

# COLLEGE of CHARLESTON

## OFFICIAL POLICY

12.4.6

### **STUDENT SEXUAL MISCONDUCT POLICY**

6/29/2016

This Policy may also be referred to as the College's *Sexual Assault Policy*, as required by S.C. Code Ann. §59-105-40.

### **Policy Statement**

The purpose of this Policy is to provide Students and other members of the College Community a description of how the College will respond when a Student is accused of Sexual Misconduct; the procedures that will be followed to investigate and determine culpability; the consequences of such misconduct and the sanctions that will be imposed if there is a finding of culpability; protections that will be afforded to the alleged victim and to the accused; the relationship of this Policy with all other College policies dealing with a similar subject matter; and the demonstration that the College's sexual misconduct programs are, foremost, aimed at prevention and also at enhancing the awareness of resources for and awareness of sexual misconduct.

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### **Policy Manager and Responsible Department or Office**

The Title IX Coordinator, upon consultation with the Dean of Students and the General Counsel, shall be responsible for the periodic review and maintenance of this Policy. Such reviews shall take place no less frequently than once during each three year period and shall be provided to the President's Executive Team within seven calendar days of completion.

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# Policy

## 1.0 INTRODUCTION

### 1.1 Purpose of Policy

The purpose of this Policy is to provide Students and other members of the College Community a description of how the College will respond when a Student is accused of Sexual Misconduct; the procedures that will be followed to investigate and determine culpability; the consequences of such misconduct and the sanctions that will be imposed if there is a finding of culpability; protections that will be afforded to the alleged victim and to the accused; the relationship of this Policy with all other College policies dealing with a similar subject matter; and the demonstration that the College's sexual misconduct programs are, foremost, aimed at prevention and also at enhancing the awareness of resources for and awareness of sexual misconduct.

### 1.2 Policy Statement

It is the Policy of the College of Charleston to respect the rights and the dignity of the individual. Sexual Misconduct, including sexual violence, violates this principle and will not be tolerated. It is a violation of this Policy to discriminate against, harass or abuse any Student or applicant for admission to the College based on gender, sexual orientation, gender identity or expression. The College is committed to taking immediate, equitable and effective steps to respond to Sexual Misconduct, to prevent its recurrence, and to address its effects. The Decisional Authority is required to consider suspending or expelling any Student found culpable for Sexual Misconduct. (See section 13.0)

### 1.3 Application

This Policy applies to all enrolled Students of the College of Charleston and to applicants who have received an offer of admission to the College. We encourage members of the campus community who experience any form of sexual misconduct, as defined in section 3.0 below, to seek help and to report the misconduct. On- and off-campus resources are outlined in sections 3.2 and 3.3 below.

Students are encouraged to report sexual misconduct whether the sexual misconduct occurs on- or off-campus. Resources are available for students no matter where the misconduct occurs. The College of Charleston will take appropriate steps to respond to complaints of sexual misconduct. If alleged misconduct occurs off-campus, the College will take the necessary steps to address any continuing effects of off-campus sexual harassment in the educational setting.

### 1.4 Effect on other Policies

This Policy is intended to and shall be read in a manner that is consistent with the College Policy entitled: **PROHIBITION OF DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT AND ABUSE.**

## **2. DEFINITIONS**

The definitions contained in this Policy will be interpreted and applied by the College in a manner that is consistent with applicable law, professional usage, and conventional understanding within the community. In the event of any alleged conflict in meaning, statutory and legal interpretations shall prevail and be deemed controlling.

**2.1 “SEXUAL MISCONDUCT”** – shall mean sexual violence and all forms of sexual discrimination, harassment and abuse, as defined in Section 5.0 of the College’s Policy on the Prohibition of Discrimination and Harassment, Including Sexual Harassment and Abuse:

Sexual/gender harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's access to an educational benefit or of an individual's employment at the College;
- (2) submission to or rejection of such conduct by an individual is used as the basis for academic decisions or decisions concerning educational benefits or employment decisions affecting such individual; or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or other educational benefit or creating an intimidating, hostile, or offensive working, learning or living environment. Additionally, sexual harassment also includes conduct (as described in this paragraph) that is directed at an employee or Student because of his or her sexual orientation or gender identity or expression.

A single incident of sexual assault may be sufficiently severe or pervasive to interfere unreasonably with one’s educational environment and therefore create a hostile environment.

Sexually-related conduct creates a hostile environment if it is sufficiently severe or pervasive to interfere unreasonably with academic, other educational, or employment performance or participation in a College activity or living environment. Sexual/gender harassment includes in-person acts and/or behavior via computer, telephone or other electronic medium, including text messages, emails, social media and other forms of electronic communication.

For scenarios of sexual misconduct, please see Appendix I.

Sexual misconduct can take various forms. They include, but are not limited to the following items:

**(a) Verbal.**

Unwelcome sexual advances or requests for sexual favors based upon gender, sexual orientation, gender identity or gender expression; Verbal harassment, such as sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions or threats; epithets; slurs; negative stereotyping (including “jokes”); Repeated, unwelcome requests for social engagements; Questions or comments about sexual behavior or preference;

**(b) Non-verbal.**

Display or sexually suggestive objects or pictures, leering, whistling, obscene gestures; written or graphic material (including communications via computers, cell phones, etc.) that defames or shows hostility or aversion toward an individual or group because of gender, sexual orientation, gender identity, or gender expression.

**(c) Acts of sexually-based intimidation.**

To place another person in reasonable fear of bodily harm and/or emotional distress through the use of threatening words, repeated and/or severe aggressive behavior or other conduct or both, but without displaying a weapon or subjecting the person to physical attack

**(d) Acts of sexually-based coercion.**

Use of explicit or implicit force, threats, unusual pressure or intimidation to make somebody do something against his or her will.

**(e) Acts of sexually-based threats.**

An expression of intention to inflict injury, harm or damage

**(f) Stalking.**

Engaging in a course of conduct directed at a specific person that would cause a reasonable person i) fear for their safety or the safety of others; or ii) suffer substantial emotional distress.

**(g) Non-consensual sexual contact.**

Any intentional sexual physical contact, with any object, including touching, pinching or brushing the body; that is without consent and/or by force.

**(h) Acts of physical aggression, including non-consensual sexual intercourse.**

“Non-consensual sexual intercourse” occurs when a student engages in sexual intercourse, however slight, with another person without that person’s consent. “Sexual intercourse” includes, but is not limited to, vaginal or anal penetration by a penis, object, tongue or finger. It also includes oral copulation (mouth to genital contact or genital to mouth contact). Non-consensual sexual intercourse includes the sexual conduct known as sexual assault or rape. Either males or females can be aggressors in sexual assault, and sexual assault can occur in same-sex relationships.<sup>2</sup> For more information, see discussion on consent in section 2.8.

**(i) Sexual exploitation.**

Sexual exploitation is taking sexual advantage of another for one’s benefit.

**(j). Age.**

Anyone under 16 years of age is not legally capable of giving consent for any sexual contact.

**(k) Relationship/Dating Violence.**

The terms relationship and dating violence mean violence is committed by a person

- i) Who is or has been in a social relationship of a romantic or intimate nature with the complainant; and
- ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship

<sup>2</sup> Kenyon College’s Sexual Misconduct Policy

**(l). Domestic Violence.**

The term domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

**2.2 “CAMPUS COMMUNITY” or “COLLEGE COMMUNITY”** – shall mean the Students, faculty, and staff of the College, whether part-time, full time or temporary, the College Board of Trustees, visiting faculty, contractors and consultants performing work or performing services on College owned or leased property and all other invitees of the College.

