# Sexual Misconduct in Education Policy

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<td>Board of Directors- Main, BOG/MEC- Main</td>
<td>10/09/2019</td>
<td>Rachel King (Title IX / 504 Compliance Coordinator)</td>
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Printed copies are for reference only. Please refer to the electronic copy for the latest version.
Purpose

This policy expresses Cleveland Clinic’s commitment to equal opportunity in its educational programs and activities and establishes a procedure for addressing reports of sex discrimination, sexual harassment, sexual violence and retaliation in those programs and activities. This policy reflects Cleveland Clinic’s compliance with Title IX of the Education Amendments of 1972, as amended, and all other relevant laws and regulations.

Policy Statement

Cleveland Clinic is an institution and community committed to the principles of excellence, fairness, and respect for all people. As part of this commitment, we actively value diversity and seek to take advantage of the rich backgrounds and abilities of everyone. Our equal opportunity policies (in employment and educational programs) affirmatively protect all employees, students, and applicants, ensuring that decisions are based on individual merit, rather than stereotypes and biases. Copies of our equal employment policies and procedures are available on the intranet and in student and employee handbooks.

Cleveland Clinic promotes an inclusive organizational culture through diversity education, consultation, and programs that leverage differences to enhance innovation, quality of care, teamwork, and economic impact. Further, it is our policy to encourage all vendors, contractors, and others doing business with Cleveland Clinic to adhere to these same principles.

In accordance with Title IX of the Education Amendments of 1972, as amended, the Violence Against Women Reauthorization Act of 2013 (VAWA) and other applicable statutes and regulations, Cleveland Clinic prohibits all forms of discrimination on the basis of sex, gender, sexual orientation, gender expression and gender identity in its educational programs and activities. Prohibited conduct under this policy includes sex discrimination, sexual harassment, sexual violence and retaliation, as those terms are defined herein.

Definitions

**Cleveland Clinic United States locations:** Includes the main campus, Avon, Euclid, Fairview, Hillcrest, Lutheran, Marymount, Medina, South Pointe, Children’s Hospital for Rehabilitation, Cleveland Clinic Florida, Cleveland Clinic Hospital (Weston), Coral Springs Ambulatory Surgery Center, and all Family Health Centers, Physician practice sites, Nevada practice sites, Emergency Departments, Express Care Centers, Urgent Care Centers and Ambulatory Surgical Centers reporting to these facilities.

**Educational Program or Activity:** Any program or activity offered at Cleveland Clinic or by Cleveland Clinic employees in the scope of their duties that is educational in nature beyond on-the-job training, general interest, or routine continuing education programs. Factors in determining whether a program or activity is educational include whether it is
structured through a particular course of study; whether participants earn academic credit toward a degree or certificate, or qualify to sit for professional exams; or whether a program provides instructors, exams or other evaluation process. Educational programs and activities include, without limitation, degree- or certificate-granting programs offered by Cleveland Clinic and affiliated colleges and universities; clinical rotations for degree- or certificate-granting programs; medical and other residency programs; research and medical fellowships; internships; and educational programs offered to middle school, high school, college and university students.

**Responsible Employee:** An employee who has the authority to address reports of prohibited conduct as defined in this policy, or who a participant in an educational program or activity could reasonably believe has this authority. All directors, administrators, supervisors, program and project managers, coordinators, professionals, clinical instructors, clinical educators, fieldwork instructors, fieldwork educators, principal investigators, mentors, Research Laboratory employees, preceptors and faculty members are responsible employees, unless they are considered a confidential resource. Student employees who receive reports in their role as employees are responsible employees. Confidential resources are licensed, professional counselors, pastoral counselors and health care providers, serving in their capacity as counselors and health care providers.

**Sex Discrimination:** Behavior or action that denies or limits a person’s ability to benefit from, or fully participate in, education programs or activities or employment opportunities because of a person’s sex, including gender, gender identity, gender expression or sexual orientation. Examples of the type of discrimination that are covered under Title IX include, but are not limited to, sexual harassment, sexual violence, failure to provide equal opportunity in educational and co-curricular programs, discrimination based on pregnancy, and employment discrimination based on sex in educational and co-curricular programs. Some types of sex discrimination are also considered sexual violence.

**Sexual Harassment:** Unwelcome conduct of a sexual nature or on the basis of sex, including gender, gender identity, gender expression or sexual orientation. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors, or other verbal, written, online or physical conduct of a sexual nature on the basis of sex, when:

1. Submission to such conduct is made either explicitly or implicitly a condition of an individual’s participation in Cleveland Clinic’s educational programs or activities;
2. Submission to or rejection of such conduct is used as the basis for educational evaluation, grades, or advancement; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance, education, or participation in Cleveland Clinic’s educational programs or activities, and is sufficiently severe, persistent or pervasive as to create an intimidating, offensive or hostile educational environment.

