

HUDSON COUNTY COMMUNITY COLLEGE SEXUAL MISCONDUCT POLICY AND PROCEDURES

Hudson County Community College (HCCC) seeks to foster a safe and healthy environment built on mutual respect and trust. At the foundation of the College's mission is the recognition of the equal and inviolable dignity and worth of every person. Sexual Misconduct of any kind is a serious violation of these principles and will not be tolerated in any form.

Sexual Misconduct includes Sexual Exploitation, Sex-Based Harassment, Sexual Assault, Stalking, and Relationship Violence of a sexual nature. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex. Sexual Harassment, including sexual violence, is a form of sex discrimination.

Any member of the College community who encourages, aids, assists or participates in any act of Sexual Misconduct against another is in violation of the College disciplinary policies and Title IX.

Violence that is not of a sexual nature is also incompatible with the College's mission and a violation of College policies. Policies and procedures governing incidents of violence that are not of a sexual nature are covered separately.

REPORTING SEXUAL MISCONDUCT

Any member of the College community who encourages, aids, assists or participates in any act of Sex Discrimination or Sexual Misconduct against another is in violation of the College's conduct policies. All members of the College community and visitors are required to report incidents of Sexual Misconduct to the appropriate Title IX Coordinator or Deputy Coordinator.

Every member of the faculty, administration and staff is obligated by law under Title IX to immediately report to the Title IX Coordinator or the appropriate Deputy Coordinator incidents of or perceived incidents of Sexual Misconduct involving any member of the campus community or third party upon learning of the incident. Even if the alleged victim requests confidentiality of the incident, the employee has a legal and moral obligation to report.

Title IX Coordinators will make every effort to maintain the confidentiality of all parties involved during investigations into alleged Sexual Misconduct. There may be some incidences when confidentiality may not be possible if the safety and security of the accuser or other members of the College community are at risk.

All incidents or perceived incidents of Sexual Misconduct where the accused is an Administrative, Faculty or Staff employee or third party, are to be reported to the College's Title IX Coordinator:

Vivien Ray
Assistant Vice President for Employee Relations
70 Sip Avenue
Jersey City NJ 07306
201-360-4073

All incidents or perceived incidents of Sexual Misconduct where the accused is a student at the Jersey City campus are to be reported to the Deputy Title IX Coordinator for Students:

Dr. David Clark
Associate Dean of Student Affairs
70 Sip Avenue
Jersey City NJ 07306
201-360-4189

All incidents or perceived incidents of Sexual Misconduct where the accused is a student at the Union City campus are to be reported to the Deputy Title IX Coordinator for Students:

Yeurys Pujols
Executive Director, North Hudson Campus
4800 Kennedy Boulevard
Union City, NJ
201-360-4628

In the event that the incident, policy, or procedure about which a student, employee, faculty member or third party seeks to file a report or complaint creates the appearance of a conflict of interest with any one of the members of the Title IX compliance team, complainants may contact any other member of the team, including the Title IX Coordinator or any Deputy Title IX Coordinator, directly.

HCCC is firmly committed to providing immediate care and support to all accusers. The College will take action to address any and all Sexual Misconduct, prevent its recurrence, and address its effects. In accordance with the Federal Campus Sexual Assault Victims' Bill of Rights, the College will ensure that:

- Survivors will be notified of their options to notify law enforcement.
- The accuser and accused will have the same opportunity to have an advisor (e.g., union representative) present during a hearing or other disciplinary proceeding.
- Both the accused and the accuser will be notified of the outcome of a disciplinary proceeding.
- Survivors will be notified of counseling services.
- Survivors will be notified of options for changing academic arrangements.

HCCC will provide counseling to accusers who seek criminal prosecution under New Jersey State Penal Law. Any student charged with such an offense may be prosecuted under New Jersey State criminal statutes. Any student charged with such an offense may be subject to action under the HCCC's Student Conduct process which acts independently of any legal proceedings.

Any faculty, administrative, staff employee or third party charged with such an offense may be prosecuted under New Jersey State criminal statutes. Any faculty, administrative, or staff employee charged with such an offense will be subject to the rules and procedures outlined in the Sexual Misconduct Policy and/or provisions of the Employee Handbook or Faculty Handbook, irrespective of collective bargaining agreements, which apply independently of any legal proceedings.

The College is required to report instances of alleged Sexual Misconduct to criminal authorities without the express consent of the victim, and where a legal obligation mandates such reporting (e.g., if there is suspected assault and/or abuse or neglect of a minor).