**2.3 "CAMPUS SECURITY AUTHORITY" – shall mean:**

- (a) The campus Office of Public Safety;
- (b) Any individual or individuals who have responsibility for campus security but who are not employed by the Office of Public Safety such as an individual who is responsible for monitoring the various entrances to College facilities.
- (c) Any individual or office specified in the College's statement of campus security policy as an individual or organization to which Students and employees should report criminal offenses. In its current Annual Security Report the College has specifically designated the following individuals as examples of Campus Security Authorities: Executive Vice President for Student Affairs, Dean of Students, Director of Fraternity and Sorority Life, Director of Residence Life, Director of Student Leadership Center, Conduct Coordinator for Residence Life, Director of Student Life, Counseling Peer Education Director, Associate Director of Athletics, Assistant Provost for International Education, Director of Multicultural Center, and Housing Area Coordinators.
- (d) An employee of the College who has significant responsibility for Student and campus activities, including, but not limited to, Student housing, Student discipline, and campus conduct proceedings. If such an official is a pastoral or professional counselor, the official is not considered a campus security authority when acting as a pastoral or professional counselor.

**2.4 "CHILD ABUSE OR NEGLECT" or "HARM" – shall mean,**  
with respect to a person under 16 years of age, conduct occurring when any person responsible for the child's welfare, including, the parent, guardian, or other person:

- (a) Inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:
  - i) Is administered by a parent or person in loco parentis;
  - ii) Is perpetrated for the sole purpose of restraining or correcting the child;
  - iii) Is reasonable in manner and moderate in degree;
  - iv) Has not brought about permanent or lasting damage to the child; and
  - v) Is not reckless or grossly negligent behavior by the parents.
- (b) Commits or allows to be committed against the child a sexual offense as defined by the laws the state of South Carolina or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;
- (c) Fails to supply the child with adequate food, clothing, shelter, or education as

required under South Carolina Code Ann., Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so, and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law;

(d) Abandons the child;

(e) Encourages, condones, or approves the commission of delinquent acts by the child and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or

(f) Has committed abuse or neglect as described in subsections (a) through (e) such that a child who subsequently becomes part of the person's household is at substantial risk of one of those forms of abuse or neglect.

**2.5 "COLLEGE"** – shall mean the College of Charleston.

**2.6 "COLLEGE PROPERTY"** – shall mean real property that is owned or leased by the College.

**2.7 "COMPLAINANT"** – shall mean a person who makes a Complaint, whether written or verbal, of facts that, if true, would constitute a violation of this Policy.

**2.8 "CONSENT"** – shall mean the presence of explicit voluntary and knowing verbal consent or overt action clearly expressing consent. Such signals of consent must be mutual and ongoing. Silence, in and of itself, does not convey consent. "Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity (ATIXA)."

Effective consent is also absent when the activity in question exceeds the scope of effective consent previously given. The fact of a previous relationship or prior consent does not imply current consent.

Consent obtained through fraud or force, whether that force is physical or through threats, intimidation or coercion, is not regarded as effective consent.

It is the responsibility of the initiator (the person who wants to engage in the specific sexual activity) to make sure that s/he has consent from the other person. Use of alcohol or drugs by the respondent shall not diminish one's responsibility to obtain consent.

If the victim is under the age of consent as defined by state law or is declared unable to give consent due to a mental or physical condition, and the respondent either knew that fact or reasonably should have known that fact, the respondent will likely be found responsible for Sexual Misconduct. The legal age of consent in South Carolina is 16 years old.

If the alleged victim is incapacitated and therefore unable to give consent, that is ineffective consent.

**2.9 “DECISIONAL AUTHORITY”** – shall mean the College manager or unit who initially opines on whether the Respondent has violated the Policy and, if so, the nature and extent of the discipline and/or remedial action to be imposed or recommended.

**2.10 “INCAPACITATION”** – shall mean a state where someone cannot make informed, rational judgments and decisions “because they lack the capacity to give knowing consent (e.g., to understand the ‘who, what, when, where, why or how’ of their sexual interaction) (ATIXA).”

Where alcohol is involved, incapacitation is defined with respect to how the alcohol consumed impacts a person’s decision-making capacity, awareness of consequences, and ability to make fully informed judgments. Indicators of incapacitation include, but are not limited to, the following: a person who is passed out, experiencing blackouts, disoriented to their surroundings, or asleep or in and out of sleep.

If the victim is unable to give consent due to incapacitation, and the respondent either knew that fact or reasonably should have known that fact, the respondent will likely be found responsible for Sexual Misconduct.

This policy covers a person whose incapacity results from the taking of drugs. Administering drugs for the purpose of initiating sexual activity with another is a violation of this policy.

**2.11 “PROGRAM OR ACTIVITY”** – shall mean any education program or activity required by the College of a Student that is not operated wholly by the College, or any program or activity that the College facilitates, permits, or considers as part of, or equivalent to, an education program or activity operated by the College, including (but not limited to) participation in educational consortia and cooperative employment and Student-teaching assignments. Such Programs and Activities include College-managed study abroad programs or trips and external sponsorships.

**2.12 “PROGRAM DIRECTOR”** – shall mean a member of the College faculty or other employee of the College who is responsible for managing or overseeing a College Program or Activity.

**2.13 “RESPONDENT”** – shall mean the person(s) named in a Complaint who is accused of a violation of this Policy or who would be found to have violated the Policy if the material facts alleged in a Complaint are determined to be more likely true than not true.



**2.14 “Student” or “Students”** – shall mean all persons who are enrolled at the College and those individuals who have received an offer of admission at the College and meet one or more of the other elements listed in Section 3.2 of the Student Handbook.

**2.15 “Title IX”** – shall mean Title IX of the Education Act Amendments of 1972 that provides, with limited exception, that: “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...” (20 U.S.C. §1681)(see Student Handbook, Sexual Misconduct Policy, Appendix 2 for complete text). <http://studentaffairs.cofc.edu/honor-system/studenthandbook/2015-2016-student-sexual-misconduct-policy.pdf>

**2.16 “TITLE IX COORDINATOR”** -- shall mean the College employee(s) who is (are) responsible for coordinating the College’s compliance with Title IX. A Title IX coordinator’s responsibilities include overseeing all Complaints of sex discrimination and identifying and addressing any patterns or systemic problems that arise during the review of such Complaints.

### **3. RESOURCES**

#### **3.1 Where to Seek Immediate Assistance, 24/7**

In addition to reporting requirements under Sections 7.6, 7.7 and 7.8, a Student who is or who knows of another Student who may be the victim of any form of Sexual Misconduct involving violence, the threat of violence, or circumstances under which the victim was incapable of giving consent (because the victim was mentally or physically impaired or under the age of 16), or physically impaired (because of alcohol or drugs), is directed to seek assistance as soon as possible under the circumstances. Assistance can be obtained 24 hours a day, seven days a week from:

- (a)** College of Charleston, Department of Public Safety – **843.953.5611**
- (b)** City of Charleston Police Department - **911**
- (c)** College of Charleston, Office of Victim Services: The 24-hour emergency team response number is **843-953-2273**.

#### **3.2 On Campus Resources Available To Students**

##### **(a) Office of Victim Services**

843-953-2273 (24-hour emergency team response number)  
Location – 67 George Street  
<http://victimservices.cofc.edu/>

**i) Purpose** — The Office of Victim Services (OVS), is a program that works specifically with College Students who may become a victim of a violent or potentially violent crime or a Policy violation. It does not matter where the

victimization occurs, on or off campus, or whether the Student elects to file an official police report or not. OVS services are available to any current Student. This program is designed to prevent re-victimization and provides comprehensive victim assistance at one convenient location.

**ii) Types of Assistance Provided** — The OVS victim assistance specialists are available to:

- Coordinate immediate medical intervention and initial support
- Explain the reporting process and assist the Student, if he/she chooses, in filing a report with the appropriate law enforcement agency
- Accompany and/or act on behalf of the victim, as needed
- Explain the victim's rights, responsibilities and options
- Assist in arranging meetings or initiating direct contact with individuals involved in on campus disciplinary actions or
- Serve as the spokesperson for the Student within the College Community so that the victim's privacy and dignity are maintained in all aspects of intervention and assistance and, as necessary, to serve as liaison with individuals off campus
- Work with the Student to reasonably appropriate, accommodate possible disruptions to the Student's class attendance, class work, academic schedule, and housing by initiating necessary changes that may result from the victimization
- Assist in locating appropriate on-campus and community resources to meet the Student's specific ongoing needs
- Work with appropriate personnel within the court system to provide information relevant to the victim's circumstances and/or direct assistance to the victim
- Provide access to legal information. This program is designed to prevent re-victimization and provides comprehensive victim assistance at one convenient location.

