

Q & A on CUNY's New Sexual Misconduct Policy August 28, 2020

CUNY implemented a new Policy on Sexual Misconduct (PSM), which went into effect on August 14, 2020 and may be found [here](#). This Q & A addresses some questions that faculty, staff, and students may have about the new policy. If you have additional questions, please contact the Title IX Coordinator, Gabriela Leal at glead@jjay.cuny.edu or 646-557-4674.

1. What is Title IX?

Title IX is a federal law that prohibits sex discrimination, including sexual misconduct or harassment, in educational institutions.

2. Why is there a new sexual misconduct policy?

In May 2020, the federal government issued new Title IX regulations that required educational institutions to follow specific procedures when responding to incidents of sexual harassment on their campuses. CUNY policies had to be revised to be consistent with new Title IX regulations but CUNY's policy also continues to address misconduct that falls outside the scope of those regulations.

3. What are the primary changes between the new policy and the old one?

The main difference is that allegations of sexual misconduct on CUNY must now be classified as either "Title IX Sexual Harassment" or "Non-Title-IX Sexual Misconduct" matters. Depending on the classification, the investigatory and grievance procedure will differ in certain ways.

- *Investigatory process:* In both "Title IX Sexual Harassment" and "Non-Title-IX Sexual Misconduct" matters, both parties have the right to review documents and tangible evidence relevant to the investigation. In addition, in "Title IX Sexual Harassment" matters, the parties will be given an opportunity to review and respond to collected evidence prior to the completion of the investigative report, as well as an opportunity to review the investigative report prior to a live hearing.
- *Decision-making process:* In "Title IX Sexual Harassment" matters, the Title IX investigator collects and summarizes evidence, then provides this information to the Adjudication Committee. The Adjudication Committee conducts a live hearing, makes factual findings based on the evidence and determines if there was any wrongdoing. In "Non-Title-IX Sexual Misconduct" matters, the Title IX investigator collects and analyzes evidence and makes factual findings regarding the evidence. The matter then goes to the College President, who will authorize any corrective actions or discipline warranted by the facts.
- *New appeal rights:* In "Title IX Sexual Harassment" matters, either party may appeal a determination of responsibility or penalty by the Adjudication Committee to an Appeals Committee. Either party may appeal the dismissal of a "Title IX Sexual Harassment" Complaint to the University Title IX Director, Rodney Pepe-Souvenir at Rodney.Pepe-Souvenir@cuny.edu. In "Non-Title-IX Sexual Misconduct" matters, student complainants now have the right to appeal unsubstantiated allegations to the Appeals Committee.

Please refer to the PSM for additional differences between the two classifications of sexual misconduct.

4. What is the difference between “Title IX Sexual Harassment” and “Non-Title IX Sexual Misconduct”?

“Title IX Sexual Harassment” includes conduct on the basis of sex (including sexual orientation, gender, gender expression and gender identity/transgender status) that occurs on CUNY campuses or at locations or activities in the United States that are sponsored or controlled by CUNY. Such conduct includes (1) a CUNY employee conditioning the provision of an aid, benefit, or service of CUNY on an individual’s participation in unwelcome sexual conduct; (2) unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to CUNY’s education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking, as defined in the PSM.

“Non-Title-IX Sexual Misconduct” describes allegations of sexual misconduct that do not meet the definition of “Title IX Sexual Harassment.” This could include, for example: a) incidents not occurring on CUNY campuses or at locations or activities in the United States that are sponsored or controlled by CUNY, or b) unwelcome verbal or physical behavior based on a person’s sex that interferes with a person’s work or academic life, but that does not constitute “Title IX Sexual Harassment,” as defined above.

5. Which employees are required to report incidents of sexual misconduct to a supervisor or to the Title IX Coordinator?

While all members of the John Jay community are encouraged to report incidents of sexual misconduct, the PSM identifies certain employees as “Responsible Employees.” Responsible Employees serve as an important resource to our community. They are available to discuss your rights, provide support, and help you explore the different options for reporting. Responsible Employees are required to report any incidents or allegations of behavior covered by the PSM of which they become aware to the College’s Title IX Coordinator. The list of Responsible Employees — which includes senior leadership, faculty department chairpersons, supervisors and managers, Student Affairs staff, and athletics and residential life staff, among others — is listed on page 13 of the PSM.

6. What are my rights as a party in a sexual misconduct investigation and resolution?

In general, both complainants and respondents have a right to an investigation and grievance procedure that is fair, impartial, timely, thorough and provides a meaningful opportunity to be heard. Additional rights regarding the receipt of adequate notice, the use of evidence, having an advisor, and other rights are detailed in the PSM.

7. What if someone does not want a formal investigation — are there options for informal resolution?

Yes. With the exception of cases involving allegations by a student against an employee, an informal resolution process is available for Title IX Sexual Harassment matters and Non-Title IX Sexual Misconduct matters. The Title IX Coordinator must consider every eligible case for informal resolution. An informal resolution will only be pursued if both parties agree to pursue one, and an agreement will only be finalized if both parties agree to it.

8. What if the complainant wants to remain anonymous?

In Title IX Sexual Harassment matters, after a complainant submits a Title IX Formal Complaint, the respondent is entitled to know the complainant's identity. In Non-Title-IX Sexual Misconduct matters, complainants may request that their identity remain anonymous to the extent possible. The Title IX Coordinator will weigh the complainant's request against the College's obligation to provide a safe, non-discriminatory environment for all students, employees and visitors, including the complainant.

9. What supports or resources are available to those involved in Title IX Sexual Harassment and Non-Title IX Sexual Misconduct matters?

Both the complainant and respondent are entitled to supportive measures and accommodations, as described in the PSM. Such measures could include changes to academic or work schedules or assignments, counseling, no-contact orders, and other measures. External, community-based counseling, law enforcement, or health resources are also available; please contact the College Title IX Coordinator, Gabriela Leal or https://www.jjay.cuny.edu/harassment-discrimination-resources#community_res for a list of resources.

For students, the College also designated "Confidential Employees" who have an obligation to maintain a complainant's confidentiality regarding allegations of sexual misconduct and will not share any identifying information with others, except as required by law in emergency circumstances. For confidential counseling, you may contact Women's Center Counselor and Gender-Based Violence Prevention and Response Advocate, Jessica Greenfield, jgreenfield@jjay.cuny.edu.

For employees, free confidential support services are available through CUNY's Work/Life Program. For more information, please visit <http://www.jjay.cuny.edu/cuny-employee-assistance-program> or call (800)-833-8707.

10. To whom should incidents of sexual misconduct be reported?

Students, employees and visitors who experience sexual misconduct and wish to report the allegations should notify one of these campus officials/offices:

- a. Title IX Coordinator – Gabriela Leal, glead@jjay.cuny.edu
- b. Office of Public Safety – Diego Redondo, dredondo@jjay.cuny.edu
- c. Dean of Students– Michael Martinez-Sachs, msachs@jjay.cuny.edu
- d. Director of Residence Life– Jessica Carson, jcarson@jjay.cuny.edu or
- e. Human Resources Director of Performance Development – Paul Wyatt, pawyatt@jjay.cuny.edu .

Students, employees and other community members also have the right to report sexual misconduct to law enforcement, and to seek medical attention and/or emotional support off-campus. For a list of off-campus resources, please visit <https://www.jjay.cuny.edu/harassment-discrimination-resources>.