Taking into account the wishes of the accuser, the College will pursue disciplinary action in cases of Sexual Misconduct. Sanctions imposed on students for violations of the College's Sexual Misconduct Policy may include, but are not limited to, suspension or expulsion from the College. Sanctions imposed on faculty, administrative or staff employees for violations of the College's Sexual Misconduct Policy include, but are not limited to, suspension or dismissal from the College. The College's disciplinary processes act independently of any legal proceedings and may include adjudication as described in the respective collective bargaining agreement if appropriate.

DEFINITIONS:

Sexual Harassment - Is unwelcome behavior that is sexual, sex-based, and/or gender-based, verbal, written, online, with or without physical contact. Sexual Harassment includes speech or behavior directed at another that is sexual in nature, unwanted, and creates a hostile environment for the student or employee. Sexual Harassment includes unwelcome conduct of a sexual nature, requests for sexual favors, and other gender-based verbal or physical conduct that is severe, persistent or pervasive enough to unreasonably interfere with an individual's educational experience or working conditions. Sexual Harassment also occurs when submission to or rejection of such conduct denies or limits someone's ability to participate in or benefit from any College educational program or activity; or employment; or by creating an intimidating, hostile or offensive environment for another person.

Gender-based Harassment – Unwanted conduct of a nonsexual nature based on someone's actual or perceived sex, including behavior based on gender identify, gender expression, and gender nonconforming behavior that creates a hostile environment for the student or employee.

Quid Pro Quo Sexual Harassment or Request for Sexual Favors – Unwanted conduct of a sexual nature in which submission to such conduct is made either explicitly or implicitly (or a factor affecting) a term or condition of an individual's education, living environment, employment, or participation in a school activity or program.

Sexual Harassment-Physical or Sexual Battery – The touching of another without their consent, which creates a hostile environment for the student or employee. This could also be defined as any other touching, i.e., massaging, stroking hair, caressing cheek, kissing, etc.

Non-Consensual Sexual Contact or Sexual Assault – The touching of another’s intimate body parts without their consent or when the person was incapable of giving consent due to physical or mental incapacitation or age.

Non-Consensual Sexual Intercourse or Penetration or Rape – The insertion of any object (a penis, a gun, a hairbrush, finger, bottle, etc.) into the vagina or anus of another without their consent; or inserting a penis into the mouth of another without their consent; orally penetrating the vagina of another without their consent (or when the person was incapable of giving consent due to physical or mental incapacitation or age).

Stalking/Harassment-General – This is usually defined by an institution’s sexual misconduct policy as a course of conduct that places a person in fear for their safety or the safety of another. Any pattern of conduct that has the purpose or effect of producing fear and/or creating an intimidating, hostile or offensive environment. A “pattern of conduct” is defined as two or more times and constitutes a repeated attempt to initiate unwanted, inappropriate and/or threatening interactions with a particular person or group. Examples of stalking behavior include, but are not limited to: unwelcome communication that can be face-to-face, phone, text, email, voice messages, written messages, gifts, etc.; pursuing and/or following another person or group; surveillance; trespassing; gaining unauthorized access to personal, medical, financial or any other identifying pieces of information without explicit permission; and accessing email, phone or other forms of personal communication in order to follow or monitor another’s activity.

Cyberstalking is a non-physical form of stalking and is a violation of this policy. Therefore, using electronic media such as the internet, social networking sites, cell phones or similar devices or mediums used to pursue, track, harass, monitor, or make unwanted contact with another person is a violation of the Sexual Misconduct Policy.

Domestic Violence/Dating Violence – This is usually defined by an institution’s sexual misconduct policy as threats or acts of sexual or physical abuse between people who were or are married, cohabitating as intimate partners, have a child in common, or are otherwise members of the family. Relationship abuse is sometimes referred to as Intimate-Partner Violence, Domestic Violence or Dating Violence. Relationship abuse refers to coercive behavior that serves to exercise control and power in an intimate relationship. The coercive and abusive behavior can be physical, sexual, psychological, verbal and/or emotional. Relationship abuse can occur between current or former intimate partners who have dated, lived together, currently reside together on or off campus, or who otherwise are connected through a past or existing relationship. It can occur in opposite-sex and same-sex relationships. Relationship abuse can be a single event or a pattern of abuse.

Sexual Exploitation - This is usually defined by an institution's sexual misconduct policy as a catch-all category and includes acts like unlawful filming, filming that was consensual but is now being distributed without the consent of one or both parties (revenge porn); knowingly transmitting a sexually transmitted infection; allowing others to have sex with an incapacitated person, etc.

