

## **Title IX**

Authority: Board of Trustees, June 18, 2015

Title IX, Education Amendments of 1972; Title VII, Civil Rights Act of 1991;  
Violence Against Women Reauthorization Act of 2013; Clery Act, 2013; NJS 2C,  
Code of Criminal Justice

### **Policy:**

### **Preamble:**

The College is committed to creating and maintaining a learning and working environment where all persons who participate in College programs and activities can work and learn together in an atmosphere free from all forms of harassment, exploitation, bias, prejudice or intimidation. The College condemns and prohibits discrimination based on sex or gender, sexual assault, sexual orientation discrimination, discrimination based on gender identity or expression, sexual misconduct and any harassment based on an individual's race, color, religion, sex, disability, national origin, veteran's status, age, marital status or other legally protected characteristic whether committed by managers, faculty, administrators, staff, students, visitors, or by vendors. Further, The College does not discriminate on the basis of sex in any educational, employment, or extracurricular activity. Any such activity committed by a member of The College community may be subject the individual to College discipline and/or sanctions as well as civil and/or criminal penalties. No amnesty will be granted under this policy. Persons who have complaints alleging violation(s) of this policy may file their complaints with The College Human Resources Department and/or Title IX Coordinator.

This policy covers unwelcome conduct of a sexual or gender-based nature, whether committed on-campus, or off-campus where the College has control over the perpetrator or the context of the harassment. Sexual misconduct, as described in this policy, is a form of sexual harassment, which is a form of discrimination and is prohibited by Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991. Domestic Violence, dating violence and stalking are also prohibited conduct as defined by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by the Violence Against Women Reauthorization Act of 2013.

Cumberland County College's Department of Safety and Security prepares an Annual Security Report to meet the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998. This report contains policy statements that address the College's policies, procedures and programs concerning safety and security. Three years of statistics are included for certain types of crimes that were reported to have occurred on campus, in or on off-campus buildings owned or

controlled by the school and on public property within or immediately adjacent to the campus.

Reports of any criminal offense shall be forwarded to College Safety for the purpose of assessing them for timely warning/crime alert purposes.

The Title IX Coordinator is the chief administrator tasked with oversight of this policy and subsequent resolution procedures. In addition the College has trained Deputy Coordinators called Title IX Deputy Coordinators. The role of the Title IX Coordinator and/or the Deputy Coordinator is the intake of complaints; advice to persons complaining on whether their complaint falls under the auspices of this policy or another assignment of complaints to the Deputy Coordinators; make the determination of responsibility of a complaint; the delivery of interim protective measures; the delivery of sanctions to an individual or remedies to the complainant or larger school community to prevent sexual harassment and remedy its effects; and the administrator serves as the point of contact to the United States Department of Education in terms of compliance with Title IX of the Education Amendments of 1972.

**Who May Utilize this Procedure (Students, Staff and Faculty)**

Complaints concerning sexual harassment, sex/gender discrimination, sexual assault/misconduct or violations of the Consensual Sexual Relationship Policy should be filed with the Title IX Coordinator. This procedure is available to any person who is alleging that the accused party, at the time of the acts complained of, was employed by Cumberland County College or was enrolled as a student.

Reports of sexual harassment to include sexual violence should be reported to Cumberland County College's Title IX Coordinator and/or the Human Resources Department.

**Definitions:**

**Title IX:**

Title IX of the Education Amendments of 1972 is a federal law that prohibits sex discrimination in education. It reads:

*"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."*

-Legal Citation: Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R. Part 106 (Title IX)

Federal law, under Title IX, requires that The College explain the legal definitions of crime under New Jersey state law as well as school policy. Consequently, while we do not adjudicate criminal offenses on campus, this policy will provide both the state criminal language where applicable as well as the definitions used by The College which would constitute a violation of school policy. The state criminal definitions are helpful

should parties choose to pursue criminal complaints as well as administrative action under this policy.

Offenses prohibited under The College's policy include, but are not limited to sexual harassment, sex discrimination (including sexual orientation discrimination and gender identity or gender expression discrimination), non-consensual sexual intercourse (or attempts to commit same), non-consensual sexual contact (or attempts to commit same), sexual coercion, domestic/dating violence, stalking, intimidation, and sexual exploitation, and any attempts to commit the same.

**Sex Discrimination:**

Includes sexual harassment and is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education, or institutional benefits, on account of sex or gender (including sexual orientation, gender identity, gender expression discrimination). It may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

**Pregnancy Discrimination:**

The College prohibits discrimination on the basis of pregnancy, childbirth, termination of pregnancy or recovery therefrom. Discrimination on the basis of pregnancy should be reported in accordance with this policy. Employees with questions regarding accommodations during pregnancy are encouraged to contact the Human Resources Department. Students and visitors with questions regarding accommodations during pregnancy are encouraged to contact the Human Resources Department and/or the Title IX Coordinator for complaints arising under this policy.

**Sexual Harassment:**

Sexual harassment is a form of sex discrimination. Sexual harassment is unwelcome and discriminatory conduct whether physical, verbal, psychological, or any other means, undertaken because of an individual's gender or is sexual in nature and is so severe, pervasive, or persistent, objectively and subjectively offensive that it has the systematic effect of unreasonably interfering with or depriving someone of educational, institutional, or employment access, benefits, activities, or opportunities. This includes but is not limited to slurs, jokes or degrading comments concerning an individual's race, color, religion, sex, disability, national origin, veteran's status or membership in other protected groups; repeated offensive flirtation, advances, or propositions; continual or repeated abuse of a sexual nature; graphic or verbal comments about an individual's body; and the displaying in the workplace of sexually suggestive objects or pictures. Students, employees, and visitors who are subject to or who witnesses unwelcome conduct of a sexual nature must report the incident(s).

**Hostile Environment Sexual Harassment:**

Is when a person is subject to unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature to such an extent that it alters the

conditions of a person's employment and creates an abusive working environment. Whether conduct is harassing is based upon examining a totality of circumstances, including but not limited to:

- the frequency of the conduct;
- the nature and severity of the conduct;
- whether the conduct was physically threatening;
- whether the conduct was deliberate, repeated humiliation based upon sex;
- the effect of the conduct on the alleged victim's mental or emotional state from the perspective of a reasonable person;
- whether the conduct was directed at more than one person;
- whether the conduct arose in the context of other discriminatory conduct;
- continued or repeated verbal abuse of a sexual nature, such as gratuitous suggestive comments and sexually explicit jokes.

**Quid Pro Quo Sexual Harassment:**

Exists when individuals in positions of authority over the complainant;

- make unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
- indicate explicitly or implicitly, that failure to submit to or the rejection of such conduct will result in adverse educational or employment action or where participation in an educational program or institutional activity or benefit is conditioned upon the complainant's submission to such activity.
- a job applicant may also be subject to this kind of harassment if the hiring decision was based on the acceptance or rejection of sexual advances.

**Examples of Harassment:**

Not all workplace or educational conduct that may be described as "harassment" affects the terms, conditions, or privileges of employment or education. For example, a mere utterance of a gender-based epithet which creates offensive feelings in an employee or student would not normally affect the terms and conditions of their employment or education. However, the following are examples of harassment:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around in an email list he/she created, even when asked to stop, causing one recipient to go out of their way to avoid the sender.
- Explicit sexual pictures are displayed on an exterior door, or on a computer monitor in a public place.
- Two supervisors frequently "rate" several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance within earshot of staff, students and/or faculty.
- A professor engages students in discussions in class about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. The professor probes for explicit details, and demands that students respond, though they are clearly uncomfortable and hesitant.

- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend, to his clear discomfort, making him a social pariah on campus.

**Retaliation:**

Any attempt to penalize or take an adverse employment, educational or institutional benefit action, including but not limited to making threats, intimidation, reprisals or other adverse action, against a person because of participation in a complaint or the investigation of discrimination, sexual harassment or sexual misconduct.

**Sexual Violence:**

Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual misconduct and sexual coercion.

**Non-Consensual Sexual Intercourse:**

Defined as any sexual intercourse or penetration of the anal, oral, or vaginal opening of the victim, including sexual intercourse or penetration by any part of a person's body or by the use of an object, however slight, by one person to another without consent or against the victim's will. This definition includes rape and sexual assault, sexual misconduct, and sexual violence.

**Non-Consensual Sexual Contact:**

Any intentional touching, however slight, whether clothed or unclothed, of the victim's intimate body parts (primarily genital area, groin, inner thigh, buttock or breast) with any object or body part, without consent and/or by force. It also includes the touching of any part of a victim's body using the perpetrator's genitalia and/or forcing the victim to touch the intimate areas of the perpetrator or any contact in a sexual manner even if not involving contact of or by breasts, buttocks, groin, genitals, mouth or other orifice. This definition includes sexual battery and sexual misconduct.

**Sexual Coercion:**

The act of using pressure (including physical, verbal, emotional or psychological pressure), alcohol, medications, drugs, or force to have sexual contact against someone's will or with someone who has already refused. This includes rape, sexual assault, sexual exploitation and sexual misconduct.

**Sexual Exploitation:**

Occurs when a person takes non-consensual, unjust or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior may not otherwise constitute one of the other sexual misconduct offenses.

**Examples of sexual exploitation include, but are not limited to:**

Non-consensual video or audio-taping of any form of sexual activity;

- going beyond the boundaries of consent (such as letting a person or people hide in the closet to watch you having consensual sex without your partner's knowledge or consent);
- sexually-based stalking or bullying;
- engaging in non-consensual voyeurism, such as observing sexual acts or body parts of another from a secret vantage point;
- knowingly transmitting a sexually transmitted disease or illness to another;
- exposing one's genitals in a non-consensual circumstance, or inducing another to expose his or her genitals;
- prostituting another person;
- other forms of invasion of sexual privacy.

**Dating violence is the violence between individuals in the following circumstances:**

- The party is or has been in a social relationship of a romantic or intimate nature with the victim; and
- The existence of such a relationship shall be determined based on a consideration of the following factors:
  - ✓ Length of the relationship
  - ✓ Type of relationship
  - ✓ Frequency of interaction between the persons involved in the relationship

**Domestic Violence under College policy means violence committed by a:**

- Current or former spouse of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse;
- A person similarly situated to a spouse of the victim under New Jersey domestic or family violence laws;
- Any other person against an adult or youth victim who is protected from that person's acts under New Jersey domestic or family violence laws

**Stalking:**

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

- fear for his or her safety or the safety of others; or
- suffer substantial emotional distress.

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

- ✓ Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- ✓ Reasonable persons means a reasonable person under similar circumstances and with similar identities to the victim.

**Consent:**

The act of willingly agreeing to engage in sexual contact or conduct. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and the absence of “No” may not mean “Yes”.

- Consent is informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity.
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- Previous relationships or consent does not imply consent to future sexual acts.
- Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity.

In order to give effective consent, one must be of legal age and have the capacity to consent. Incapacity may result from mental disability, intellectual disability, unconsciousness/sleep, age, or use of alcohol, drugs, medication, and/or other substances. Consent given by someone who one should know to be, or based on the circumstances, reasonably should have known to be, mentally or physically incapacitated, is a policy violation. Incapacitation is a state where someone cannot make rational, reasonable decisions because he or she lacks capacity to give knowing consent (e.g. to understand the “who, what, when, where, why or how” of their sexual interaction). Incapacity may result from a level of alcohol ingestion that is more severe than impairment, being under the influence, drunkenness or intoxication. It is less severe than alcohol poisoning or overdose. Whether a person is incapacitated is a subjective determination that will be made after the incident and in light of all facts available. Individuals reach incapacitation at different points and as a result of different stimuli [and] exhibit incapacity in different ways. Note, that indications of consent are irrelevant if the initiator knows or should reasonably have known of the incapacity of the other person.

**Examples of when a person should know the other is incapacitated include, but are not limited to:**

- the amount of alcohol, medication or drugs consumed, or
- imbalance or stumbling, or
- slurred speech, or
- lack of consciousness or inability to control bodily functions or movements, or
- vomiting.

**Use of alcohol, medications, or other drugs will not excuse behavior that violates this policy.**

**Other Misconduct:**

Other forms of misconduct based on one’s gender also constitute violations of this policy including: threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;

- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
- Gender-based intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Gender-based bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the First Amendment);
- Violence, including assault, battery or other physical abuse between those in an intimate or dating or romantic relationship with each other;

**State Definitions:**

In accordance with the Violence Against Women Reauthorization Act of 2013 the following definitions are applicable should you wish to pursue New Jersey state criminal or civil actions. These definitions may differ from The College’s administrative policy definitions noted above. The College’s administrative system and disciplinary procedures are separate and distinct from those available to someone in a state civil or criminal action. Individuals may seek administrative remedies in accordance with this policy and also may seek state or federal civil or criminal remedies for the same incident through the applicable systems.

**Sexual Assault:**

In New Jersey, sexual assault is the legal term for rape. The law defines sexual assault as "the penetration, no matter how slight, in which physical force or coercion is used or in which the victim is physically or mentally incapacitated." This crime is severely punished under state law, and covers a different range of sexual contact and levels of force or intimidation.

The following table highlights the main provisions of New Jersey's sexual assault laws.

<b>Code Sections</b>	Sexual Assault: NJSA 2C: 14-2 et seq.
<b>Elements of Sexual Assault</b>	<ul style="list-style-type: none"> <li>• Having sexual contact with someone who is under 13 years of age and you are over 17, or</li> <li>• Committing an act of sexual penetration when:</li> <li>• Using physical force not resulting in injury of the victim,</li> <li>• The victim is under your control, as in the case of prison inmate or probationer,</li> <li>• The victim is between 16 and 18 and is related to you or you have control over them, or</li> </ul>

