

Cheyney University Policy SE-2010-6001

Policy Title: Preventing and Addressing Sexual Harassment, Including Sexual Violence

Approved by: Social Equity
Social Equity Council; President's Cabinet

History: Issued: 12-9-2010
Revised: Social Equity Council 1-14-2013; President's Cabinet 8-5-2014;
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Related Policies: Policy on Nondiscrimination SE-2010-6002, Policy on Harassment, Intimidation and Disruptive Conduct SE-2010-6006; Policy on Title IX Policies and Procedures SE-2011-60081

Additional References:

A. Purpose:

The purpose of this policy is to educate all members of the campus community regarding Cheyney University's commitment to creating an environment that is free of sexual harassment, including sexual violence. This policy provides important information regarding: (1) the types of conduct that constitute sexual harassment, including sexual violence; (2) University procedures governing the reporting and investigation of sexual harassment, including sexual violence; and (3) the actions, including disciplinary action against employees or students, that may be taken when it is determined that an individual has committed sexual harassment, including sexual violence. This policy is further intended to clarify that the University will not tolerate sexual harassment, including sexual violence.

B. Scope:

This policy applies to all members of the Council of Trustees, administration, faculty, staff, and student body (including student workers), and to all, unpaid volunteers, visitors, contractors, contracted service providers, and vendors to the college ("third parties").

C. Definition(s): The words and phrases below, as used in this policy, are defined as follows:

Complainant: The person who is alleging the occurrence of sexual harassment, which may include sexual violence.

Consent: Consent is an affirmative, explicit and voluntary agreement to participate in a sexual act that is made freely by an individual who is not: coerced, impaired or incapacitated by a

The University is in the process of updating its policies concerning sexual harassment and related topics. In the event of a conflict or inconsistency between any provision of this policy and that of another policy, this policy should be followed.

mental disability or the influence of drugs or alcohol, or is not otherwise prevented by law from giving consent. Consent may be withdrawn at any time.

Dating Violence: Violence by a person who is or has been in a romantic or intimate relationship with the complainant. Whether such a relationship exists or existed will be gauged by the length, type, and frequency of interaction between the complainant and respondent. Stalking is defined as a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.

Domestic Violence: Includes asserted violent misdemeanor and felony offenses committed by:

1. The complainant's current or former spouse;
2. The complainant's current or former cohabitant;
3. A person similarly situated under domestic or family violence laws; or
4. Anyone else against an individual protected under domestic or family violence laws.

Respondent: The person whose actions are alleged to constitute sexual harassment (which may include sexual violence).

Retaliation: Any adverse action, which causes a tangible academic or employment detriment to an individual for engaging in a protected activity.

Sexual Harassment: Includes all of the following:

- (1) Conduct that violates Title VII of the Civil Rights Act of 1964, meaning:
Sexual advances, requests for sexual favors, and/or other verbal or physical conduct that is pervasive or severe and may constitute sexual harassment when:
 - a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement; or
 - b. submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such an individual; or
 - c. such conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment; and
- (2) Conduct that violates Title IX, 20 U.S.C. § 1681et seq., including any or all of the following:
 - a. Unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, either verbal or nonverbal, or physical conduct of a sexual nature.
 - b. Acts of sexual violence.
- (3) For purposes of this policy, all references to "sexual harassment" shall be interpreted as including dating violence, domestic violence and stalking when the victim is a student or when the respondent is a member of the campus community.²

² In order to ensure the University's compliance with federal law, allegations of sexual violence, domestic violence, dating violence and stalking must be reported and investigated pursuant to this policy.

Sexual Violence: Includes, but is not limited to: rape, sexual assault, sexual battery, and sexual coercion. Acts of sexual violence are:

1. committed against a person's will;
2. where a person is incapable of giving consent as a result of his/her use of drugs or alcohol; or
3. where a person is unable to give consent due to an intellectual or other disability.

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her own safety or the safety of others or suffer substantial emotional distress. Stalking is a violation of the University's sexual harassment policy.

Title IX Coordinator: The University official who oversees investigations involving sexual harassment, sexual violence, domestic violence, dating violence and stalking of students and employees to ensure University-wide compliance with Title IX. At this University, the Title IX Coordinator currently serves as Social Equity Coordinator as well.

Title IX: A provision of federal law (Education Amendments of 1972) that prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance; sexual harassment of students is a form of discrimination prohibited by Title IX.

