

Title IX Policy Governing Employees and Students

SEX-BASED DISCRIMINATION & HARASSMENT

As reflected in our Mission Statement, the School of Law strives to make this a special place to work and learn with an atmosphere of mutual respect and professionalism. As employees and students of the Law School, we all have a responsibility to live up to our values by creating an atmosphere every day in which each person knows that they are valued as an individual and treated with respect and professionalism. This policy is a reflection of our vision and our commitment to complying with all laws governing discrimination and harassment.

I. DISCRIMINATION

Discrimination is defined as the unfair treatment of a person or group based on perceived or real characteristics. The School of Law is committed to an environment that encourages the fair, humane, and ethical treatment of all persons. The School of Law is committed to equal opportunity in the application, admission, participation, operation, and treatment of employees, students, and guests, and prohibits discrimination based on sex, gender, age, race, color, religion, national origin, ethnicity, gender identity, gender expression, sexual orientation, marital or parental status, pregnancy, false pregnancy, termination of pregnancy, recovery from pregnancy related conditions, military status, alienage, citizenship, or disability, or any other legally protected class. Additionally, it is the policy of the School of Law to provide an environment for prospective employees and students and other third parties, to include contract employees, free of harassment and discrimination. It is expected that all members of the School of Law community will consider themselves responsible for proper observance of this policy.

Further, the School of Law does not condone and will not tolerate sexual misconduct or sexually exploitative or harassing behavior of any kind. Our community is committed to creating and maintaining an environment that is not only free of sexual misconduct, but that promotes a healthy spirit of responsibility, dignity, and respect in matters of sexual conduct. Charleston School of Law employees and students share an ethical tradition of abiding by the highest moral standards, taking responsibility for their actions, and treating people with integrity and respect.

II. COORDINATION WITH OTHER SCHOOL OF LAW POLICIES

The School of Law has created this campus wide policy specifically to address sex-based discrimination impacting students, employees, and third parties and to provide equity in process to complainants and respondents.

The School of Law recognizes that harassment related to an individual's sex, sexual orientation, gender expression, or gender identity may also be tied to other forms of harassment and discrimination and may also be directed at the individual based on their age, ethnicity, religion, or other protected status. When discrimination is alleged that is directed at an individual based on both their sex and another protected class, resolution of the complaint will include two separate investigations: one according to this policy, and a second in accordance with the Harassment

Complaint Procedure set forth in the Student Code of Conduct, Staff Guidelines, and the Faculty Handbook.

The procedures outlined in this policy for resolution of complaints of sexual misconduct apply to investigation and adjudication of student and employee sexual misconduct complaints. All other complaints of student or employee misconduct not meeting the definitions described in this policy will follow the procedures outlined in the Harassment Complaint Procedure, Honor Code and Code of Conduct (*see* Appendix B of the Student Handbook), or the respective employee handbook.

III. STATEMENT OF PROHIBITION AND JURISDICTION

As a recipient of federal funds, the School of Law is required to comply with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (“Title IX”) which prohibits discrimination on the basis of sex in educational programs or activities. Sexual Misconduct, as defined herein, is a form of discrimination prohibited by Title IX. The School of Law has updated this policy (February 1, 2017) to reflect the changes to the Clery Act as amended by the 2013 Reauthorization of the Violence Against Women Act.

This Policy applies to conduct that takes place within the School of Law’s educational programs or activities. This includes locations, events, or circumstances over which the School of Law exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the School of Law.

The School of Law strongly encourages reports of sexual misconduct regardless of location and regardless of when the misconduct is reported to have occurred. Even if the policy does not apply to the conduct because of its location, the School of Law will take prompt action to provide for the safety and well-being of the complainant and the broader campus community.

IV. DEFINITIONS

There are many terms used in this policy, which are defined in this section.

A. Key Terms Defined

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or to the Title IX Team.

A “complainant” means an individual who is alleged to be the victim of conduct that could constitute a violation of this policy (e.g. sexual harassment).

An “education program or activity” means all of the degrees, programs, activities, and operations of the Law School, including locations, events, or circumstances in the United States over which the School of Law exercises substantial control over both the respondent and the context in which the alleged prohibited conduct occurs, including, but not limited to, moot court, mock trial, and

other external competitions in which CSOL students participate. This also includes any building owned or controlled by a student organization that is officially recognized by the School of Law.

