

# **Sexual Harassment and Sexual Assault / Violence Policy (TITLE IX)**

*(July 1, 2018)*

## **Introduction and Non- Discrimination Notice**

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. To ensure compliance with Title IX and other federal and state laws, the University of Charleston has developed policies that prohibit discrimination and misconduct on the basis of gender, such as sexual misconduct, sexual assault, sexual harassment, intimate partner violence, stalking and any other gender-based harassment or misconduct.

The University of Charleston does not discriminate against any person because of race, color, religion, sex, sexual identity, sexual orientation, national origin, age, disability, or veteran status in administration of its educational policies, scholarship and loan programs, admissions, employment, athletics, and other school-administered programs in accordance with the laws of the United States and the state of West Virginia.

## **Purpose**

The University of Charleston is committed to providing an environment free from gender-based or sexual discrimination and misconduct. Members of the University community, guests and visitors have a right to be free from sexual harassment, sexual assault/violence and gender-based discrimination and harassment. When an allegation of misconduct is investigated, and a responding community member is found to have violated this policy, serious sanctions may be used in an effort to ensure that such actions are not repeated. This policy is intended to define community standards and to outline the investigation and grievance process when those standards are violated.

Any attempts to violate this policy are considered sufficient for having committed the violation itself. The use of alcohol or other drugs will not be accepted as a defense or mitigating factor to a violation of this policy. These policies apply regardless of the complainant's or respondent's sexual orientation, sex, gender identity, age, race, nationality, religion, or ability. Harassment or discrimination based upon an individual's sexual orientation may be considered gender-based and be subject to this policy. Prohibitions against discrimination and harassment do not extend to statements or written materials that are germane to the classroom or academic course of study.

## **Scope of the Policy**

This policy applies to all University of Charleston community members, including students, faculty, staff, volunteers, vendors, contractors, visitors, and individuals regularly or temporarily employed, conducting business, studying, living, visiting, or having any official capacity with the University or on its property.

The University strongly encourages reports of Title IX misconduct regardless of who engaged in the conduct. Even if the University does not have authority over the alleged respondent, the University will take prompt action to provide for the safety and wellbeing of the complainant and the broader campus community.

This policy applies to conduct that occurs on any part of the Universities campus or property. It also applies when students, faculty, or staff travel off campus as part of a University activity, team, organization, event, or University sponsored study abroad program.

## **Definitions**

### ***Sexual Harassment***

Sexual harassment is defined as unwelcome gender-based verbal or physical conduct that is sufficiently severe, persistent, or pervasive that it has the effect of unreasonably interfering with, limiting, or depriving someone of the ability to participate in or benefit from the University's educational program, activities and/or employment; it and is based on power (*quid pro quo*), the creation of a hostile environment, or retaliation. Examples of sexual harassment include, but are not limited to:

- Subtle or persistent pressure for sexual activity;
- Unnecessary touching, pinching or brushing against a person;
- Requesting or demanding sexual favors concerning employment, academic activities or other University activities;
- Unwelcome communications (verbal, written, electronic, etc.) of a sexual nature;
- Failure to accept the termination of a consensual relationship with repeated and persistent requests and behavior.

#### *Non-consensual sexual contact*

Non-consensual sexual contact, including any intentional touching, however slight, whether clothed or unclothed, with any object or body part by a person against another person that is without consent and/or by force. Examples of non-consensual sexual contact include, but are not limited to:

- Intentional contact with the breasts, buttocks, groin, or genitals;
- Intentional touching of another with breasts, buttocks, groin, or genitals;
- Making another person touch someone or themselves in a sexual manner;

Any intentional bodily contact in a sexual manner. Non-consensual sexual intercourse includes any sexual intercourse, however slight, with any object or body part by a person against other person that is without consent and/or by force.

#### *Non-consensual sexual intercourse*

Non-consensual sexual intercourse, including but not limited to:

- Vaginal penetration by a penis, object, tongue or finger;
- Anal penetration by a penis, object, tongue or finger;
- Oral copulation (mouth to genital contact or genital to mouth contact).
- Sexual exploitation includes but is not limited to:
- Invasion of sexual privacy and voyeurism (in-person or through audio or video recording);
- Knowingly transmitting a sexually transmitted infection;
- Exposing of a person's body or genitals;
- Prostituting or soliciting another community member.