D. Policy and Procedure(s):

(1) University and Individual Responsibilities

a. Reporting and Confidentiality

Federal law prohibits sexual harassment and requires a prompt and equitable resolution of complaints. Therefore, acts of sexual harassment, including sexual violence, should be promptly reported to the Cheyney University Department of Public Safety and the Title IX

Coordinator. All members of the campus community have a role in establishing and maintaining an environment that is free from sexual harassment, including sexual violence. Therefore, all University employees must report any allegations of sexual harassment, including sexual violence, once they have learned of such allegations. In reporting the allegations, the employee is required to disclose the name of the victim to the Title IX Coordinator unless one of the following exceptions applies:

- (i) The victim is a student and the employee holds a statutory privilege (i.e., professional or pastoral counselor); or
- (ii) The victim is a student, the employee learned of the allegations while providing assistance to the student in the capacity of a nonprofessional counselor or advocate, and the President, with the approval of the Office of University Legal Counsel, has designated the position of the employee as exempt from the reporting requirements because he/she holds a privilege.

The role of the Title IX Coordinator includes the oversight of investigations involving sexual harassment, including sexual violence. Investigative procedures are set forth in section E of this policy. In the interest of maintaining confidentiality, the Title IX coordinator will disclose the name of the victim only to the extent necessary to protect the rights of any party involved or as otherwise required by law or collective bargaining agreement. The only individuals who may participate in the investigation are the complainant, respondent, and individuals identified as witnesses. Student complainants and respondents may be accompanied by an advocate or advisor of their choice. With respect to the judicial hearing, the role of the advocate or advisor is addressed in the Student Code of Conduct.

b. Coordination between Department of Public Safety and Title IX Coordinator.

Complainants are encouraged, but not required, to file a report with the Department of Public Safety and/or any other law enforcement agency. Cheyney University Public Safety employees should notify complainants of their right to file an administrative Title IX sex discrimination complaint with the University in addition to, and independent of, the criminal complaint. The University's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the University of its independent Title IX obligation to investigate a complaint. Complainants should take every precaution to preserve evidence as proof of sexual violence, domestic violence, dating violence and stalking offenses.

c. Resolution of Complaints.

Absent unusual circumstances, within sixty (60) days of a complaint of sexual harassment being filed, the Vice President for Student Affairs' Office, in the case of allegations against a student, or the Title IX Coordinator, in the case of allegations against a non-student employee or off-campus vendor, will seek to conclude the investigation and will notify the parties, in writing, that there has been a resolution of the complaint. Where a complainant reports an alleged incident of sexual harassment, sexual violence, domestic violence, dating violence and/or stalking, the outcome of the complaint will be determined based on a preponderance of the evidence (i.e., it is more likely than not that a violation has occurred). Depending on the nature of the allegation, the university may be required to notify law enforcement in order to protect the university community. Pending the resolution of the complaint, based on the circumstances, the university may be required to take or enforce remedial measures to prevent further contact between the parties.

d. Training.

The University is committed to ensuring the availability of training and education to prevent the recurrence of sexual harassment, sexual violence, domestic violence, dating violence and stalking. Employee and student training as to the contents of this policy is available on an annual basis throughout the year, both in person and electronically. Additionally, Cheyney University employees are required to participate in this training on an annual basis.

e. Avoidance of inappropriate relationships.

University employees are advised to avoid inappropriate relationships.

i. General Guidance

A personal, amorous or non-academic relationship may interfere with the faculty/student relationship and may violate standards of conduct expected of all faculty by the university. Personal, amorous or non-academic relationships should not be permitted to interfere with or compromise the academic integrity of the faculty/student relationship. Sexual relations between a faculty member and a current student of that faculty member are determined by the university to be inappropriate and/or unethical. This determination also applies to relations between a graduate student and an undergraduate student when the graduate student has supervisory academic responsibility for the undergraduate. Furthermore, the determination also applies to relations between a current student and an administrator, coach, advisor, program director, counselor, or residential staff member who has supervisory responsibility for the student. As with the faculty/student relationship, this policy also covers employer/employee consensual relationships. An employee with professional responsibility or supervision of another employee who has real or potential power and authority over that individual in a variety of roles including, but not limited to, supervisor, mentor, committee member, etc., shall not abuse that power.

ii. Consensual Relationships

Absent contradictory evidence, an amorous or sexual relationship between individuals where one possesses or appears to possess authority or power over another is presumed to be exploitative and shall constitute unprofessional conduct. The consensual nature of such a relationship does not necessarily constitute a defense to a charge of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking, or related unprofessional conduct especially when the indirect result of the relationship creates a hostile workplace or academic environment.

Therefore, any faculty member or employee in a supervisory role who enters into a sexual relationship with a student or another employee will be subject to scrutiny if a complaint of sexual harassment, sexual violence, domestic violence, dating violence and/or stalking, is brought against the faculty member by a student or against the "supervisory person" by the "subordinate person" or if a third party brings a complaint.

f. False Complaints

All individuals have a responsibility to ensure the integrity of the reporting and investigatory process by conducting themselves honestly. Any person who knowingly files a false complaint is subject to disciplinary action, up to and including dismissal from the university.

