

CT BOARD OF REGENTS FOR HIGHER EDUCATION

RESOLUTION

concerning

Policy Regarding

Sexual Misconduct Reporting, Support Services and Processes Policy

January 15, 2015

- WHEREAS, The Board of Regents in accord with the Connecticut State Colleges and Universities comprised of seventeen institution and a System Office, is committed to insuring that each member of every BOR governed college or university community has the opportunity to participate fully in the process of education and development; and
- WHEREAS, The BOR and CSCU strive to maintain a safe and welcoming environment free from acts of sexual misconduct and relationship violence. It is the intent of the BOR and each of its colleges or universities to provide safety, privacy and support to victims of sexual misconduct and relationship violence; and
- WHEREAS, The Board of Regents for Higher Education adopted policy regarding “Sexual Misconduct, Sexual Assault and Intimate Partner Violence Policy” on March 13, 2014; and
- WHEREAS, Public Act 14-11 An Act Concerning Sexual Assault, Stalking and Intimate Partner Violence on Campus and the federal Campus Sexual Assault Violence Elimination Act imposed new requirements on colleges and universities to address sexual violence on campuses; and
- WHEREAS, The Board of Regents consistent with the goal providing safe environments at all of its campuses for all who frequent them, has reviewed its policy regarding “Sexual Misconduct, Sexual Assault and Intimate Partner Violence Policy” and revised the policy so that it is consistent with the law; therefore be it
- RESOLVED, That the Board of Regents formally rescinds the “Sexual Misconduct, Sexual Assault and Intimate Partner Violence Policy” dated March 13, 2014 and adopts the “Sexual Misconduct Reporting, Support Services and Processes Policy” in substitution.

A True Copy:



Erin A. Fitzgerald, Secretary of the
CT Board of Regents for Higher Education

**Board of Regents for Higher Education
Connecticut State Colleges and Universities
Policy Regarding**

Sexual Misconduct Reporting, Support Services and Processes Policy

Statement of Policy

The Board of Regents for Higher Education (BOR) in conjunction with the Connecticut State Colleges and Universities (CSCU) is committed to insuring that each member of every BOR governed college and university community has the opportunity to participate fully in the process of education and development. The BOR and CSCU strive to maintain a safe and welcoming environment free from acts of sexual misconduct and intimate partner violence. It is the intent of the BOR and each of its colleges or universities to provide safety, privacy and support to victims of sexual misconduct and intimate partner violence.

The BOR strongly encourages victims to report any instance of sexual misconduct, including sexual harassment, sexual assault, sexual exploitation, stalking and intimate partner violence, as an effective means of taking action by reporting such acts to the appropriate officials and pursuing criminal or disciplinary remedies, or both. The only way that action can be taken against anyone who violates another in such a manner is through reporting. Each and every BOR governed college and university shall provide those who report sexual misconduct with many supportive options, including referral to agencies that provide medical attention, counseling, legal services, advocacy, referrals and general information regarding sexual misconduct. Each and every BOR governed college and university will preserve the confidentiality of those who report sexual misconduct to the fullest extent possible and allowed by law. All BOR and CSCU employees, victim support persons and community victim advocates being consulted will make any limits of confidentiality clear before any disclosure of facts takes place. Other than confidential resources as defined above, in addition to employees who qualify as Campus Security Authorities under the Jeanne Clery Act, all BOR and CSCU employees are required to immediately communicate to the institution's designated recipient any disclosure or report of sexual misconduct regardless of the age of the reported victim.

Sexual intimacy is permissible only if it is agreed to by all participants and all activity is affirmatively consensual at all times. Sexual misconduct, as defined herein, is a violation of BOR policies and, in addition, may subject an accused student or employee to criminal penalties. The BOR and each of its governed colleges and universities are committed to providing an environment free of personal offenses. Sexual relationships of any kind between staff, faculty and students are discouraged pursuant to BOR policy.

The Board of Regents for Higher Education hereby directs the Connecticut State Colleges and Universities to implement the Policy stated above pursuant to the following provisions:

Terms and Usage

Consent is the equal approval, given freely, willingly, and knowingly of each participant to desired sexual involvement. Consent is an affirmative, conscious decision – indicated clearly by words or actions – to engage in mutually accepted sexual contact. Consent cannot be assumed because there is no physical resistance or other negative response. A person who initially consents

to sexual activity shall be deemed not to have consented to any such activity which occurs after that consent is withdrawn. A lack of consent may result from mental incapacity (e.g., ingestion of alcohol or drugs which significantly impair awareness or judgment) or physical incapacity (e.g., the person is unconscious or otherwise unable to communicate consent). The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.”

