

CAROLINAS COLLEGE OF HEALTH SCIENCES POLICY AND PROCEDURE

STUDENT AFFAIRS

SUBJECT: SEXUAL HARASSMENT (TITLE IX)

REVIEWER(S): Dean of Administration and Finance (Title IX Coordinator)*
Dean of Student Affairs and Enrollment Management
Chair, APG

POLICY

Carolinas College of Health Sciences does not tolerate sexual harassment (*quid pro quo* harassment, hostile environment harassment, sexual assault, dating violence, domestic violence and stalking), discrimination, or retaliation and will endeavor to protect students and teammates from inappropriate actions by others. The College complies with Title IX of the Education Amendments of 1972, and its implementing regulations, which prohibit sexual harassment and sex discrimination in the College's educational programs and activities. Title IX also prohibits retaliation for asserting claims of sexual harassment and sex discrimination.

PROCEDURE

A. Definitions

1. *Quid pro quo* Harassment: Any attempt to explicitly or implicitly condition participation in an education program or activity or bases an educational decision on one's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. *Quid pro quo* harassment is equally unlawful whether one resists and suffers the threatened harm or submits and thus avoids the threatened harm.
2. Hostile Environment Harassment: Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.
3. Sexual Assault: An intentional and voluntary act resulting from non-consensual sexual contact, non-consensual sexual intercourse, or other offensive actions, including but not limited to rape, fondling, incest, or statutory rape.
4. Dating Violence: Any unwanted controlling, abusive, sexual, and aggressive behavior committed by a person who is, or has been, in a social relationship of an intimate or romantic nature. Dating violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse.
5. Domestic Violence: Any unwanted controlling, abusive, sexual, and aggressive behavior that occurs in romantic, family or other close relationships committed by a current or former spouse or intimate partner, by persons sharing a child, or by cohabitating partners. Domestic violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse.
6. Stalking: Engaging in conduct directed at a specific individual that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.
7. Discrimination: Unfair treatment of a person or group on the basis of prejudice or real or perceived differences. Discrimination includes but is not limited to deliberate actions causing unfair or unfavorable treatment based on race, color, age, religion, gender, sexual orientation, gender identity, national origin, veteran status, disability, genetic information indicating predisposition to chronic diseases, source of payment, or any other basis prohibited by law.
8. Retaliation: Taking adverse action against a student, teammate, or co-worker based on their having reported an assault, harassment, discriminatory action, or other disciplinary-related action. Retaliation of any kind is prohibited. Retaliation includes intimidations, threats, coercion, discrimination and bringing code of conduct charges for actions that do not involve sexual harassment but arise from the same facts or circumstances as a formal grievance complaint, if the conduct charges are brought "for the purpose of interfering" with a person's Title IX rights. Persons protected from retaliation include those who made a report or complaint, testified,

assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

9. Consent: While Title IX does not impose a mandatory definition of "consent" for purposes of sexual assault, the College defines consent as the voluntary agreement to engage in sexual activity. Someone who is incapacitated due to the use of drugs or alcohol, level of consciousness, or intellectual or other mental ability cannot provide consent. Previous relationships, history of sexual activity or past consent does not imply future consent. Silence or absence of resistance does not imply consent. Coercion, force, or threat invalidates consent. Consent can be withdrawn at any time.

