

CT BOARD OF REGENTS FOR HIGHER EDUCATION

RESOLUTION

concerning

Statement of Title IX Policy

July 29, 2020

- WHEREAS, The Board of Regents in accord with the Connecticut State Colleges and Universities comprised of seventeen institution and a System Office, is committed to ensuring that each member of every BOR governed college or university community has the opportunity to participate fully in the process of education and development; and
- WHEREAS, The BOR and CSCU strive to maintain a safe and welcoming environment free from acts of sexual misconduct and relationship violence. It is the intent of the BOR and each of its colleges or universities to provide safety, privacy and support to victims of sexual misconduct and relationship violence; and
- WHEREAS, The United States Department of Education promulgated regulations under Title IX of the Education Amendments of 1972 (“Title IX”) and set forth certain specific requirements, which become effective on August 14, 2020; and
- WHEREAS, The Board of Regents consistent with the goal providing safe environments at all of its campuses for all who frequent them, sets forth a “Statement of Title IX Policy” therefore be it
- RESOLVED, That the Board of Regents formally adopts a “Statement of Title IX Policy” effective August 14, 2020.

A True Copy:

Erin A. Fitzgerald, Secretary of the
CT Board of Regents for Higher Education

ITEM

The Board of Regents for Higher Education adopts a “Statement of Title IX” Policy to comply with the United States Department of Education regulations under Title IX of the Education Amendments of 1972 (“Title IX”)

BACKGROUND

The United States Department of Education promulgated regulations under Title IX of the Education Amendments of 1972 (“Title IX”) to address sexual discrimination, specifically sexual harassment. These regulations require the adoption of policy. The Statement of Title IX policy is set forth to comply with that requirement.

RECOMMENDATION

That the Board of Regents for Higher Education formally adopts “Statement of Title IX” effective August 14, 2020.

Board of Regents for Higher Education
Connecticut State Colleges and Universities
Regarding

Statement of Title IX Policy

Consistent with Title IX of the Education Amendments of 1972 (“Title IX”)ⁱ, the Connecticut State Colleges and Universities (CSCU) does not and will not discriminate against students, faculty or staff based upon sex in any of its programs or activities, including but not limited to education programs, employment or admission. Further, retaliation against any person who made a complaint, testified, assisted, participated or refused to participate in a Title IX process will not be tolerated.

The Board of Regents for Higher Education (BOR) is committed to ensuring that each member of the CSCU community has the opportunity to participate fully in the process of education and development. The BOR and CSCU strive to maintain a safe and welcoming environment free from acts of sexual discrimination, including, sexual harassment, sexual assault, dating violence and stalking. It is the intent of the BOR that each college and university provide safety, privacy and support.

The BOR strongly encourages students, parents, bystanders and employees to alert Title IX Coordinators to sexual discrimination, including sexual harassment. Title IX Coordinators will promptly address these matters and treat all parties equitably. In accordance with federal law, those accused of engaging in prohibited conduct will be presumed not responsible and receive no punitive treatment unless and until found responsible after due process. All BOR governed colleges and universities will provide complainants and the respondents with supportive measures, including referral to agencies that provide medical attention, counseling, legal services, advocacy, referrals and other relevant information.

Under Title IX sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioned in the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or
3. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v)ⁱⁱ, “dating violence” as defined in 34 U.S.C. 12291(a)(10)ⁱⁱⁱ, “domestic violence” as defined in 34 U.S.C. 12291(a)(8)^{iv}, or “stalking” as defined in 34 U.S.C. 12291(a)(30).^v

If the institution’s Title IX Coordinator determines that the alleged harassment meets the above definition of sexual harassment, as well as occurred within the United States on property owned or controlled by the institution or any building owned or controlled by a student organization officially recognized by the institution, and at the time of the filing the complainant was

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participating or attempting to participated in an educational program or activity at the particular College or University the Title IX coordinator will initiate a Title IX process. If the Title IX Coordinator determines that the alleged harassment does not meet the above factors, but the alleged misconduct violates BOR policy the Title IX Coordinator will comply with the BOR Sexual Misconduct Reporting, Supportive Measures and Processes Policy. If the institution's Title IX Coordinator determines that the allegations do not constitute a violation of either Title IX or Board policy and can make no finding of responsibility, complainant and respondent will be notified that the matter will be closed.

Sexual harassment will not be tolerated.