	<ul style="list-style-type: none"> <li>The victim is between 13 and 16 and you are four years older.</li> </ul> <p><b>Aggravated Sexual Assault</b></p> <ul style="list-style-type: none"> <li>Victim is under 13 years old, Victim is between the ages of 13 and 16 and you are a family member or have other control over them,</li> <li>The act is committed during the commission of another crime (assault, murder, robbery, kidnapping, etc.),</li> <li>The act is committed using a weapon or the threat of a weapon,</li> <li>You act with assistance of someone else, using force, The victim is handicapped or in some way incapacitated.</li> </ul>
<b>What is the definition of "sexual penetration" and "sexual contact?"</b>	<ul style="list-style-type: none"> <li>Sexual Penetration” means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger, or object into the anus or vagina either by the defendant on the defendant's instruction.</li> <li>“Sexual Contact” means an intentional touching by the victim or defendant, either directly or through clothing, of the victim’s or defendant’s intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the defendant. Sexual contact of the defendant with himself must be in view of the victim whom the actor knows to be present.</li> </ul>
<b>Punishment</b>	<p>Felony, punishment depends on the nature of the crime and age of the victim. Generally, sexual assault is a 2nd degree crime and carries a maximum 10 year prison sentence.</p> <p>Aggravated sexual assault is a 1st degree crime and carries up to 20 years in prison.</p>
<b>Sex Offender Registration?</b>	If you are convicted of the above crimes, you will likely have to register as a sexual offender with the State of New Jersey.
<b>Time Limit to Report?</b>	None. There is no statute of limitations on reporting sexual assault in New Jersey.
<b>Definition of "Intimate Parts"</b>	“Intimate Parts” means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

**Sex Offenses** is defined in New Jersey as:

**N.J.S. 2C:14-1. Definitions.** The following definitions apply:

**Actor:**

A person accused of an offense proscribed under this act;

**Victim:**

A person alleging to have been subjected to offenses proscribed by this act;

**Sexual Penetration:**

Vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction.

The depth of insertion shall not be relevant as to the question of commission of the crime;

**Sexual Contact:**

An intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present;

**Intimate Parts:**

The following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person;

**Severe Personal Injury:**

Severe bodily injury, disfigurement, disease, incapacitating mental anguish or chronic pain;

**Physically Helpless:**

The condition in which a person is unconscious or is physically unable to flee or is physically unable to communicate unwillingness to act;

**Mentally Incapacitated:**

The condition in which a person is rendered temporarily incapable of understanding or controlling his conduct due to the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling his conduct;

**Domestic Violence** is defined in New Jersey as:

**N.J.S.2C:25-19. Definitions;** as used in this act:

**Domestic Violence:**

The occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor:

- a) Homicide N.J.S.2C:11-1 et seq.
- b) Assault N.J.S.2C:12-1
- c) Terroristic threats N.J.S.2C:12-3
- d) Kidnapping N.J.S.2C:13-1
- e) Criminal restraint N.J.S.2C:13-2
- f) False imprisonment N.J.S.2C:13-3
- g) Sexual assault N.J.S.2C:14-2
- h) Criminal sexual contact N.J.S.2C:14-3
- i) Lewdness N.J.S.2C:14-4
- j) Criminal mischief N.J.S.2C:17-3
- k) Burglary N.J.S.2C:18-2
- l) Criminal trespass N.J.S.2C:18-3
- m) Harassment N.J.S.2C:33-4
- n) Stalking P.L.1992, c.209 (C.2C:12-10)

When one or more of these acts is inflicted by an un-emancipated minor upon a person protected under this act, the occurrence shall not constitute "domestic violence," but may be the basis for the filing of a petition or complaint pursuant to the provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

**Law Enforcement Agency:**

A department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.

**Law Enforcement Officer:**

A person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

**Victim of Domestic Violence:**

A person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member. "Victim of domestic violence" also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. "Victim of domestic violence" also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

**Emancipated Minor:**

A person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

**Dating Violence** is defined in New Jersey as:

Violence committed by a person:

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 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.

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.

**Stalking** is defined in New Jersey as:

**N.J.S.2C:12-10. Definitions; stalking designated a crime; degrees.**

As used in this act:

- **Course of conduct** means repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveying, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.
- **Repeatedly** means on two or more occasions.
- **Emotional distress** means significant mental suffering or distress.
- **Cause a reasonable person to fear** means to cause fear which a reasonable victim, similarly situated, would have under the circumstances.
- ✓ A person is guilty of stalking, a crime of the fourth degree, if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his safety or the safety of a third person or suffer other emotional distress.
- ✓ A person is guilty of a crime of the third degree if he commits the crime of stalking in violation of an existing court order prohibiting the behavior.
- ✓ A person who commits a second or subsequent offense of stalking against the same victim is guilty of a crime of the third degree.
- ✓ A person is guilty of a crime of the third degree if he commits the crime of stalking while serving a term of imprisonment or while on parole or probation as the result of a conviction for any indictable offense under the laws of this State, any other state or the United States.

This act shall not apply to conduct which occurs during organized group picketing.

Other Sexual Misconduct- inappropriate sexual behaviors not covered previously in this section. Examples include but are not limited to sexual activity in public places.

**Consent** is defined in New Jersey as:

### **N.J.S.2C:2-10. Consent**

- In general. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.
- Consent to bodily harm. When conduct is charged to constitute an offense because it causes or threatens bodily harm, consent to such conduct or to the infliction of such harm is a defense if:
  - ✓ The bodily harm consented to or threatened by the conduct consented to is not serious; or
  - ✓ The conduct and the harm are reasonably foreseeable hazards of joint participation in a concerted activity of a kind not forbidden by law; or
  - ✓ The consent establishes a justification for the conduct under chapter 3 of the code.
- Ineffective consent. Unless otherwise provided by the code or by the law defining the offense, assent does not constitute consent if:
  - ✓ It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
  - ✓ It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or
  - ✓ It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

### **Risk Reduction**

With no intent to victim blame and recognizing that only rapists are responsible for rape, the following are some strategies to reduce one's risk of sexual assault or harassment (taken from Rape, Abuse, & Incest National Network, [www.rainn.org](http://www.rainn.org))

- **Be aware** of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
- **Try to avoid isolated areas.** It is more difficult to get help if no one is around.
- **Walk with purpose.** Even if you don't know where you are going, act like you do.
- **Trust your instincts.** If a situation or location feels unsafe or uncomfortable, it probably isn't the best place to be.
- **Try not to load yourself down** with packages or bags as this can make you appear more vulnerable.
- **Make sure your cell phone is with you** and charged and that you have cab money.
- **Don't allow yourself to be isolated** with someone you don't trust or someone you don't know.
- **Avoid putting music headphones in both ears** so that you can be more aware of your surroundings, especially if you are walking alone.

- **When you go to a social gathering, go with a group of friends.** Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
- **Trust your instincts.** If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).
- **Don't leave your drink unattended** while talking, dancing, using the restroom, or making a phone call. If you've left your drink alone, just get a new one.
- **Don't accept drinks from people you don't know or trust.** If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from the punch bowls or other large, common open containers.
- **Watch out for your friends, and vice versa.** If a friend seems out of it, is way too intoxicated for the amount of alcohol they've had, or is acting out of character, get him or her to a safe place immediately.
- **If you suspect you or a friend has been drugged, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).** Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).
- If you need to get out of an uncomfortable or scary situation here are some things that you can try:
- **Remember that being in this situation is not your fault.** You did not do anything wrong, it is the person who is making you uncomfortable that is to blame.
- **Be true to yourself.** Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable with.
- **Have a code word with your friends or family** so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
- **Lie.** If you don't want to hurt the person's feelings it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use are: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.
- **Try to think of an escape route.** How would you try to get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?
- **If you and/or the other person have been drinking,** you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

### **Potential Aggressor:**

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.

- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go; or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity, then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to one form of sexual behavior does not automatically imply consent to other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

### **How to be an Active Bystander**

Bystanders play a critical role in the prevention of sexual and relationship violence. They are "individuals who observe violence or witness the conditions that perpetuate violence. They are not directly involved but have the choice to intervene, speak up, or do something about it. We want to promote a culture of community accountability where bystanders are actively engaged in the prevention of violence without causing further harm. We may not always know what to do even if we want to help. Below is a list of some ways to be an active bystander. If you or someone else is in immediate danger, dial 911. This could be when a person is yelling at or being physically abusive towards another and it is not safe for you to interrupt.

- Watch out for your friends and fellow students/employees. If you see someone who looks like they could be in trouble or need help, ask if they are ok.
- Confront people who seclude, hit on, try to make out with, or have sex with people who are incapacitated.
- Speak up when someone discusses plans to take sexual advantage of another person.
- Believe someone who discloses sexual assault, abusive behavior, or experience with stalking.
- Refer people to on or off campus resources listed in this document for support in health, counseling, or with legal assistance.

## **Minors on Campus Policy:**

### **Purpose and Scope of Policy**

#### **Purpose:**

Cumberland County College strives to conduct its operations and maintain its facilities in a manner consistent with its mission as an institution of higher education. While there may be occasions when the presence of Minors on or brief visits by Minors to campus may be appropriate or necessary, Minors are not permitted to be unsupervised on College premises, including circumstances when they are hired to work on and/or permitted to participate in activities on campus or sponsored (on- or off-campus) by the College. In addition to the requirements of this Policy, the visits of Minors are subject to the same conditions as any other visitors to the College.

**Any College employee who suspects that a Minor who is on College premises for any reason, or is participating in a College-sponsored activity at another location, has been the victim of child abuse shall immediately report the suspected abuse to College Safety and Security and/or the Human Resources Department.**

#### **Scope:**

This Policy applies to activities and programs taking place on Cumberland County College campus / locations, or College-sponsored off-campus activities, in which Minors will be physically present and participating, with the following exception: minors matriculated in undergraduate programs.

### **Consensual Sexual Relationship Policy**

Sexual behavior that is welcome or consensual does not constitute sexual harassment under the law. However, amorous, dating or sexual relationships that might be appropriate in other circumstances have inherent dangers when they occur between: co-workers, a faculty, staff, student or community member or any person for whom an employee has a professional or academic responsibility. These dangers can include:

- That a student or employee may feel coerced into an unwanted relationship because he or she fears the refusal to enter into the relationship will adversely affect his or her education or employment;
- That conflicts of interest may arise when a faculty member, supervisor, or other member of the College community is required to evaluate the work or make personnel or academic decisions about a person with whom he or she is having a romantic relationship;
- That students or employees may perceive that a fellow student or co-worker involved in a romantic relationship will receive an unfair advantage, or
- That if the relationship ends in a way that is not amicable, either or both of the parties may wish to take action to injure the other party.

Faculty, supervisors and other members of the College community who are professionally responsible for other individuals, must remain aware that any romantic or sexual involvement with a student or employee for whom they have any academic or professional responsibility will

raise questions about their integrity, the mutuality of the relationship and may lead to charges of sexual harassment.

For the reasons stated above, such relationships are not permitted.

## **Investigative and Resolution Procedures**

The College recognizes its obligation to address incidents of sexual misconduct, discrimination and harassment on campus when it becomes aware of its existence even if no complaints are filed; therefore, The College reserves the right to take appropriate action unilaterally under this procedure, including but not limited to issuing discipline, no-contact orders, modification of course-schedules, etc.

### **Students**

With respect to students, The Title IX Coordinator and/or Deputy Coordinators, may take immediate administrative or disciplinary action deemed necessary for the welfare or safety of the College community.

### **Employees**

With respect to employees, upon a determination at any stage in the investigation or Complaint procedure that the continued performance of either party's regular duties or College responsibilities would be inappropriate, the Title IX Coordinator/Director of Human Resources may issue a written warning, suspension or termination, may suspend or reassign said duties or responsibilities, place the individual on leave of absence, or any combination of the above, pending the completion of the investigation or Complaint procedure.

### **Investigation**

The person complaining of sexual misconduct is called the "complainant," "reporting party" or "accuser" and those terms may be used interchangeably in this policy. The person alleged to have engaged in sexual misconduct is called the "respondent" or "accused party" and those terms may be used interchangeably in this policy. The Title IX Coordinator and Deputy Coordinators, are trained annually on the issues related to domestic violence, dating violence, sexual assault, and stalking and taught how to conduct an investigation and grievance process that protects the safety of the victim and promotes accountability.

### **Reporting Options**

#### **Duty to Report Sexual Harassment, Discrimination, and Misconduct Mandatory Reporting**

With limited exceptions, **every** College employee *must* report conduct that could constitute sexual harassment / sex discrimination / sexual misconduct under this policy.

**Supervisors, managers and faculty members with administrative duties or student supervisory duties are responsible for taking all appropriate action to prevent sexual misconduct, discrimination and harassment, to correct it when it occurs, and *must* promptly report it to:**

Rosemarie Fiscus, Director of Human Resources & Title IX Coordinator  
Human Resources Department Cumberland County College  
rfiscus@cccnj.edu Phone: (856)-200-4562 Fax: (856)-690-8012)

**Failure to report may result in disciplinary action up to and including termination.**

Students and those who have knowledge of sexual misconduct or harassment are strongly encouraged to report this information as soon as possible. Prompt reporting of incidents greatly improves the ability of the College and law enforcement to provide support resources to victims and to address the violations effectively. Although there is no time limit for reporting sexual harassment or misconduct offences, delays in reporting may reduce the ability of the College and law enforcement to investigate and respond to incidents. As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more difficult.

**Students and employees can use the Title IX Complaint Form to report an incident, which is available on both the College website and the Portal.**

After an incident of sexual assault and domestic violence, the victim should consider seeking medical attention as soon as possible. In New Jersey, evidence may be collected even if you chose not to make a report to law enforcement. It is important that a victim of sexual assault not bathe, douche, smoke, change clothing or clean the bed/linen/area where they were assaulted if the offense occurred within the past 96 hours so that evidence may be preserved that may assist in proving that the alleged criminal offense occurred/or is occurring or may be helpful in obtaining a protection order. In circumstances of sexual assault, if victims do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted disease. Victims of sexual assault, domestic violence, stalking, and dating violence are encouraged to also preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if they have any, that would be useful to College hearing boards/Deputy Coordinators or police. Where criminal behavior is involved, the College encourages reporting to law enforcement. However, reporting to law enforcement is not required for students to report an incident to the College. A student may choose to report to the College even before they have made a decision about whether or not to report to law enforcement. A student's choice not to pursue a criminal complaint with law enforcement will not limit their rights or options under this policy. Complaints of sexual misconduct or harassment and Title IX Complaint Forms can be sent to any of the following College administrators:

Rosemarie Fiscus, Title IX Coordinator, Director of Human Resources  
Phone: (856) 200-4562 E-mail: [rfiscus@cccnj.edu](mailto:rfiscus@cccnj.edu)

Joseph Hibbs, Title IX Deputy Coordinator, Senior Executive Director, Student Services  
Phone: (856) 200-4585 E-mail: [jhibbs@cccnj.edu](mailto:jhibbs@cccnj.edu)