**(b) Department of Public Safety**

Emergency #: 843.953.5611

Non-Emergency #: 843.953.5609

Location – 89 St. Philip Street

<http://publicsafety.cofc.edu/>

**i) Purpose** – The Department of Public Safety is available to provide emergency assistance, to accept and address criminal Complaints, and to investigate allegations of criminal sexual misconduct.

**ii) Services** provided by the Department of Public Safety include, but are not limited to:

- Students can report occurrences of sexual misconduct and/or can file a

- criminal Complaint.
- Attends to student's immediate safety concerns.
- Takes steps to conduct criminal investigations.

### **(c) Dean of Students**

Main Office #: 843.953.5522

Location – Stern Center, 3rd floor

<http://deanofstudents.cofc.edu/>

**i) Purpose** – The Dean of Students is available to address student concerns, including allegations of sexual misconduct.

**ii) Services** provided by the Dean of Students include, but are not limited to:

- Students can report occurrences of sexual misconduct and/or can file a campus Complaint.
- Explains the student's rights and options.
- Assists with academic needs and can arrange appropriate interim measures (e.g., changing class schedule or housing). Takes steps to prevent retaliation. Investigates allegations.

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### **(d) Title IX Coordinator / Director of Office of Equal Opportunity Programs**

Main Office #: 843.953.5758

Email: [eop@cofc.edu](mailto:eop@cofc.edu)

Location – Robert Scott Small Building, Room 112

<http://eop.cofc.edu/index.php>

**i) Purpose** – The Title IX Coordinator carries out investigations and compliance-related responsibilities for Title IX.

**ii) Services** provided by the Title IX Coordinator include, but are not limited to:

- Students can report occurrences of sexual misconduct and/or can file a Complaint.
- Explains student's rights and options; can assist with appropriate interim measures; takes steps to prevent retaliation.
- Investigates allegations.
- Allegations of sexual misconduct will be maintained as confidential to the extent possible and permitted under law.

### **(e) Counseling and Substance Abuse Services**

Main Office #: 843.953.5640

After Hours #: 843.953.5611 (Public Safety)

Location – Robert Scott Small Building, 3rd floor

<http://counseling.cofc.edu/>

**i) Purpose** – The professionals in the Office of Counseling and Substance Abuse Services (CASAS) are available to help Students, free of charge, and on a regular or an emergency basis.

**ii) Types of Assistance Provided:** CASAS provides counseling for individuals who have been victimized; who are suffering the mental health after-effects of a victimization; who have been accused of Sexual Misconduct and who need assistance with family and a variety of relationship concerns. CASAS can also help direct Students to appropriate community resources, both on and off campus, which might better meet their needs. Services include, but are not limited to:

- Assists students who have experienced sexual misconduct with personal counseling/support.
- Provides a list of counselors in the Charleston for survivors seeking off campus counseling assistance. Confidential per SC Code Ann. §19-11-95.
- <http://studentaffairs.cofc.edu/sexual-misconduct-resources/>

#### **(f) Student Health Services**

Main Office #: 843.953.5520

Hours: 8:30 a.m. to 5:00 p.m., Monday through Friday

Email: [healthservices@cofc.edu](mailto:healthservices@cofc.edu)

Location 181 Calhoun Street

<http://studenthealth.cofc.edu/>

**i) Purpose** – Student Health Services is staffed by physicians, nurse practitioners, physician assistants, and registered nurses and is available to address the health needs of Students only.

**ii) Types of Assistance Provided** – In addition to customary and routine healthcare matters, Student Health Services also provides information about sexual health and sexual safety and serves as a resource for Students to acquire information about sexuality. Services include, but are not limited to:

- Available to address the health needs of students and can provide appropriate referrals.
- Not able to collect evidence after a sexual assault but can provide a referral.

#### **(g) Office of Legal Affairs**

Main Office #: 843.953.5502

Location – Room 302, Randolph Hall

<http://legalaffairs.cofc.edu>

**i) Purpose** – The Office of Legal Affairs provides legal advice to the campus regarding our obligations under Title IX, including interpretation of the laws/regulations, implementation of our policies and procedures, responses to complaints and taking steps to prevent violations.

**(h) Residence Hall Directors and Resident Assistants**

Main Office #: 843.953.5523

Location of Main Office – 40 Coming Street

Hours of Main Office – 8:30 a.m. to 5:00 p.m., Monday through Friday

**i) Purpose** – Residence Hall Directors and Resident Assistants are available to provide support to students on a variety of issues, including allegations of sexual misconduct. Resident Hall Directors and Resident Assistants can provide appropriate referrals to students.

**ii)** Each Residence Hall and House has an assigned Residence Hall Director. Go to the front desk of your assigned hall and ask for the Residence Hall Director or the Residence Hall Director On-Call.

(i) Student victims of Sexual Misconduct who are participating in a **Program or Activity that is taking place outside of Charleston**, South Carolina (including overseas programs and external internships conducted at business firms or other establishments) may contact local law enforcement authorities; the College of Charleston, Office of Victim Services (the 24-hour emergency team response number is 843-953-2273); the Program Director for the particular Program or Activity; or the Dean of Students or the Title IX Coordinator who may each be reached during work hours at **843.953.5522** or, can be reached during non-working hours by calling the College of Charleston, Department of Public Safety at **843.953.5611**.

**3.3 Off-Campus Resources Available to Students**

**(a) Charleston Police Department**

Phone Number — 911

Address — 180 Lockwood Blvd. Charleston, SC 29403

**(i)** Students can file criminal complaints with the City of Charleston Police Department for assaults that occur off campus.

**(b) Medical University of South Carolina**

MUSC SANE (Sexual Assault Nurse Practitioner) MUSC Emergency Room

Phone Number – 843.792.1414

Address — 171 Ashley Avenue Charleston, SC 29425

**(i)** Types of Assistance Provided –

- Forensically trained nurses on call for the MUSC Emergency Room 24/7 to assist and collect evidence after an acute sexual assault (within 120 hours/5 days).
- Office of Victim Services (843.953.2273) can assist with arranging a SANE exam.
- No cost for a forensic examination for sexual assault, regardless of their involvement with law enforcement, when certain conditions are met. See the State Office for Victims' Services website (<http://www.sova.sc.gov/>).

#### **(c) MUSC Institute of Psychiatry**

Phone Number — 843.792.9888 or 1.800.922.5250

Address — 67 President Street, Charleston, SC 29425

#### **(d) People Against Rape**

Phone Number — 24/7 - 843.745.0144

Address — 259 Meeting St., Charleston, SC 29401

<http://www.peopleagainstrape.org/>

##### **(i) Types of Assistance Provided –**

- 24 hour crisis hotline
- Crisis intervention
- Medical and legal appointment accompaniment
- Support and follow-up via healing process
- Support groups for victims and their families
- Individual counseling and therapy referrals

#### **(e) United States Department of Education**

Phone Number — 1.800.872.5327

#### **(f) More Information about Resources**

<http://studentaffairs.cofc.edu/sexual-misconduct-resources/>

### **4.0 WHO ACCEPTS COMPLAINTS**

**4.1 For Respondents who are Other Than Students –** When a person identifies an assailant as a faculty member or an administrator as one who has engaged in Sexual Misconduct the Complaint shall be referred in accordance with **Section 2.0 of the OPERATING PROCEDURES FOR PROCESSING INITIAL COMPLAINTS AGAINST FACULTY AND ADMINISTRATORS AND STAFF that is attached to and made a part of the College's policy** entitled: PROHIBITION OF DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT AND ABUSE

**4.2** For Respondents who are Students –When a person identifies a Student as a person who has engaged in Sexual Misconduct, the allegations may be received by the following offices:

- (a) Title IX Coordinator/Director of Equal Opportunity Programs
- (b) The Dean of Students
- (c) The Campus Police or other law enforcement authority
- (d) The Provost College officials who receive such reports shall immediately refer the matter to the Title IX Coordinator and the Dean of Students for processing and shall not disclose the allegations to anyone else without the prior consent of the Dean of Students, the Title IX Coordinator, or the General Counsel.

