



**PACIFIC COLLEGE OF HEALTH AND SCIENCE, NEW YORK**

**POLICY ON SEXUAL MISCONDUCT**

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## II. Prohibited Conduct

### A. Sexual Harassment, Gender-Based Harassment and Sexual Violence

This policy prohibits sexual harassment, gender-based harassment and sexual violence against any PCHS-NY student, employee or visitor.

Sexual harassment includes unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic and electronic communications or physical conduct that is sufficiently serious to adversely affect an individual's participation in employment, education or other PCHS-NY activities.

Gender-based harassment is unwelcome conduct of a nonsexual nature based on an individual's actual or perceived sex, including conduct based on one's gender identity, gender expression, and nonconformity with gender stereotypes that is sufficiently serious to adversely affect an individual's participation in employment, education or other PCHS-NY activities.

Sexual violence is an umbrella term that includes: (1) any sexual activity without affirmative consent, such as sexual assault, rape/attempted rape, and forcible touching/fondling; (2) dating, domestic and intimate partner violence; (3) sexual violence as defined in this policy.

The complete definitions of these terms, as well as other key terms used in this policy are set forth in section XI below.

### B. Retaliation

This policy prohibits retaliation against any person who reports sexual harassment, gender-based harassment or sexual violence, assists someone making such a report, or participates in any manner in an investigation or resolution of a sexual harassment,







notice to a respondent describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions; (ii) an opportunity to offer evidence during an investigation, and to present evidence and testimony at a hearing, where appropriate, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five years from such a hearing and may include a transcript, recording or other appropriate record; and (iii) access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest. In order to effectuate an appeal, a respondent and reporting individual in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a reporting individual will be similarly provided to a respondent and any rights provided to a respondent will be similarly provided to a reporting individual.

- iii. Access to a sexual assault forensic examination through a local health care facility.

Reporting individuals have the right to the following:

- i. Notify campus security, local law enforcement, and/or state police.
- ii. Emergency access to a Title IX Coordinator or other appropriate designee trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining



the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance. Reports will be investigated in accordance with this policy and a reporting individual's identity will remain private at



- vi. Whether PCHS-NY possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

A decision to maintain confidentiality does not mean that confidentiality can be absolutely guaranteed in all circumstances, but only that all efforts will be undertaken to keep information confidential consistent with law. Notwithstanding the decision of the Title IX Coordinator regarding the scope of any investigation, the college will provide the complainant with ongoing assistance and support, including, where appropriate, the interim and supportive measures set forth in section VII of this policy.

If the Title IX Coordinator determines that she/he will maintain confidentiality as requested by the complainant, the college will take all reasonable steps to investigate the incident consistent with the request for confidentiality. However, a ability to meaningfully investigate the incident and pursue disciplinary action may be limited by such a request.

In any event, the college is required to abide by any laws mandating disclosure, such as the Jeanne Clery Act and Campus Safety Act. However, notification under the Jeanne Clery Act is done without divulging the identity, and notification of sexual violence under the Campus Safety Act is not required and will not be done if the complainant requests confidentiality.

Information regarding institutional crime reporting including, but not limited to: reports pursuant to the Clery Act, 20 U.S.C. 1092(f), will be reported in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual. PCHS-NY is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual. A reporting individual shall not be identified in a timely warning.

The Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, allows institutions to share information with parents when there is a health or safety emergency or when the student is a dependent on either parent's prior year federal income tax return. Generally, PCHS-NY shall not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual. An individual who speaks to a PCHS-NY employee about sexual harassment, gender-based harassment or sexual violence should be aware that employees fall into three categories:

- i. employees, who have an obligation to maintain a confidentiality regarding the incident(s);
- ii. employees, who are required to report the incident(s) to the Title IX









set forth in this section above, PCHS-NY encourages all other community members, including faculty, students and visitors, to take reasonable and prudent actions to prevent or stop an act of sexual harassment, gender-based harassment or sexual violence that they may witness. Although these actions will depend on the circumstances, they include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

In addition, PCHS-NY encourages all community members to report an incident of sexual harassment, gender-based harassment or sexual violence that they observe or become aware of to the Title IX Coordinator and/or Campus Director and, in the case of employees, Human Resources. Community members who take action in accordance with this paragraph will be supported by the college, and anyone who retaliates against them will be subject to disciplinary charges.

**E. Reporting Suspected Child Abuse**

Certain members of the PCHS-NY community who interact with, supervise, chaperone, or otherwise oversee minors in programs or activities at PCHS-NY or sponsored by PCHS-NY are required to report immediately to the New York State Maltreatment Hotline if they have reasonable cause to suspect abuse or maltreatment of individuals under the age of 18. If anyone other than mandated reporters has reasonable cause





- ii. Changing an work assignment or schedule;
- iii. Prohibiting contact between the complainant and the respondent orders);
- iv. Referral to counseling services and an off-campus agency;
- v. Providing assistance in obtaining medical and other services, including access to rape crisis centers;
- vi. Providing assistance with filing a criminal complaint and seeking an order of protection;
- vii. Enforcing an order of protection;

In exceptional circumstances, seeking an emergency suspension of a student or an employee under applicable PCHS-NY rules.