In the case of a complaint against an employee, the Title IX coordinator will arrange for a Title IX investigator, who is an employee, to conduct the investigation. When the complaint is against a student, the Title IX coordinator will coordinate with the Office of Student Affairs,

which will conduct the investigation and take appropriate action in accordance with the Student Judicial Code.

E. University Procedures for Resolution of Complaints

STEP 1: All charges of sexual harassment, including sexual violence must be reported to the Title IX Office.

In order to ensure the effective handling of all incidents of sexual harassment, this policy requires that all such reports be directed to the same office on campus, namely that of the Title IX Coordinator. At this first stage of the procedure, the individual or individuals who alert(s) the Title IX Coordinator of a possible incident might not be the actual aggrieved party(ies). Both the complainant and the respondent may be accompanied by an advisor, who is a member of the campus community, when meeting with the Title IX Coordinator or any Title IX investigators. A potentially aggrieved party may bring a complaint of sexual harassment, to a supervisor, department chair or dean, who, in turn, shall refer the complainant to the Title IX Coordinator.

In the event there are two or more complainants and/or two or more persons (respondents) charged with sexual harassment, sexual violence, domestic violence, dating violence and/or stalking in the same set of circumstances, the Title IX Coordinator or his/her designee, will decide whether the complaint will be handled jointly or separately.

The role of the Title IX Coordinator, or his/her designee is to serve as a fact finder. The Title IX Coordinator, or his/her designee, must act in such a manner as to ensure that all parties to a complaint are protected by appropriate due process and confidentiality. Should the Title IX Coordinator be accused of sexual harassment, sexual violence, domestic violence, dating violence and/or stalking, the Provost will act in his/her place. Should the University President be accused of sexual harassment, sexual violence, domestic violence, dating violence and/or stalking, the matter will be referred to the Pennsylvania State System of Higher Education, Office of the Chancellor.

STEP 2: The complainant meets with the Title IX Coordinator.

The purpose of this meeting is to discuss the complaint, to gather information, and to provide the complainant with a copy of this policy, which sets forth the rights and procedures governing complaints. At this initial meeting, the Title IX Coordinator, or his/her designee, clarifies for the complainant whether or not the allegations may constitute sexual harassment, sexual violence, domestic violence, dating violence and/or stalking. The Title IX Coordinator, or his/her designee, then reviews the appropriate complaint procedure for the benefit of the complainant. Complainants are not required to file a written complaint, but have the right to do so in the manner specified in Step 4.

STEP 3: The complainant will receive additional clarification regarding university procedures regarding the alleged violation and general information regarding counseling.

If requested by the complainant, the Title IX Coordinator, or his/her designee, will provide general guidance for the complainant in order to:

- (a) clarify the nature of the alleged violation.
- (b) review the university's complaint procedure.
- (c) review the complainant's responsibilities of filing a written or oral complaint.
- (d) give guidelines for what a written complaint should contain, in the event the complainant chooses to file his/her complaint in writing.
- (e) apprise the complainant, in writing, of counseling, health, mental health, advocacy and other relevant services.*
- (f) apprise the complainant, in writing, of possible remedial actions (to reduce the likelihood of contact with respondent) with respect to changing transportation, academic, residence or working situations, if reasonably available.*

**More information on the services and remedial actions is provided in the document, Sexual Assault & Relationship Violence: What Everyone Needs to Know! Available at: <http://www.cheyney.edu/president/Title-IX.cfm>

STEP 4: The complainant files a complaint.

A complainant may file a complaint either orally or in writing. The complainant will be given the opportunity to provide the names of any witnesses and/or documentation in support of his/her complaint. In the event that a complainant does not wish to file a signed complaint him or herself, the Title IX Coordinator, or his/her designee, will prepare a written statement with the following information: the names of the complainant and the respondent, a brief description of the alleged violation as stated by the complainant, and the date(s) of the alleged violation. Whether the complainant submits a written complaint or the Title IX Coordinator prepares a written statement, the allegations will be investigated.

STEP 5: The Title IX Coordinator must decide on an appropriate course of action regarding the complaint.

There are two possible courses of action following the filing of a complaint:

- A. Based on the complainant's written or spoken account of alleged sexual harassment which may include sexual violence, domestic violence, dating violence, and/or stalking the Title IX Coordinator, or his/her designee, determines there is insufficient reason to proceed with a complaint and counsels the complainant regarding this decision. In this case, the investigation would stop at this point, and the complainant would be notified of the determination of the Title IX Coordinator.
- B. Based on the complainant's account of alleged harassment (which may include sexual violence, domestic violence, dating violence and/or stalking) and a finding of sufficient reason to proceed, the Title IX Coordinator or his/her designee, will promptly initiate an impartial fact-finding investigation.