**4.3.** Inquiries – Inquiries concerning the application of Title IX to any circumstance may be addressed to the College’s Title IX Coordinator at:

**Director**

Kimberly Gertner  
Main Office #: 843.953.5758  
Fax #: 843.953.6421  
Email - gertnerka@cofc.edu  
Office of Equal Opportunity Programs  
College of Charleston 66 George Street Charleston, SC 29424  
Office Location - Robert Scott Small Building, Room 112, 175 Calhoun Street  
Charleston, SC 29401

OR

**The Department of Education, Office of Civil Rights**

Washington DC (Metro) Office for Civil Rights U.S. Department of Education 400  
Maryland Avenue, SW  
Washington, D.C. 20202-1475  
Main Office #: 202.453.6020  
Fax #: 202.453.6021; TDD: 877.521.2172  
Email: [OCR.DC@ed.gov](mailto:OCR.DC@ed.gov)

## **5. CONFIDENTIALITY**

### **5.1 Requests for Confidentiality**

The College recognizes that confidentiality is important. Information gathered during an investigation of alleged Sexual Misconduct will be maintained as confidential to the extent reasonably possible and permitted under law. If the Complainant requests confidentiality or asks that the Complaint not be pursued, the College will take all reasonable steps to investigate and respond to the Complaint consistent with the request for confidentiality or request not to pursue an investigation. If a Complainant insists that his or her name or other identifiable information not be disclosed to the Respondent, the College will inform the Complainant that its ability to respond may be limited. The College will also inform the

Complainant that Title IX prohibits retaliation, and that College officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. Finally, as indicated in Section 5.2, the Complainant will be advised of the circumstances under which his/her request for confidentiality or non-pursuit of a matter may be declined.

## **5.2 Reasons Why Confidentiality May Not Be Appropriate**

**(a) Confidentiality** – The College will weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the Complainant's age; whether there have been other harassment Complaints about the same individual; and the Respondent's rights to receive information about the allegations, if the information is maintained by the College as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 C.F.R. Part 99. The College will inform the Complainant if it cannot ensure confidentiality. In all cases when discrimination or harassment is found, however, the College will take steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of situations when confidentiality will not be maintained include circumstances when the College is required by law to disclose information (i.e., in response to legal process such as a subpoena or when the victim is under 18 years of age) or when disclosure is required by the College's outweighing interest to protect the rights and safety of others. If a Student is unsure of someone's duties and ability to maintain confidentiality, the Student should ask them about confidentiality before discussing a matter.

**(b) Investigations** – In circumstances when a report of Sexual Misconduct is made, but the Complainant does not wish to pursue the matter, the College reserves the right to investigate the report and take appropriate action under this Policy. The College is likely to make a decision to pursue such a matter if it determines, in the exercise of its discretion, that:

- (i) the allegations, if true, give reason to believe that the Complainant or other members of the College Community may be at continued risk of victimization and/or that the College may be put at risk of legal liability; and
- (ii) the Complainant is credible.

**(c) Results** – If an investigation reveals that discriminatory harassment has occurred, the College will take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. The College will pursue this course of action regardless of whether a student has complained, asked the school to take action, or identified the harassment as a form of discrimination.

## **5.3 Immediate Preliminary Report of Investigation**

In order to make evaluations under this Section and to decide if interim action is needed as provided for in Section 8.0, the Title IX Coordinator or the Dean of Students, or her/his designee, may conduct an immediate preliminary investigation into the alleged Sexual Misconduct. If one or more material elements of the Complaint are credible, the matter



shall processed further in accordance with this Policy, including the imposition of interim actions as may be appropriate pursuant to Section 8.0. If there is no credible basis to believe any material element of the Complaint, the Complainant shall be advised of the same and shall have the right to appeal the decision to the Executive Vice President for Student Affairs. Such an appeal shall be filed within 5 working days of notification by the investigator and the Executive Vice President shall have an additional 5 working days from the receipt of the appeal to either dismiss the matter or to remand it back to the investigator for further processing under this Policy.

## **6. FEDERAL REPORTING OBLIGATIONS**

### **6.1 Requirements**

As a condition for participating in certain Federal financial assistance programs for student loans and grants, Federal law requires that the College do a number of things to protect the safety of Students and employees. One such requirement deals with the reporting of crime statistics, and another deals with security-related notifications for Students and employees.

### **6.2 Crime Statistics**

The College collects, classifies and counts certain types of crimes occurring on or near the College campus and reports such data to the federal government each year. These statistics cover the most recent calendar year, and the 2 preceding calendar years for which data are available. The following criminal offenses, that are first reported to “Campus Security Authorities” or local police agencies, are reported to the Government: (a) murder; (b) sex offenses, forcible or nonforcible; (c) relationship violence; (d) domestic violence; (e) stalking; (f) robbery; (g) aggravated assault; (h) burglary; (i) motor vehicle theft; (j) manslaughter; (k) arson; and (l) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession (“Clery Act Crimes”). With crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, gender identity, ethnicity, or disability of the victim that are reported to Campus Security Authorities or local police agencies, such data is also collected and reported according to category of prejudice. **When reporting these statistics the College does not provide the federal government with the identity of the victims of these crimes.**

(a) Each year the College will publish an annual security report containing safety- and security-related policy statements and crime statistics and will make such report available to all current Students and employees, as well as, the public. The reports for the most recent three years can be found at:

<http://Studentaffairs.cofc.edu/annual-security/index.php>

### **6.3 Timely Warnings**

(a) Continuing Threats – To provide the College Community with information

necessary to make informed decisions about their safety, the College will issue a timely warning for any Clery Act crime that represents an ongoing threat to the safety of Students or employees. The College will issue such a notice in a manner that is timely and will aid in the prevention of similar crimes, if such crimes that are

- (i) Clery Act Crimes (see section 6.2 of this Policy);
- (ii) Reported to a Campus Security Authority; and
- (iii) Considered by the Chief of the College Police Department to represent an ongoing threat to Students and employees.

(b) Alerts and Warnings – Depending primarily on the proximity of the crime to the campus the College will issue either a “Cougar Alert” (for emergencies occurring on College property and contiguous areas), or a “Timely Warning” (for a Clery Act crime that takes place on College property). The information contained in such a notice will include all material information that would promote safety, such as the topic of the alert, a description of the perpetrator, location, time and date of the crime(s), and other information on what to do to avoid danger or to address the ongoing threat. The decision to issue a Clery Act warning is made by the Chief of Campus Police based on a threat assessment conducted by that Department. The identity of the victim will not be stated in an Alert or Notice.

(c) Exceptions– Clery Act crimes reported to a pastoral, health professional or professional counselor need not be reported to a Campus Security Authority.

## **7. INVESTIGATIVE AND OTHER PROCEDURES**

### **7.1 Right to Pursue Internal Charges during a Criminal Investigation or Prosecution**

Generally, the investigation of a Student for alleged Sexual Misconduct will not be postponed if the Complainant and/or Respondent has/have been charged with a crime arising out of an event related to the Complaint. In such a circumstance, the Office of Legal Affairs shall be notified by the Dean of Students of the criminal matter and the Dean will decide, on a case-by-case basis, whether exceptional circumstances exist to warrant delaying the investigation and/or hearing of the matter. The College will respond to and cooperate with law enforcement authorities in such investigations and encourages Students who have been victims of sexual assaults to report those matters to law enforcement authorities as soon as practicable.