B. General Guidelines

1. The College has designated the dean of administration and finance as the Title IX Coordinator, to coordinate the college's compliance with, education of, and response to inquiries concerning Title IX as well as to receive reports and investigate incidents of alleged Title IX violations, as well as violations of this policy. The Title IX Coordinator is Amy Slack, 704-355-4305, amy.slack@carolinacollege.edu
2. Complainants (i.e., alleged victims) and respondents (i.e., alleged perpetrators) will be treated equitably. There will be an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. There will be no presumptions of credibility based on a party's status as complainant, respondent or witness.
3. The College will respond promptly and in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment. Actual knowledge is determined when institutional officials with the authority to institute corrective measures receive notice of sexual harassment or become aware of allegations of sexual harassment. These institutional officials include the Title IX Coordinator and those working in student affairs, student support, or campus security.
4. Upon receiving actual knowledge of sexual harassment, the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant that supportive measures are available irrespective of whether the complainant files a formal complaint, and explain the process for filing a formal complaint. In the event a formal complaint is filed, and an investigation is commenced, the supportive measures will also be offered to the respondent.
5. Supportive measures are non-disciplinary in nature, as are those that are reasonably available without fee or charge and are designed to restore or preserve equal access to the institution's education programs and activities without unreasonably burdening the other party. Examples of supportive measures may include mutual restrictions on contact between parties, EAP counseling, and other considerations of academic continuity for both parties. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
6. All institutional participants (e.g., Title IX Coordinator, investigator(s) and review committee) in the process will be free of a conflict of interest or bias.
7. The College will maintain the confidentiality of complainants, respondents and witnesses except as permitted by FERPA, as required by law, or as necessary to comply with the directives of this policy or the Title IX regulations. The College's obligations under FERPA do not obviate or alleviate any of the obligations in the Title IX regulation. To the extent there is a conflict between FERPA and the Title IX regulation, the College will comply with the Title IX regulation.
8. To the extent a conflict exists between state or local law and Title IX, the obligation to comply with §§ 106.30, 106.44, and 106.45 is not obviated or alleviated by state or local law. The Title IX regulation preempts any state or local laws that conflict with its core provisions.
9. This policy covers teammates, students, applicants for employment or admission, contractors, vendors, visitors, guests, and participants in college-sponsored programs or activities. A non-student or non-teammate who subjects a student or teammate to discrimination in the college or clinical area will be informed of the Title IX policy; other action may be taken as appropriate.

C. Investigation

1. The College's obligation to investigate a report of sexual harassment is activated by the filing of a formal complaint. A formal complaint is a physical or electronic document signed by an alleged victim of sexual harassment or the Title IX Coordinator specifically requesting an investigation. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the College's education program or activity.
2. A parent, friend or other third-party cannot file a formal complaint on behalf of an alleged victim and cause a Title IX investigation to be initiated. The Title IX Coordinator could file a formal complaint based on a report made by a third-party only after consulting with the alleged victim and only if filing an institutional complaint is not clearly unreasonable under the facts and circumstances. Decision to file a formal complaint by the Title IX Coordinator should consider factors such as the severity of the conduct at issue, the risk the conduct may be repeated, and the availability of evidence.
3. Once a formal complaint is made, the institution will provide written notice to the parties of the investigation including the following:
 - Describe the process to be utilized and disclose sufficient details regarding the complaint, including, if known, the identities of the parties, the conduct at issue and the date and location of the alleged incident.
 - A statement that the respondent is presumed not responsible and that a determination will not be made until the conclusion of the grievance process.
 - Notice of their right to an advisor of their choice, who may be an attorney.
 - Prohibitions on making false statements.
 - If the scope of the investigation expands, the institution will issue a supplemental written notice providing additional details that also meet these standards.
4. Using an individualized safety and risk analysis, if it is determined that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, the College has the ability to remove a respondent on an emergency basis provided the respondent is notified and provided an opportunity to challenge the decision immediately after the removal. Interim removal may not be appropriate in cases involving nonphysical misconduct, such as verbal harassment, and will instead be reserved for more serious cases involving actual or threatened physical contact (i.e., sexual assault, dating violence or domestic violence) or post-report threats or acts of physical violence.
5. In the case of a non-student employee respondent, The College retains broad discretion to place the respondent on administrative leave pending the outcome of the grievance process according to established Atrium Health policies.
6. The parties have the equal right to be accompanied by an advisor of their choice to interviews and meetings and that the advisor may, but does not have to be, an attorney. The institution retains the ability to limit the role of the advisor in interviews and meetings as long as it does so equally for both parties.
7. The institution will provide written notice to the parties and witnesses of any interview, meeting or hearing that the individual is expected to attend, with sufficient time for the party to prepare to participate, to include: the date, time and location; the participants; and the purpose.
8. During the investigation:
 - The burden of proof and burden of gathering evidence rests on the institution. Notably, the institution is prohibited from accessing a party's health, psychiatric or counseling records without written consent.
 - The parties must have equal opportunity to present witnesses, including both fact and expert witnesses, together with other inculpatory and exculpatory evidence.
 - The institution may not restrict the ability of either party to discuss the allegations or to gather and present relevant evidence.
 - The institution may consolidate multiple complaints involving different persons when they arise from the same facts or circumstances.
9. At any point in the investigation, if the institution determines that the conduct alleged in the formal complaint, if assumed true, does not constitute sexual harassment; did not occur in the