Sexual misconduct includes engaging in any of the following behaviors:

- (a) **Sexual harassment**, which can include any unwelcome sexual advance or request for sexual favors, or any conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s education or employment; submission to or rejection of such conduct by an individual is used as a basis for academic or employment decisions affecting the individual; or such conduct has the purpose or effect of substantially interfering with an individual’s academic or work performance or creating an intimidating, hostile or offensive educational or employment environment. Examples of conduct which may constitute sexual harassment include but are not limited to:

- sexual flirtation, touching, advances or propositions
- verbal abuse of a sexual nature
- pressure to engage in sexual activity
- graphic or suggestive comments about an individual’s dress or appearance
- use of sexually degrading words to describe an individual
- display of sexually suggestive objects, pictures or photographs
- sexual jokes
- stereotypic comments based upon gender
- threats, demands or suggestions that retention of one’s educational status is contingent upon toleration of or acquiescence in sexual advances.

Retaliation is prohibited and occurs when a person is subjected to an adverse employment or educational action because he or she made a complaint under this policy or assisted or participated in any manner in an investigation.

- (b) **Sexual assault** shall include but is not limited to a sexual act directed against another person without the consent (as defined herein) of the other person or when that person is not capable of giving such consent:

Sexual assault is further defined in sections 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b and 53a-73a of the Connecticut General Statutes.

- (c) **Sexual exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another for anyone’s advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:

- Prostituting another person;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- Going beyond the bounds of consent (for example, an individual who allows friends to hide in the closet to watch him or her having consensual sex);
- Engaging in non-consensual voyeurism;
- Knowingly transmitting an STI, such as HIV to another without disclosing your STI status;
- Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals; or
- Possessing, distributing, viewing or forcing others to view illegal pornography.

Sexual exploitation is further defined as a crime in Connecticut State Law.

- (d) ***Intimate partner, domestic and/or dating violence means*** any physical or sexual harm against an individual by a current or former spouse of or person in a dating or cohabitating relationship with such individual that results from any action by such spouse or such person that may be classified as a sexual assault under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53a-73a of the general statutes, stalking under section 53a-181c, 53a-181d or 53a-181e of the general statutes, or domestic or family violence as designated under section 46b-38h of the general statutes. This includes any physical or sexual harm against an individual by a current or former spouse or by a partner in a dating relationship that results from (1) sexual assault (2) sexual assault in a spousal or cohabiting relationship; (3) domestic violence; (4) sexual harassment (5) sexual exploitation, as such terms are defined in this policy.

Offenses that are designated as "domestic violence" are against family or household members or persons in dating or cohabitating relationships and include assaults, sexual assaults, stalking, and violations of protective or restraining orders issued by a Court. Intimate partner violence may also include physical abuse, threat of abuse, and emotional abuse.

- Physical abuse includes, but is not limited to, slapping, pulling hair or punching.
- Threat of abuse includes but is not limited to, threatening to hit, harm or use a weapon on another (whether victim or acquaintance, friend or family member of the victim) or other forms of verbal threat.
- Emotional abuse includes but is not limited to, damage to one's property, driving recklessly to scare someone, name calling, threatening to hurt one's family members or pets and humiliating another person.
- Cohabitation occurs when two individuals dwell together in the same place as if married.
- The determination of whether a "dating relationship" existed is to be based upon the following factors: the reporting victim's statement as to whether such a relationship existed, the length of the relationship, the type of the relationship and the frequency of the interaction between the persons reported to be involved in the relationship.

- (e) ***Stalking***, which is defined as repeatedly contacting another person when contacting person knows or should know that the contact is unwanted by the other person; and the contact causes the other person reasonable apprehension of imminent physical harm or the contacting person knows or should know that the contact causes substantial impairment of the other person's ability to perform the activities of daily life.

As used in this definition, the term "contacting" includes, but is not limited to, communicating with (including internet communication via e-mail, instant message, on-line community or any other internet communication) or remaining in the physical presence of the other person.

Confidentiality

When a BOR governed college or university receives a report of sexual misconduct all reasonable steps will be taken by the appropriate CSCU officials to preserve the privacy of the reported victim while promptly investigating and responding to the report. While the institution will strive to maintain the confidentiality of personally identifiable student information reported, which information is subject to privacy requirements of the Family Education Rights Privacy Act (FERPA), the institution also must fulfill its duty to protect the campus community.