Any inquiries about this policy should be directed to the Title IX Coordinator

ⁱ Title IX states that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance"

ⁱⁱ 20 U.S.C. 1092(f)(6)(A)(v), The term "[sexual assault](#)" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

ⁱⁱⁱ 34 U.S.C. 12291(a)(10) The term "[dating violence](#)" means violence committed by a person - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

^{iv} 34 U.S.C. 12291(a)(8) The term "[domestic violence](#)" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or [youth](#) victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

^v 34 U.S.C. 12291(a)(30) (30) The term "[stalking](#)" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to - (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

CT BOARD OF REGENTS FOR HIGHER EDUCATION

RESOLUTION

concerning

Policy Regarding

Sexual Misconduct Reporting, Supportive Measures and Processes Policy

July 29, 2020

- WHEREAS, The Board of Regents in accord with the Connecticut State Colleges and Universities comprised of seventeen institution and a System Office, is committed to insuring that each member of every BOR governed college or university community has the opportunity to participate fully in the process of education and development; and
- WHEREAS, The BOR and CSCU strive to maintain a safe and welcoming environment free from acts of sexual misconduct and relationship violence. It is the intent of the BOR and each of its colleges or universities to provide safety, privacy and support to victims of sexual misconduct and relationship violence; and
- WHEREAS, The Board of Regents for Higher Education adopted policy regarding “Sexual Misconduct Reporting, Support Services and Processes Policy, as amended from time to time; and
- WHEREAS, The United States Department of Education promulgated regulations under Title IX of the Education Amendments of 1972 (“Title IX”) and set forth certain specific requirements, which become effective on August 14, 2020; and
- WHEREAS, The Board of Regents consistent with the goal providing safe environments at all of its campuses for all who frequent them, has reviewed its policy regarding “Sexual Misconduct, Sexual Assault and Intimate Partner Violence Policy” and revised the policy so that it is consistent with the regulations; therefore be it
- RESOLVED, That the Board of Regents formally amends the renamed the “Sexual Misconduct Reporting, Supportive Measures and Processes Policy” effective August 14, 2020.

A True Copy:

Erin A. Fitzgerald, Secretary of the
CT Board of Regents for Higher Education

ITEM

The Board of Regents for Higher Education renames and amends its' policy regarding "Sexual Misconduct Reporting, Supportive Measures and Processes" to comply with the United States Department of Education regulations under Title IX of the Education Amendments of 1972 ("Title IX")

BACKGROUND

The United States Department of Education promulgated regulations under Title IX of the Education Amendments of 1972 ("Title IX") to address sexual discrimination, specifically sexual harassment. These regulations preempt previous Title IX provisions, but do not obviate the requirements of state law. The policy regarding Sexual Misconduct Reporting, Support Services and Processes Policy was initially drafted to comply with Connecticut General Statute section 10a-55m. That statute implicitly codified some of the U.S. Department of Education Title IX guidance and the Violence Against Women Act (VAWA) requirements. Although the Title IX requirements are now less stringent, the Connecticut State Colleges and Universities must adhere to State's requirements in addition to federal requirements. The amended policy incorporates the federal changes while preserving BOR policy that was created in compliance with Connecticut law.

ANALYSIS

The Policy has been amended to include the requirements of the Title IX regulations. This includes subtle changes in nomenclature such as use of the terms complainant, and respondent, and supportive measures instead of support services, and provides more examples of appropriate supportive measures. It requires that respondents and complainants be treated equally and that respondents are presumed not responsible and not be subjected punitive measures until found responsible.

Most significant, however, is the revised section on Sexual Misconduct Investigation and Procedures. This policy clearly presents the role of the Title IX Coordinator to determine not only supportive measures, but also whether a matter is within the scope of Title IX. If the matter is within the scope of Title IX, the highly prescriptive Title IX procedures will apply. Those procedures will be applied to students, faculty and staff alike.

All of the revisions to the policy were made to bring the policy into compliance with federal law.

RECOMMENDATION

That the Board of Regents for Higher Education rename and amend the Sexual Misconduct Reporting, Supportive Measures and Processes Policy effective August 14, 2020.

