



# Sexual Harassment & Interpersonal Violence Resolution Policy

John Carroll University

March 25, 2022



<b>Policy:</b> Interim Sexual Harassment & Interpersonal Violence Policy	<b>Policy No.:</b> Pending
<b>Policy Owner(s):</b> Division of Diversity, Equity & Inclusion	<b>Original Date:</b> January 16, 2008
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## I. Title IX Notice of Non-Discrimination

Title IX of the Education Amendments of 1972 protects individuals from discrimination based on sex/gender in any educational program or activity operated by recipients of federal financial assistance. Sexual harassment, which includes particular acts of sexual and interpersonal violence, is a form of sex discrimination prohibited by Title IX, as well as Title VII of the Civil Rights Act of 1964, as amended. John Carroll University does not discriminate on the basis of sex in employment, admission, or in educational programs and activities that it operates.

John Carroll University has appointed a Title IX Coordinator to oversee the University’s Title IX compliance measures, which include: publishing notices of the University’s policies and grievance procedures; offering supportive measures; facilitating resolution of Formal Complaints; developing training and education programs/materials for faculty, staff and students; overseeing retention of records and monitoring trends and effectiveness of the University’s Title IX educational efforts. Questions regarding the University’s compliance with Title IX should be referred to:

Emily Sherwood, Director of Community Standards and Interim Title IX Coordinator  
1 John Carroll Blvd, LSC 207b  
University Heights, OH 44118  
216-397-4402  
[TitleIX@jcu.edu](mailto:TitleIX@jcu.edu) or  
[esherwood@jcu.edu](mailto:esherwood@jcu.edu)

Additional information and questions regarding Title IX also may be referred to the U.S. Department of Education’s Office for Civil Rights by contacting:

U.S. Department of Education  
Office for Civil Rights  
Assistant Secretary for Civil Rights  
Lyndon Baines Johnson (LBJ) Department of Education Building  
400 Maryland Ave, SW  
Washington, DC 20202  
1-800-421-3481  
[OCR@ed.gov](mailto:OCR@ed.gov)

## **II. Purpose**

John Carroll University seeks to provide a community for faculty, staff and students that promotes personal growth and development in a safe and welcoming environment. The University is committed to the belief that respect for the rights and dignity of all people must be protected. This goal is an integral part of all aspects of University life, rooted in our Jesuit Catholic identity, and is essential to our academic community. The purpose of this Policy is to help ensure that John Carroll University provides an environment free from Sexual Harassment and Interpersonal Violence for all members of the community. The policy defines the various forms of Sexual Harassment and Interpersonal Violence, which are subject to resolution using the University's Sexual Harassment and Interpersonal Violence Resolution Process, and/or the Grievance Process for Title IX Sexual Harassment, as appropriate.

## **III. Scope**

- A. This Policy applies to all: enrolled students (whether full-time or part-time); employees (including all faculty and staff members); vendors; contractors; visitors; third-party field experience partners; volunteers; and guests, whether the behavior(s) took place on University property, online, or at off-campus University-related programs, activities or events, including, but not limited to, study abroad programs, internships and immersion experiences.
  
- A. This Policy also applies to any off-campus conduct and to actions online that affect a substantial University interest. The Title IX Coordinator—in consultation with other University offices as appropriate—will determine on a case-by-case basis whether conduct or actions affect a substantial University interest, based on pertinent factors including but not limited to:
  - 1. Whether the action constitutes a criminal offense as defined by federal, state, or local law, regardless of whether the action takes place on the University's property or elsewhere;
  - 2. Whether any person involved may present a danger or threat to the health or safety of others;
  - 3. Whether the conduct or actions involves a situation that significantly impinges upon the rights, property or learning opportunities of a University community member or members, or significantly breaches the peace and/or causes social disorder;
  - 4. Whether conduct or actions that occur off University property cause, or would cause, a substantial on-campus disruption;
  - 5. Whether the situation is detrimental to the educational interests or mission of the University;
  - 6. Whether online postings or other electronic communication (including cyber-bullying, cyber-stalking, cyber-harassment, etc., including those occurring outside of the University's control - e.g., not with use of University Information Technology resources such as networks, websites or between University email accounts) cause or have the potential to cause a substantial on-campus disruption; and/or

7. Whether the alleged conduct or actions could be appropriately assessed and addressed via the University's Policy and Resolution Process in light of the University's access to the facts and to the parties in the matter, and in light of other similar factors.
- B. While this Policy applies broadly to the constituents and circumstances described above, the scope of a "Title IX Sexual Harassment" violation (defined in Section V(D)(1) of this policy) and the circumstances in which the procedures governing a Title IX Sexual Harassment violation will apply are narrower than the scope of this Policy as a whole.
- C. This Policy considers harassment, as well as other prohibited behaviors under this Policy, based on gender identity, gender expression, or sexual orientation as a form of sex- or gender-based harassment.
- D. This Policy's scope does not apply to complaints regarding employment matters not involving sexual harassment or interpersonal violence, governed by Title VII of the Civil Rights Act, and resolved through other University policies through the Human Resources Office or Faculty Handbook, including but not limited to employment, promotion, pay, demotion, transfer, recruitment, hiring, termination, and compensation.