Confidential resources are defined as follows: For the Universities, entities with statutory privilege, which include campus based counseling center, health center and pastoral counseling staff members whose official responsibilities include providing mental health counseling to members of the University community as well as off campus counseling and psychological services, health services providers, member(s) of the clergy, and the local Sexual Assault Crisis Center and Domestic Violence Center. For the Colleges, confidential resources are limited to entities with statutory privilege, such as off campus counseling and psychological services, health services providers, member(s) of the clergy, and the local Sexual Assault Crisis Center and Domestic Violence Center. The personnel of these centers and agencies are bound by state statutes and professional ethics from disclosing information about reports without written releases.

Information provided to a confidential resource by a victim of a sexual misconduct or the person reported to have been the victim of sexual misconduct cannot be disclosed legally to any other person without consent, except under very limited circumstances, such as an imminent threat of danger to self or others or if the reported victim is a minor. Therefore, for those who wish to obtain the fullest legal protections and disclose in full confidentiality, she/he must speak with a confidential resource. Each BOR governed college and university will provide a list of such confidential resources in the College or University's geographic region to victims of sexual misconduct as well as publish these resources on-line and in various publications.

Where it is deemed necessary for the institution to take steps to protect the safety of the reported victim and/or other members of the campus community, the institution will seek to act in a manner so as not to compromise the privacy or confidentiality of the reported victim of sexual misconduct to the extent reasonably possible.

Mandated Reporting by College and University Employees

Other than confidential resources as defined above, in addition to employees who qualify as Campus Security Authorities under the Jeanne Clery Act, all employees are required to immediately communicate to the institution's designated recipient any disclosure or report of sexual misconduct regardless of the age of the reported victim. A disclosure is the receipt of any communication of an incident of sexual misconduct not accompanied by a request for an investigation or adjudication by the institution. A report of sexual misconduct, on the other hand, is the receipt of a communication of an incident of sexual misconduct accompanied by a request for an investigation or adjudication by the institution. Upon receiving a disclosure or a report of sexual misconduct, employees are expected to supportively, compassionately and professionally offer academic and other accommodations and to provide a referral for support and other services.

Further, in accordance with Connecticut State law, with the exception of student employees, any paid administrator, faculty, staff, athletic director, athletic coach or athletic trainer who, in the ordinary course of their employment, has a reasonable cause to suspect or believe that a person under the age of 18 years has been abused or neglected, has been placed in imminent harm or has had a non-accidental injury is required by law and Board policy to report the incident within twelve hours to their immediate supervisor and to the Department of Children and Families.

Rights of Those Who Report

Those who report any type of sexual misconduct to any BOR governed college or university employee will be informed in a timely manner of all their rights and options, including the necessary steps and potential outcomes of each option. When choosing a reporting resource the following information should be considered:

- All reports of sexual misconduct will be treated seriously and with dignity by the institution.
- Referrals to off-campus counseling and medical services that are available immediately and confidential, whether or not those who report feel ready to make any decisions about reporting to police, a college or university employee or the campus's Title IX Coordinator.
- Those who have been the victim of sexual misconduct have the right to take both criminal and civil legal action against the individual allegedly responsible.
- Those who seek confidentiality may contact a clergy member(s), a University counseling center psychologist, a University health center care provider, the Sexual Assault Crisis Center of Connecticut and/or the Connecticut Coalition Against Domestic Violence – all of whom are bound by state statutes and professional ethics to maintain confidentiality without written releases.

Options for Changing Academic, Housing, Transportation and Working Arrangements

The colleges and universities will provide assistance to those involved in a report of sexual misconduct, including but not limited to, reasonably available options for changing academic, campus transportation, housing or working situations as well as honoring lawful protective or temporary restraining orders. Each and every BOR governed college and university shall create and provide information specific to its campus detailing the procedures to follow after the commission of such violence, including people or agencies to contact for reporting purposes or to request assistance, and information on the importance of preserving physical evidence.

Support Services Contact Information

It is BOR policy that whenever a college or university Title IX Coordinator or other employee receives a report that a student, faculty or staff member has been subjected to sexual misconduct, the Title IX Coordinator or other employee shall immediately provide the student, faculty or staff member with contact information for and, if requested, professional assistance in accessing and using any appropriate campus resources, or local advocacy, counseling, health, and mental health services. All CSCU campuses shall develop and distribute contact information for this purpose as well as provide such information on-line.

Right to Notify Law Enforcement & Seek Protective and Other Orders

Those who report being subjected to sexual misconduct shall be provided written information about her/his right to:

- (1) notify law enforcement and receive assistance from campus authorities in making the notification; and,
- (2) obtain a protective order, apply for a temporary restraining order or seek enforcement of an existing order. Such orders include:
 - standing criminal protective orders;
 - protective orders issued in cases of stalking, harassment, sexual assault, or risk of injury to or impairing the morals of a child;
 - temporary restraining orders or protective orders prohibiting the harassment of a witness;
 - family violence protective orders.