#### *Intimate Partner Violence*

Relationship violence is a pattern of behavior in an intimate relationship that is used to establish power and control over another person through fear and intimidation. A pattern of behavior is typically determined based on the repeated use of words and/or actions and inactions in order to demean, intimidate, and/or control another person. This behavior can be verbal, emotional, and/or physical. Examples include but are not limited to: striking another person (slapping, punching, etc.), property damage, reckless behavior, name calling and insults, public humiliation, harassment directed toward friends and acquaintances, and verbal and/or physical threats.

#### *Stalking*

Stalking involves any behaviors or activities occurring on more than one occasion that collectively instill fear and/or threaten a person's safety, mental health, and/or physical health. Such behaviors or activities may include, but are not limited to non-consensual communications (i.e., face to-face, telephone, email, and social media), threatening or obscene gestures, surveillance, or showing up outside the targeted individual's classroom, residence or workplace.

#### *Other Forms of Misconduct*

Other forms of misconduct, when gender-based, will fall under this harassment policy. These include, but are not limited to:

- Conduct that interferes with the rights of others and/or demonstrates disregard for the University community;
- Assisting another person in committing a violation of this policy;
- Personal harassment and/or verbal abuse;

- The threat of physical harm, physical abuse, mental distress, or injury;
- Inflicting physical harm, physical abuse, mental distress, or injury;
- Slandorous, false, or malicious statement(s) about a person or defamation of character;
- Endangerment of the health and safety of others;
- Hazing;
- Damage and/or vandalism to another's property.

### *Consent*

Consent is an active, knowing, and voluntary exchange of affirmative words and/or actions, which indicate a willingness to participate in a particular sexual activity. Consent must be freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement. The lack of a negative response is not consent. A person, who is incapacitated by alcohol and/or drugs, whether voluntarily or involuntarily consumed, may not give consent. Neither consent to one form of sexual activity nor past relationships imply consent to future sexual activity. Incapacitation is a state where someone cannot make rational, reasonable decisions due to a lack of capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, and how” of the sexual interaction).

Sexual activity with someone who is or based on circumstances should reasonably have known to be, mentally or physically incapacitated (i.e., by alcohol or other drug use, unconsciousness, or blackout) constitutes a violation of this policy.

A person who is incapacitated due to mental disability, sleep, involuntary physical restraint, or from the consumption (voluntary or otherwise) of incapacitating drugs or alcohol cannot give consent.

In order to give consent, a person must be of the legal age of consent.

Alcohol-related incapacity results from a level of alcohol ingestion that is more severe than impairment, being under the influence, drunkenness, or intoxication.

Evidence of incapacity may be detected by physical cues, such as slurred speech, bloodshot eyes, and odor of alcohol on a person's breath or clothing, inability to maintain balance, vomiting, unusual or irrational behavior, and unconsciousness. Context is important in helping to determine incapacitation. Any of these particular cues alone do not necessarily indicate incapacity.

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion that overcomes resistance or produces consent. Coercion is unreasonable pressure for sexual activity. Coercion is the use of emotional manipulation to persuade someone to do something they may not want to do, such as being sexual or performing certain sexual acts. Being coerced into having sex or performing sexual acts is not consenting sex and is considered sexual misconduct.

### *Procedures for Reporting*

ALL reports of sexual harassment, sexual discrimination and sexual assault/violence made to any University employee or mandated reporter must be reported to the University's Title IX Coordinator.