Philip Cecola, Title IX Deputy Coordinator, Senior Director Safety and Security  
Phone: (856) 200-4704 E-mail: [pcecola@cccnj.edu](mailto:pcecola@cccnj.edu)

Nathan Alridge, Title IX Deputy Coordinator, Assistant Director Adjunct Faculty  
Development  
Phone: (856) 200-4545 E-mail: [nalridge@cccnj.edu](mailto:nalridge@cccnj.edu)

Brenda Torres, Title IX Deputy Coordinator, Senior Student Development Advisor  
Phone: (856) 200-4608 E-mail: [btorres@cccnj.edu](mailto:btorres@cccnj.edu)

The Complaint should contain a concise statement of the alleged violations and a detailed statement of the facts supporting the alleged violations. When the Title IX Coordinator and/or Deputy Coordinators receives a complaint of a violation, the Coordinator will provide information about options and resources available to the student(s) involved. The Coordinator will collect basic information from the reporting party. Where criminal behavior is involved, complaints may be filed with the law enforcement agency that has jurisdiction in the place where the crime took place. For offenses that occur on the College campus, that agency is Safety and Security, (856) 691-8600 ext. 1777. Campus Safety and Security can assist students in contacting and filing a complaint with any other agency when the incident did not occur on campus:

- Safety and Security, (856)691-8600 ext. 1777
- Vineland Police Department (856) 691-4111
- Millville Police Department (856) 825-7010
- Cumberland County Sheriff's Department (856) 451-4449
- Emergency Services 911

For complaints in which an employee is involved, students have the right to file a complaint with the New Jersey Division of Civil Rights or the U.S. Equal Employment Opportunity Commission. A copy of the New Jersey Policy Prohibiting Discrimination in the Workplace is available in the Cumberland County College Policy and Procedure Manual.

### **Coordination with Law Enforcement**

If any party chooses to file a criminal complaint, The College will assist the student or employee in making a criminal report and will cooperate with law enforcement agencies if he/she decides to pursue the criminal process to the extent permitted by law. Except where the complainant is younger than eighteen (18) years old, The College will respect an individual's choice whether or not to report an incident to local law enforcement. In a case of suspected child abuse, The College has a responsibility and duty to report the concern under the appropriate state mandatory reporting law. Neither law enforcement's nor a prosecutor's determination on whether or not to prosecute a suspect, nor the outcome of any criminal prosecution, are determinative on whether a policy violation has occurred. Criminal and College investigations are separate and may be conducted simultaneously. Cumberland County College will not wait for the completion of a

criminal investigation in order to respond, but will pause the administrative investigation for between 3-10 days to allow law enforcement to engage in the initial fact-finding.

### **Retaliation**

Any harassment or adverse employment or educational action taken against a person because of that person's participation in a complaint or investigation of discrimination or sexual misconduct is a violation of this policy, and will result in immediate action by the College to stop the retaliatory behavior, prevent further violations by the perpetrator(s), and remedy any adverse impact of the violation.

### **Confidentiality**

When the College is made aware of a report or allegation of sexual misconduct or harassment, the College will endeavor to maintain the confidentiality of the matter and of all individuals involved to the extent permitted by law. The College will balance the needs of the individuals involved (victim and accused) with its obligation to fully investigate allegations and to protect the safety and wellbeing of the community at large. In all cases, the College and its employees will respect the dignity and rights of all individuals involved. When consulting campus resources, victims should be aware that certain campus authorities are mandated to report and take action after receiving information regarding sexual misconduct and harassment. These include but are not limited to, Safety and Security Officers, managers and supervisors, coaches, club and organization advisors, faculty and, Deans. If you wish to speak to employees of the College confidentially, ask them about their ability to maintain confidentiality. Different people on campus have different reporting responsibilities, and different abilities to maintain your confidentiality, depending on their roles at the College.

### **Confidential Resources**

Students who desire that details of an incident be kept confidential can receive confidential services through the EOF Office (856-200-4628). When speaking with these resources, your right to confidentiality is legally protected. However, there are limits to this protection in specific situations. If you disclose that the incident involved the use of a weapon or other contraband as defined by New Jersey law, or there is an ongoing threat or danger to the safety of another person (particularly children or the elderly), these resources may be required to report the incident to police.

### **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes. All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, etc.- with addresses withheld), for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime to ensure greater community safety.

### **Federal Timely Warning Obligations**

Victims of sexual misconduct should also be aware that College administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the community to aid in the prevention of similar occurrences. The College will withhold the names and other identifying information of victims as confidential, while still providing enough information for community members to make decisions related to their safety in light of the danger.

### **Rights of Victims, Complainants and Accused Students**

- The right to a prompt, fair, and impartial investigation and appropriate resolution of all credible formal complaints.
- The right to have an institutional disciplinary proceeding (hearing).
- The right to have a support person (Advisor) of their choosing accompany and assist them during any institutional disciplinary proceeding or in any related meeting or proceeding. The Advisor may not speak or take part directly in the meeting or proceeding itself, though the student may request a recess to confer with their Advisor.
- The right to consult with an attorney at their own expense. An attorney may not speak or take part directly during any institutional disciplinary proceeding or in any related meeting or proceeding itself but is permitted to serve as an Advisor.
- The right to have the College compel the presence of student, faculty, staff and non-student witnesses, except for the complainant or victim, who shall not be compelled to be present by the College, and the right to ask questions, directly or indirectly of witnesses, and the right to challenge documentary evidence.
- The right to petition that any member of the Sexual Misconduct & Harassment Hearing Board be removed on the basis of bias.
- The right to be present for all information given and evidence presented at a hearing.
- The right to present relevant witnesses at a hearing, including expert witnesses.
- The right to submit a written statement at the conclusion of the hearing and to have that statement considered by the Sexual Misconduct & Harassment Hearing Board in determining its sanction if it has been determined that the accused violated and Title IX Policy.
- The right to receive simultaneous written notice of the results and sanction(s) of the hearing.
- The right to appeal the finding and sanction of the Sexual Misconduct & Harassment Hearing Board in accordance with the provisions of the Title IX policy.
- The right to receive simultaneous written notice of any change to the results prior to final imposition and the date of final imposition.
- The right to be informed in advance of any public release of information regarding the formal complaint to the extent possible and as allowed by law.
- The right to be free from retaliation.
- Regardless of whether a victim elects to pursue a criminal complaint or whether the offense is alleged to have occurred on or off campus, the College will assist victims of sexual assault, domestic violence, dating violence, and stalking and will provide each victim with a written explanation of their rights and options.

- In New Jersey, a victim of domestic violence, dating violence, sexual assault or stalking has the following rights:
  - ✓ To be treated with dignity and compassion by the criminal justice system.
  - ✓ To be informed about the criminal justice process.
  - ✓ To be free from intimidation.
  - ✓ To have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible.
  - ✓ To make at least one telephone call from the police station provided the call is reasonable in both length and location called.
  - ✓ To medical assistance if, in the judgment of the law enforcement agency, medical assistance appears necessary.
  - ✓ To be notified if presence in court is not needed.
  - ✓ To be informed about available remedies, financial assistance and social services.
  - ✓ To be compensated for their loss whenever possible.
  - ✓ To be provided a secure, but not necessarily separate, waiting area during court proceedings.
  - ✓ To be advised of case progress and final disposition.
  - ✓ To the prompt return of property when no longer needed as evidence.
  - ✓ To submit a written statement about the impact of the crime to a representative of the county prosecutor's office which shall be considered prior to the prosecutor's final decision concerning whether formal criminal charges will be filed; and
  - ✓ To make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime. This statement is to be made in addition to the statement permitted for inclusion in the persistence report.