Employee Conduct Procedures

Employees who are reported to have engaged in sexual misconduct are subject to discipline in accordance with the procedures applicable to the employee's classification of employment.

Student Conduct Procedures

The **Student Code of Conduct** provides the procedures for the investigation, definitions of terms, and resolution of complaints regarding student conduct, including those involving sexual misconduct, as defined herein.

The Title IX Coordinator can assist in explaining the student conduct process. The Student Code of Conduct provides an equal, fair, and timely process (informal administrative resolution or a formal adjudication) for reported victims and accused students.

Reported victims of sexual misconduct shall have the opportunity to request that disciplinary proceedings begin promptly; that such disciplinary proceedings shall be conducted by an official trained annually in issues relating to sexual misconduct and shall use the preponderance of the evidence (more likely than not) standard in making a determination concerning the alleged sexual misconduct.

Both the reported victim of sexual misconduct and the accused student are entitled to be accompanied to any meeting or proceeding relating to the allegation of sexual misconduct by an

advisor or support person of their choice, provided the involvement of such advisor or support person does not result in the postponement or delay of such meeting as scheduled and provided such an advisor or support person may not directly address the Hearing Body, question witnesses or otherwise actively participate in the hearing process or other meeting pertaining to a report of sexual misconduct and each student shall have the opportunity to present evidence and witnesses on her/his behalf during any disciplinary proceeding.

Both the reported victim and accused student are entitled to be provided at the same time written notice of the results of any disciplinary proceeding, normally within one (1) business day after the conclusion of such proceeding, which notice shall include the following: the name of the accused student, the violation committed, if any, and any sanction imposed upon the accused student. Sanctions may range from a warning to expulsion, depending upon the behavior and its severity of the violation(s). The reported victim shall have the same right to request a review of the decision of any disciplinary proceeding in the same manner and on the same basis as shall the accused student; however, in such cases, if a review by any reported victim is granted, among the other actions that may be taken, the sanction of the disciplinary proceeding may also be increased. The reported victim and the accused student are entitled to be simultaneously provided written notice of any change in the results of any disciplinary proceeding prior to the time when the results become final as well as to be notified when such results become final.

In accordance with the Family Educational Rights and Privacy Act (FERPA), the accused student and the reported victim have the right to keep their identities confidential.

Dissemination of this Policy

Upon adoption by the Board all CSCU institutions shall, upon receipt, immediately post and maintain this policy at all times in an easily accessible manner on each institution's website. This policy shall thereafter be annually provided to all Title IX Coordinators, campus law enforcement officers and security personnel, and other campus personnel. Further, this policy shall be presented at student orientation and at student awareness and prevention trainings, and made broadly available at each campus. The policy shall be expanded upon by each institution to provide resources and contact information specific to their institution and geographic area as set forth above.

ITEM

The Board of Regents for Higher Education replaces its' a policy regarding "Sexual Misconduct, Sexual Assault and Intimate Partner Violence Policy" by adopting the "Sexual Misconduct Reporting, Support Services and Processes Policy" which shall be applicable to each of the Connecticut State Colleges and Universities.

BACKGROUND

Although the Board approved the Sexual Misconduct, Sexual Assault and Intimate Partner Violence Policy in March 2013, it was understood that the Connecticut State Legislature and federal sources were developing additional requirements. The resolution underlying the adoption of the policy included a provision that the policy would be reviewed and revised in the fall of 2014 so that it would remain consistent with the law. Consequently, the attached re-titled policy is an updated version of the policy reviewed and approved by the Board in March 2014.

ANALYSIS

In accordance with the new provisions and greater clarity of the issues and their impact upon the colleges and universities, this policy has been re-titled so that it reflects its purpose of outlining not only the statement of the board policy, but also describe the services and processes to which the institutions must adhere. Revisions to the policy clarify that reported victims are encouraged to report and that employees must report disclosures of sexual misconduct. Terms and usage are more central to the operation of the document, and certain definitions have been revised and expanded, i.e. consent, stalking and sexual harassment. Stalking and dating violence are included under the provisions of sexual misconduct. The section regarding confidentiality has also been revised so that readers will understand who can keep reports confidential and who cannot. This revised policy also specifically addresses employees who may report sexual misconduct.

RECOMMENDATION

That the Board of Regents for Higher Education to rescind the policy regarding "Sexual Misconduct, Sexual Assault, and Sexual Intimate Partner Violence" by adopting the Sexual Misconduct reporting, Support Services and Processes Policy.