### **VIII. Investigating Complaints**

PCHS-NY will seek consent from reporting individuals prior to conducting an investigation. Declining to consent to an investigation shall be honored unless PCHS-NY determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community. Honoring such a request may limit PCHS-N accused individual. Factors used to determine whether to honor such a request are outlined in section VI above.

#### **A. The Investigation**

The college Title IX Coordinator is responsible for conducting the investigation in a prompt, thorough, and impartial manner. The college Title IX Coordinator shall inform all parties that an investigation is being commenced and shall provide the respondent with a written summary of the allegations of the complaint. The Title IX Coordinator shall coordinate investigative efforts and may designate other individuals to conduct all or part of the investigation.

The Title IX Coordinator will take any immediate action, as necessary, to protect and assist reporting individuals. The college Title IX Coordinator shall take prompt steps reasonably calculated to end any sexual harassment, gender-based harassment or sexual violence, including: (i) taking interim measures; (ii) preventing retaliation; (iii) providing the complainant and the respondent with periodic status updates of the investigation and notice of outcome of the investigation; (iv) informing the complainant of her/his right to file a criminal complaint; (v) coordinating with law enforcement agencies, as



President.

Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the institution's code of conduct, every student has the right to the following:

- i. For the respondent, accused, and reporting individual to be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process.
- ii. To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made pursuant to the provisions of this policy, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault.
- iii. To an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest.
- iv. To have PCHS-justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay. If there is a delay in completing the investigation, the Title IX Coordinator shall notify the complainant and the respondent in writing.
- v. To review and present available evidence in the case file, or otherwise in the possession of PCHS-NY, and relevant to the conduct case, consistent with PCHS-NY policies and procedures.
- vi. To exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- vii. To receive written or electronic notice, provided in advance of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a



written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.

- viii. To make a statement during the investigation which will be included in the report to the decision maker for appropriate sanctions.
- ix. To simultaneous (among the parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.
- x. To be informed of the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process and the rationale for the actual sanction imposed.
- xi. To choose whether to disclose or discuss the outcome of a conduct or judicial process.
- xii. To have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals grievance committee makes a final determination unless otherwise required by law.

**B. Conflicts**

If any administrator designated by this policy to participate in the investigation or resolution of a complaint (including but not limited to the Title IX Coordinator) is the respondent, the Campus Director will appoint another college administrator to perform such duties under this policy. If the Campus Director is the respondent, the investigation will be handled by the college Title IX Coordinator or her/his designee.

**C. Report of Findings**

Following the completion of the investigation, the Title IX Coordinator shall report the findings to the Campus Director in writing. Following such report, the Campus Director shall review the complaint investigation



decision, and to appeal. Penalties for students range from a warning to suspension or expulsion from the college.

**ii. Discipline Against Employees**

In cases where an employee is charged with a violation of this policy, including retaliation, the matter shall be referred for disciplinary action in accordance with the applicable PCHS policies. Penalties for employees include reprimand, suspension or termination of employment following applicable disciplinary procedures.

**iii. Action Against Visitors**

In cases where the person accused of sexual harassment, gender-based harassment or sexual violence is neither a PCHS student nor a PCHS employee, the ability to take action against the accused is extremely limited. However, the college shall take all appropriate actions within its control, such as restricting the access to campus. In addition, the matter shall be referred to local law enforcement for legal action where appropriate.

**E. No Disciplinary Action**

In cases where a determination is made not to bring disciplinary action, the Title IX Coordinator shall inform the complainant and the respondent of that decision contemporaneously, in writing, and shall offer counseling or other support services to both the complainant and the respondent.

**F. Sanctions and Transcript Notations**

If the school discovers an incident of harassment or discrimination, it has an obligation to stop it and make sure that it does not happen again. Sanctions may include appropriate disciplinary and/or remedial action, warning, censure, suspension, or dismissal from employment or from the program.

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C.1092(f)(1)(F)(i)(I)-(VIII), PCHS-NY shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from Pacific College while such conduct charges are pending, and declines to complete the disciplinary process, Pacific College shall make a notation on the transcript of such students that they "withdrew with conduct charges pending." Student appeals seeking removal of a transcript notation for a suspension are referred





Any party that wishes to appeal the decision and/or sanctions determined after the investigation shall follow the grievance policy as outlined in the college Catalog.

**H. Malicious Allegations**

Members of the PCHS community who make false and malicious complaints of sexual harassment, gender-based harassment or sexual violence, as opposed to complaints which, even if erroneous, are made in good faith, may be subject to disciplinary action.

**I. Reporting Retaliation**

An individual may file a complaint with the Title IX Coordinator if she/he has been retaliated against for reporting sexual harassment, gender-based harassment or sexual violence, assisting someone making such a report, or participating in any manner in an investigation or resolution of a sexual harassment, gender-based harassment or sexual violence complaint. All retaliation complaints will be investigated in accordance with the investigation procedures set forth in section VIII of this policy, and individuals who are found to have engaged in retaliation will be subject to disciplinary action.