Retaliatory Harassment – This is usually defined by an institution's sexual misconduct policy as intimidation or harassment (general-non-sexual) that is used to dissuade a complainant from continuing to cooperate with an investigation up to a complaint of sexual misconduct. It includes any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation.

Hostile Environment - A "hostile environment" exists when sex-based harassment is sufficiently serious, persistent or pervasive and objectively offensive; including behavior that is physically threatening, humiliating and has an effect on the reporting party's mental or emotional state as to deny, interfere or limit the person's ability to participate in or benefit from the College's educational programs, employment opportunities or activities. A hostile environment can be created by anyone involved in a College's program or activity (e.g., administrator, faculty members, students, and campus visitors).

Consent - With all cases of a sexual nature, consent is granted only when a person freely, actively, knowingly and voluntarily agrees at the time to participate in a particular sexual act with another person. Consent exists when mutually understandable words and/or actions demonstrate a willingness to participate in a mutually agreed upon activity at every stage of that sexual activity. Consent can be verbally or non-verbally withdrawn by either party at any stage. Consent cannot be assumed from partner silence, manner of dress, or be based on a previous or ongoing sexual relationship. Consent cannot be obtained by use of physical force, compelling threats, intimidating behavior, or coercion. Consent cannot be given by someone known to be, or should be known to be mentally or physically incapacitated or under the age of consent.

Incapacity - A person is considered incapable of giving consent if he or she is:

- Under the age of consent, which is 16 in New Jersey state
- Asleep, unconscious, and/or losing and regaining consciousness
- Under threat of physical force or coercion, intimidation, or duress
- Mentally or physically incapacitated, for example by medication, alcohol and/or other drugs.
- Evidence of physical or mental incapacity will be determined by assessing context clues such as:
 - Lack of protest does not imply consent. Under no circumstance does a current or previous dating relationship constitute consent.

INVESTIGATIVE AND DISCIPLINARY PROCEDURES

INITIAL MEETING

Alleged violations of the College's Sexual Misconduct Policy are to be reported to one of the Title IX Coordinators. These individuals will provide an understanding of this policy and identify forms of support or immediate interventions available to the accuser, including referrals to appropriate law enforcement agencies, referrals for medical treatment, the College's Counseling Center and other on and off campus resources. A student, faculty member or employee who reports to the College that they have been a victim of one of the aforementioned crimes shall be provided with a written explanation of their rights or options.

When possible, the initial meeting may include a discussion of any accommodations that may be appropriate for the accuser's academic schedule, and/or College employment arrangements. If such a discussion is not possible or appropriate during the initial meeting, it will follow as soon thereafter as is possible and appropriate. Available accommodations will be provided to the victim regardless of whether he or she chooses to report the crime to campus police or local law enforcement. Please note, that the College is required by New Jersey State law to report alleged incidents of sexual assault to the appropriate law enforcement agency.

At the initial meeting or as soon thereafter as is possible and appropriate, the accuser will be asked to decide how he/she wants to proceed. The options include pursuing the complaint within the College and/or with local law enforcement or requesting the complaint remain confidential. The appropriate adjudication/grievance process will be implemented, as applicable.

INTERIM MEASURES

In all cases of alleged Sexual Misconduct, regardless of how the accuser wishes to proceed, HCCC will undertake a prompt, fair, and impartial investigation conducted by officials who receive annual training on issues related to sexual misconduct. At the same time, HCCC will take immediate and effective action to support and protect the accuser pending the final outcome of the investigation and hearing, taking into account the desire of the accuser to maintain confidentiality, as applicable. Accordingly, HCCC may impose a no-contact order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing. Protection will be accorded the accused party as well.

The College also may take any further protective action if deemed appropriate concerning the interaction of the parties including providing escorts for the accuser and the accused to and from HCCC locations, directing appropriate College officials to alter the students' academic schedules, provide a Leave of Absence, and/or alter College employment arrangements.

Title IX requires that when taking such steps to separate the accuser and the accused, HCCC should minimize the burden on the accuser and thus should not, as a matter of course, remove the accuser from his/her classes, or employment while allowing the accused to remain. HCCC will consider how such changes will impact the accused.

UPDATED AUGUST 1, 2019

Violation(s) of HCCC's directives regarding the protective actions may lead to additional disciplinary proceedings as outlined in the Student Handbook for students, the Employee Manual for all administrative and staff employees, the Faculty Handbook for faculty and, if applicable, the collective bargaining agreement.