A “formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the School investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the educational program or activity of the School. A “document filed by a complainant” means a document or electronic submission (such as by electronic mail) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. When the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party. *See* Section IX.

“Parties” is a term used to collectively refer to complainants and respondents.

A “party” is the complainant or respondent.

A “respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

The “record” refers to the investigatory report (including all relevant evidence attached thereto), the recording of the hearing, and/or any new evidence submitted by a party as part of an appeal.

“Sexual Misconduct” is an umbrella term used to refer to a variety of prohibited acts and includes the following specific forms as defined in this policy:

1. Sexual Harassment
2. Gender-Based Harassment
3. Sexual Assault
 - a. Non-Consensual Sexual Contact (or attempts to commit same)
 - b. Non-Consensual Sexual Penetration (or attempts to commit same)
4. Stalking
5. Intimate Partner Violence
 - a. Dating Violence
 - b. Domestic Violence

A “student” is a person who is enrolled in courses at the School of Law.

The “Title IX Team” refers to officials with the authority to take action pursuant to this policy. These officials are listed in Section VII.

A “witness” is a person who is believed to have knowledge of the alleged misconduct.

B. Sexual Harassment

As used in this policy, **sexual harassment means conduct on the basis of sex that satisfies one or more of the following:**

1. An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual misconduct (i.e. *quid pro quo*);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an educational program or activity (i.e. hostile environment); or
3. Sexual assault, or dating violence, domestic violence, and/or stalking.

3(A): Sexual Assault

Sexual Assault is defined as any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual Assault is broken down into four categories: rape, fondling, incest, and statutory rape.

3(A)(1): **Rape** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

3(A)(2): **Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

3(A)(3): **Incest** mean sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

3(A)(4): **Statutory Rape** means sexual intercourse with a person who is under the statutory age of consent.

3(B): Stalking

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

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

For the purposes of this definition:

- *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action,

method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

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

Examples of stalking include:

- Repeated, unwanted, and/or intrusive communications from the offender via telephone, text, email, social media, or in-person;
- Gathering of information about a person from family, friends, co-workers, and/or classmates;
- Following or lying in wait for a person at home, school, work, or other locations frequented by the person;
- Posting information or spreading rumors about a person on the internet (social media, postings, instant messages, or by postings of pictures or other information onto websites), in a public place, or by word of mouth;
- Damaging or threatening to damage a person's property; and/or
- Repeatedly sending flowers or other unwanted gifts to a person.

3(C): Intimate Partner Violence:

Intimate Partner Violence includes any act of violence or threatened act of violence against a person who is, or has been involved in a sexual, dating, spousal, domestic, or other intimate relationship with the respondent. The School of Law will not tolerate Intimate Partner Violence of any form.

Intimate Partner Violence is often referred to as dating violence, domestic violence, or relationship violence. Intimate Partner Violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate Partner Violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner, to pets, or to the family members or friends of the sexual or romantic partner. Intimate Partner Violence often includes offenses defined in this policy as sexual assault or stalking, which occur in concert with other forms of psychological, economic, or other abuse. Intimate Partner Violence may affect individuals of all sexes, sexual orientations, gender identities, gender expressions, races, and social and economic backgrounds.

a. Dating Violence

Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length

of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. 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.

b. Domestic Violence

Domestic Violence is defined as a felony or misdemeanor crime 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 in which the crime of violence occurred;
- 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 in which the crime of violence occurred.

C. Gender-Based Harassment

Gender-Based Harassment is harassment based on sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, physical, graphic, or otherwise based on these actual or perceived characteristics. To qualify as Gender-Based Harassment, the conduct need not involve conduct of a sexual nature.

Sexual and Gender-Based Harassment:

- May be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, sexual orientation, gender identity, or gender expression.
- May be committed in the presence of others or when the parties are alone.