- **Definitions**

- A. "Actual Knowledge": notice of Sexual Harassment or Interpersonal Violence, or allegations of Sexual Harassment or Interpersonal Violence, to the University's Title IX Coordinator or any Deputy Title IX Coordinator, or any other official of the University who has authority to institute corrective measures on behalf of the University.
- B. "Complainant": an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment and Interpersonal Violence.
- C. "Deputy Title IX Coordinator": a designated University employee who has been assigned a supporting role to assist the Title IX Coordinator with coordinating all Title IX compliance measures, which includes tracking and overseeing the resolution of Formal Complaints of Sexual Harassment and Interpersonal Violence falling under this Policy.
- D. "Formal Complaint": a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment. Such a Formal Complaint does not need to contain a detailed statement of facts.
- E. "Report": a disclosure by any person to the Title IX Coordinator (or Deputy Title IX Coordinator or a University official who has authority to institute corrective measures) that is sufficient to provide Actual Knowledge of Sexual Harassment or Interpersonal Violence; such a disclosure does not need to contain the information required of a Formal Complaint in order to constitute a Report.
- F. "Respondent": an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment and Interpersonal Violence.
- G. "Sexual Harassment and Interpersonal Violence" or "Sexual Harassment": the terms that will be used throughout this Policy to refer collectively to any or all of the violations described in Section V(D).

- H. “Third-Party Reporter”: any person who was not the recipient of the behavior and reports an incident of Sexual Harassment or Interpersonal Violence. This term can apply to witnesses or other employees who report allegations of Sexual Harassment and Interpersonal Violence.
- I. “Title IX Coordinator”: the University employee having primary responsibility for coordinating all Title IX compliance measures, which includes tracking and overseeing the resolution of Formal Complaints of Sexual Harassment and Interpersonal Violence falling under this Policy.

## **V. Policy on Sexual Harassment and Interpersonal Violence**

### **A. Policy Statement**

1. Students and employees are entitled to a working environment and educational environment free of Sexual Harassment and Interpersonal Violence. Acts of Sexual Harassment and Interpersonal Violence may be committed by any person upon any other person, regardless of the sex, gender or sexual orientation of those involved.
2. Sexual Harassment as defined in this Policy—which includes quid pro quo sexual harassment, sexual harassment which creates a hostile environment, and acts of sexual assault, dating violence, domestic violence, and stalking—is a type of sex discrimination. Sexual Harassment and Interpersonal Violence violates basic human dignity and impedes the fundamental mission of the University. In keeping with its commitment to social justice and honoring the inherent dignity of all persons, John Carroll University prohibits acts of Sexual Harassment and Interpersonal Violence as provided in this Policy. Therefore, any employee, student, or other person over whom the University exercises substantial control who engages in an act of Sexual Harassment and Interpersonal Violence is in violation of this Policy.
3. Alleged violations of this Policy are subject to resolution using the University’s Sexual Harassment and Interpersonal Violence Resolution Process, and Grievance Process for Title IX Sexual Harassment as appropriate. When a Complainant (or the Title IX Coordinator) files a Formal Complaint alleging that a Respondent has violated the Sexual Harassment and Interpersonal Violence Policy, the University’s response will aim to end the Sexual Harassment and Interpersonal Violence, prevent its recurrence, and remedy the effects on both the individuals and the University community.

### **A. Resolution of Sexual Harassment and Interpersonal Violence**

1. The processes described in the Sexual Harassment and Interpersonal Violence Resolution Process or Grievance Process for Title IX Sexual Harassment shall serve as the only internal University processes for resolution and appeal of Formal Complaints of Sexual Harassment and Interpersonal Violence. The Title IX Coordinator may delegate specific functions to other University officials as described in the Sexual Harassment and Interpersonal Violence Resolution Process or Title IX Grievance Process, or as necessary on a case-by-case basis.
2. The University reserves the right to impose any level of sanction, ranging from education up to and including suspension or dismissal from the University for any act of Sexual Harassment and Interpersonal Violence based on the facts and circumstances of the particular allegation. Such sanctions may include: educational programs;

coaching/mentorship; verbal or written reprimand or warning; time and place restrictions; probation; suspension; deferred suspension; delayed conferral of degree; revocation of admission; removal from the residence halls; dismissal; termination; revocation or withdrawal of degree; and remedies for the Complainant, as appropriate.