ACCUSER REQUESTS CONFIDENTIALITY

If the accuser requests confidentiality, under Title IX, HCCC is still required to investigate and take reasonable action in response to the accuser's request. The accuser should be informed that in such situations that HCCC's ability to take action is likely to be limited. Alleged sexual assault incidences must be reported to the appropriate law enforcement agency whether or not the accuser participates in an investigation.

In such cases, Title IX requires the College to evaluate the accuser's request(s) that the complaint not be adjudicated or remain confidential due to the HCCC's legal and moral obligation to provide a reasonably safe and non-discriminatory environment for all students, faculty, administrative and staff employees. In order to make such an evaluation, HCCC may conduct a preliminary investigation into the alleged Sexual Misconduct and will weigh the accuser's request(s) for confidentiality against the following factors: the seriousness of the alleged Sexual Misconduct, whether there have been other complaints of Sexual Misconduct against the same individual, and the accused's rights to receive information about the allegations if the accused is a student and HCCC maintains such information as an educational record under the Family Education Rights and Privacy Act ([FERPA](#)). An accuser's collective bargaining unit will not be consulted if the accuser requests confidentiality without the accuser's express permission.

The College will inform the accuser if HCCC cannot ensure confidentiality. Even if the College cannot take disciplinary action against the accused because the accuser insists on confidentiality or that the complaint not be adjudicated, Title IX requires the College to take prompt and effective action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. The College reserves the authority to issue a no-contact order and other measures as indicated in this policy.

The Title IX Coordinator, charged with coordinating investigative and disciplinary procedures, will disclose confidential information regarding instances of sexual misconduct only on a need-to-know basis. Notwithstanding the HCCC's respect for the accuser's confidentiality, the College will disclose information relating to instances of Sexual Misconduct to appropriate legal authorities where it has a legal obligation to do so.

ACCUSER REQUESTS INFORMAL RESOLUTION

An accuser who wishes to file an official complaint within the College, but who does not wish to pursue the formal student or faculty, administrative or staff employee conduct process, may request a less formal proceeding, known as Informal Resolution. Informal Resolution is an adjudicative process; it is not mediation.

Informal Resolution provides an opportunity for the accuser to confront the accused in the presence of and facilitated by a Title IX Coordinator, and to communicate his or her feelings and perceptions regarding the incident, the impact of the incident and his or her wishes and expectations regarding protection in the future. The accused will have an opportunity to respond.

Both the accuser and the accused may each choose an advisor to accompany them throughout the Informal Resolution process. The advisor may advise the accuser or accused during the Informal Resolution. However, in accordance with applicable Title IX, Clery and VAWA provisions, the advisor may not address the Title Coordinator during the course of the proceedings, question witnesses or participate directly in the Informal Resolution proceedings. When a student is the accuser, the Deputy Coordinator for Students may elect to be assisted by a member of the Sexual Misconduct Hearing Board or a member of the Dean of Student Affairs staff.

Informal Resolution cannot result in the formal sanctions of suspension or expulsion from the College or the termination of employment of the accused. Informal Resolution may result in imposing protective actions agreed upon by the parties. Without such agreement, the Title IX Coordinator may impose protective actions based on information derived from the proceedings, taken together with any other relevant information known to the College at the time of the Informal Resolution. These procedures are in accordance with applicable Title IX, Clery and VAWA provisions effective July 1, 2015.

The accuser may, at any time prior to the conclusion of the Informal Resolution, elect to end such proceedings and initiate the formal HCCC conduct process instead. In such cases, statements or disclosures made by the parties in the course of the Informal Resolution may be used as evidence in the formal HCCC conduct process. However, the Title IX Coordinator may consider such statements and impose protective actions as deemed necessary until all formal College conduct procedures are completed including the Appeals Process.

In order to promote honest and direct communication, information disclosed during Informal Resolution will remain confidential while the Informal Resolution is pending, except where disclosure may be required by law or authorized in connection with duties on behalf of HCCC. The investigation and Informal Resolution should conclude within sixty (60) days.

ACCUSER REQUESTS COLLEGE ADJUDICATION

If the accuser decides to proceed with the College adjudication, the College will proceed with a full investigation.

ACCUSED –AS ADMINISTRATIVE, FACULTY OR STAFF EMPLOYEE IN COLLEGE ADJUDICATION

In cases where the accused is an administrative, or staff employee, the Sexual Misconduct Policy, the Employee Handbook, Faculty Handbook and if applicable, collective bargaining unit, shall govern how the case is investigated and adjudicated. Following the investigation and hearing (if applicable), the Title IX Coordinator will issue a document to the accused and the accuser indicating the results of the proceeding. Results will include: a finding of *in violation* or *not in*

violation of Sexual Misconduct for the accused, the sanctions imposed, if any, and an explanation of the rationale for its determination.