Academic Freedom and Sexual Harassment Provision: This policy is consistent with the School of Law’s commitment to academic freedom and free speech. This commitment requires that the Law School not abridge community members’ expression of ideas in their teaching, learning, and research, including advocacy that may be controversial, provocative, or unpopular. This protection extends to the expression of ideas, however controversial, in the classroom and other campus-related activities. It must be recognized, however, that this protection has its limits. This policy defines those limits, and conduct that is found to be “sexual harassment” or “gender-based harassment” is not consistent with the Law School’s commitment to academic freedom and free speech. No member of the community may escape responsibility for engaging in such conduct merely by labeling the conduct as “speech” or other expressive activity.

D. **Other Key Terms**

Other key terms used in this policy include the following:

“Consent” means words or actions that communicate approval of sexual activity taking place between the parties. Consent to one activity does not automatically imply consent to other forms of sexual activity and must be made in the absence of coercion, intimidation, or physical force (threatened, actual, or implied) of any kind. Silence in and of itself cannot be interpreted as consent. In addition, persons who are incapacitated due to alcohol or drugs cannot give consent. Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant. Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

Of important note, an individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given as does “accepting” consent from someone you know, or reasonably should know, is not capable of providing consent due to their age or their level of intoxication.

Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed “no” or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain, or is no longer a mutual participant (someone who is not actively reciprocating sexual activity.) Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity (less duress, coercion, or force as previously mentioned).

“Force” is the use or threat of physical violence to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity or provide consent. Consent obtained by force is not valid.

For the use of force to be demonstrated, there is no requirement that a complainant resist the sexual advance or request. However, evidence of resistance by the complainant will be viewed as a clear demonstration of a lack of consent.

“Intimidation” is the use of implied threats to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity or provide consent. Consent obtained by intimidation is not valid.

“Coercion” is the improper use of pressure to compel another individual to initiate or continue sexual activity against that individual’s will. Consent obtained through coercion is not valid.

Coercion can include a wide range of behaviors, including manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity, or gender expression, and threatening to harm oneself if the other party does not engage in the sexual activity. When someone indicates, verbally or physically, that they do not want to engage in a particular sexual activity, that they want to stop a particular activity, or that they do not want to go past a certain point of sexual interaction, continued activity or pressure to continue beyond that point can be coercive. The School of Law will evaluate the following in determining whether coercion was used: (a) the frequency of the application of pressure, (b) the intensity of the pressure, (c) the degree of isolation of the person being pressured, and (d) the duration of the pressure.

“Incapacitation” is a state where an individual cannot make an informed and rational decision to engage in sexual activity because of a lack of conscious understanding of the fact, nature, or extent of the act (e.g., to understand the who, what, when, where, why, or how of the sexual interaction) and/or is physically helpless. For example, an individual is incapacitated, and therefore unable to give consent, if the individual is asleep, unconscious, or otherwise unaware that sexual activity is occurring. An individual will also be considered incapacitated if the person cannot understand the nature of the activity or communicate due to a mental or physical condition, no matter temporary or permanent. Incapacitation may result from the use of alcohol, drugs, or other medication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual’s: (1) decision-making ability; (2) awareness of consequences; (3) ability to make informed judgments; or (4) capacity to appreciate the nature and scope of the act.

It shall not be a valid excuse that the respondent believed that the complainant consented to the sexual activity if the respondent knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances: (a) the complainant was asleep or unconscious; (b) the complainant was incapacitated due to the influence

of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity; (c) the complainant was unable to communicate due to a mental or physical condition.

Whether the respondent reasonably should have known that the complainant was incapacitated will be evaluated using an objective reasonable person standard. The fact that the respondent was unaware of the complainant's incapacity is irrelevant to this analysis, particularly where the respondent's failure to appreciate the complainant's incapacitation resulted from the respondent's failure to take reasonable steps to determine the complainant's incapacitation or where the respondent's own use of alcohol or drugs caused the respondent to misjudge the complainant's incapacity.

It is the responsibility of each party to be aware of the intoxication level of the other before engaging in sexual activity. In general, sexual activity while under the influence of alcohol or other drugs poses a risk to all parties. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity. Being intoxicated by drugs or alcohol is no defense to any violation of this policy and does not diminish one's responsibility to obtain consent.

V. RETALIATION

The School of Law prohibits retaliation against any individual who, in good faith, complains of a violation of the School of Law's Title IX Policy or assists by providing information about an allegation of discrimination, including a complaint of sexual misconduct. The School of Law considers an act of retaliation against a complainant or witness a separate violation of this policy and will be adjudicated as such.