3. Respondents will be presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Interim Sexual Harassment and Interpersonal Violence Resolution Process or Grievance Process for Title IX Sexual Harassment.
4. In resolving complaints that include allegations falling within the purview of this Policy as well as related allegations falling under other University policies, the Title IX Coordinator, in consultation with other appropriate University officials, has the discretion to investigate and/or resolve the entire complaint under the Interim Sexual Harassment and Interpersonal Violence Resolution Process or Grievance Process for Title IX Sexual Harassment.

#### B. Academic Freedom

1. The University's policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom to advance the classroom experience or support the learning goals or other relevant pedagogical reasons that include relevant, but controversial or sensitive, subject matter protected by academic freedom. Each faculty member may consider in classes any topic relevant to the subject matter of the course as defined by the department or academic dean.
2. Classroom topics also must be in balance with the rights of others not to be sexually harassed. If there are questions about whether the course material or the manner in which it is presented falls within the definition(s) of the various forms of sexual harassment, the concerned party should contact the Title IX Coordinator or appropriate Deputy Title IX Coordinator to discuss the concern.

#### C. Prohibited Behaviors

The various behaviors constituting Sexual Harassment and Interpersonal Violence are addressed in three categories: (1) Title IX Sexual Harassment; (2) Sexual Harassment and Interpersonal Violence Beyond the Purview of Title IX; and (3) Other Prohibited Behaviors.

##### 1. Title IX Sexual Harassment

- a. The definition of Title IX Sexual Harassment below applies to all employees (including all faculty and staff members), student-employees, volunteers, and any other person over whom the University exercises substantial control in the context of their employment or volunteer role with the University. This definition of Title IX Sexual Harassment also applies to all current and prospective students participating in or attempting to participate in any education program or activity of the University. It applies to acts in locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment that occurs in any building owned or controlled by a student organization that is officially recognized by the University.

a. Formal Complaints alleging acts of Title IX Sexual Harassment will be resolved using the Grievance Process for Title IX Sexual Harassment, which is incorporated into Section XII of the Sexual Harassment & Interpersonal Violence Resolution Process.

b. Title IX Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an educational program or activity of the University; or
3. Sexual assault, defined as:

a. Sex Offenses, Forcible: Any sexual act, or attempted sexual act, directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent.

. Forcible Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

i. Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

ii. Sexual Assault with An Object: To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

iii. Forcible Fondling: The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

b. Sex Offenses, Nonforcible— Nonforcible sexual intercourse.

. Incest: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law in the State of Ohio.

i. Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent under the law in the State of Ohio.

0. Dating Violence

a. Dating Violence is defined as: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant.

a. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

b. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

1. Domestic Violence

- a. A felony or misdemeanor crime of violence committed—
- . By a current or former spouse or intimate partner of the Complainant;
  - i. By a person with whom the Complainant shares a child in common;
  - ii. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - iii. By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws for the State of Ohio; or
  - iv. 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 State of Ohio.

b. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

0. Stalking

a. Stalking is defined as: engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- i. Fear for the person's safety or the safety of others; or
- ii. Suffer substantial emotional distress.

b. For the purposes of this definition—

i. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.



ii. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

0. Sexual Harassment and Interpersonal Violence Beyond the Purview of Title IX

a. Consistent with the Scope of this Policy described in Section III, the University also prohibits acts of Sexual Harassment and Interpersonal Violence that may occur outside the scope of employment or an education program or activity, or that may include behaviors other than those described in Section V(D)(1) as Title IX Sexual Harassment.

a. All Formal Complaints alleging such acts of Sexual Harassment and Interpersonal Violence Beyond the Purview of Title IX will be resolved through the Sexual Harassment and Interpersonal Violence Resolution Process, and will not be subject to the Grievance Process for Title IX Sexual Harassment. However, where a Formal Complaint alleges violations of both Title IX Sexual Harassment and Sexual Harassment and Interpersonal Violence Beyond the Purview of Title IX arising from the same set of facts or circumstances, the University will have the discretion to adjudicate some or all of the alleged violations together under the Grievance Process for Title IX Sexual Harassment.

b. Such prohibited forms of Sexual Harassment and Interpersonal Violence Beyond the Purview of Title IX include the following:

1. Forcible Rape, as defined in Section V(D)(1)(c)(3) above.
2. Forcible Sodomy, as defined in Section V(D)(1)(c)(3) above.
3. Sexual Assault with an Object, as defined in Section V(D)(1)(c)(3) above.
4. Forcible Fondling, as defined in Section V(D)(1)(c)(3) above.
5. Incest, as defined in Section V(D)(1)(c)(3) above.
6. Statutory Rape, as defined in Section V(D)(1)(c)(3) above.
7. Dating Violence, as defined in Section V(D)(1)(c)(4) above.
8. Domestic Violence, as defined in Section V(D)(1)(c)(5) above.
9. Stalking, as defined in Section V(D)(1)(c)(6) above.