## **Procedures**

### **Voluntary Resolution Procedures**

Some complaints of sexual misconduct can be resolved through voluntary problem resolution processes between parties. The Title IX Coordinator or Title IX Deputy Coordinators may arrange for/and facilitate mediation between the involved parties or coordinate other voluntary problem resolution.

- The College reserves the right to extend time periods identified in this policy. The resolution of a complaint will be completed within 60 days, unless extraordinary circumstances exist.
- Once a report of sexual misconduct has been made, voluntary resolution procedures will be initiated within seven calendar days. Details of the complaint will be given to the accused during the first Title IX Coordinator and/or Title IX Deputy Coordinator interview.
- Voluntary Resolution Procedures are optional and may be used when the College determines that it is appropriate. Voluntary procedures are never applied in cases involving violence or nonconsensual sexual intercourse or penetration.
- An investigation into the report will be conducted by the Title IX Coordinator or Title IX Deputy Coordinators. Title IX Coordinators receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation that protects the safety of victims and promotes

- accountability. For reports involving allegations against College employees, the Title IX Coordinator/Director of Human Resources conducts the investigation and resolves the issue according to employee policy.
- Once the Voluntary Resolution Procedure is complete, written notification to both parties will be given by the Title IX Coordinator or Title IX Deputy Coordinator. If either party is unsatisfied with the outcome of the voluntary resolution procedure, the formal resolution procedure may be pursued.

### **Formal Resolution Procedures**

The formal resolution procedure will be followed when the College determines it is necessary.

- The College reserves the right to extend time periods identified in this policy. The resolution of a complaint will be completed within 60 days, unless extraordinary circumstances exist.
- Once a report of sexual misconduct has been made, an investigation into the report will be initiated by the Title IX Coordinator or Title IX Deputy Coordinator within seven calendar days. Title IX Coordinators receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation that protects the safety of victims and promotes accountability. For reports involving allegations against College employees, the Title IX Coordinator/Director of Human Resources conducts the investigation and resolves the issue according to employee policy.
- The investigation may include any of the following: interviews of the parties involved, including witnesses, review of written statements, and the gathering of other relevant information.
- Once the accused has been notified of the formal written complaint, the victim, complainant and the accused will be kept informed of all developments and will be advised of the procedures that will guide the resolution of the complaint. Details of the complaint will be given to the accused during the first Title IX Coordinator/Title IX Deputy Coordinator interview.
- Findings will be based on a “Preponderance of the Evidence” standard which means whether “It is more likely than not” that a violation of the Title IX Policy occurred.
- When investigative findings do not substantiate a violation, a hearing may be requested by either party within 5 business days (exceptions may be made in extenuating circumstances).
- For complaints that involve students, the appropriate adjudicator will be determined as follows:
  - ✓ *Sexual Misconduct & Harassment Hearing Board* - If the alleged violation is one for which the accused student could likely be suspended or expelled from the College, the complaint will be heard by the Sexual Misconduct & Harassment Hearing Board. Hearing Officers and Hearing Board members are Title IX Coordinators and receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking that protects the safety of victims and promotes accountability.
- The accused, complainant, and victim will be informed in writing of the date and time of the hearing before the Sexual Misconduct & Harassment Hearing Board.

- The accused, complainant and victim will have the opportunity to make a request to the Hearing Board for witnesses to participate in the hearing on their behalf. Witnesses will be approved based on the relevance of the information that they are expected to provide.
- The accused, complainant and victim must notify the Hearing Board of any witnesses attending the hearing 5 business days prior to the hearing.
- Any additional scheduling requests must be directed to the Hearing Board to be determined.
- If a sexual misconduct or harassment case based on the same alleged incident(s) is also being heard by a civil or criminal court, the College retains the right to hear the case before, after, or during the same time as the civil or criminal case, and to implement appropriate action to maintain the safety of the parties involved and the campus.
- The College will attempt to schedule a hearing within 20 business days after the accused has received the formal complaint.

### **Hearing Board Procedures**

The Title IX Coordinator will assemble a Sexual Misconduct & Harassment Hearing Board with at least two trained Title IX Deputy Coordinators to hear sexual misconduct and harassment cases. Each Sexual Misconduct & Harassment Hearing Board will be composed of representatives of both genders.

- The Title IX Coordinator will present the facts of the case up to the point in time the Sexual Misconduct & Harassment Hearing Board convenes.
- All hearings will be closed to the public.
- Each Board member must indicate to the Title IX Coordinator within 3 days prior to the hearing whether they have knowledge of the participants in the case that may impair – or may be perceived to impair – their ability to hear and determine a case impartially, and to excuse themselves if their participation might compromise the integrity of the hearing process.
- All hearings will be audio recorded. A digital file will be made available to the complainant, victim and/or accused student in the event a request for an appeal is filed.
- Board members will be provided with access to written information and evidence at least 24 hours prior to the hearing.
- The accused student, complainant and victim may each be accompanied by an Advisor. The Advisors are present to support the accused student, complainant and victim, and to provide advice on procedural matters. The Advisors do not have speaking privileges during the hearing. A hearing will not be cancelled or postponed in the event an
  - ✓ Advisor does not attend. If the Advisor is not able to attend, the accused student complainant or victim should arrange for a substitute.
  - ✓ If the accused student, complainant or victim fails to appear at the hearing, the matter will be resolved in their absence.
- Witnesses may be present at the hearing only at the time they are called to participate. A hearing will not be cancelled or postponed if a scheduled witness does not attend.

- Written statements of witnesses not in attendance due to extraordinary circumstances may be considered by the Sexual Misconduct & Harassment Hearing Board, if approved by the Title IX Coordinator.
- In making its determination the Sexual Misconduct & Harassment Hearing Board will consider only the evidence admitted at the hearing and the admission of evidence will be within the discretion of the Title IX Coordinator.
- At the start of the hearing, the Title IX Coordinator will ask if the accused student has received the formal complaint, and if the nature of the formal complaint is understood.
- Only the information and evidence related to the alleged violations set forth in the formal complaint will be considered.
- The remainder of the hearing will customarily proceed in the following order:
  1. Opening statement from complainant.
  2. Opening statement from accused student.
  3. Complainant and accused student questioning of witnesses (each witness will be questioned separately).
  4. Board questioning of witnesses (each witness will be questioned separately then excused).
  5. Board questioning of complainant and accused student.
  6. Accused student's responding statement.
  7. Complainant's responding statement.
  8. Final questions from Board
  9. Accused student's closing statement.
  10. Complainant's closing statement.
- The Sexual Misconduct & Harassment Hearing Board will deliberate in private and make an appropriate determination based on the information presented during the hearing.
- The Sexual Misconduct & Harassment Hearing Board by a majority decision will determine whether or not the accused student violated the Title IX Policy as alleged in the formal complaint by finding either: "In violation" or "Not in violation" of the Title IX Policy. The Sexual Misconduct & Harassment Hearing Board's determination will be based on a "Preponderance of the Evidence" standard which means the Board will determine whether "it is more likely than not" that a violation of the Sexual Title IX Policy occurred.
- If a determination of "In violation", is rendered the Sexual Misconduct & Harassment Hearing Board will determine an appropriate sanction.
- The Sexual Misconduct & Harassment Hearing Board will have up to ten days to render a decision.
- The Title IX Coordinator will notify the accused student, complainant and victim simultaneously in writing of the decision.
- The accused student, complainant and victim may file a written appeal of the decision in accordance with established procedures (See Appeals procedure).
- The Title IX Coordinator will notify the accused student, complainant and victim simultaneously in writing of any change to the results prior to final imposition and the date of final imposition.