**Board of Regents for Higher Education
Connecticut State Colleges and Universities**

**Policy Regarding
Sexual Misconduct Reporting, Supportive Measures and Processes Policy**

STATEMENT OF POLICY

The Board of Regents for Higher Education (BOR) in conjunction with the Connecticut State Colleges and Universities (CSCU) is committed to ensuring that each member of every BOR governed college and university community has the opportunity to participate fully in the process of education and development. The BOR and CSCU strive to maintain a safe and welcoming environment free from acts of sexual misconduct, including, sexual harassment, sexual assault, intimate partner violence and stalking. It is the intent of the BOR and each of its colleges or universities to provide safety, privacy and support to victims of sexual misconduct and intimate partner violence.

The BOR strongly encourages students, parents, bystanders and employees to report any instance of sexual misconduct, including sexual harassment, sexual assault, sexual exploitation, stalking and intimate partner violence. Title IX Coordinators will promptly address these matters and treat all parties equitably. In accordance with federal law Respondents will be presumed not responsible and receive no punitive treatment unless and until found responsible after due process. All BOR governed colleges and universities will provide complainants and respondents with supportive measures, including referral to agencies that provide medical attention, counseling, legal services, advocacy, referrals and general information regarding sexual misconduct.

All CSCU employees and support persons will make any limits of confidentiality clear before any disclosure of facts takes place. Other than confidential resources as defined below and employees who qualify as Campus Security Authorities under the Jeanne Clery Act, all CSCU employees are required to immediately communicate to the institution's Title IX Coordinator any disclosure or report of sexual misconduct received from a student as well as communicate any disclosure or report of sexual misconduct the employee received from another employee when misconduct is related to the business of the institution.

Affirmative consent must be given by all parties before engaging in sexual activity. Affirmative consent means an active, clear and voluntary agreement by a person to engage in sexual activity with another person. Sexual misconduct, as defined herein, is a violation of BOR policies and, in addition, may subject an accused student or employee to criminal penalties. The BOR and each of its governed colleges and universities are committed to providing an environment free of personal offenses. Sexual relationships of any kind between staff/faculty and students are discouraged pursuant to BOR policy.

The Board of Regents for Higher Education hereby directs the Connecticut State Colleges and Universities to implement the Policy stated above pursuant to the following provisions:

TERMS, USAGE AND STANDARDS

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

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Support Services and Processes Policy

Consent must be affirmed and given freely, willingly, and knowingly of each participant to desired sexual involvement. Consent is a mutually affirmative, conscious decision – indicated clearly by words or actions – to engage in mutually accepted sexual contact. Consent may be revoked at any time during the sexual activity by any person engaged in the activity.

Affirmative consent may never be assumed because there is no physical resistance or other negative response. A person who initially consents to sexual activity shall be deemed not to have affirmatively consented to any such activity which occurs after that consent is withdrawn. It is the responsibility of each person to assure that he or she has the affirmative consent of all persons engaged in the sexual activity to engage in the sexual activity and that affirmative consent is sustained throughout the sexual activity. It shall not be a valid excuse to an alleged lack of affirmative consent that the student or employee responding to the alleged violation believed that the student reporting or disclosing the alleged violation consented to the activity (i) because the responding student or employee was intoxicated or reckless or failed to take reasonable steps to ascertain whether the student or employee reporting or disclosing the alleged violation affirmatively consented, or (ii) if the responding student or employee knew or should have known that the student or employee reporting or disclosing the alleged violation was unable to consent because the student or employee was unconscious, asleep, unable to communicate due to a mental or physical condition, or incapacitated due to the influence of drugs, alcohol or medication. The existence of a past or current dating or sexual relationship between the persons involved in the alleged violation shall not be determinative of a finding of affirmative consent.

Report means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation of sexual harassment. At the time of the filing the formal complaint, the complainant must be participating in or attempting to participate in an education program or activity of the institution.

Disclosure is the receipt of any communication of an incident of sexual misconduct that is not accompanied by a request for an investigation or adjudication by the institution.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual misconduct includes engaging in any of the following behaviors:

- (a) **Sexual harassment**, which can include any unwelcome sexual advance or request for sexual favors, or any conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education or employment; submission to or rejection of such conduct by an individual is used as a basis for academic or employment decisions affecting the individual; or such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creating an intimidating, hostile or offensive educational or employment environment. Examples of conduct which may constitute sexual harassment include but are not limited to:

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- sexual flirtation, touching, advances or propositions
- verbal abuse of a sexual nature
- pressure to engage in sexual activity
- graphic or suggestive comments about an individual's dress or appearance
- use of sexually degrading words to describe an individual
- display of sexually suggestive objects, pictures or photographs
- sexual jokes
- stereotypic comments based upon gender
- threats, demands or suggestions that retention of one's educational status is contingent upon toleration of or acquiescence in sexual advances.