10. Quid Pro Quo Sexual Harassment

a. Quid Pro Quo Sexual Harassment is defined as: any person conditioning the provision of any aid, benefit, or service on another individual's participation in sexual conduct;

. This prohibition applies to all members of the University community, regardless of their role at the University.

i. Examples of such unwelcome sexual conduct may include, but are not limited to: dating; entering a romantic or sexual relationship; engaging in sexual any act(s), including but not limited to acts of voyeurism or exposure.

ii. The target of the Quid Pro Quo Sexual Harassment need not accept the proposed aid, benefit, or service, nor engage in the sexual conduct, in order for a violation to occur. An individual violates this policy upon making it known to the targeted person that the provision of the aid, benefit, or service is conditioned upon the sexual conduct.

2. Sexual Harassment Resulting in a Hostile Environment

a. Sexual Harassment Resulting in a Hostile Environment is defined as: any unwelcome verbal, written, pictorial, online and/or physical conduct that is based on sex and/or gender or is sexual in nature that:

i. is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities; or

ii. when such conduct has the purpose or effect of unreasonably interfering with an individual's employment or educational experience.

b. A hostile environment can be created by anyone involved in a University program or activity (e.g., staff, faculty members, students, campus visitors or guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, such as non-consensual sexual intercourse or non-consensual sexual touching, even if isolated, can be sufficient.

a. The University will remedy all forms of Sexual Harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. Harassment that does not rise to the level of creating a hostile environment may be addressed through alternative means, such as respectful conversation, remedial actions, education or conflict resolution.

0. Non-Consensual Sexual Contact

a. Non-Consensual Sexual Contact is defined as: any intentional sexual touching of another without consent.

. The following types of contact will be deemed sexual *per se*: intentional contact (whether using part of one's body or an object) with the breasts, buttocks, groin, genitals, anus, or mouth of another, as well as the touching of another with any of these body parts, by a person upon any other person.

i. Contact with other parts of the body will also constitute sexual touching where the contact would be interpreted by the objective, reasonable person to be sexual in nature.

ii. This prohibition includes any action that constitutes an attempt to commit such sexual contact.

0. Sexual Exploitation

- a. Sexual Exploitation is defined as: taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit, regardless of whether such behavior constitutes one of the other Sexual Harassment and Interpersonal Violence offenses. Examples include, but are not limited to:
  - i. Non-consensual recording: Non-consensual digital, video or audio recording of sexual activity or nakedness (full or partial). This includes the unauthorized sharing or distribution of digital, video or audio recording of sexual activity or nakedness (full or partial).
  - ii. Compelling Prostitution: Forcing or inducing another individual to engage in sexual activity for hire.
  - iii. Voyeurism: Engaging in secretive observation of another for personal sexual pleasure or engaging in non-consensual video or audio recording of sexual acts or nakedness. This behavior is a form of sexual misconduct and violates the dignity of the affected party(ies), regardless of whether the person secretly viewed or recorded is aware of the observation or recording.
  - iv. Exposure: Disrobing or exposure of one's breasts, buttocks, groin or genitals to another without the consent of the other person, or inducing another to disrobe or to expose their breasts, buttocks, groin or genitals to another person without their consent.
  - v. Administering alcohol/drugs: Administering alcohol or drugs to another person without their knowledge or consent in an attempt to facilitate sexual contact.
0. Threats or Causing Physical Harm/Abuse
  - a. Threats or Causing Physical Harm/Abuse is defined as: Threatening or causing physical harm, extreme verbal abuse or other conduct that threatens or endangers the health or safety of any person on the basis of sex or gender or is associated with an act of interpersonal violence.
0. Intimidation
  - a. Intimidation is defined as: Implied threats or acts that cause an unreasonable fear of harm in another on the basis of sex/gender or are associated with an act of interpersonal violence.
0. Hazing
  - a. Hazing is defined as: Any planned/executed action or activity, based on sex or gender, by or against an active member, associate member, new member, pledge or potential member of an organization or group that inflicts physical or mental harm, distress, anxiety, or which may demean, degrade, embarrass or disgrace any person, regardless of location, consent or intention of participants, is prohibited.
  - b. Hazing that falls outside this Policy (i.e., is not based on sex or gender or an act of interpersonal violence) may nonetheless violate other University policies.

## 0. Bullying

- a. Bullying is defined as: repeated, severe, and/or aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived sex and/or gender.
- b. Bullying that falls outside this Policy (i.e., is not based on sex or gender or an act of interpersonal violence) may nonetheless violate other University policies.