Sexual harassment may include, but is not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual’s body, sexual prowess or sexual deficiencies; leering; whistling; touching; insulting or obscene comments or gestures; displays of sexually suggestive
objects or pictures, offensive images on computers or in email messages; and other physical, verbal or visual conduct of a sexual nature.

**Sexual Violence:** Under this policy, sexual violence includes sexual assault, sexual exploitation, relationship violence, and stalking.

**Sexual assault** is sexual contact or sexual intercourse without consent, through threat or use of force, or when an individual is incapacitated. Sexual contact is intentional contact, directly, over clothing or with an object, however slight, with the breasts, buttocks, groin or genitals of another, touching another with any of these body parts, or compelling another to touch his or her own body parts or the body parts of another in a sexual manner. Sexual intercourse is sexual penetration, however slight, with any body part or object, by an individual upon another.

**Sexual exploitation** occurs when an individual takes non-consensual or abusive sexual advantage of another. Examples of sexual exploitation include, but are not limited to, surreptitiously observing another’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved; non-consensual sharing or streaming of images, photography, video or audio recordings of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved; exposing one’s genitals or inducing another to expose their genitals in non-consensual circumstances; knowingly exposing another to a sexually transmitted infection without their knowledge; hazing or bullying related to sex or gender; or inducing incapacitation in another in order to make them vulnerable to non-consensual sexual activity.

**Relationship Violence** is physical, sexual, or psychological violence or abuse, including acts of intimidation and coercion, by a current or former partner in an intimate relationship upon the other partner. Relationship violence may be referred to as domestic violence when it involves current or former spouses, individuals who are or were cohabitating or individuals who share a child in common. Relationship violence may be referred to as dating violence when it involves another form of intimate relationship. The existence of an intimate relationship will be evaluated considering the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Stalking** is a course of conduct or repeated acts directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Stalking may include repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or by any other action, device or method.

**Retaliation:** Any adverse action or attempt to seek retribution against an individual because of the individual’s report or participation in an investigation or resolution of an allegation of Prohibited Conduct as defined in this policy.

**Consent:** Consent is informed, freely given and clearly communicated willingness to engage
in sexual activity. Both words and actions can express consent, but they must create mutually understood permission to engage in the sexual activity. Consent to one form of sexual activity does not, by itself, constitute consent to another form of sexual activity. Silence, without more, is not consent. Consent may be withdrawn at any time through clear words or actions. Once consent is withdrawn, the sexual activity must cease immediately. Consent is absent when force is used, when an individual is incapacitated, or when a person is too young under applicable law to consent to the sexual activity.

**Force** includes physical violence, abuse of power, threats, intimidation, and/or coercion.

**Incapacity** occurs when an individual is impaired temporarily or permanently by a mental and/or physical deficiency, disability, illness, or by the use of drugs or alcohol to the extent that the person lacks sufficient understanding or the ability to make or act on considered decisions to engage in sexual activity. A person violates this policy when they know or should know, based on what a reasonable sober person would have known, that the individual seemingly giving consent is incapacitated.

**Policy Implementation**

**Scope**

This policy applies to all individuals participating in Cleveland Clinic educational programs and activities, including, without limitation, employees, Professional Staff, medical and other residents, researchers, fellows, interns, students enrolled in Cleveland Clinic and affiliate programs, and third parties (such as patients, vendors and visitors).

This policy applies to conduct on the Cleveland Clinic campus and off-campus where such conduct interferes with or denies a participant equal access to Cleveland Clinic’s educational programs and activities.

Cleveland Clinic recognizes that certain participants in its educational programs and activities are affiliated with schools, colleges and universities that also have sexual misconduct policies. When another institution’s policy may be implicated by conduct prohibited under this policy, Cleveland Clinic will cooperate with that institution to ensure fairness to all parties.

**Title IX Coordinator**

Cleveland Clinic has a designated Title IX Coordinator with the responsibility to oversee Cleveland Clinic’s response to reports of sex discrimination, sexual harassment, sexual violence and retaliation and to identify and address any related patterns or systemic problems. Cleveland Clinic’s Title IX Coordinator may be reached at TitleIX@ccf.org.

Questions or concerns regarding Title IX, sex discrimination, sexual harassment, sexual violence or retaliation in Cleveland Clinic’s educational programs and activities may be directed to the Title IX Coordinator.
Cleveland Clinic’s Title IX Coordinator has authority to:
   a. Accept all reports of sex discrimination, sexual harassment, sexual violence and retaliation in Cleveland Clinic educational programs and activities;
   b. Ensure that Cleveland Clinic’s response to all such reports is appropriate to stop the conduct, prevent its recurrence, and address its effects;
   c. Provide for a prompt, adequate and impartial investigation into reports when required;
   d. Coordinate Cleveland Clinic’s Title IX education and training for all participants in its educational programs and activities;
   e. Keep accurate, confidential records of all reports for the required time period according to Cleveland Clinic’s Record Retention Policy or guidelines; and
   f. Monitor institutional compliance in matters related to Title IX.