(b) **Sexual assault** shall include but is not limited to a sexual act directed against another person without the consent (as defined herein) of the other person or when that person is not capable of giving such consent:

Sexual assault is further defined in sections 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b and 53a-73a of the Connecticut General Statutes.

(c) **Sexual exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:

- Prostituting another person;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- Going beyond the bounds of consent (for example, an individual who allows friends to hide in the closet to watch him or her having consensual sex);
- Engaging in non-consensual voyeurism;
- Knowingly transmitting an STI, such as HIV to another without disclosing your STI status;
- Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals; or
- Possessing, distributing, viewing or forcing others to view illegal pornography.

Sexual exploitation is further defined as a crime in Connecticut State Law.

(d) **Intimate partner, domestic and/or dating violence means** any physical or sexual harm against an individual by a current or former spouse of or person in a dating or cohabitating relationship with such individual that results from any action by such spouse or such person that may be classified as a sexual assault under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53a-73a of the general statutes, stalking under section 53a-181c, 53a-181d or 53a-181e of the

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general statutes, or domestic or family violence as designated under section 46b-38h of the general statutes. This includes any physical or sexual harm against an individual by a current or former spouse or by a partner in a dating relationship that results from (1) sexual assault (2) sexual assault in a spousal or cohabiting relationship; (3) domestic violence; (4) sexual harassment (5) sexual exploitation, as such terms are defined in this policy.

Offenses that are designated as “domestic violence” are against family or household members or persons in dating or cohabiting relationships and include assaults, sexual assaults, stalking, and violations of protective or restraining orders issued by a Court. Intimate partner violence may also include physical abuse, threat of abuse, and emotional abuse.

- Physical abuse includes, but is not limited to, slapping, pulling hair or punching.
- Threat of abuse includes but is not limited to, threatening to hit, harm or use a weapon on another (whether victim or acquaintance, friend or family member of the victim) or other forms of verbal threat.
- Emotional abuse includes but is not limited to, damage to one’s property, driving recklessly to scare someone, name calling, threatening to hurt one’s family members or pets and humiliating another person.
- Cohabitation occurs when two individuals dwell together in the same place as if married.
- The determination of whether a “dating relationship” existed is to be based upon the following factors: the complainant’s statement as to whether such a relationship existed, the length of the relationship, the type of the relationship and the frequency of the interaction between the persons reported to be involved in the relationship.

(e) **Stalking**, which is defined as repeatedly contacting another person when contacting person knows or should know that the contact is unwanted by the other person; and the contact causes the other person reasonable apprehension of imminent physical harm or the contacting person knows or should know that the contact causes substantial impairment of the other person’s ability to perform the activities of daily life.

As used in this definition, the term “contacting” includes, but is not limited to, communicating with (including internet communication via e-mail, instant message, on-line community or any other internet communication) or remaining in the physical presence of the other person.

Retaliation is prohibited and occurs when a person is subjected to an adverse employment or educational action because he or she made a complaint under this policy or assisted or participated in any manner in an investigation. No institution or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report of complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding or hearing related to a report or complaint related to sex discrimination.

CONFIDENTIALITY

When a BOR governed college or university receives a report of sexual misconduct all reasonable steps will be taken by the appropriate CSCU officials to preserve the privacy of the complainant and

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respondent while promptly investigating and responding to the report. While the institution will strive to maintain the confidentiality of personally identifiable student information reported, which information is subject to privacy requirements of the Family Education Rights Privacy Act (FERPA), the institution also must fulfill its duty to protect the campus community.

Confidential resources are defined as follows: For the Universities, entities with statutory privilege, which include campus based counseling center, health center and pastoral counseling staff members whose official responsibilities include providing mental health counseling to members of the University community as well as off campus counseling and psychological services, health services providers, member(s) of the clergy, and the local Sexual Assault Crisis Center and Domestic Violence Center. For the Colleges, confidential resources are limited to entities with statutory privilege, such as off campus counseling, on campus counseling where available, and psychological services, health services providers, member(s) of the clergy, and the local Sexual Assault Crisis Center and Domestic Violence Center. The personnel of these centers and agencies are bound by state statutes and professional ethics from disclosing information about reports without written releases.