### **7.2 Standards for Culpability**

A preponderance of the evidence is the standard adopted by this Policy to determine if a Student has engaged in Sexual Misconduct. A preponderance of the evidence means that credible information shows it is “more likely than not” that the Respondent violated this policy. Because the standard of evidence for the conviction of a crime (“beyond a reasonable doubt”) is different from the standard used to determine a violation of this Policy (“a preponderance of the evidence”), the outcome of a police investigations or criminal trial is not determinative of whether alleged Sexual Misconduct violates this

Policy. Therefore, conduct may constitute Sexual Misconduct under this Policy even if law enforcement authorities lack sufficient evidence of a crime and decline to prosecute.

### **7.3 Right to Pursue Internal College Action**

Regardless of whether a Complainant elects to file a criminal complaint or initiate a civil law suit, the College is entitled to pursue internal College procedures to investigate allegations of Sexual Misconduct and to receive appropriate remedial actions and remedies by the College that may be warranted under the circumstances.

### **7.4 Applicable Investigative Procedures**

In Complaints of Sexual Misconduct when the alleged wrongdoer (Respondent) is other than a Student, the matter shall be investigated and resolved in accordance with the College policy entitled: **PROHIBITION OF DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT AND ABUSE**. In Complaints when the Respondent is a Student, the matter shall be investigated and resolved in accordance with this Policy and the College's procedures for resolving violations of the STUDENT CODE OF CONDUCT.

### **7.5 Basic Requirements of All Internal Investigatory Processes and Hearings**

Throughout any College's investigation of a violation of this Policy, including at any hearing, the Complainant and the Respondent will have equal rights with respect to calling witnesses, presenting evidence, timely reviewing evidence (including the statement of the other Parties), and having an attorney or other support person in attendance at the proceedings for purposes other than addressing the Board or the Hearing Officer. Under no circumstances will one Party be permitted to directly cross examine another Party. Throughout the process both the Complainant and the Respondent are to be treated with dignity and respect and both shall be informed in writing of the outcome of a campus proceeding. The College will maintain documentation of all proceedings which may include written findings of facts, transcripts, or audio recordings. Such records shall be maintained for at least one year after all appeals have been finally decided, or the right to appeal has been exhausted. These procedures shall neither expand nor reduce a private right of action under existing laws.

### **7.6 Reporting Sexual Harassment/Abuse When the Student is the Alleged Wrongful Actor**

The College will accept Complaints of Sexual Misconduct from any member of the College Community or from any other person who believes that a violation of this Policy may have occurred on College Property, or during the conduct of a College Program or Activity regardless of the location of that Program or Activity, or on other than College Property if there is any allegation that the off-campus misconduct may result in sexual misconduct on College Property. If the Respondent was a Student at the time of the alleged Sexual Misconduct, there is no time limit to invoking the protections and processes available under this Policy. Nevertheless, Students are encouraged to report alleged Sexual

Misconduct immediately in order to maximize the College's ability to obtain evidence and conduct a prompt, thorough, impartial and reliable investigation. Once the College becomes aware of Sexual Misconduct it will take immediate steps to end the harassment, prevent its recurrence, and to address its effects.

### **7.7 Duty to Report**

Any member of the College Community who reasonably believes that s/he has experienced or witnessed any form of sexual misconduct, harassment or abuse proscribed by this Policy has a responsibility to report the situation immediately to one of the **persons listed in the Section 4.0. A member of the College Community**, including Students, who witnesses but fails to report such a situation, may be subject to the immediate consideration of disciplinary or other remedial action if the failure to report has placed a member of the College Community at risk of harm or the College at risk of legal liability. The nature and extent of the action taken, if any, will depend on the following factors: (a) the severity of the circumstances observed; (b) the position/status of the person who observed the incident; (c) the position/status of the observed victim and observed violator; and (d) the consequences of the failure to report or the failure to report in a timely manner.

### **7.8 Additional Duty in Reporting Child Abuse**

South Carolina law requires certain persons to report Child Neglect or Abuse as it affects Students and others younger than age 18, even when it occurs outside the College. Among other designated persons, South Carolina law requires that schoolteachers, counselors, healthcare clinicians, substance abuse treatment staff, childcare workers in any day care center, police or law enforcement officers, and computer technicians, who have reasonable cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by Abuse or Neglect, as defined by state law, are to immediately report it to the local Department of Social Services or other proper law enforcement agency.

A faculty or staff member who suspects or has any concern regarding Child Abuse or Neglect may report this information promptly to his/her Department Head, Director of Human Relations and Minority Affairs, the Dean of Students, the Campus Police or other law enforcement authority, the Provost, or the General Counsel. College officials who receive such reports shall consult with the Office of Legal Affairs and the College's Chief of Police who will determine the College's duty under the circumstances and, if determined appropriate, will assist in contacting the proper external authorities.

A faculty member or member of the administration who has reason to suspect abuse or neglect and fails to report it is subject to prosecution; however, the person making the report based on valid suspicion and concern is protected by law from both civil and criminal retaliation.

### **7.9 Effect on the Graduating Respondents**

When the accused Respondent is a degree candidate who is anticipated to graduate within the academic year, the Complainant shall consult with the Dean of Student's Office concerning the Respondent Student's intended date of graduation. In no event will the College allow an impending graduation to unduly delay its resolution of a Complaint under this Policy. The conferral of a degree may, therefore, be delayed, if appropriate under the circumstances, until a Sexual Misconduct charge is resolved.

### **7.10 Conditional Amnesty for Alcohol and Other Drugs**

In deference to its compelling interest to end Sexual Misconduct, the College has elected not to pursue any related alcohol and other drugs use/possession violations against a Student who claims to be a victim of Sexual Misconduct or against Students named as a Respondent, or Students who are witnesses or reporters, as may be appropriate under the circumstances.

### **7.11 Initial Meetings**

Prior to the conduct of an initial investigation as described in section 5.3, the Dean of Students or designee shall have an initial meeting with the Complainant as soon after the Complaint is filed as is practicable. The purpose of that meeting shall be to: (a) discuss this Sexual Misconduct Policy; (b) review the availability of assistance for the Complainant such as the Office of Victim Services, Counseling and Substance Abuse Services, Student Health Services and Honor Advisors; (c) discuss the need for interim interventions for the Complainant and Respondent, as provided for in section 8.0; (d) give Notice that retaliation will not be tolerated; and (e) provide a general understanding of the investigation and hearing processes and the affiliated timeline.

### **7.12 Options to Resolve the Complaint**

During the initial meeting described in Section 5.1, the Dean of Students or designee will ask the Complainant how she/he wishes to proceed, namely, by formal resolution or, in limited circumstances, by informal resolution (facilitated discussion or mediation with the Respondent). In either event the Dean will determine the name of the accused Student, and the date, location and nature of the alleged sexual misconduct and will ask the Complainant to prepare a written statement. In no event will an alleged sexual assault be appropriate for mediation.

### **7.13 Notification and Coordination with Campus Title IX Coordinator**

(a) Upon the filing of a Complaint with the Dean of Students, the Dean will notify the Title IX Coordinator and provide the Coordinator a copy of the Complaint. The Dean of Students and the Title IX Coordinator will confer in order to determine whether or not there is a reasonable basis to pursue the allegations. The Title IX Coordinator, after consultation with the Dean of Students, may conduct the immediate preliminary investigation (described in Section 5.3) and any other investigation herself/himself or may appoint one or more investigators (including the Dean of Students) to conduct such investigations (hereinafter the "Investigator"). In

cases when the Respondent is a Student, or if there is more than one Respondent, when all Respondents are Students, it is expected that the Dean of Students will be designated as the Investigator.

(b) The Title IX Coordinator shall communicate regularly with the Department of Public Safety and to provide information regarding Title IX requirements.