## 3. Other Prohibited Behaviors

a. A violation of any other University rule or policy, when motivated by the individual's actual or perceived sex or gender, may be resolved under this Policy and the Interim Sexual Harassment and Interpersonal Violence Resolution Process. This Policy's scope generally does not apply to complaints regarding employment matters not involving sexual harassment or interpersonal violence. These complaints, including but not limited to, employment, promotion, pay, demotion, transfer, recruitment, hiring, termination, and compensation, are governed by other university policies and Title VII of the Civil Rights Act. These complaints are referred for resolution to Human Resources, the appropriate resolution processes in the Faculty Handbook, or other appropriate university process. The Title IX Coordinator will consult with appropriate University personnel in determining the applicable resolution process for a complaint.

a. Objectionable conduct that does not rise to the level of Sexual Harassment or Interpersonal Violence or that is of a generic nature not on the basis of sex/gender may not result in the imposition of sanctions/corrective action under this University policy, but may be addressed through other policies and may include sanctions/corrective actions, remedial actions, education and/or conflict resolution mechanisms. For assistance with conflict resolution, individuals should contact the Title IX Coordinator, who may refer the parties to the Director of Community Standards and Student Wellbeing for student Respondents, to the appropriate department chair or Dean for faculty Respondents, or to the Human Resources Department for staff Respondents.

### b. Making Statements Known to be False During Sexual Harassment and Interpersonal Violence Resolution Processes

1. No Complainant, Respondent, or Witness may make a statement (or present evidence in any other form) that they know to be false or fabricated to any Title IX Officer in the course of any proceeding under the University's Sexual Harassment and Interpersonal Violence Resolution Process & Grievance Process for Title IX Sexual Harassment.
2. Without more, any final determinations regarding the responsibility of the Respondent for any policy violation in the Resolution Processes are insufficient to prove that a statement by any participant was known to be false. The determination that any Complainant, Respondent, or Witness made such a knowingly false statement must be independently determined based on a preponderance of the evidence in a separate proceeding under the Sexual Harassment and Interpersonal Violence Resolution Process. Such an allegation

of a knowingly false statement must be supported by information beyond mere suspicion or speculation before it will be referred to the Resolution Processes.

3. The Title IX Coordinator, or designee, will review the sufficiency of any allegation(s) before referring a matter for resolution under the Interim Sexual Harassment and Interpersonal Violence Resolution Process.
- c. Retaliation
1. No person or group, including University officials or the institution as an entity, may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
  2. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, constitutes retaliation.
  3. Where the agent of a student or employee—such as an Advisor who is not an employee of the University—engages in conduct that constitutes retaliation pursuant to this policy while acting on that student or employee’s behalf, the student or employee will be accountable for the retaliatory conduct of the agent.
  4. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
  5. Complaints alleging retaliation may be filed as a Formal Complaint under this Policy, and will be resolved through the Sexual Harassment and Interpersonal Violence Resolution Process. However, where the alleged act of Retaliation occurs within the context of the resolution or adjudication of a Formal Report of Title IX Sexual Harassment, then the Formal Complaint of retaliation will be resolved through the Grievance Process for Title IX Sexual Harassment.

## **VI. Consent to Engage in Sexual Activity**

### **A. Standards for Consent to Engage in a Sexual Activity**

1. Consent is granted when a person freely, actively and knowingly agrees at the time to participate in a particular sexual act with a particular person.
0. Consent requires mutually understandable words and/or actions that demonstrate a willingness to participate in mutually agreed-upon activity at every stage of that sexual activity.

- 0. Consent is mutually understandable when an objective, reasonable person would consider the words and/or actions of the parties to have reached agreement to engage in the particular sexual activity.
- 0. In the absence of mutually understandable affirmative words or actions, it becomes the responsibility of the initiator (the person who wants to engage in a specific sexual activity) to obtain effective consent from the other partner.
- 0. Consent has time boundaries. Consent at one time does not imply consent at any other time.
- 0. The existence of a dating/romantic relationship between the persons involved or the fact of a previous sexual relationship does not automatically establish consent for future sexual activity.

B. Consent does not exist if:

- 1. Agreement is only inferred from a person's silence or lack of resistance;
- 2. There is threat of physical force, harm or intimidation; or there is coercion.
- 3. The person is under the age required by law in the jurisdiction in which the act took place.
- 4. Someone engaging in sexual behavior knew or should have known that the other person was incapacitated.
  - a. Regardless of the state of the Respondent, the University will use the perspective of a "sober and reasonable person" in determining whether one should have known about the impact of the use of alcohol; drugs; the deceptive administering of any drug, intoxicant or controlled substance; mental illness, etc. on another's ability to give consent.