Information provided to a confidential resource by a complainant or respondent cannot be disclosed legally to any other person without consent, except under very limited circumstances, such as an imminent threat of danger to self or others or if the reported complainant is a minor. Therefore, for those who wish to obtain the fullest legal protections and disclose in full confidentiality, she/he must speak with a confidential resource. Each BOR governed college and university will provide a list of such confidential resources in the College or University's geographic region to complainants and respondents as well as publish these resources on-line and in various publications.

Where it is deemed necessary for the institution to take steps to protect the safety of members of the campus community, the institution will seek to act in a manner so as not to compromise the privacy or confidentiality of the either the complainant or respondent to the extent reasonably possible.

MANDATED REPORTING BY COLLEGE AND UNIVERSITY EMPLOYEES

Other than confidential resources as defined above, in addition to employees who qualify as Campus Security Authorities under the Jeanne Clery Act, all employees are required to immediately communicate to the institution's designated recipient (e.g., Title IX Coordinator) any disclosure or report of sexual misconduct received from a student regardless of the age of the complainant. All employees are also required to communicate to the institution's designated recipient (e.g., Title IX Coordinator) any disclosure or report of sexual misconduct received from an employee that impacts employment with the institution or is otherwise related to the business of the institution.

Upon receiving a disclosure or a report of sexual misconduct, employees are expected to supportively, compassionately and professionally offer academic and other accommodations and to provide a referral for support and other services.

Further, in accordance with Connecticut State law, with the exception of student employees, any paid administrator, faculty, staff, athletic director, athletic coach or athletic trainer who, in the ordinary course of their employment, has a reasonable cause to suspect or believe that a person under the age

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of 18 years has been abused or neglected, has been placed in imminent harm or has had a non-accidental injury is required by law and Board policy to report the incident within twelve hours to their immediate supervisor and to the Department of Children and Families.

RIGHTS OF PARTIES

Complainants and respondents will be informed in a timely manner of all their rights and options, including the necessary steps and potential outcomes of each option. Complainants and respondents shall be offered non-disciplinary, non-punitive individualized services as appropriate and available that are designed to restore or preserve equal access to the institution's education program or activity without unreasonably burdening the other party, which may include measures designed to protect the safety of all parties or the institution's educational environment or deter sexual harassment.

When choosing a reporting resource the following information should be considered:

- All reports of sexual misconduct will be treated seriously and with dignity by the institution.
- Referrals to off-campus counseling and medical services that are available immediately and confidential, whether or not those who report feel ready to make any decisions about reporting to police, a college or university employee or the campus's Title IX Coordinator.
- Information regarding the right to take both criminal and civil legal action against the individual allegedly responsible.
- Those who seek confidentiality may contact a clergy member(s), a University counseling center psychologist, a University health center care provider, the Sexual Assault Crisis Center of Connecticut and/or the Connecticut Coalition Against Domestic Violence – all of whom are bound by state statutes and professional ethics to maintain confidentiality without written releases.

RIGHT TO NOTIFY LAW ENFORCEMENT & SEEK PROTECTIVE AND OTHER ORDERS

Complainants and respondents shall be provided written information about her/his right to:

- (1) notify law enforcement and receive assistance from campus authorities in making the notification; and,
- (2) obtain a protective order, apply for a temporary restraining order or seek enforcement of an existing order. Such orders include:
 - standing criminal protective orders;
 - protective orders issued in cases of stalking, harassment, sexual assault, or risk of injury to or impairing the morals of a child;
 - temporary restraining orders or protective orders prohibiting the harassment of a witness;
 - family violence protective orders.

The institution will also honor lawful protective or temporary restraining orders.

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Each and every BOR governed college and university shall create and provide information specific to its campus detailing the procedures to follow after the commission of such violence, including people or agencies to contact for reporting purposes or to request assistance, and information on the importance of preserving physical evidence.

OPTIONS FOR CHANGING ACADEMIC, HOUSING, TRANSPORTATION AND WORKING ARRANGEMENTS

College and university Title IX Coordinators will provide supportive measures to complainants and respondents. These supportive measures may include, but are not limited to, reasonably available options for changing academic situations, including but not limited to extensions of deadlines or other course related adjustments, modifications of work or class schedules, campus transportation and escort services, mutual restrictions on contact between parties, leaves of absence, increased security and monitoring and housing or working situations.