**J. Relationship of PCHS Investigation to the Action of Outside**





including human resources, is responsible for ensuring that the college provides training to college employees on their obligations under this policy; provides education on this policy and on sexual misconduct (including domestic violence, dating violence, stalking and sexual assault) to new and continuing students; and promotes awareness and prevention of sexual harassment, gender-based harassment and sexual violence among all students and employees. The institution may take proactive steps, such as training or awareness efforts, to combat domestic violence, dating violence, stalking or sexual assault in a general way that does not identify those who disclose or the information disclosed. Specific require8( w)-27(ho )JTJETQ7 Tf1 0 0 1 108.12 598.33 T912 0 612 792 re



## **X. Rules Regarding Intimate Relationships**

### **A. Relationships between Faculty or Employees and Students**

There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions, and parties in such a relationship assume those risks, even if affirmative consent exists. At a college, the role of the teacher is multifaceted including serving as intellectual guide, mentor, role model and advisor. However, in the educational context, such positions can include (but are not limited to) teacher and student, teaching assistant and student, staff member and student, and supervisor and employee.

Because of the potential for conflict of interest, exploitation, favoritism and bias, such relationships may undermine the real or perceived integrity of the supervision and evaluation provided. Further, these relationships are often less consensual than the individual whose position confers power or authority believes. In addition, circumstances may change, and the conduct that was previously welcome may become unwelcome.

Such relationships may also have unintended, adverse effects on the climate of an academic program or work group, thereby impairing the learning or working environment for others-both within or outside of the duration of the relationship. Relationships in which one party is in a position to evaluate the work or influence the career of the other may provide grounds for complaint by third parties when that relationship gives undue access or advantage, restricts opportunities or simply creates a perception of these problems.

For all of these reasons, romantic or sexual relationships- whether regarded as consensual or otherwise--between individuals in inherently unequal positions should in general be avoided while an instructional or professional relationship exists. Additionally, the college discourages students, staff and faculty from having a therapeutic relationship anywhere other than in a professional, medical office setting.

Because of the relative youth of undergraduates and their particular vulnerability in such relationships, sexual or romantic relationships between teachers and undergraduate students are even more strongly discouraged.

Individuals in inherently unequal positions must disclose to the administration if a dating or sexual relationship does develop within seven to ten days of any sexual or romantic involvement. Doing so will not only help the administration protect the student(s) but the faculty/staff member(s) as well. Consensual relationships will be reported to the supervisor, Campus Director and Vice President of Human Resources, preserving as much confidentiality as possible.

Where such a relationship develops, individuals in the position of greater authority or power must recuse themselves to ensure that they do not exercise any supervisory or



evaluative function over the other person in the relationship. In the case of a faculty schedule. This may result in a reduction in the faculty's teaching responsibilities for an indefinite period until such time as the student graduates or is no longer attending.

Failure of faculty/staff members to report consensual relationships to the administration in a timely fashion and recuse themselves from the position of authority obligates the supervisor, Campus Director and Vice President of Human Resources to conduct a prompt and thorough investigation. Where it is concluded that there was failure to report the relationship to the administration and/or a position of authority and a consensual relationship exists, the position of authority will be terminated, and the faculty or staff member will be subject to disciplinary action, up to and including dismissal.

If there is any doubt whether a relationship falls within this policy, individuals should disclose the facts and seek guidance from the administration rather than fail to disclose. Questions may be addressed to the appropriate supervisor, Campus Director, or Vice President of Human Resources.

**B. Relationships between Supervisors and Employees**

Many of the concerns about intimate relationships between faculty members or employees and students also apply to relationships between supervisors and employees they supervise. Those relationships therefore are strongly discouraged. Individuals in inherently unequal positions must disclose to the administration if a dating or sexual



In order to give consent, one must be of legal age (17 years or older). Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol



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people who are able to speak for the targeted individual when that person is unable to speak for themselves.

- N. **Privacy** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials.
  
- O. **Quid pro quo harassment** occurs when a school employee causes a student or colleague to believe that he or she must submit to unwelcome sexual conduct in order to participate in a school program, activity, or as a condition of employment. It can also occur when an employee causes a student to believe that the employee will make an educational decision based on whether or not the student submits to unwelcome sexual conduct. For example, when a teacher threatens to fail a student unless the student agrees to date the teacher, it is quid pro quo harassment. It does not matter whether the student refuses to submit to the  hat the teacher wants and thus avoids the harm. In both cases, this act of harassment by the school employee is unlawful.
  
- P. **Rape and Attempted Rape** is the penetration or attempted penetration, no matter how slight, of any body part by a sex organ of another person, without the consent of that person.
  
- Q. **Reporting individual** shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term to reference an individual who brings forth a report of a violation.
  
- R. **Respondent** refers to a person accused of a violation who has entered the institut judicial or conduct process.
  
- S. **Retaliation** is adverse treatment of an individual as a result of that reporting sexual harassment, gender-based harassment...or sexual violence, assisting someone **with a report**









## Pacific College of Health and Science, New York

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;

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