C. Incapacitation

- 1. Incapacitation exists when a person is unaware, blacked out, asleep, unconscious, unable to make rational/reasonable decisions and/or otherwise physically or mentally helpless to give effective consent.
- 2. Indicators of incapacitation include, but are not limited to: inability or diminished ability to accurately discern one's environment (who, what, where, when and/or how); slurred speech; vomiting; severe intoxication; loss of voluntary motor skills; loss of involuntary motor skills; disjointed speech patterns (unable to follow a conversation or verbalize complete thoughts); sleepiness that demonstrates an inability to control one's ability to stay awake; and/or outrageous or unusual behavior.
- 3. Because incapacitation may be difficult to discern, the person seeking the sexual behavior is strongly encouraged to err on the side of caution; i.e., when in doubt, assume the other person is incapacitated and therefore unable to give effective consent.

D. Coercion

- 1. Coercion exists when a person engages in threats, sexual pressuring or oppressive behavior to force another person to engage in unwanted sexual activity. Real or perceived power differentials between the individuals involved may create an atmosphere conducive to coercion. (Coercion can be differentiated from seduction by a repetition of

the coercive activity in the face of resistance, the degree of pressure applied, or the initiator's knowledge that the pressure is unwanted.)

2. When one party has any professional responsibility for another's academic or job performance or professional future (i.e. faculty member and student, supervisors and employees etc.), consent may be difficult to assess, may be deemed not possible, and may be construed as coercive.

## **VII. Supportive Measures**

- A. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter Sexual Harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- B. Upon acquiring Actual Knowledge of Sexual Harassment and Interpersonal Violence, the Title IX Coordinator or designee will promptly reach out to the Complainant to discuss the availability of appropriate Supportive Measures, including considering the Complainant's wishes with respect to supportive measures and explaining the process for filing a Formal Complaint.
- C. In the event that a Formal Complaint is filed against a Respondent, the Title IX Coordinator or designee will also reach out to the Respondent to discuss the availability of appropriate Supportive Measures.
- D. The University will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures.
- E. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## **VIII. Emergency Removal**

- A. Any person may be removed from an educational program or activity on an emergency basis where University officials determine in an individualized safety and risk analysis that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal.
- B. Where a person is removed on an emergency basis, the removed person will have a timely notice and opportunity to challenge the removal. The Sexual Harassment and Interpersonal Violence Resolution Process will describe the process for making such a determination

regarding emergency removal, including the removed person's opportunity to challenge that removal.

## **IX. Reporting and Confidentiality/Privacy**

### **A. Reporting Options**

1. The University strongly encourages persons who experience Sexual Harassment to file a Formal Complaint with the Title IX Coordinator or a Deputy Title IX Coordinator in person, by phone or online using the form located at: <http://jcu.edu/title-ix>.
2. To avoid a conflict of interest, any allegations of Sexual Harassment by the Title IX Coordinator should be reported directly to either the Vice President for Diversity, Equity, and Inclusion, or to the University President.

### **B. Confidentiality and Privacy**

1. Concerns regarding Sexual Harassment and Interpersonal Violence may also be shared with University community members, but the obligations of each University community member to report to the Title IX Coordinator or one of the Deputy Title IX Coordinators depends on their reporting responsibilities. In order to make informed choices when consulting campus resources, one should be aware of confidentiality and mandatory reporting requirements described in the paragraphs below.
2. On campus, some resources may maintain confidentiality, offering options and advice without any obligation to inform University officials or an outside agency or individual unless the Complainant requests that the information be shared. Other campus resources, such as JCUPD or other "Responsible Employees" as referenced in Section IX(B)(5) below, cannot by law provide confidentiality (although they will make reasonable efforts to limit disclosure of information so as to protect privacy).
3. By making a disclosure to a Non-Confidential Formal Reporting Option, one is initiating formal action by the University. The nature and extent of that action by the University will depend on the circumstances of the reported concern, including whether the Complainant decides to request Supportive Measures or file a Formal Complaint.
4. In every instance, the University as an entity will keep private the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a Report or filed a Formal Complaint of Sexual Harassment and Interpersonal Violence (any Complainant), any individual who has been reported to be the perpetrator of sex discrimination (any Respondent), and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
5. The following describes the reporting options and confidential resources available at the University:



a. Non-Confidential Formal Reporting Option for Sexual Harassment and Interpersonal Violence

1. A party wishing to initiate a Formal Complaint, an investigation or other action by the University is encouraged to speak to a “responsible employee” to make a Formal Complaint concerning incidents of Sexual Harassment and Interpersonal Violence. Under the University’s Mandatory Reporting Policy, all University employees, except those identified as confidential resources in Section IX(B)(5)(c) of this Policy, are designated as “mandatory reporters” and have a duty to report incidents of possible Sexual Harassment and Interpersonal Violence to the Title IX Coordinator. This makes all employees (except for those identified in Section IX(B)(5)(c)) “Responsible Employees” with regard to incidents of Sexual Harassment and Interpersonal Violence.
2. When a party informs a “Responsible Employee” about an incident involving Sexual Harassment and Interpersonal Violence, the Responsible Employee is required to report all relevant details about the incident to the University’s Title IX Coordinator or designee. This includes the names of the Complainant(s), alleged Respondent(s), witnesses and any other relevant facts, including the date, time and specific location (if known).