SUPPORT SERVICES CONTACT INFORMATION

It is BOR policy that whenever a college or university Title IX Coordinator or other employee receives a report of sexual misconduct, the Title IX Coordinator shall immediately provide all parties with contact information for and, if requested, professional assistance in accessing and using any appropriate campus resources, or local advocacy, counseling, health, and mental health services, without fee. All CSU campuses shall develop and distribute contact information for this purpose as well as provide such information on-line.

SEXUAL MISCONDUCT INVESTIGATION AND PROCEDURES

All complaints of sexual misconduct will be reviewed by the college or university Title IX Coordinator who will determine supportive measures and whether the complaint falls within the scope of Title IX. If the institution's Title IX Coordinator determines that the alleged harassment is

- (1) so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity; or,
- (2) implicates an employee of the institution, alleging that the employee conditioned a provision of an aid, benefit, or service upon the complainant's participation in unwelcome sexual conduct; or,

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(3) alleges “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v)¹, “dating violence” as defined in 34 U.S.C. 12291(a)(10)², “domestic violence” as defined in 34 U.S.C. 12291(a)(8)³, or “stalking” as defined in 34 U.S.C. 12291(a)(30)⁴ as defined in 34 U.S.C. 12291(a)(30)⁵

and

(4) the alleged harassment occurred within the United States on property owned or controlled by the institution or any building owned or controlled by a student organization officially recognized by the institution; and

(5) at the time of the filing the Complainant was participating or attempting to participate in the educational program or activity;

The Title IX coordinator will initiate the Title IX Process which shall be applicable to students, faculty and staff. The Title IX Process and Procedures are available on-line and through the Office of the Title IX Coordinator.

If the institution’s Title IX Coordinator determines that the alleged harassment does not meet the factors above but the alleged misconduct violates BOR Policy, the following procedures apply:

- Each party shall have the opportunity to request that an investigation or disciplinary proceedings begin promptly; that such disciplinary proceedings shall be conducted by an official trained annually in issues relating to sexual assault, stalking and dating, domestic or intimate partner violence and shall use the preponderance of the evidence (more likely than

¹ 20 U.S.C. 1092(f)(6)(A)(v), The term “[sexual assault](#)” means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

² 34 U.S.C. 12291(a)(10) The term “[dating violence](#)” means violence committed by a person - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

³ 34 U.S.C. 12291(a)(8) The term “[domestic violence](#)” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or [youth](#) victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

⁴ 34 U.S.C. 12291(a)(30) (30) The term “[stalking](#)” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to - (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

⁵ 34 U.S.C. 12291(a)(30) (30) The term “[stalking](#)” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to - (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

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not) standard in accordance with State law in making a determination concerning sexual assault, stalking or domestic/dating/intimate partner violence.

- Both the complainant and respondent are entitled to be accompanied to any meeting or proceeding relating to the allegation of sexual misconduct by an advisor or support person of their choice, provided the involvement of such advisor or support person does not result in the postponement or delay of such meeting as scheduled and provided such an advisor or support person may not directly address the Hearing Body, question witnesses or otherwise actively participate in the hearing process or other meeting pertaining to a report of sexual misconduct and each party shall have the opportunity to present evidence and witnesses on her/his behalf during any disciplinary proceeding.
- Both parties are entitled to be provided at the same time written notice of the results of any disciplinary proceeding, normally within one (1) business day after the conclusion of such proceeding, which notice shall include the following: the name of the respondent the violation committed, if any, and any sanction imposed upon the respondent. Sanctions may range from a warning to expulsion, depending upon the behavior and its severity of the violation(s). The complainant shall have the same right to request a review of the decision of any disciplinary proceeding in the same manner and on the same basis as shall the respondent; however, in such cases, if a review by any complainant is granted, among the other actions that may be taken, the sanction of the disciplinary proceeding may also be increased. Both the complainant and respondent are entitled to be simultaneously provided written notice of any change in the results of any disciplinary proceeding prior to the time when the results become final as well as to be notified when such results become final.

If the institution's Title IX Coordinator determines that the allegations do not constitute a violation of either Title IX or Board policy and can make no finding of responsibility, complainant and respondent shall be notified that the matter shall be closed.

Employee sexual misconduct not subject to Title IX is subject to discipline in accordance with the procedures applicable to the employee's classification of employment.