## Appeals

- Upon receiving notification of the outcome of a case, the accused student, complainant, or the victim may file an appeal under the following circumstances:
  - ✓ The specified procedural error(s) or error(s) in the interpretation of College regulations is so substantial as to effectively deny the participant a fair hearing.
  - ✓ New and significant information has become available which could not have been discovered by a properly diligent person before or during the hearing.
  - ✓ The sanction is inappropriate in light of the violation.
  - ✓ The facts of the case were insufficient to establish that a violation occurred.
- All appeals must be made within five (5) business days of the date on the letter informing the parties of the decision. Appeals must be submitted in writing to the Title IX Coordinator and should explain in detail the basis of the request, including any supporting documentation.
- Upon receipt of the written appeal, the Title IX Coordinator will defer the imposition of the sanction(s) pending the decision on the appeal. Note: Interim Suspension as well as any other prior restrictions will remain in effect during the appeal process.
- Cases adjudicated by the Sexual Misconduct & Harassment Hearing Board will be forwarded to the Sexual Misconduct & Harassment Appeals Board.
- An appeal will be responded to within 15 days and a final decision will be issued in writing either accepting or denying the appeal and giving the reasons for this decision.

The title IX Coordinator will assemble a Sexual Misconduct & Harassment Appeals Board with at least two trained title IX Deputy Coordinators (that are not the same Title IX Deputy coordinators that were on the Sexual Misconduct & Harassment Hearing Board). The Sexual Misconduct & Harassment Appeals Board will be composed of representatives of both genders.

- The Title IX Coordinator convenes the Sexual Misconduct & Harassment Appeals Board. The Title IX Coordinator presents the facts from the Sexual Misconduct & Harassment Hearing Board. Each member must be in attendance for a quorum.
- Appeal Board members receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking that protects the safety of victims and promotes accountability.
- The Sexual Misconduct & Harassment Appeals Board will review the written appeal and all documentation contained in the case file in a closed meeting. The decision to deny or uphold the appeal will be made by a simple majority vote. If an appeal is upheld based on procedural error or new information the case will be remanded to the Sexual Misconduct & Harassment Hearing Board for re-opening of the hearing. If an appeal is upheld based on disproportionate sanction or lack of sufficient information, the Sexual Misconduct & Harassment Appeals Board will render the appropriate determination and/or sanction.
- Normally, all Sexual Misconduct & Harassment Appeals Board decisions are final and will be implemented immediately

## **Findings**

The Title IX Coordinator, or designee, shall render a finding based on the evidence as a whole, the totality of the circumstances, and the context in which the alleged incident(s) occurred, utilizing a preponderance of the evidence standard, i.e. the facts complained of are more likely true than not. Mediation between the parties is never an appropriate resolution option in cases involving sexual misconduct and will not be used by Cumberland County College.

Upon completion of the Title IX investigation, the Title IX Coordinator, or designee, is authorized to take the following actions:

### **Finding of Not Responsible**

The Title IX Coordinator finds that no policy violation occurred and dismisses the complaint, giving written notice of said dismissal to each party involved.

**Finding of Some Other Policy Violation-** The Title IX Coordinator has determined that the Title IX policy has not been violated, however, the investigation yielded that there is a violation of another College policy (for example, an employee violated the **Consensual Sexual Relationship Policy** or a student violated a provision of the Student Code of Conduct.) In these cases, a Finding of Not Responsible will be found with the caveat that the matter is a potential violation of another policy and will direct the matter to the appropriate College official with oversight for the enforcement of the other policy.

### **Finding of Responsibility**

**Students:** The matter is resolved and the accused party has been found responsible for sexual misconduct as defined in the Title IX policy. The Title IX Coordinator or his/her designee will prepare an outcome letter indicating the finding, the reason for the finding, and the sanction, which includes but is not limited to:

- Disciplinary probation with or without loss of designated privileges for a specified period of time.
- Restriction privileges such as removal from elective or appointed office and/or ineligibility in representing the College.
- Suspension from the College for a specified period of time. Any suspension may be followed by a probationary period and may include restriction or forfeiture of privileges.
- Dismissal from the College with permission to reapply after a specified period of time. Conditions precedent to readmission may be established in conjunction with such a dismissal.
- Permanent dismissal from the College.  
Note: If a student is suspended or dismissed from the College and is later reinstated, credits for courses at other institutions of higher learning are not transferrable.
- A delay as to when a degree is to be conferred upon the student.
- A determination that the student is not entitled to have their degree conferred.

- Letter of warning regarding conduct.

The Title IX Coordinator will provide an outcome letter to the complainant and respondent, simultaneously and via College email or US Mail. The Title IX Coordinator will also convey any permanent protective measures that they determine appropriate based on the facts of the case (for example, the Title IX Coordinator may impose permanent no contact between the parties, or may restrict a party's access to certain spaces on campus indefinitely.) At that time, the investigation and the record shall be closed.

### **Employees**

The Title IX Coordinator makes a finding of impropriety and notifies the Chief Human Resources Officer / Title IX Administrator of the finding and may recommend discipline up to and including termination of employment.

If there is a conflict of interest or bias for or against the accuser or the accused on the part of the Title IX Coordinator or Deputy Coordinator, the Coordinator or Deputy Coordinator will recuse himself/herself.

### **Special Provisions**

#### **Alternative Testimony Options**

For all participating parties, alternative testimony options will be provided. Options include, placing a privacy screen in the hearing room, providing testimony from another room via video or other options that provide a safe space for participation while not depriving the accused student of their rights in the process. While alternative testimony options are intended to help make the complainant, victim or other participating parties more comfortable, they are not intended to work to the disadvantage of the accused student.

#### **Attempted Violations**

In most circumstances, the College will treat attempts to commit any of the violations described in this policy as if those attempts had been completed, and students will be subject to disciplinary action accordingly.

#### **False Reports**

The College does not tolerate intentional false reporting of incidents. It is a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

#### **Immunity from Disciplinary Action**

The welfare of students in our community is of paramount importance. It is in the best interests of this community that as many victims as possible choose to report incidents involving sexual misconduct or harassment. The College encourages the reporting of sexual misconduct and harassment violations. The College also encourages students to

offer help and assistance to others in need. This is true even when the student who has a complaint or a witness may have a concern that his or her own actions, including drug or alcohol use, may have violated College policies. The College will not pursue disciplinary action for drug or alcohol violations, or most other violations of the Code of Student Conduct, against a victim or witness who comes forward in good faith to report sexual misconduct or harassment, crimes of violence, or other serious criminal behavior. While violations cannot always be completely overlooked, the College will provide educational options rather than punishment, in such cases. This limited immunity does not extend to the perpetrator(s) of the sexual misconduct or harassment, crimes of violence, or other serious criminal behavior.