institution's education program or activity; or did not occur against a person in the United States then the institution will dismiss the complaint for purposes of its Title IX grievance procedure. The institution has discretion to address such conduct under the Community Standards policy.

10. An institution may dismiss a formal complaint at any time if:
 - The complainant would like to withdraw the complaint;
 - The respondent is no longer enrolled or employed by the institution; or
 - Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination.
 - May close a case if the respondent is permanently separated from the institution
11. The institution will give the parties equal opportunity to inspect and review any evidence gathered during the investigation directly related to the allegations raised in the formal complaint, including inculpatory and exculpatory evidence and evidence the institution does not intend to rely upon in the hearing. Access will be given so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. At a minimum, the institution must send the evidence to the party and the party's advisor in electronic form and give them at least 10 days to submit a written response, which the Review Committee must consider before finalizing the investigation. The institution will make the evidence available again at any hearing, including for use in cross-examination.
12. The investigation will result in a final report that fairly summarizes the investigation. The report will be completed at least 10 days prior to the hearing and sent to each party and their advisor.

D. Hearing

1. The hearing will generally follow the procedures of the Review Committee as explained in the Complaints and Appeals policy. Additional considerations are below, and these will override any conflicting protocols in the Complaints and Appeals policy.
2. The investigation will be followed by a live hearing during which the Review Committee must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those bearing on credibility. This will be the extent of the role of the advisor.
3. The standard of evidence to be used by the Review Committee will be a preponderance of the evidence. This standard will be used uniformly for all cases regardless of respondent. During the hearing there will be a presumption that the respondent did not violate the policy.
4. Cross-examination will be conducted directly, orally and in real time by the party's advisor of choice and never by a party personally. This specifically precludes requiring that cross-examination be conducted by pre-submitted written questions.
5. If a party is unable to obtain an advisor, the institution will provide one free of charge for the purpose of conducting cross-examination for the party. The advisor provided does not have to be, but may be, an attorney.
6. At either party's request, the institution will provide the parties with separate rooms and use technology so the Review Committee and parties may simultaneously see and hear the questions.
7. At the hearing, the chair of the Review Committee has the responsibility to determine the relevancy of questions and explain in real time any decision not to permit a question. Questions concerning a complainant's sexual history is generally not permitted, subject to narrow exceptions similar to those utilized under the rape shield provisions of the Federal Rules of Evidence.
8. If a party or witness refuses to submit to cross-examination, then the Review Committee is required to ignore that person's statement and reach a decision based on the remaining body of relevant evidence. The Review Committee is not, however, permitted to draw an adverse inference based on the mere fact that an individual refused to submit to cross-examination.
9. After the hearing, the chair of the Review Committee will issue a written determination of responsibility to the parties at the same time. The written determination becomes final upon the earlier of when: (i) the parties are notified of the determination on appeal; or (ii) the time to file an appeal has passed with neither party appealing. The written determination must have several required elements, including:

- Identification of the allegations at issue;
 - Description of the procedural steps taken throughout the case;
 - Findings of fact supporting the determination;
 - Conclusions regarding application of the Title IX policy;
 - A statement and rationale as to the determination for each allegation;
 - A statement of any disciplinary sanctions and whether any remedies will be provided to the complainant; and
 - A description of the procedures and permissible grounds for appeal
10. The range of potential disciplinary sanctions and remedies will follow those established in the Community Standards policy.
 11. The institution will not utilize procedures that invade legally recognized privileges (e.g., attorney-client, priest-penitent, patient-counselor, etc.) unless the party holding the privilege has waived it in writing.
 12. The institution will make an audio or video recording of the hearing, or a transcript, and make it available to the parties for inspection and review.

E. Appeal

1. Any appeal of the determination by the Review Committee will be submitted to the president according to the process described in the Complaint and Appeals policy. Additional considerations are below, and these will override any conflicting protocols in the Complaints and Appeals policy.
2. Either party will be allowed to appeal the determination, or any dismissal of the complaint, on the following grounds:
 - Procedural irregularity that affected the outcome (this effectively incorporates the concept of “prejudicial error” versus “harmless error”);
 - New evidence not reasonably available that could affect the outcome; and
 - Conflict of interest or bias by the institutional participants that affected the outcome.
3. The non-appealing party will be notified of the appeal and allowed to submit a written statement in response.
4. The appeal must conclude with a written decision describing the appeal and the rationale for the result that is provided to the parties simultaneously.

F. Informal Resolution

1. After a formal complaint is filed, the parties may agree to a voluntary informal resolution process at any time prior to a final determination. The parties must provide their voluntary consent in writing to participate in such a process.
2. Prior to commencing an informal resolution process, the institution will have provided the parties with the required written notice of the allegations and notification describing the parameters of the informal resolution process. The notice must include a statement that a party is permitted to withdraw from the informal resolution process and resume the formal process at any time prior to a resolution being reached.
3. Use of the informal resolution is prohibited where a teammate is accused of sexually harassing a student.

G. Institutional Requirements

1. The College must notify applicants for admission and employment, students, parents, legal guardians, and employees of the Title IX Coordinator’s name and contact information.
2. The Title IX Coordinator, investigators, and review committee members must receive training on various relevant aspects of the institution’s Title IX policy and grievance process, including definitions of sexual harassment, the scope of the institution’s education programs and activities, how to conduct investigations, hearings, appeals and informal resolutions (as applicable), and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias. Additionally:
 - The training for decision-makers must include training on relevant technology to be used at any live hearing, relevance and the permissible use of sexual history.

- The training provided to various institutional actors must be free of sex stereotypes and must promote impartial investigations.
 - The College will publish all training materials and the training received by all Title IX actors on the website.
3. The College will maintain the complete records of each phase relating to the resolution of a formal complaint for a period of seven years, including any records of informal resolution.
- The institution must also retain all materials used to train institutional participants in the various phases of the resolution process, including the Title IX Coordinator, investigators, and Review Committee.
 - For each instance where an institution receives a report of sexual harassment but where a formal complaint is not filed, the College will maintain, for a period of seven years, a record of all actions taken, including all supportive measures provided. For each such case, the institution must include documentation of its rationale for why the actions it took were not deliberately indifferent.

H. The Sexual Harassment (Title IX) policy and procedure will be reviewed bi-annually.

REFERENCES

Related Policies to Consult

CCHS:

BOARD - [Discrimination, Harassment, Retaliation and Accommodations Policy](#)

HUMAN RESOURCES - [Involuntary Termination](#)

STUDENT AFFAIRS – [Community Standards](#); [Accommodating Special Needs](#); [Complaints and Academic Appeals](#)

Atrium Health: [HR 5.07 Protection from Discrimination, Harassment and Retaliation](#)

Related 2018 SACSCOC Standard(s)

- 5.5 Personnel appointment and evaluation
- 6.3 Faculty appointment and evaluation
- 12.3 Student rights