#### *The University Title IX Coordinator*

Name: Virginia Moore  
Position: Dean of Students

On Campus Address: Geary Student Union 309  
2300 MacCorkle Ave. SE Charleston, WV 25304  
Email: virginiamoore@ucwv.edu  
Phone Number: 304-357-4987

### *Deputy Title IX Coordinators*

Name: Dr. Kim Spiezio  
Position: Provost

On Campus Address: 201 Riggleman Hall  
2300 MacCorkle Ave. SE, Charleston, WV 25304  
Email: [kimspiezio@ucwv.edu](mailto:kimspiezio@ucwv.edu)  
Phone Number: 304 357-4711

Name: Janice Gwinn  
Position: Director of Human Resources

On Campus Address: 202 Riggleman Hall  
2300 MacCorkle Ave. SE, Charleston, WV 25304  
Email: [janicegwinn@ucwv.edu](mailto:janicegwinn@ucwv.edu)  
Phone Number: 304 357-4383

Name: Todd Diuguid  
Position: Associate Director of Athletics

On Campus Address: 115 Cox Hall  
2300 MacCorkle Ave. SE, Charleston, WV 25304  
Email: [todddiuguid@ucwv.edu](mailto:todddiuguid@ucwv.edu)  
Phone Number: 304 357-4827

Name: Nicole Rupe-Harold  
Position: Regional Records Manager

On Campus Address: Student Solutions Center Worley Building  
167 Dye Drive, Beckley, WV 25801  
Email: [nicolerupe@ucwv.edu](mailto:nicolerupe@ucwv.edu)  
Phone Number: 304 352-0047

Also, any person who believes he or she has been subject to sexual harassment, sexual discrimination or sexual assault/violence may contact the University Title IX Coordinator or a deputy Title IX Coordinator directly. The Title IX Coordinator will conduct an investigation, determine possible interim measures, find a resolution, and ensure complainants have access to medical, mental health, law enforcement, and other resources that may be required.

### *Handling of Complaints*

Complaints between students will be handled in accordance with the University judicial processes as outlined in Student Expectations & Accountability.

Complaints between a student and a faculty/staff person will be handled in accordance with Title IX policy, Student Expectations & Accountability Standards, and Employee Handbook.

Complaints between faculty and/or staff will be handled in accordance with the Title IX policy and the Employee Handbook.

In situations where a complaint is filed against a community member who embodies more than one status at the University (i.e. community member is a student and an employee), the University Title IX Coordinator has the authority to appoint investigators (possibly from different areas of the institution) and determine the grievance process for the reported incident (student, faculty, or non- faculty employee). The selected grievance process shall have the authority to make final determinations affecting all individual statuses at the University.

#### *Confidentiality and Privacy in Reporting*

When reporting a violation of this policy there are resources that can provide confidentiality, sharing options and advice without any obligation to inform other University staff members unless requested. Such on-campus confidential resources include Counseling Services, Health Services, and/or Campus Ministry staff. Additionally, community members can seek out assistance from an off-campus crisis center, which can maintain confidentiality. Faculty members are not confidential resources and must contact the University Title IX Coordinator.

#### *Confidential Reports*

Position: Campus Pastor  
On Campus Address: Geary Student Union 309  
2300 MacCorkle Ave. SE, Charleston, WV 25304  
Phone Number: 304 357-4873

Position: Campus Counselor  
On Campus Address: School of Pharmacy Building  
2300 MacCorkle Ave. SE, Charleston, WV 25304  
Email: uc-counselor@ucwv.edu  
Phone Number: 304-357-4862

### University of Charleston Resources

Counseling and Outreach Services located in the School of Pharmacy, Charleston  
304-357-4862

Campus Pastor located in Geary Student Union Office 309, Charleston  
304-357-4873

Security located in Geary Student Union 1st Floor, Charleston  
Office of Safety and Security  
304-357-4857 or 304-859-2755

Security located at 158 Dye Drive, Beckley  
UC – Beckley Office of Safety and Security  
304-929-1653 or 304-890-2722

### Off-Campus Resources

REACH- Rape Education, Advocacy, Counseling, and Healing  
1021 Quarrier Street, Suite 414  
Charleston, WV 25301  
304-340-3676  
Confidential Toll Free 24-Hour Hotline 1-800-656-HOPE

Shenandoah Women's Center- Martinsburg  
304-263-8292

Women's Resource Center- Beckley  
1-888-825-7836

Rape, Abuse, and Incest National Network (RAINN)  
Crisis hotline – 1-800-656-HOPE

Rape, Abuse, and Incest National Network (RAINN) online hotline – <https://ohl.rainn.org/online/>

## Retaliation Clause

It is a violation of this policy to retaliate against any person making a complaint or report of any alleged violations, against any person participating in the investigation of (including testifying as a witness to) any such allegation. Individuals engaging in retaliation are subject to discipline in accordance of the policy in the Student Code of Conduct or the Employee Handbook. Retaliation includes direct or indirect intimidation, threats, coercion, harassment, or other forms of discrimination against any individual who has brought forward a concern or participated in the University's conduct process.