a. Requests for Confidentiality

1. A party’s request for confidentiality or that no investigation be pursued should be made to the Title IX Coordinator or to the Responsible Employee at the time the report is made. The Responsible Employee will then inform the Title IX Coordinator of the request. The request will be weighed by the Title IX Coordinator considering relevant information that may be received in consultation with others involved in monitoring University safety matters. Those considerations will be weighed against the University’s obligation to provide a safe, non-discriminatory environment for all members of the University community, including the Complainant. Where the Title IX Coordinator makes the decision to honor that request for confidentiality, doing so may limit the University’s ability to meaningfully investigate and pursue conduct action against a Respondent.
2. Complainants and Third-Party Reporters have the right, and can expect, to have reports taken seriously by the University, and to have Formal Complaints investigated and properly resolved through these procedures. When a Respondent is found in violation, the University will act to end the discrimination, prevent its recurrence and remedy its effects.
3. Even when a Formal Complaint is filed, this Policy still affords privacy to the Complainant and Respondent, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the parties (unless otherwise required by law). The University may also need to share limited information with certain staff members in order to facilitate supportive measures and other elements of its institutional response to Sexual Harassment and Interpersonal Violence. The people with this knowledge are charged with preserving a parties’ rights and privacy to the

extent reasonable in order for an adequate, reliable and impartial investigation to be conducted.

- b. Privileged and Confidential Communications for All Sexual Harassment and Interpersonal Violence Reports
  - 1. If a party who has experienced an incident of Sexual Harassment and/or Interpersonal Violence does not desire action by the University and would like the details of the incident to be kept confidential, but desires to confide in someone, the party may speak with:
    - a. a counselor at the University Counseling Center;
    - a. a doctor, or nurse acting under a doctor's direction, at the University Health Center;
    - b. an ordained member of the clergy (e.g. a priest) acting in the context of pastoral care/spiritual advising; or
    - c. off-campus local rape crisis counselors, domestic violence resources, local or state assistance agencies.
  - 2. University employees who fall within this category will submit anonymous statistical information to JCUPD or the Title IX Coordinator for Clery Act (Campus Crime Statistics Act) purposes unless they believe it would be harmful to their client, patient or spiritual advisee, but will not otherwise share the information. Confiding in someone within this category does not provide the University with Actual Knowledge of the concern, and will not result in outreach by the Title IX Coordinator, an investigation, or other action by the University.
  - 3. Exceptions may exist where the professional who receives the confidential concern has a good faith belief that reporting the concern to University officials, law enforcement, or other appropriate person(s) is necessary to prevent or lessen a serious and imminent threat to the health or safety of any person or the community. Common immediate safety concerns could include, but are not limited to, a pattern of alleged conduct, predation, weapons, violence or threat.
- d. Non-Confidential but "Private" Communications
  - 1. Non-Confidential but Private resources for discussing claims of Sexual Harassment include any staff member who works for the University Counseling Center, Health Center, or Campus Ministry who is not otherwise a confidential resource as defined in Section IX(B)(5)(c). These resources are initially required to provide a limited report to the Title IX Coordinator that includes the nature, date, time and general location of the incident, but these resources do not share any personally identifiable information in the report unless the disclosing party gives permission, except in the rare event that the incident reveals a need to protect the immediate safety of the disclosing party and/or other members of the University community. Common immediate safety concerns could include, but are not limited to, a pattern of alleged conduct, predation, weapons, violence or threat.
  - 2. Unlike the confidential resources listed in Section IX(B)(5)(c), these resources are required to report as described above under the University's Mandatory

Reporting Policy and cannot guarantee confidentiality. If a party who wishes to discuss an incident is unsure of someone's duties and ability to maintain privacy, one should ask that person about confidentiality before talking to them.

- a. Reporting of Instances Involving Minors
  1. Sexual Harassment and Interpersonal Violence involving a minor who is a student will be processed consistent with this Policy. Anyone witnessing or otherwise knowing of a violation of this Policy that involves a non-student individual under the age of 18, or under the age of 21 and physically or mentally impaired, should refer to the University's Minors on Campus Policy. Any observed violations of that policy should be reported to the Title IX Coordinator and/or to JCUPD and the person in charge of the program. Whether involving a student or non-student, the University, the Title IX Coordinator, and/or privileged and confidential resources also may be required to report Sexual Harassment and Interpersonal Violence involving a minor to Cuyahoga County's Children & Family Services at (216) 431-4500.