(c) The Title IX Coordinator, or the Investigator appointed by the Coordinator, shall review all evidence in a sexual harassment or sexual violence case brought before the College's Honor Board or Hearing Officer to determine whether the Complainant is entitled to a remedy under Title IX that was not available through the Honor Board/Officer.

## **8. ASSESSMENT FOR IMMEDIATE INTERIM ACTION**

### **8.1 Determinations**

Whenever there is a Complaint of alleged Sexual Misconduct, the Dean of Students and the Title IX Coordinator will undertake an immediate preliminary investigation (as described in Section 5.3) and, if appropriate, take interim action to support and protect the Complainant and/or the Respondent. To the extent practicable under the circumstances, such actions shall be pre-approved by the Executive Vice President for Student Affairs and the General Counsel.

### **8.2 Types of Interim Actions Available**

Interim actions include, but are not limited to:

- Orders of "no contact"
- Providing an escort to ensure that the Complainant can move safely between classes and activities
- Moving the Complainant or Respondent to a different residence hall
- Providing counseling services
- Providing medical services
- Providing academic support services, such as tutoring;
- A ban from specific buildings or areas of the campus
- Adjustments to academic schedules
- Interim suspension and ban from campus
- Any other action that the College believes is reasonable and appropriate under the circumstances
- 

A violation of the interim actions by the Complainant or the Respondent will constitute a related offense that may result in the imposition of disciplinary action.

## **9. MEDIATION**

### **9.1 Informal Resolution**

Except as provided for in Section 9.6, mediation is the preferred way to resolve most disputes between members of the College Community. In order for mediation to take place on any Complaint, however, it must be mutually acceptable to both the Respondent and the Complainant. During the mediation, the Investigator meets individually with each Party and with each collectively with both Parties, as appropriate. Understanding the sensitivity surrounding allegations of sexual misconduct, a mediation may not be appropriate in such cases (see also section 9.6 below). Either the Complainant or the Respondent may refuse mediation or, once commenced, end mediation at any time. No adverse inference is to be drawn from any such decision to accept or reject mediation. If a mediated compromise is reached between the Parties, it must be approved by the Investigator and the Executive Vice President for Student Affairs. The Executive Vice President may consult, as appropriate, with affected supervisor(s) and others and shall seek legal advice from the General Counsel to resolve or discuss legal issues.

### **9.2 Non-Disclosure**

In order to promote honest, direct communication, information disclosed during Informal Resolutions shall remain confidential, except when disclosure may be required by law or is necessary to discharge a legal or ethical responsibility of the College.

### **9.3 Mediated Agreements**

All mediated agreements shall be reduced to writing and a copy shall be given to both the Complainant and the Respondent. A copy of the agreement shall also be maintained in the Office of the Dean of Students.

### **9.4 Consequences of a Breach of the Agreement**

If there is a breach of the mediated agreement by either Parties the College may, in the exercise of its reasonable discretion, discipline the breaching Parties and/or declare the agreement null and void and of no force or effect and reinstate the Complaint.

### **9.5 Time Limitations**

If a negotiated agreement cannot be reached within 30 days from the first mediation session, the matter shall be referred for formal investigation under Section 10.0.

### **9.6 Inappropriate Circumstances for Mediation**

The College will not agree to any mediated solution to a Complaint, despite the wishes of the Parties, when it has reason to believe that:

- (a)** A sexual assault or any other form of violence has taken place;
- (b)** The Complainant and the Respondent are so diametrically adverse in positions or have such conflicting views that resolution by mediation seems unlikely;

- (c) There is an unreasonable risk of violence or intimidation by one Parties against the other;
- (d) The Respondent has been charged with a crime arising out of the event giving rise to the Complaint; or
- (e) For other good cause shown, in the best interest of the Parties, as determined in the discretion of the Investigator.

## **9.7 No Mediation or Unsuccessful Mediations**

If mediation is not feasible or appropriate under the circumstances, or if not successful within a reasonable period of time (as provided for in Section 9.5), the Investigator is to commence a formal investigation.

## **10. FORMAL INVESTIGATION**

### **10.1 Commencement**

The Investigator shall first identify all provisions of this Policy that may have been violated if the allegations made by the Complainant prove more likely true than not true. Only those allegations that would, if true, constitute a violation of this Policy should be investigated; and only evidence that tends to prove or disprove such allegations shall be considered relevant to the investigation. If the Investigator reasonably determines that even if all allegations prove true there would be no violation of this Policy, the matter shall not be investigated. In that event the Complainant shall be advised of the same and shall have the right to appeal the decision of the Investigator to the Executive Vice President for Student Affairs. Such an appeal shall be filed within 5 working days of notification by the Investigator and the Executive Vice President shall have an additional 5 working days from the receipt of the appeal to either dismiss the matter or to remand it back to the Investigator for further processing under this Policy.

### **10.2 Notice**

Except as provided in this Section 10.2, the Investigator is to notify the Respondent, in writing, that allegations have been made against him/her and the nature of the allegations. This Policy shall be cited and the Respondent shall be informed that retaliation in any form against the Complainant or an actual or potential witness is strictly prohibited. The Respondent shall also be notified that s/he will have an opportunity to address the allegations and to submit evidence on his/her own behalf. In exceptional cases, notification of the Respondent may be delayed if the Investigator determines that such notification may put the Complainant or a witness at risk or impede the investigation.

- (a) If the matter is to be heard and decided by the Honor Board or by a single Hearing Officer, the Dean of Students, or the Title IX Coordinator as the case may be, shall submit to the Honor Board or Hearing Officer the Preliminary Report of Investigation (as prepared pursuant to section 10.4) and a pre-hearing report that summarizes the allegations, the defenses asserted, and the material facts that would tend to prove or disprove the allegations. Such Preliminary Report of Investigation and pre-hearing report shall be used by the Board/Officer to prepare for the hearing and to acquaint themselves



with the relevant issues to be decided.

### **10.3 Decisional Authority**

(a) Hearing Board – For complaints of sexual misconduct, the Honor Board shall be made up of three faculty/staff who have received training on the policy and procedures regarding Complaints of Sexual Misconduct. The Honor Board shall be considered the Decisional Authority, subject to such reviews by the Executive Vice President for Student Affairs as provided for in Section 16.0.

(b) Hearing Officer – A Hearing Officer may only be used in lieu of Honor's Board if both the Complainant and the Respondent agree to the use of a Hearing Officer. Both Parties shall be informed that in the event of a Hearing Officer that Officer may also conduct the investigation as well as render the decision. For complaints that are heard by a Hearing Officer, that Officer shall be considered the Decisional Authority, subject to such reviews by the Executive Vice President for Student Affairs as provided for in Section 16.0.

(c) Authority of the Decisional Authority – The Decisional Authority may: (i) sustain all or some of the charges and determine the culpability of any Parties; (ii) impose or recommend the imposition of sanctions; (iii) find one or more of the charges not sustained by the evidence and dismiss such charges; and/or (iv) remand the matter for more investigation by the appropriate Investigator.

### **10.4 Evidence and the Role of Legal Counsel**

The following principles shall apply with respect to any investigation, whether conducted by an Investigator and regardless of who may be acting as the Decisional Authority:

(a) Fact Gathering – To the extent reasonably practicable under the circumstances, there shall be interviews of the Complainant, the Respondent and other witnesses, the examination of written statements from the Parties, the review of all relevant documents, and the consideration of any other evidence that would tend to prove or disprove the material factual allegations. Executive Vice Presidents are to take reasonable measures to assure that the Investigator and the Decisional Authority have access to witnesses, documents, and such other evidence as may be reasonably necessary under the circumstances to discover and consider relevant facts. Interviewers shall make notes of all interviews conducted as part of the investigation if not otherwise recorded in a transcript of a hearing.

(b) Legal Counsel – Witnesses, including the Complainant and the Respondent, may have legal counsel present at interviews or at a hearing, but counsel may not participate in the interview or hearing (that is, answer questions for, or ask questions on behalf of, their clients or make statements) and may be asked to leave the interview site if disruptive or causing an unreasonable delay in the conduct of the interview or hearing. Prior to any such interview with counsel in attendance, the Dean of Students shall notify the General Counsel and afford the General Counsel the opportunity to attend the interview or proceedings.

