

## Sexual Misconduct in Education Policy

<b>Target Group:</b> Cleveland Clinic United States locations		<b>Original Date of Issue:</b> 09/04/2012	<b>Version</b> 3
<b>Approved by:</b> Board of Directors- Main, BOG/MEC- Main	<b>Date Last Approved/Reviewed:</b> 08/26/2020	<b>Prepared by:</b> Rachel King (Title IX 504 Compliance Coordinator)	<b>Effective Date</b> 08/26/2020
<b>Avon Hospital:</b> MEC approval date: Board approval date: Effective Date:		<b>Euclid Hospital:</b> MEC approval date: Board approval date: Effective Date:	
<b>Fairview Hospital:</b> MEC approval date: Board approval date: Effective Date:		<b>Hillcrest Hospital:</b> MEC approval date: Board approval date: Effective Date:	
<b>Lutheran Hospital:</b> MEC approval date: 8/27/2020 Board approval date: Effective Date:		<b>Marymount Hospital:</b> MEC approval date: Board approval date: Effective Date:	
<b>Medina Hospital:</b> MEC approval date: Board approval date: Effective Date:		<b>South Pointe Hospital:</b> MEC approval date: Board approval date: Effective Date:	
<b>CCCHR:</b> MEC approval date: Board approval date: Effective Date:		<b>Weston, Florida:</b> MEC approval date: Board approval date: Effective Date:	
<b>Coral Springs, FL ASC/FHC:</b> MEC/CSOC approval date: Board approval date: Effective Date:			

**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**

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. Program directors, administrators, supervisors, program and project managers, coordinators, clinical instructors, clinical educators, fieldwork instructors, fieldwork educators, principal investigators, mentors, preceptors and faculty members are responsible employees, unless they are considered a confidential resource. Confidential resources are professional counselors, pastoral counselors and health care providers, serving in their capacity as counselors and health care providers and any employee designated as a confidential resource by their institute or department.

**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:** Conduct on the basis of sex, including gender, gender identity, gender expression or sexual orientation, 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 by an employee of Cleveland Clinic;
2. Submission to or rejection of such conduct is used as the basis for educational evaluation, grades, or advancement by an employee of Cleveland Clinic; or
3. Such conduct is unwelcome and would be determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the Cleveland Clinic's educational programs or activities; or
4. Such conduct constitutes sexual violence as defined herein.

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, 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.

**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, participation in an investigation or resolution of an allegation of Prohibited Conduct as defined in this policy, or exercise of any other right under 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, in cases of incest 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 Cleveland Clinic property and to locations, events, or circumstances where Cleveland Clinic exercises substantial control over the person alleged to have engaged in the conduct and the context in which it occurred.

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](mailto: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 seven years; 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 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 supportive 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, Graduate Medical Education (GME) Program Managers, and Allied Health Internal Program Managers.

### **Title IX/ Section 504 Advisory Team Members**

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