ACCUSED – AS STUDENT IN COLLEGE ADJUDICATION

In cases where the accused is a student, the Sexual Misconduct Policy and the Student Handbook shall govern how the case is investigated and adjudicated. Following the investigation and hearing (if applicable), the Vice President of Student Affairs and Enrollment (if the accused is a Jersey City campus student) or the Executive Director for the North Hudson Campus (if the accused is a North Hudson campus student) will issue a document to the accused and the accuser indicating the results of the proceeding. Results will include: a finding of *in violation* or *not in violation* of Sexual Misconduct for the accused, the sanctions imposed, if any, and an explanation of the rationale for its determination.

RETALIATION

HCCC strictly prohibits retaliation against any person who in good faith brings forth a Sexual Misconduct Policy violation in addition to retaliation against any person because of his or her good faith involvement in an investigation or hearing as part of the complaint process. Encouraging others to retaliate also violates this policy.

Retaliation is any materially adverse action, or threat thereof, against an individual because of the individual's good faith report or complaint of a potential policy violation or his/her good faith participation in an investigation or hearing. Retaliatory acts may include, but are not limited to: adverse changes in employment status or opportunities; adverse academic action; adverse changes to academic, educational and extra-curricular opportunities; harassment; intimidation; acts or comments intended to embarrass the individual; and seeking out or attempting to discover the parties and witnesses involved in a report or complaint process for the purpose of influencing their participation or testimony or taking adverse action against them.

Retaliatory conduct by community members and third-parties is prohibited regardless of whether such conduct occurs on or off campus, in person, or through social media, e-mail, or other form of communication. Retaliatory conduct may lead to additional disciplinary proceedings as outlined in the Student, Faculty and Employee Handbooks and applicable collective bargaining agreements.

Anyone who feels they have been retaliated against should report the retaliation to the Title IX Coordinator.

SEXUAL MISCONDUCT AND RELATIONSHIP ABUSE EDUCATION

HCCC provides Sexual Misconduct and Relationship Abuse primary prevention programs, ongoing prevention and awareness campaigns, and risk-reduction programs to the campus community, and educates about relevant resources.

Through annual training, the College encourages students, faculty, administrative and staff employees to learn about sexual misconduct. The Title IX Coordinator and the Deputy Title IX Coordinators are valuable resources for students, faculty, administrative and staff employees who have experienced Sexual Violence or who are interested in learning more about how Sexual Violence affects their campus and the society in which they live.

BYSTANDER INTERVENTION INFORMATION

If someone suspects that another individual may be in a high risk situation to become a victim of any form of Sexual Misconduct, it is important to decide as a bystander whether there is a safe and reasonable way to intervene effectively.

There is no legal obligation in New Jersey State for a bystander of a potentially violent situation or crime to intervene or act. Bystanders are encouraged to act if there are safe and reasonable ways to intervene and/or discourage people from being uncivil towards each other in an effort to foster a safer environment for everyone.

BYSTANDER TIPS:

- Remind others that “consent” is the difference between sex and sexual assault and that someone can be too intoxicated, or otherwise physically or mentally incapacitated to consent.
- Take the initiative to help others who are not thinking clearly from becoming targets of violence (or) take steps to stop a friend who chooses to use violence.
- Prevent an intoxicated person from going to a private location with a stranger or an acquaintance.
- Do not leave anyone, whether a friend of an acquaintance, alone at a party or a bar.
- Ask anyone, whether an acquaintance or stranger, who is attempting to engage in Sexual Misconduct to stop and leave the location.
- Recognize dating or domestic partners who cause fear or physical pain to their partner and voice your concerns where appropriate; one suggestion is referring the student to the Counseling Center and a faculty, administrative or staff employee to Human Resources.
- Contact Campus Security, Human Resources, Dean of Student Affairs, Executive Director of the North Hudson Campus or another person of authority who can assist.

For information or questions about Bystander Intervention contact:

Office of Human Resources - 201-360-4073

Vice President of Student Affairs and Enrollment - 201-360-4111

Associate Dean for Student Affairs – 201-360-4189

Executive Director North Hudson Campus - 201-360-4628

UPDATED AUGUST 1, 2019

Office of Safety and Security (Jersey City) – 210-360-4080
Office of Safety and Security (Union City) – 210-360-4777
Counseling Center – 201-360-4155 or 201-360-4229