## **X. Reporting to Police and Federal Timely Warning Obligation**

- A. There may be instances in which Sexual Harassment and Interpersonal Violence constitutes a criminal act. Anyone who has experienced Sexual Harassment and Interpersonal Violence that they believe may constitute a crime may choose to contact at any time the JCU Police Department or a local police jurisdiction where the Sexual Harassment and Interpersonal Violence occurred. Pursuant to Ohio law and depending on the behaviors alleged and the location of the behavior, the Title IX Coordinator will be obligated to report certain reported crimes (i.e. felonies) to the JCU Police Department, who will be obligated to report the crime to the appropriate police jurisdiction. Reports made to police departments are generally public records.
- B. Choosing not to pursue criminal action does not alter the responsibility of the University to investigate and take appropriate action related to the report of Sexual Harassment and Interpersonal Violence.
- C. Parties reporting Sexual Harassment and Interpersonal Violence should be aware that under the Clery Act, the University, via JCUPD, must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The University will undertake reasonable efforts to ensure that a Complainant's name and other identifying information is not disclosed in any timely warning, while still providing enough information for community members to make safety decisions in light of the potential danger. Also under the Clery Act, certain designated individuals who are deemed Campus Security Authorities have an obligation to report to the JCUPD certain crimes defined under federal law.

## **XI. Retention of Records & University Transcript Notation Policy**

- A. The University will maintain for a period of at least seven (7) years records of—

1. Any actions, including any supportive measures, taken in response to a Report or Formal Complaint of Sexual Harassment and Interpersonal Violence. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the educational program or activity. If the University does not provide a Complainant with supportive measures, then the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
2. Each investigation of Sexual Harassment and Interpersonal Violence, including any determination regarding responsibility and any audio or audiovisual recording or transcript of any Title IX grievance process hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the educational program or activity;
3. Any appeal and the result therefrom;
4. Any informal resolution and the result therefrom;
5. Any notes or external sources relied upon by the review panels; and
6. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The University will also make these training materials publicly available on its website.

B. Transcript Notation Policy

1. Transcript notations, consistent with the University’s [transcript notation policy](#), may be applied and maintained for the designated period of time.

## **XII. Title IX Coordinator and Deputy Title IX Coordinators**

Any incidents of Sexual Harassment and Interpersonal Violence should be reported to the Title IX Coordinator. Incidents can also be reported to a designated Deputy Title IX Coordinator for a particular constituency.

<p>All Complaints and Complaints Involving Visitors</p> <p>Emily Sherwood,          Director of Community Standards and Interim Title IX Coordinator          1 John Carroll Blvd, LSC 207b          University Heights, OH 44118          216-397-4402  <a href="mailto:TitleIX@jcu.edu">TitleIX@jcu.edu</a> or  <a href="mailto:esherwood@jcu.edu">esherwood@jcu.edu</a></p>	<p>Complaints Involving Faculty</p> <p>James Krukones, Ph.D.          Deputy Title IX Coordinator and Associate Academic Vice President          Administration Bldg., Room 133E 1          John Carroll Blvd.          University Heights, OH 44118          216-397-4762  <a href="mailto:jkrukones@jcu.edu">jkrukones@jcu.edu</a></p>
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<p>Complaints Involving Students</p> <p>Lisa Brown Cornelius Deputy Title IX Coordinator and Senior Director of Residence Life D.J. Lombardo Student Ctr., Ground Level 1 John Carroll Blvd. University Heights, OH 44118 216-397-4008 <a href="mailto:lbrown@jcu.edu">lbrown@jcu.edu</a></p>	<p>Complaints Involving Staff</p> <p>Leslie Beck Deputy Title IX Coordinator and Human Resources Coordinator Rodman Hall, Room 25 1 John Carroll Blvd. University Heights, OH 44118 216-397-1726 <a href="mailto:lbeck@jcu.edu">lbeck@jcu.edu</a></p>
<p>Complaints Involving Athletics</p> <p>Katie Hine Deputy Title IX Coordinator and Associate Athletic Director DeCarlo Varsity Center, Room 110 1 John Carroll Blvd. University Heights, OH 44118 (216) 397-1997 <a href="mailto:khine@jcu.edu">khine@jcu.edu</a></p>	<p>EXTERNAL CONTACTS</p> <p>Inquiries about this Policy and accompanying complaint procedures may be made externally to:</p> <p>Office for Civil Rights (OCR) U.S. Department of Education Telephone #: (800) 421-3481 Email: <a href="mailto:OCR@ed.gov">OCR@ed.gov</a> Web: <a href="http://www.ed.gov/ocr">http://www.ed.gov/ocr</a></p> <p>Equal Employment Opportunity Commission (EEOC) Contact: <a href="http://www.eeoc.gov/contact/">http://www.eeoc.gov/contact/</a></p>