### **Notification of Outcomes**

The outcome of a campus disciplinary hearing is part of the education record of the accused student and is protected from release under FERPA. However the College observes the exceptions as follows:

- Victims of incidents charged under the Student Sexual Misconduct and Harassment Policy have a right to be informed simultaneously of the outcome and sanctions of the hearing, in writing. Victims are also permitted to submit an appeal.
- Students who bring a complaint against faculty or staff under the Sexual Misconduct and Harassment Policy may be informed of the outcome and sanction.
- The College may release publicly the name, nature of the offense and sanction for any student who is found in violation of a College policy that is a sex offense or crime of violence
- Parents or guardians of the accused student may be notified for cases involving sex offenses or crimes of violence

### **Past Sexual History/Character**

The past sexual history or sexual character of a student will not be admissible by the other party in hearings unless such information is determined to be highly relevant by the Chair. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request, and must be reviewed in advance of the hearing by the Associate Dean. If, in the past, the accused student was found to have violated the Student Sexual Misconduct and Harassment Policy, the information related to that past violation may be considered in the hearing if: (a) The previous violation was substantially similar to the present complaint; and (b) The previous violation indicates a pattern of behavior and substantial conformity with that pattern by the accused student.

### **College as Complainant**

As necessary, the College reserves the right to initiate a complaint, to serve as complainant, and to initiate institutional disciplinary proceedings without a formal complaint by the victim of sexual misconduct or harassment.

### **Finding**

After consultation between the Deputy Coordinator, Title IX Coordinator or designee, shall render a finding based on the evidence as a whole, the totality of the circumstances, and the context in which the alleged incident(s) occurred, utilizing a preponderance of the evidence standard, i.e. the facts complained of are more likely true than not.

### **Finding of Not Responsible**

The Title IX Coordinator finds that no policy violation occurred and dismisses the complaint, giving written notice of said dismissal to each party involved.

### **Finding of Some Other Policy Violation**

The Title IX Coordinator has determined that the Title IX policy has not been violated; however, the investigation yielded that there is a violation of another College policy (for example, an employee violated the *Consensual Sexual Relationship Policy* or a student violated a provision of the Student Code of Conduct.) In these cases, a Finding of Not Responsible will be found with the caveat that the matter is a potential violation of another policy and will direct the matter to the appropriate College official with oversight for the enforcement of the other policy.

### **Finding of Responsibility**

**Students:** The matter is resolved and the accused party has been found responsible for sexual misconduct as defined in the Title IX policy. The Title IX Coordinator or his/her designee will prepare an outcome letter indicating the finding, the reason for the finding, and the sanction\*, which includes but are not limited to:

- a) Disciplinary probation with or without loss of designated privileges for a specified period of time.
- b) Restriction privileges such as removal from elective or appointed office and/or ineligibility in representing The College.
- c) Suspension from The College for a specified period of time. Any suspension may be followed by a probationary period and may include restriction or forfeiture of privileges.
- d) Dismissal from The College with permission to reapply after a specified period of time. Conditions precedent to readmission may be established in conjunction with such a dismissal.
- e) Permanent dismissal from The College.

Note: If a student is suspended or dismissed from The College and is later reinstated, credits for courses at other institutions of higher learning are not transferrable.

- f) A delay as to when a degree is to be conferred upon the student.
- g) A determination that the student is not entitled to have their degree conferred.
- h) Letter of warning regarding conduct.

The Title IX Coordinator will provide an outcome letter to the complainant and respondent, simultaneously and via College email or US Mail. The Title IX Coordinator

will also convey any permanent protective measures that they determine appropriate based on the facts of the case (for example, the Title IX Coordinator may impose permanent no contact between the parties, or may restrict a party's access to certain spaces on campus indefinitely.) At that time, the investigation and the record shall be closed.

### **Employees**

The Title IX Coordinator/Director of Human Resources makes a finding of impropriety and may recommend discipline up to and including termination of employment. If there is a conflict of interest or bias for or against the accuser or the accused on the part of the Title IX Coordinator or Deputy Coordinator, the Coordinator or Deputy Coordinator will recuse himself/herself and/or a different Deputy Coordinator will be assigned.

### **Special Provisions**

#### **Alternative Testimony Options**

For all participating parties, alternative testimony options will be provided. Options include, placing a privacy screen in the hearing room, providing testimony from another room via video or other options that provide a safe space for participation while not depriving the accused student of their rights in the process. While alternative testimony options are intended to help make the complainant, victim or other participating parties more comfortable, they are not intended to work to the disadvantage of the accused student.

#### **Attempted Violations**

In most circumstances, the College will treat attempts to commit any of the violations described in this policy as if those attempts had been completed, and students will be subject to disciplinary action accordingly.

#### **False Reports**

The College does not tolerate intentional false reporting of incidents. It is a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

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## Resources for Victims

### Resources for victims of Domestic Violence, Dating Violence, Sexual Assault & Stalking

The College has procedures in place that serve to be sensitive to those who report sexual assault, domestic violence, dating violence, and stalking, including informing individuals about their right to file criminal charges as well as the availability of counseling, health, mental health, victim advocacy, legal assistance and other services on and/or off campus as well as additional remedies to prevent contact between a complainant and an accused party, such as course scheduling, transportation and/or working accommodations, if reasonably available. The College will make such accommodations, if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to the Department of College Safety and Security or local law enforcement. Students and employees should contact Rosemarie Fiscus, Director of Human Resources/Title IX Coordinator, or a Title IX Deputy Coordinator (see below) to request accommodations related to a case of sexual misconduct.

<b>On-Campus</b> Counseling, Mental Health Title IX Coordinator	EOF Department	Alonna Brown Director, EOF 856-200-4628
	Human Resources Department	Rosemarie Fiscus, Director Human Resources / Title IX Coordinator 856-200-4562
Campus Safety and Security	College Safety	Philip Cecola, Director Safety and Security 856-200-7404
Student Services	Student Services	Joseph Hibbs, Sr. Exec. Director Student Services 856-200-4585
Adjunct Faculty Development	Adjunct Services	Nathan Alridge, Assistant Director, Adjunct Faculty Development 856-200-4545
Student Counseling	Humanities	Brenda Torres, Sr. Student Development Advisor 856-200-4608

800 225-0196 Cumberland County SERV (Services Empowering Rights of Victims) This is a 7 day a week, 24 hours a day, free service.

856-691-3713 Cumberland County Women's Center

1 800 656-HOPE (4673) National Sexual Assault Hotline

[www.ovw.usdoj.gov/sexassault.htm](http://www.ovw.usdoj.gov/sexassault.htm) - Department of Justice

[www2.ed.gov/about/offices/list/ocr/index.html](http://www2.ed.gov/about/offices/list/ocr/index.html) Department of Education, Office of Civil Rights

[www.rainn.org](http://www.rainn.org) Rape, Abuse, & Incest National Network