REVIEW AND AUDIT

The Title IX Coordinator will report to the President of the institution all findings on reported sexual misconduct matters. The Title IX Coordinator shall include within its annual Connecticut General Statute 10a-55m Sexual Misconduct Report a separate report specifically disclosing the number of complaints, the subject matter of each complaint and the final outcome of each case processed under Title IX. At a joint meeting of the Human Resources and Administration Committee and the Academic and Student Affairs Committee, the CSCU Title IX Coordinator will

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report annually on CSCU data of complaints and outcomes of sexual misconduct matters reviewed under Title IX, BOR policies, and other applicable state statutes.

DISSEMINATION OF THIS POLICY

Upon adoption by the Board all CSCU institutions shall, upon receipt, immediately post and maintain this policy at all times in an easily accessible manner on each institution's website, handbook and catalogue. This policy shall thereafter be annually provided to all Title IX Coordinators, campus law enforcement officers and security personnel, and other campus personnel. Further, this policy shall be presented at student orientation and at student awareness and prevention trainings, and made broadly available at each campus. The policy shall be expanded upon by each institution to provide resources and contact information specific to their institution and geographic area as set forth above. This includes but is not limited to the name, office address, email address and telephone number of the Title IX Coordinators.

CT BOARD OF REGENTS FOR HIGHER EDUCATION

RESOLUTION

concerning

Amendment of the CSCU Student Code of Conduct

July 29, 2020

- WHEREAS, The Board of Regents for Higher Education on March 13, 2014 adopted the Student Code of Conduct and has amended the document from time to time to remain consistent with the law; and
- WHEREAS, The United States Department of Education promulgated regulations under Title IX of the Education Amendments of 1972 (“Title IX”) and set forth certain specific requirements, which become effective on August 14, 2020; and
- WHEREAS, The Student Code of Conduct, Part E: Hearing Procedures for Sexual Misconduct, Sexual Intimate Partner, Domestic Violence & Stalking Reports, must be amended to address the requirements set forth in the Title IX Regulations; therefore be it
- RESOLVED, That the Board of Regents amends The Student Code of Conduct, Part E: Hearing Procedures for Sexual Misconduct, Sexual Intimate Partner, Domestic Violence & Stalking Reports effective August 14, 2020.

A True Copy:

Erin A. Fitzgerald, Secretary of the
CT Board of Regents for Higher Education

ITEM

The Board of Regents for Higher Education amends the “Student Code of Conduct, Part E: Hearing Procedures for Sexual Misconduct, Sexual Intimate Partner, Domestic Violence & Stalking Reports” to comply with United States Department of Education promulgated Regulations under Title IX of the Education Amendments of 1972 (“Title IX”).

BACKGROUND

The United States Department of Education promulgated regulations under Title IX of the Education Amendments of 1972 (“Title IX”). These regulations set forth certain specific requirements, including, but not limited to factors for determining whether a matter is subject to Title IX. However, the factors are limiting and certain acts of sexual misconduct that would violate the Student Code of Conduct do not violate Title IX. The changes to Part E of the Student Code of Conduct provide for following the processes required under Title IX, while continuing to provide the institutions with a process for addressing sexual misconduct that violates the BOR policy and the Code of Conduct.

ANALYSIS

The revisions to the Student Code of Conduct appear only in Part E.

In accordance with the requirements of the Title IX regulations, the parties are referred to as “Complainant” and “Respondent” with an emphasis on equal treatment of both parties. The amended Code of Student Conduct clearly presents the role of the Title IX Coordinator to determine not only supportive measures, but also whether a matter is within the scope of Title IX, within the Student Code of Conduct or fails to meet either standard. These changes are necessary for compliance with State and Federal law and existing Board policy.

RECOMMENDATION

That the Board of Regents for Higher Education amend the “Student Code of Conduct, Part E: Hearing Procedures for Sexual Misconduct, Sexual Intimate Partner, Domestic Violence & Stalking Reports” effective August 14, 2020.