**Relevant Considerations**

**Relationships involving authority or power:** Relationships between two individuals in which one has responsibility over the other’s professional or academic development, performance, or future are ethical violations. Consent can sometimes be difficult to discern in these types of relationships, may be deemed not possible, and may be construed as coercive. Such relationships also may have the potential to result in claims of sexual harassment.

**Intention vs. Impact:** Prohibited conduct, as defined in this policy, can occur even if the individual engaging in such conduct did not intend to engage in such conduct. All parties within Cleveland Clinic’s educational community are expected to understand the conduct that constitutes a violation of this policy. Alleged violations will be evaluated using a reasonable person’s understanding of this policy.

**Academic Freedom:** The intent of this policy is not to restrict academic freedom in Cleveland Clinic’s educational endeavors. Educational topics with sexual content may be appropriate, but their presentation must not interfere with the rights of others not to be sexually harassed. Anyone with concerns that educational material is being used to sexually discriminate or harass should report those concerns.

**Reporting**

**Reporting Options**
Any person may report sex discrimination, sexual harassment, sexual violence or retaliation in Cleveland Clinic’s educational programs or activities.

All participants in, or applicants to, Cleveland Clinic’s educational programs and activities who believe that they have been subjected to sex discrimination, sexual harassment, sexual violence, or retaliation are strongly encouraged to make a report. Prompt reporting allows Cleveland Clinic to provide resources to the participant and facilitates an appropriate response. Reports may be made at any time, but delayed reports may limit the availability of evidence and witnesses, and make it difficult for Cleveland Clinic to respond in an effective manner.
and fair matter. Reports may be made to Cleveland Clinic’s Title IX Coordinator, to a confidential resource, through Cleveland Clinic’s anonymous reporting hotline, to law enforcement, or to a state or federal agency with jurisdiction over the relevant educational program or activity, including the U.S. Department of Education Office of Civil Rights.

**Duty to Report**
All Responsible Employees who become aware of information that leads them to reasonably believe that a participant in an educational program or activity has been subject to prohibited conduct under this policy must promptly make a report to the Title IX Coordinator. All other Cleveland Clinic employees, except confidential resources, are strongly encouraged to make such a report.

Employees of schools, colleges and universities whose students participate in Cleveland Clinic educational programs and activities are encouraged, and in some cases required by agreement, to report to Cleveland Clinic’s Title IX Coordinator any information that leads them to reasonably believe that a participant in a Cleveland Clinic educational program or activity has been subject to prohibited conduct under this policy.

**Confidentiality**

Cleveland Clinic will maintain confidentiality of reports to the extent reasonably possible consistent with its responsibility to provide a safe educational and work environment, to provide a prompt, equitable and fair response, investigation and resolution of the report and to comply with applicable laws related to reporting. An individual’s requests for confidentiality will be considered in determining an appropriate response.

**Addressing Reports of Prohibited Conduct**

Cleveland Clinic will develop procedures to address reports of prohibited conduct under this policy. The procedures shall address interim measures to be taken to protect all parties to a report, processes for informal resolution and formal investigation of reports and the rights of parties in a resolution process.

**Regulatory Requirement/References**

- Title IX of the Education Amendments of 1972 (as amended by the 1988 Civil Rights Restoration Act)
- Violence Against Women Reauthorization Act of 2013
- 34 CFR, Part 106
- 34 CFR, §668.46
Oversight and Responsibility

The Chief Academic Office is responsible for the oversight and dissemination of this policy. The Title IX Coordinator is responsible for implementing the policy.

It is the responsibility of each hospital, institute, department and discipline to implement the policy and related procedures.

Other Background Information

Issuing Office

Chief Academic Office

Reviewed by:

- Institute Chairs, GME Program Managers, and Allied Health Internal Program Managers.

Title IX/ Section 504 Advisory Team Members

Roy Anderson        Education Institute
Angela Cain          Community Outreach
Diane DeCamillo     Chief Academic Office
Cheryl Goliath      Cleveland Clinic Akron General
Susan Hastings      Law Department
Mari Knettle        Center for Health Sciences Education
Julie Marth         Protective Services
Kathleen Mau        Nursing Education
Christine Moravec   Lerner Research Institute
Lori Smith          Graduate Medical Education
Christine Warren    Cleveland Clinic Lerner College of Medicine
Stephen Webster     Human Resources