## False Reporting

It is a violation of these procedures to knowingly provide false information to a University Official resulting in an investigation, conduct proceeding, or interim actions are against University Policy. Without minimizing the injury that can be suffered by the complainant, the University also recognizes that the filing of a complaint can have serious consequences for the person accused. That person, too, has rights that must be preserved and protected. Therefore, any person who abuses these procedures by knowingly filing a false complaint will be subject to the Student Code of Conduct or Human Resources if the complaint was filed in bad faith. This provision is not meant in any way to discourage legitimate complaints.

## Timely Warning Disclosure

If a report of misconduct discloses a serious or continuing threat to the University of Charleston, the University may issue a campus wide timely warning (which can take the form of an email to campus) to protect the health or safety of the campus community. The timely warning will not include identifying information about the victim.

At no time will the University release the name of the victim to the general public without the express written consent of the victim. The release of the respondent's name, if a student, to the general public is guided by the Family Educational Rights and Privacy Act (FERPA) and Clery Act.

All University proceedings are conducted in good faith compliance with the requirements of FERPA, the Clery Act, Title IX, and other federal laws. No information shall be released from such proceedings except as required or permitted by law and University policy.

## If You are the First Contact

Members of the University community are encouraged to speak to University staff and administration (such as Title IX staff listed above, supervisors, advisers, Security, Residence Life and Student Life staff, academic administration, faculty, etc.) to make formal reports of incidents. Notice to a University employee constitutes official notice to the University and must be communicated to the Title IX Coordinator.

Regardless of which office initially receives the first report from the victim (i.e. residential staff, Student Leadership and Engagement staff, faculty, administrative staff, and student staff), the contact person at this stage should provide immediate support and short-term problem-solving. The primary goal is to help the victim secure needed professional services. This individual will complete the Sexual Harassment/Sexual Discrimination/Sexual Assault/Violence Protocol Checklist and report allegations to the Title IX Coordinator at 304-357-4987 or after hours at 304-541-6438.

The successful contact-victim interaction is one in which the contact has shared information concerning services available to them and the victim feels free to make a choice as to what, if anything should happen next. A good contact person will listen objectively and not blame the victim. Self-blame is common. The victim needs your support, guidance and understanding. Assure them that it was not their fault.

Confidentiality is a very important issue. Discuss the limits to confidentiality prior to discussing the details of an alleged sexual harassment, sexual discrimination or sexual assault/violence incident. Under no circumstances should the individual be given the impression that the fact that a Title IX incident occurred will remain with you. Explain to the victim that basic information about the incident will be shared with the Title IX Coordinator for the University. The Title IX Coordinator will compile information on reported Title IX issues for the institution and will share the information with others on a “need to know” basis only.

The victim of sexual harassment, sexual discrimination, or sexual assault/violence may be in shock when you speak with him or her. S/he may have trouble staying focused on your instructions. Be patient, speak slowly, and repeat information as necessary. Provide handouts to the victim whenever possible.

Reported incidents will be investigated and may be resolved through the appropriate grievance procedures. Only people who have a need to know about the incident will be informed, and information will be shared only as necessary with investigators, witnesses and the accused person. Reports that are made anonymously or by third parties may not initiate grievance procedures; however, Title IX requires the University to investigate all incidents about which the University knows or has reason to know in order to protect the health and safety of the University community. The University will undertake an investigation even in cases where the alleged victim and/or complainant choose not to cooperate.

Throughout this process, every effort is made to ensure confidentiality.