PART E: HEARING PROCEDURES FOR SEXUAL MISCONDUCT, SEXUAL INTIMATE PARTNER, DOMESTIC VIOLENCE & STALKING REPORTS

In addition to disciplinary procedures applicable to State University students in Section II, Community College students in Section III, and Charter Oak State College Students in Section IV, for any hearing conducted involving allegations of sexual misconduct, including sexual harassment, sexual assault, sexual exploitation, stalking and intimate partner violence the Complainant and the Respondent shall each have the following rights:

1. All complaints of sexual misconduct will be reviewed by the Title IX Coordinator who will determine supportive measures and whether the complaint falls within the scope of Title IX.
2. If the institution's Title IX Coordinator determines that the alleged harassment is
 - (1) so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity; or,
 - (2) implicates an employee of the institution, alleging that the employee conditioned a provision of an aid, benefit, or service upon the complainant's participation in unwelcome sexual conduct; or,
 - (3) alleges "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v)¹, "dating violence" as defined in 34 U.S.C. 12291(a)(10)², "domestic violence" as defined in 34 U.S.C. 12291(a)(8)³, or "stalking" as defined in 34 U.S.C. 12291(a)(30)⁴ as defined in 34 U.S.C. 12291(a)(30)⁵

and

¹ 20 U.S.C. 1092(f)(6)(A)(v), The term "[sexual assault](#)" means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

² 34 U.S.C. 12291(a)(10) The term "[dating violence](#)" means violence committed by a person - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

³ 34 U.S.C. 12291(a)(8) The term "[domestic violence](#)" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or [youth](#) victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

⁴ 34 U.S.C. 12291(a)(30) (30) The term "[stalking](#)" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to - (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

⁵ 34 U.S.C. 12291(a)(30) (30) The term "[stalking](#)" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to - (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

(4) the alleged harassment occurred within the United States on property owned or controlled by the institution or any building owned or controlled by a student organization officially recognized by the institution; and

(5) at the time of the filing the Complainant was participating or attempting to participate in the educational program or activity;

The Title IX coordinator will initiate the Title IX Process.

The Title IX Process and Procedures are available on-line and through the Office of the Title IX Coordinator.

3. If the institution's Title IX Coordinator determines that the alleged harassment does not meet the factors in Section 2 above, but the alleged misconduct violates the Student Code of Conduct, the following procedures apply:
 - a. At any meeting or proceeding, both the Complainant and Respondent (Respondent means the person who has been reported to be the perpetrator of conduct violating the Student Code of Conduct) may be accompanied by an advisor or support person of the student's choice provided the advisor or support person does not cause a scheduled meeting or hearing to be delayed or postponed and provided an advisor or support person may not directly address the Hearing Body, question witnesses, or otherwise actively participate in the hearing process (or other proceeding or pertaining to a report of sexual misconduct);
 - b. Both the Complainant and Respondent are entitled to request that disciplinary proceedings begin promptly;
 - c. Any hearing regarding an accusation of sexual misconduct shall (i) be fair, prompt and impartial; (ii) be conducted by a Hearing Body annually trained in issues relating to sexual misconduct (iii) use the preponderance of evidence (more likely than not) standard; (iv) shall allow both the Complainant and Respondent the opportunity to present evidence and witnesses on their behalf during any disciplinary proceeding; (v) provide both the Complainant and Respondent with equal access to any information that will be used during meetings and hearings; (vi) invoke the standard of "affirmative consent"⁶ in determining whether consent to engage in sexual activity was given by all persons who engaged in sexual activity; (vii) presume that the Respondent is not responsible until the conclusion of the process; and (viii) the hearing will be held live.
 - d. In accordance with the Family Educational Rights and Privacy Act (FERPA), Complainant and Respondent have the right to keep their identities confidential;

⁶ The standard of "Affirmative Consent" is set forth in the BOR Sexual Misconduct Reporting, Support Services and Processes Policy and is incorporated herein by reference.

- e. Complainants and Respondents shall be provided written notice of the decision of the Hearing Body simultaneously, normally within one (1) business day after the conclusion of the Hearing. In accordance with the Family Educational Rights and Privacy Act (FERPA) the notice to parties to sexual misconduct shall contain only the following: the name of the parties, the violation committed, if any, and any sanction imposed against the Respondent.
- f. Both parties shall have the same right to request a review of the decision of the Hearing Body (appeal rights) in the same manner and on the same basis; however, if a request for review is determined to be properly made and if the review determines there is sufficient grounds for altering the decision of the Hearing Body, among the other actions that may be taken as set forth above, the sanction of the hearing may be increased or decreased. Notwithstanding the foregoing, in any hearing pertaining to sexual misconduct both the Complainant and Respondent are entitled to be simultaneously provided notice of any change in the results of the hearing prior to the time when the results become final, as well as to be notified when such results become final.

If the institution's Title IX Coordinator determines that the allegations do not constitute a violation of either Title IX or Board policy and can make no finding of responsibility, complainant and respondent will be notified that the matter will be closed.