(c) No Inference – A negative inference may not be drawn by the Complainant's or

Respondent's decision not to provide a statement or give an interview. In such event, the matter will be decided without the benefit of such participation.

(d) Consequences for Interference – A member of the College Community who interferes with an investigation or hearing conducted under this Policy shall be subject to disciplinary action up to and including termination or expulsion, depending on the frequency or seriousness of the offense.

(e) Opportunity to Respond – The Respondent must be given a meaningful opportunity, at a meaningful time, to respond to the allegations in the Complaint and present relevant evidence on their behalf during the investigation.

## **11. HEARING**

### **11.1 Pre-Hearing**

The Chair of the Honor Board or Hearing Officer will schedule a pre-hearing meeting prior to the hearing date. At the meeting the Chair or Officer will review hearing procedures with the Parties, separately or jointly. The Chair or Officer will also review the Complaint of alleged Sexual Misconduct (and related misconduct, if applicable), and review the Parties' respective lists of proposed witnesses to assist them in eliminating duplicative or non-relevant statements or other information.

### **11.2 Exchange of Information**

The Parties will provide the Chair or Officer with a list of witnesses they wish the College to call, and copies of documents and a description of any other information they propose to enter into the record and present at the hearing. Unless for good cause shown, the witness lists, documents and other information must be submitted at least five business days prior to the hearing. In the absence of good cause (such as impeachment of a newly asserted allegation), as determined by the Chair or Officer in the exercise of his or her sole discretion, the Parties may not introduce witnesses, documents or other information at the hearing that were previously undisclosed.

### **11.3 Modification of the Proceedings**

The College reserves the right, acting through the Chair of the Honor Board or Hearing Officer, to add to or modify the alleged violations of this Policy and to add witnesses to the witness lists at the pre-hearing meeting and/or at the hearing in order to conform to the evidence, provided that, both the Complainant and the Respondent have an equitable opportunity at a meaningful time to respond to such additions or modifications.

### **11.4 Notification of Any Special Arrangements for Hearing**

Absent a showing of good cause, special needs regarding the hearing room set-up shall be communicated to the Chair of the Honor Board/Hearing Officer and the Dean of Students at least two working days before the scheduled hearing. After review, the Dean

will ask the Decisional Authority, as appropriate, to accommodate concerns for the personal safety, well-being, and/or apprehensions of the Complainant, Respondent, and/or other witnesses during the hearing. Among other accommodations this may include using a visual screen, or by permitting participation by telephone, videophone, Skype®, audio tape, written statement, and/or other means appropriate to the circumstances that do not violate principles of fundamental fairness for all concerned.

### **11.5 Challenges**

A Party desiring to challenge the participation of any Honor Board member for cause (such as a conflict of interest) must notify the Board Chair, in writing, within three calendar days of receipt of the Notice of Pre-Hearing, stating the specific reasons for the objection. The Chair will determine whether the challenge has merit and may make changes in the Board's composition if such a challenge is warranted under the circumstances.

### **11.6 Persons Admitted To Hearing; Role of Advisors**

Both the Respondent and the Complainant may be accompanied at any time during the Complaint resolution process by an advisor. Advisors may not be called as a witness by the Party using that advisor and may not participate in the interview or hearing as a representative of that Party (that is, answer questions for, or ask questions on behalf of, their advisee or make statements for the advisee). Advisors may be asked to leave the interview site if disruptive or causing an unreasonable delay in the conduct of the interview or hearing. An attorney may act as an advisor, subject to the limitations stated in Section 10.4(b). A member of the public shall not be admitted to the Hearing as a spectator unless: (a) all Parties first agree; or (b) the spectator is the parent or legal guardian of a Party and that Party is under 18 years of age.

### **11.7 Examination of Evidence**

The hearing will not follow a courtroom model and formal rules of evidence will not be observed. The Chair or Hearing Officer will determine the order of the witnesses and resolve any questions of procedure or relevancy arising during the hearing.

### **11.8 Time Estimates**

After a Complaint is filed, or the College elects to investigate a matter, the Investigator shall prepare a schedule that includes dates for the following, as may be applicable to the matter: (a) the Preliminary Interviews; (b) mediation; (c) pre-hearing meeting with the Decisional Authority; (d) the exchange of evidence; (e) the hearing; and (f) finalization of the final Report of Investigation. Except for good cause shown, and taking into account pending workload requirements, other assigned cases, and the complexity of the individual Complaint being investigated, the period of time from the filing of a Complaint, or a College decision to investigate a matter, to the completion of the preliminary Report of Investigation shall not exceed 60 calendar days. The Decisional Authority shall render a decision within 30 calendar days from receipt of the preliminary Report of Investigation.

## **11.9 Operating Procedures**

The Executive Vice President for Student Affairs or his/her designee shall adopt such operating procedures for the hearing as maybe appropriate, provided that, such operating procedures are not in conflict with any provision of this Policy or any other College Policy and are available to all Students.

## **11.10 Post Finding**

If the Decisional Authority determines that the Respondent Student is responsible for Sexual Misconduct, the Complainant may present the Decisional Authority with a written or verbal statement recommending sanctions and remedies, and a description of how the actions of the Respondent have impacted the Complainant's educational and personal goals. The Respondent will be provided an opportunity to respond to the Impact Statement. The Decisional Authority is not bound by these statements in determining sanctions.

## **12. REPORT OF INVESTIGATION AND DETERMINATION**

### **12.1 Issuance of a Final Report of Investigation and Determination (the "Report")**

Regardless of whether a Complaint is resolved by a Hearing Officer or by the Honor Board, a Final Report of Investigation shall be completed. The content of the Report shall be principally confined to the matters listed in subsections (a) through (f) of this Section 12.1. No legal conclusions are to be presented in the Report as to the applicability of any law, or whether any law was violated; except that, the Report must state that retaliation is a violation of both law and College Policy. The Final Report shall contain at least the following five sections:

- (a) The allegations;
- (b) The applicable policy or policies involved;
- (c) The method of investigation, including a list of witness interviewed, documents reviewed and other evidence considered;
- (d) Findings of fact and factual conclusions;
- (e) A determination as to whether the Policy has been violated, and if so, the sanctions to be imposed; and
- (f) Proposed remedies for the Complainant, if appropriate.

### **12.2 The Record**

The Final Report and all its exhibits and referenced materials and the electronic transcript of the hearing (if such a hearing was held) shall be the official record of the investigation.

### **12.3 Maintenance of the Record**

After the investigation has been completed and the determination of the Decisional Authority has been rendered, the official record of the investigation, the preliminary Report of Investigation and the determination of the Decisional Authority shall be maintained in the Office of the Dean of Students. These materials shall be available to: (a) the Complainant and the Respondent, with such redactions as may be required under law; (b) the investigator, the Decisional Authority, and the Office of Legal Affairs; and (c) such third Parties who may have a legal right to access such materials, in whole or in part, as determined by the General Counsel.

### **13. SANCTIONS AND EFFECTIVE DATE**

#### **13.1 Types of Sanctions and Guidelines**

The Decisional Authority is required to consider suspending or expelling any Student found culpable for Sexual Misconduct; however, the Decisional Authority may impose any other sanction that it finds to be fair and proportionate to the violation(s) and the attending circumstances. Other sanctions may include removal from campus housing, deferred suspension, mandatory referral to counseling, and/or disciplinary service. Matters that may be considered when deciding on the appropriate sanctions, include

- (a) The record of past violations of any College Policy, the Honor Code, or government rules, regulations or laws, as well as the nature and severity of such past violations;
- (b) The acknowledgement of wrongdoing by and the commitment of the Respondent to conform his/her conduct to acceptable standards in the future;
- (c) Whether alcohol or controlled substances were involved in the incident;
- (d) Whether violence was involved in the incident; and
- (e) If the Respondent Student poses a continuing risk to the Complainant and/or the College Community

#### **13.2 Actions by the Honor Board**

Determination and Sanction decisions made by the Honor Board must be by majority vote of all members of the Board, except that a sanction of expulsion shall be by a unanimous vote of the entire Board. In the event that the Board cannot agree on a sanction after a finding of culpability, the sanction decision shall be made by the Dean of Students.