STEP 6: The respondent is notified of the complaint.

Absent unusual circumstances, within 14 calendar days of a complaint being filed, the Title IX Coordinator will notify the respondent that a complaint of sexual harassment, sexual violence, domestic violence, dating violence and/or stalking has been filed against him/her. Depending on the circumstances, the respondent will be notified either orally or in writing. If the notification is in writing, for reasons of confidentiality, the notification will be mailed to the respondent's home address, unless the respondent is a student who resides on campus. Furthermore, if the notification is in writing, it will be sent by certified mail so that only the respondent can sign for it personally.

STEP 7: The Title IX Coordinator meets with the respondent.

Absent unusual circumstances, within 14 calendar days of having received notification of the complaint, the respondent must meet with the Title IX Coordinator, or his/her designee, to discuss the complaint. The respondent will be given the opportunity to respond to the allegations and provide any and all defenses, as well as the names of any witnesses and/or documentation in his/her defense. The University will take every precaution to protect the complainant and any witnesses from retaliatory action by the respondent. In fact, the respondent will be informed he/she is not to retaliate against the complainant in any way nor against any other person connected to the complaint as that action may result in a separate disciplinary action. Further, the respondent will be informed he/she is not to communicate directly with the complainant regarding the claim of sexual harassment, sexual violence, domestic violence, dating violence and/or stalking as this may be perceived as an attempt to discourage the complainant from pursuing the complaint. The Title IX Coordinator will attempt to resolve the complaint informally, if appropriate. If the complaint is not resolved informally, a formal investigative process will follow.

STEP 8: The Title IX Coordinator seeks to resolve the complaint and/or to mediate a solution.

The Title IX Coordinator, or his/her designee, may choose to meet with the complainant, absent unusual circumstances, within 7 days of having met with the respondent. Upon meeting with the respondent and the complainant, the Title IX Coordinator, or his/her designee, will seek to resolve the complaint. One of three outcomes is possible:

- a. The Title IX Coordinator, or his/her designee, is satisfied that the respondent will make appropriate changes in his/her behavior. The Title IX Coordinator, or his/her designee, meets with the respondent to counsel the respondent about resolution of the complaint (e.g. removing inappropriate pictures from a conspicuous location). A record of the resolution would be signed by the respondent and would be kept in the Office of the Title IX Coordinator for three years. The Title IX Coordinator will inform the complainant the matter has been resolved, without providing detailed information about the resolution.

- b. A mediated solution could be achieved which is satisfactory to the complainant and the respondent. A record of the resolution would be kept in the Office of the Title IX Coordinator for three years.
- c. If the complaint cannot be resolved for any reason, including the nature of the allegations, the investigation will proceed as explained in Step 9. If the complaint involves an allegation of sexual violence, domestic violence, dating violence, or stalking, there shall be no attempt at mediation, as mediation will not be an option to resolve such complaints. Instead, the matter shall be referred to Public Safety, if not already reported, and/or resolved as set forth below.

STEP 9: Action by the University President and Final Disposition of the Complaint.

If the complaint cannot be resolved as set forth in Step 8, the Title IX Coordinator, or his/her designee, will continue the investigation to its conclusion. A report containing any and all factual findings will be submitted to the University President or his/her designee. Upon receiving the report, the President, or his/her designee, will decide what action will be taken, including, but not limited to, the dismissal of the complaint or the imposition of discipline. The decision of the President or his/her designee shall be final. All records of the formal process, including the decision of the President, or his/her designee, will be kept in the Office of the Title IX Coordinator for three years. In the event of an adverse ruling against the respondent, a copy of the decision of the President, or his/her designee, shall be placed in the respondent's personnel file. The complainant will receive a letter from the Title IX Coordinator stating there has been a resolution of the complaint, without providing specific details regarding the resolution.

E. POLICY DISSEMINATION

A current hard copy of this policy is available in the following locations: the student handbook, the Office of the President, the Title IX Coordinator's Office, the Department of Public Safety, and the Office of the Vice President for Student Affairs, and the Guidance and Counseling Center. Hard copies of this policy may be obtained from the Title IX Coordinator.

An electronic copy of this policy is available in the following locations: the Cheyney University website under "Policy Register"; the Title IX Coordinator webpage under "Links of Interest"; the Office of the Vice President for Student Affairs' webpage; the Guidance and Counseling Center webpage under "Resources"; and the Athletics webpage under "Compliance."