safety can help with filing a police complaint. It is the **Complainant's choice**.
- **Parties can receive** assistance, interim/supportive measures, and resources from the institution.

# 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 to file and the available remedies 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>
- US Equal Employment Opportunity Commission  
<http://www.eeoc.gov>
- US Department of Justice  
<http://www.justice.gov/>
- US Department of Education, Office for Civil Rights  
<http://www2.ed.gov/ocr>

# Responsible Employees

**REQUIRED** to report incidents of sexual misconduct to the Title IX Coordinator

- Title IX Coordinator and staff
- Office of Public Safety employees
- Vice President for Student Affairs and Dean of Students and all staff in those offices
- Residence Life staff in CUNY owned or operated housing, including Resident Assistants
- **College President, Vice Presidents and Deans**
- Athletics Staff, Faculty Athletics Representatives
- Department Chairpersons/Executive officers
- International Education Liaisons/Study Abroad Directors

# Responsible Employees, cont'd

**REQUIRED** to report incidents of sexual misconduct to the Title IX Coordinator

- Human Resources staff
- College/Unit attorney and staff
- College/Unit labor designee and staff
- Faculty/staff members when leading off-campus trips
- Faculty or staff advisors to student groups
- **Employees who are managers or supervisors**
- SEEK/College Discovery staff
- College Childcare Center staff
- Education Opportunity Centers (EOC) Directors
- Faculty or staff academic advisors

# 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!**

# All Other Employees

- Employees who are not designated “Responsible Employees” are strongly encouraged to report any possible sexual misconduct to the Title IX Coordinator.
- **Only** certain employees (designated “**Confidential Employees**” such as mental health counselors) can promise that an allegation of sexual misconduct will remain confidential.



# Confidentiality - Employees

- Employees who wish to report an incident confidentially should contact support services available through **CUNY's Work/Life Program (EAP)**, 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>

# SAFETY FIRST!

Where appropriate, CUNY will provide assistance and implement **security/interim measures** to keep employees, students and the campus community **safe**. Can seek review of interim measures.

## For employees

- Security escort
- Office relocation
- Free confidential support services through CUNY's Work/Life Program
- No Contact Order between Complainant and Respondent
- Honor Orders of Protection

## For students

- Security escort
- Class or dorm reassignment
- On campus counseling
- Academic assistance
- No Contact Order between Complainant and Respondent
- Honor Orders of Protection

# 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 respondent, 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
- **CUNY will seek to discipline anyone found to have engaged in retaliation**

# 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.
- The complainant and respondent will be **informed in writing** of the outcome when the disciplinary procedure is complete.
- While these proceedings are pending, CUNY **may separate** parties, as necessary.

# Possible Disciplinary Penalties

## Employees

(based on collective bargaining agreements)

- Reprimand, suspension or termination of employment
- Demotion
- Fine or restitution
- Campus ban
- No contact order
- CUNY may also take other measures not governed by CBAs, such as removal from discretionary positions

## Students

- Probation, suspension, expulsion
- Removal from dorm and/or extracurricular activities including athletics
- Campus ban

# IMPORTANT “TAKEAWAYS”:

1. Employees have R\_\_\_\_\_, but also R\_\_\_\_\_, under the EO/Nondiscrimination/Sexual Misconduct Policies.
2. S\_\_\_\_\_ FIRST, Get Assistance!!
3. *If you \_\_\_\_\_ something, \_\_\_\_\_ something*, especially if you are a M\_\_\_\_\_ Reporter!!
4. If you have a Discrimination or Sexual Misconduct concern or complaint, *Who you gonna call?* G\_\_\_\_\_ B\_\_\_\_\_ or the CDO/Title IX Coordinator \_\_\_\_\_

# IMPORTANT “TAKEAWAYS”:

1. Employees have rights, but also responsibilities, under the EO/Nondiscrimination/Sexual Misconduct Policies.
2. Safety FIRST, Get Assistance!!
3. *If you see something, say something*, especially if you are a Mandated Reporter!!
4. If you have a Discrimination or Sexual Misconduct concern or complaint, *Who you gonna call?* Ghostbusters or the CDO/Title IX Coordinator, Michael J. Valente, Esq.





**Thank you!**