#### **13.3 Timing of Sanctions**

Sanctions imposed by a Decisional Authority are not effective until any pending appeal of the finding and/or sanctions is finally resolved by the Executive Vice President for Student Affairs. However, if advisable to protect the safety of the Complainant or the College Community, the Decisional Authority may recommend to the Executive Vice President for Student Affairs that any suspension (or suspension preliminary to an expulsion) be effective immediately pending the exhaustion of appeal rights or a decision on appeal.

## **14. REMEDIES FOR THE COMPLAINANT**

**14.1** Depending on the findings of the Decisional Authority, remedies for the Complainant may include, but are not limited to, one or more of the following:

- (a)** Providing an escort to ensure that the Complainant can move safely between classes and activities;
- (b)** Ensuring that the Complainant and the Respondent do not attend the same classes;
- (c)** Moving the Complainant or Respondent to a different residence hall;
- (d)** Providing counseling services;
- (e)** Providing medical services;
- (f)** Providing academic support services, such as tutoring;
- (g)** Arranging for the Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
- (h)** Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the Complainant being disciplined.

## **15. NOTIFICATION OF OUTCOME**

### **15.1 Timing**

Within two working days of a decision by a Decisional Authority on a Complaint, the Office of the Dean of Students will issue two documents to both the Respondent and the Complainant: a determination letter and a memorandum opinion letter. The determination letter will contain the following information: the name of the Respondent Student; whether the Respondent was found in violation or not in violation for specific violations of the Sexual Misconduct Policy and the sanctions, if any, imposed. The memorandum opinion letter will contain all of the information in the determination letter in addition to a summary of the Decisional Authority's rationale for its decision, as well as, a notice of appeal rights. The determination letter, the memorandum opinion letter and the record of proceedings are education records within the meaning of the Family Education Rights and Privacy Act (20 U.S.C. §1232g, 34 C.F.R. Part 99) and may not be disclosed except when disclosure is authorized or required by law or College Policy.

## **16. APPEALS**

### **16.1 Who May File**

The Complainant and the Respondent may each file an appeal. Appeals are to contain the information described in Section 16.2 and shall be filed with the Executive Vice President for Student Affairs (66 George Street, Stern Center, College of Charleston, Charleston, SC 29424 ), with a copy to the Dean of Students (66 George Street, Stern Center, College of Charleston, Charleston, SC 29424 ). The Dean will then notify and provide a

copy of the appeal to the other Party to the proceeding. The non-appealing Party shall have three days from receipt of the appeal to state their position on the appeal with the Executive Vice President for Student Affairs with a copy to the Dean of Students.

## **16.2 Grounds for Appeal**

A decision reached or a sanction imposed by a Decisional Authority may be appealed within five (5) working days of the transmittal of the decision to the Party who is appealing. Such appeals shall be in writing and shall cite the name of the case; the grounds for the appeal and the relief requested. The only grounds that will justify changing or overruling a decision by the official or Honor Board are the following:

- (a)** There was no reasonable basis in the record for the decision rendered or the sanction imposed;
- (b)** There was a substantive mistake of procedure that likely influenced the outcome of the proceeding; or
- (c)** New evidence, sufficient to alter a decision was not brought out in the original hearing, because such evidence was either unavailable or unknown at that time after diligent inquiry by the person appealing.

\*The Executive Vice President will reach a determination on the appeal within ten (10) working days from the receipt of the appeal. At this stage in the process, the Executive Vice President for Student Affairs' response time may be modified if circumstances dictate. The decision of the Executive Vice President is final.

## **17. RETALIATION**

The College prohibits adverse treatment of employees or Students for exercising their rights under this Policy. Any good faith report of discrimination and/or harassment, experienced or observed, should be made without fear of retaliation by the College. RETALIATION AGAINST ANY EMPLOYEE OR STUDENT FOR FILING A COMPLAINT OR PARTICIPATING IN AN INVESTIGATION IN GOOD FAITH IS STRICTLY PROHIBITED BY LAW AND THIS POLICY. VIOLATORS WILL BE SUBJECT TO THE IMMEDIATE CONSIDERATION OF DISCIPLINARY AND/OR REMEDIAL ACTION THAT COULD INCLUDE SEPARATION FROM THE COLLEGE.

17. 1 Intentionally making a false report or providing false or materially misleading information during an investigation also constitute grounds for discipline and/or remedial action.

## **18. TRAINING AND EDUCATION**

### **18.1 Training**

It is the responsibility of the Executive Vice President for Student Affairs to ensure that all persons within the Division of Student Affairs are appropriately and periodically trained on this Policy.

## **18.2 Development of Materials and Implementation of Policy**

The Title IX Coordinator, in cooperation with the Dean of Students, shall develop materials on sexual harassment and violence that shall be distributed to Students during orientation and upon receipt of Complaints, as well as widely posted throughout College buildings and residence halls. This material shall include:

- (a)** What constitutes sexual harassment or violence;
- (b)** What to do if a Student has been the victim of sexual harassment or violence;
- (c)** Contact information for counseling and victim services on and off school grounds;
- (d)** How to file a complaint with the College;
- (e)** How to contact the school's Title IX Coordinator or the Dean of Students; and
- (f)** What the College will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken.

## **18.3 Committee on Sexual Misconduct**

The Executive Vice President for Student Affairs shall establish a Committee on Sexual Misconduct. Members of the Committee shall be the Dean of Students, the Title IX Coordinator, the Director of the Office of Equal Opportunity Programs, and such other faculty, staff and Students as the Executive Vice President shall decide. The Committee shall identify strategies for ensuring that Students:

- (a)** Know the College's prohibition against sex discrimination, including sexual harassment and violence;
- (b)** Recognize sex discrimination, sexual harassment, and sexual violence when they occur;
- (c)** Understand how and to whom to report any incidents, including any incident that may take place during a Program or Activity conducted overseas or on other than College Property;
- (d)** Know the connection between alcohol and drug abuse and sexual harassment or violence; and
- (e)** Feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence.

The Committee shall also consider other steps that clearly communicate that the College does not tolerate sexual harassment and violence and will respond to any incidents and to any Student who reports such incidents. In addition, the Committee may recommend such changes to this Policy as it believes appropriate to ensure that the procedures contained herein for resolving Complaints are prompt and equitable.

## **19. RESPONSIBILITY FOR POLICY MAINTENANCE**

The Title IX Coordinator, upon consultation with the Dean of Students and the General



Counsel, shall be responsible for the periodic review and maintenance of this Policy. Such reviews shall take place no less frequently than once during each three year period and shall be provided to the President's Executive Team within seven calendar days of completion.

**20. AMENDMENTS**

This Policy and Procedure may be amended at any time in accordance with the Colleges Campus Wide Policy Making Procedures.

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**Departments/Offices Affected by the Policy**

All College of Charleston Departments and Offices

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**Procedures Related to the Policy**

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**Related Policies, Documents or Forms**

<http://studentaffairs.cofc.edu/honor-system/studenthandbook/2015-2016-student-sexual-misconduct-policy.pdf>

Appendix 1: Scenarios of Sexual Misconduct

Appendix 2: Prohibition against discrimination; exceptions.

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Issue Date:6/29/2016  
Date of Policy Revision:6/29/2016

Next Review Date:10/29/2020

**POLICY APPROVAL**

(For use by the Office of the Board of Trustees or the Office of the President)

Policy Number: 12.4.6

President or  
Chairman, Board of Trustees

  
Pres.

Date: 6-29-16