

### 3354:1-30-03.12 Sexual Misconduct Policy

(A) Cuyahoga Community College is committed to maintaining a learning and working environment that is free from Sexual Misconduct, where everyone is treated with dignity and respect. The College prohibits Sexual Misconduct in any form, which includes Sexual Harassment, Sexual Violence, Sexual Exploitation, Domestic Violence, or other inappropriate behavior that is of a sexual nature, or based on sex, and directed towards, by or against employees, students, vendors, customers or persons participating in a college program or activity.

#### (B) Definitions

(1) **Sexual Misconduct** – any unwelcome behavior of a sexual nature that is committed without consent. Sexual misconduct can occur between persons of the same or different sex.

(2) **Non-Consensual Sexual Contact** – any intentional sexual touching and any other intentional bodily contact in a sexual manner, however slight, with any object, by a man or a woman upon another person that is without consent.

(3) **Consent** - free and affirmatively communicated willingness to participate in sexual activity, expressed by clear, unambiguous words or actions. It is the responsibility of the initiator of the sexual activity to ensure that he or she has the other person's consent to engage in sexual activity, throughout the entire sexual activity by all parties involved. At any time, a participant can communicate that he or she no longer consents to continuing the activity. Consent may never be obtained through the use of force, coercion, or intimidation or if an individual is mentally or physically incapacitated, including through the use of drugs or alcohol. Consent cannot be assumed based on the existence of a previous dating or sexual relationship. The initiator's use of alcohol or drugs does not diminish his/her responsibility to obtain consent.

(4) **Coercion** – unreasonable, intimidating or forcible pressure for sexual activity.

(5) **Incapacitation** – incapacity to evaluate or control conduct, because an individual is unconscious, asleep, intoxicated, or under the influence of other drugs or, for any other reason, physically, mentally or legally unable to communicate or grant consent.

(6) **Sexual Harassment** is any unwelcome verbal or non-verbal sexual advances, requests for sexual favors, other verbal or physical conduct of a sexual nature, or conduct directed at an individual because of gender.

(a) **Quid Pro Quo** (a.k.a – “this for that”) – consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:

- (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic success, or
- (ii) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual.

(b) **Hostile Work Environment** – includes any unwelcome, and severe or pervasive action of a sexual nature which unreasonably interferes with job

performance or learning ability and creates an intimidating, or offensive work, academic or athletic environment, even if it leads to no tangible or economic consequences. A single instance of harassment may be sufficient to create a hostile work environment.

- (7) **Sexual Violence** means physical sexual acts (such as unwelcome sexual touching, sexual assault, sexual battery and rape) perpetrated against an individual without consent or against an individual who is incapable of giving consent due to that individual's use of drugs or alcohol, or disability.
  - (8) **Sexual Exploitation** occurs when an individual takes non-consensual, unjust or abusive sexual advantage of another, for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute non-consensual sexual contact, non-consensual sexual intercourse or Sexual Harassment.
  - (9) **Domestic Violence/Dating Violence/Intimate Partner Violence** is a pattern of abusive behaviors used to exert power and control over a partner or former partner. This violence can be physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure or wound someone. Domestic violence can occur regardless of the relationship status, including individuals who are dating, cohabitating or married.
  - (10) **Consensual sexual relationships** include romantic, intimate or sexual relationships in which both parties agree to participate in the relationship.
  - (11) **Preponderance of the Evidence** is the standard used in determining if the responding party is responsible for a violation of the Sexual Misconduct Policy; specifically it must be found that it is “more likely than not” that the alleged behavior/conduct occurred and was in violation of this policy.
- (D) Examples of Prohibited Sexual Misconduct may include, but are not limited to:
- (1) unwanted physical contact of any kind including, but not limited to touching, hugging, or kissing;
  - (2) verbal harassment, such as slurs, propositions, lewd comments, recordings, music, jokes and offensive personal references of a sexual nature;
  - (3) non-verbal harassment, such as obscene hand or finger gestures, explicit drawings, pictures, posters, and cartoons or sexually suggestive written or electronically transmitted messages, and postings on social media;
  - (4) conduct of a sexual nature that is demeaning, bullying, insulting, or intimidating;

- (5) sexual assault, including unwanted penetration of an orifice (anal, vaginal, oral) with the penis, mouth, finger or objects;
- (6) prostituting another person;
- (7) using electronic devices or technology (e.g., cell phone, camera, email, internet sites or social networks) to record or transmit images or videos of nudity or sexual acts, real or altered, depicting an individual without that individual's knowledge and permission;
- (8) intentionally observing nudity or sexual acts of another person without the person's knowledge or permission (voyeurism);
- (9) threatening to sexually harm someone;
- (10) initiating sexual activity with a person who is incapacitated and unable to provide consent; or
- (11) inducing incapacitation for the purpose of sexual exploitation.

