

# THE THREE R'S OF TITLE IX: RIGHTS AND REPORTING RESPONSIBILITIES

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- Policy on Sex-Based Misconduct
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# TITLE IX FEDERAL LAW, 1972

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- Title IX of Education Amendments of 1972 is a federal law that protects people from discrimination based on sex in educational settings. Title IX protects students and employees in public and private schools, colleges, and universities that receive federal funds.
- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

# HOW DO WE GET THE CUNY POLICY ON SEX-BASED MISCONDUCT?

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Title IX – Federal Law

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NY129A&B – State law, affirmative consent, amnesty for violations of drug /alcohol use provisions, mandates Training

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THE CUNY POLICY ON SEX-BASED MISCONDUCT



# RIGHTS UNDER THE POLICY ON SEX-BASED MISCONDUCT

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A summary

1. You have a right to go to attend school and work in an environment free from sex harassment.
2. You have a right to go to school and work in an environment that's free from sexual jokes, sexualized emails being passed around and a right to be free from retaliation if you make a report.
3. You have also have a right to due process ... and a right to be treated fairly during an investigation.

# AFFIRMATIVE CONSENT, NY STATE LAW 129B

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- **Knowing, Voluntary** and **Mutual Decision** among all participants to engage in sexual activity.
- Words or Actions that create a **Clear Permission Regarding Willingness to engage** in sexual activity.
- **Not** Affirmative Consent:
  - ⊗ Silence or lack of resistance
  - ⊗ when a person is incapacitated/drunk/asleep
  - ⊗ When someone is under the age of 17
  - ⊗ based on consent to a different sexual act or prior sexual activity
  - ⊗ based on coercion, intimidation, force, or threat of harm

# UNDER CUNY POLICY

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- The University applies the preponderance of the evidence standard of proof (i.e., whether it is more likely than not that the Sex-Based Misconduct took place) to determine whether Sex-Based Harassment occurred.
- On a scale of 1 to 100, we need 51 to find a preponderance

# SEX-BASED MISCONDUCT

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- What is it?

# HOSTILE ENVIRONMENT

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- Unwelcome **sex-based conduct** that, based on the totality of the circumstances, is **subjectively and objectively** offensive *and is* so severe **or** pervasive that it limits or denies a person's ability to participate in or benefit from CUN Y's education program or activity.
- Takes many forms, Offensive emails, jokes, naked pics being passed around, etc. Words or actions



# QUID PRO QUO HARASSMENT

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- Conduct in which a CUNY employee, or Third Party, explicitly or impliedly conditions the provision of an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

# DATING VIOLENCE

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- Violence committed by a person who is or has been in a social relationship, of a romantic or intimate nature, with the Complainant
- Includes threats
- Single act or pattern of behavior

# SEXUAL ASSAULT

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**Sexual Assault Contact:** Any sexual contact – including sexual touching – for the purpose of sexual gratification, degradation of another person, or abuse of another person – without affirmative consent.

**Sexual Assault Penetration:** Any form of vaginal, anal, or oral penetration, however slight, by a penis, object, tongue, or finger without a person's affirmative consent.

# STALKING

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Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. fear for their safety or the safety of others; or
2. suffer substantial emotional distress.

# MANDATORY REPORTERS

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- **Who Are They & What Must They Do**
- **Your reporting responsibilities**

## Mandatory Reporters - Employees with a Duty to Notify the Title IX Coordinator of Reports of Sex-Based Misconduct

Except for those employees who are designated as Confidential Employees, every employee who has the authority to institute corrective measures on behalf of CUNY or who has responsibility for administrative leadership, teaching, or advising within CUNY is a Mandatory Reporter who has a duty to notify the Title IX Coordinator when they reasonably suspect or observe conduct that may constitute Sex-Based Misconduct. Mandatory Reporters are not permitted to maintain a complainant's confidentiality, but they should maintain a complainant's privacy to the greatest extent possible.

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Policy on Sex-Based Misconduct Effective August 1, 2024

# MANDATORY REPORTERS

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## What Must They do?

- Must notify the Title IX Coordinator for their school, college, or unit when: they reasonably suspect or observe conduct that **may constitute** sex-based misconduct
- Reporting obligations apply to information about conduct affecting Students, Fellow Employees, or Third Parties participating or attempting to participate in the CUNY's program or activities.
- Can't maintain confidentiality, but can maintain privacy to the greatest extent possible.
- When possible, a Mandatory Reporter should advise the complainant of their obligations as a Mandatory Reporter **before** receiving a report of Sex-Based Misconduct.

# EMPLOYEE OBLIGATIONS – STUDENT PREGNANCY RULE,

POLICY ON SEX-BASED MISCONDUCT EFFECTIVE AUGUST 1, 2024

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If a student discloses a pregnancy or related condition to an employee, unless the employee reasonably believes that the Title IX coordinator has already been notified, the employee must:

- Promptly provide the student with the Title IX coordinator's contact information

**AND**

- Inform the student that the Title IX Coordinator can coordinate reasonable modifications to preserve their equal access to the institution's education program or activity.



# FACT PATTERN

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- Karyn, an MEC Student, notifies her professor that she is pregnant, and the professor immediately informs the student that the Title IX Coordinator can coordinate reasonable modifications to preserve their equal access to the institution's education program or activity. The professor takes no other action.
- Has the professor violated CUNY Policy?

# FACT PATTERN

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- Mary, an MEC Student discloses to Professor Johnson that she is pregnant and may need an accommodation. Professor Johnson notices Mary after class talking with her boyfriend, a fellow MEC Student, in the hallway and witnesses the boyfriend hit Mary violently while speaking with her. Not wanting to get involved in personal matter, Professor Johnson doesn't provide Mary with the Title IX Coordinator's contact information nor does he inform Mary that the Title IX Coordinator can coordinate reasonable modifications to preserve her equal access to the institution's education program. Professor Johnson takes no other action.
- Has Professor Johnson violated CUNY policy?
- Has Professor Johnson violated any other policies?

# FACT PATTERN

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- Dale, an MEC administrator is a member of the Liberal Arts Department. Kiesha, a full-time administrative assistant and fellow employee within the department, is being stalked by an ex-boyfriend. One day, while in office, Dale observes Keisha receiving 25 unwanted calls to her cell phone within 30mins from her ex-boyfriend. Keisha tells Dale while crying and substantially emotionally distressed that she been trying for weeks to get her ex to leave her alone, but he wont stop harassing her. Dale advises Keisha that he is aware of some off campus anti-stalking resources that may be able to assist her and provides the telephone numbers to these outside organizations. Dale then goes on with his day without notifying the MEC Title IX Coordinator?
- Has Dale violated CUNY policy?

# SUPPORTIVE MEASURES

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- Counseling services through the Counseling Center or other appropriate office, or referral to an off-campus agency;
- Appropriate changes to academic programs, including:
  - changes in class schedule;
  - accommodations to permit students to take an incomplete or drop course(s) without penalty;
  - remote learning;
  - providing an academic tutor; or
  - extending deadlines
- Pregnancy accommodations;
- Making appropriate changes to residential housing situations or providing assistance in finding alternate housing;

Changing an employee's work assignment or schedule;

Providing an escort to and from class or campus work location;

Arranging appropriate transportation services to ensure safety;

Issuing a No Contact Order whereby continued intentional contact would be a violation of CUNY Policy and subject to disciplinary action;

Enforcing an Order of Protection issued by a court; and

Emergency removal of a respondent when they pose an imminent threat to the physical health or safety of any person.

# MY CONTACT INFORMATION

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