(E) If an employee or faculty member or student is found to have violated the Sexual Misconduct Policy, the sanctions may include, but are not limited to, suspension, expulsion, no-contact orders, banning from campus or college-related activities, mandatory training, degree revocation. Students found to have violated this policy may also be subject to the student code of conduct. Employees or faculty members found to have violated this sexual misconduct policy may be subject to discipline up to and including termination.

(F) Consensual Sexual Relationships

- (1) The College recognizes that consensual sexual relationships are generally not problematic, except when the relationship may create the potential for abuse of authority or create a conflict of interest. Consensual sexual relationships may also create a third-party perception that a subordinate is receiving preferential treatment.
- (2) Consensual sexual relationships between administrators, supervisors, deans or chairpersons and the employees they professionally supervise, advise, and counsel, or employees over whom they have direct impact on the employee's terms and conditions of employment are strictly prohibited.

- (3) Consensual sexual relationship involving students:
- (a) The College prohibits consensual sexual relationships between faculty or staff members and the students or student employees enrolled in a class or class sequence(s) taught, advised, counseled, coached or supervised by the faculty member, or over whom the faculty member has direct impact on the student or student employee's academic enrollment or success. However, consensual sexual relationships in instances where a student is the lawful spouse of the faculty member, and was so prior to enrolling in the course taught by the faculty member, are permitted.
  - (b) The College prohibits consensual sexual relationships between administrators, supervisors, deans, chairpersons or employees and the student or student employees who they advise, counsel, and coach or supervise, or over whom they have a direct impact on the student or student employee's academic enrollment or success.
  - (c) The College discourages all employees or faculty members from engaging in consensual sexual relationships with active status students.
- (4) An employee or faculty member who is engaged in a consensual sexual relationship with another employee or faculty member in violation of this policy has the responsibility to notify his/her administrator, dean or chairperson, the Human Resources Office, or Employee and Labor Relations about the relationship.
- (a) If possible, the employment of the parties involved in the consensual sexual relationship in which one person has authority over or influence upon the status of the other will be modified so that the authority or influence no longer exists. This shall occur by moving one of the persons to another position, department or supervisor.
  - (b) an employee or faculty member who does not notify his/her administrator, supervisor, dean or chairperson that he/she is involved in a consensual sexual relationship in violation of this policy shall be subject to disciplinary action, up to and including termination of employment.
  - (c) If an employee or faculty member is found to be engaged in a consensual sexual relationship with a student that violates this policy, disciplinary action may be expedited.

**(G) Reporting Responsibilities for Sexual Misconduct**

- (1) The College strongly encourages persons who experience sexual misconduct or are aware of sexual misconduct to report the misconduct, to seek assistance and to pursue action for their own protection and that of the entire campus community. Victims of criminal conduct have a right to report criminal actions to the police as well as report a sexual misconduct complaint to a Designated Reporting Representative at the College.
- (2) The College may initiate an investigation without receiving a complaint from a student or employee if the College deems appropriate.

- (3) Any College faculty, staff, official, or student employee, who is consulted about and/or witnesses behavior involving potential sexual misconduct has the responsibility to report the potential misconduct to one of the Designated Reporting Representatives at the College.
- (4) Designated Reporting Representatives include the College's Title IX Coordinator, Deputy Title IX Coordinators within the Office of Student Affairs, and members of Campus Police.

**(H) Confidentiality and Privacy**

(1) The College will make reasonable efforts to conduct all proceedings under this policy in a manner that will protect the confidentiality of all parties. Parties to a complaint under this Policy should treat the matter under investigation with discretion and respect for the reputation of all parties involved. The Title IX Coordinator will evaluate requests for confidentiality.

(2) The College has a compelling obligation to address allegations and suspected instances of sexual misconduct when it obtains information that would lead a reasonable person to believe that the policy has been violated. Thus, confidentiality is not required if disclosure is required by law, or if disclosure is necessary to report a crime or violation of law or to engage in concerted activity regarding terms or conditions of employment, or in relation to the right of a student respondent or complainant to re-disclose the outcome of the process under the Family Educational Rights and Privacy Act (FERPA) and/or Campus Crime Statistics Act (Clery Act) laws.

(I) It is a violation of this Policy for anyone to knowingly or with reckless disregard for the truth make false accusations of Sexual Misconduct. Failure to prove a claim of sexual misconduct is not equivalent to a false allegation. Sanctions may be imposed on individuals who knowingly or with reckless disregard for the truth make false accusations under this Policy.

(J) The College prohibits retaliation against an individual making a sexual misconduct claim or anyone participating in a sexual misconduct investigation and any retaliatory actions may constitute grounds for disciplinary action. Retaliation is the act of taking adverse action against a complainant, a respondent, or any other person involved in the process under this Policy based on the person's good faith reporting or participation in any process under this Policy.

(K) The President or the President's designee is hereby directed to take all steps necessary and appropriate for the effective implementation of this policy.

Effective date: June 29, 2018

Prior effective date: October 29, 2015