VI. POLICY ON CONSENSUAL RELATIONS BETWEEN FACULTY AND STUDENTS AND EMPLOYEES AND SUBORDINATES

The School of Law has no formal policy on consensual relationships between faculty and students; however, romantic or intimate relationships between employees and students and between supervisors and their subordinates with whom they have an academic or supervisory relationship are fraught with the potential for abuse and are discouraged. Similarly, romantic or intimate relationships between an employee and his or her subordinate compromises the School of Law's ability to enforce its policy protecting persons from sexual harassment. There are power differentials that exist between faculty and their students and employees and their bosses. Thus, relationships that begin as consensual can later be determined to be non-consensual. Consequently, the School of Law does not wish to interfere with private choices regarding personal relationships, but strongly discourages employees and students from engaging in consensual intimate and/or sexual relationships and retains the right to take necessary action should it find evidence of an abuse of power.

VII. HOW TO REPORT A COMPLAINT OF SEXUAL MISCONDUCT

Members of the School of Law are strongly encouraged to promptly report all incidents of discrimination and harassment, to include sexual misconduct, whether experienced personally or

observed. Any person may report sex discrimination, including sexual harassment (whether or not the person that reports is the person alleged to be the victim of the conduct that could constitute a violation of this policy in person), by mail, by telephone, by electronic mail, or by any other means that result in the Title IX Coordinator receiving the person's written or verbal report. Such a report may be made at any time (including during non-business hours) by using the below contact information:

Shera Silvis
 Title IX Coordinator and Director of Human Resources
 385 Meeting Street, 2nd Floor
 (843) 377-4904
 ssilvis@charlestonlaw.edu

Reports can also be made to the Title IX Team:

| Name | Address | Telephone & Email |
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| Dean, <i>Larry Cunningham</i> | 385 Meeting Street, Third Floor | 843.377.2145 lcunningham@charlestonlaw.edu |
| Title IX Coordinator & Director of Human Resources, <i>Shera Silvis</i> | 385 Meeting Street, Second Floor | 843.377.4904 ssilvis@charlestonlaw.edu |
| Deputy Title IX Coordinator & Associate Dean of Students, <i>Nick Sanders</i> | 385 Meeting Street, First Floor | 843.377.1104 nsanders@charlestonlaw.edu |
| Deputy Title IX Coordinator & Associate Dean for Academic Affairs, <i>Margaret Lawton</i> | 385 Meeting Street, Third Floor | 843.377.2423 mlawton@charlestonlaw.edu |
| Title IX Decision-Maker & Associate Dean for Information Services, <i>Katie Brown</i> | 385 Meeting Street, First Floor | 843.377.2432 kbrown@charlestonlaw.edu |
| Title IX Decision-Maker & Professor of Law, <i>Miller Shealy</i> | 835 Meeting Street, Third Floor | 843.377.2148 mshealy@charleston.edu |
| Title IX Investigator & Director of Financial Aid, <i>Bobby Greer</i> | 385 Meeting Street, Second Floor | 843.377.4901 bgreer@charlestonlaw.edu |

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| Title IX Investigator & HR Administrator, <i>Laura Lake</i> | 385 Meeting Street, Second Floor | 843.377.1395 llake@charlestonlaw.edu |
| Title IX Investigator & Assistant Director of Student Wellness & Success, <i>Cristy Lorente</i> | 385 Meeting Street, Second Floor | 843.377.1322 clorente@charlestonlaw.edu |
| Campus Security | 385 Meeting Street, First Floor | 843.377.4911 csolsecurity@charlestonlaw.edu |

Anonymous reports are also accepted and should be directed to the Title IX Coordinator and Director of Human Resources, Shera Silvis via email at ssilvis@charlestonlaw.edu or via mail using the contact information previously provided, but the supplier of the anonymous report should be mindful that failure to disclose personally identifying information about the accused party, the victim of the misconduct, or the facts and circumstances regarding the misconduct severely limit the School of Law’s ability to respond to, address, and remedy the effects of sexual misconduct.

If a member of the Title IX Team learns of a possible violation of this policy then he/she has a duty to report the information to the Title IX Coordinator, and to include the personally identifiable information regarding the parties. The School of Law has no on site medical or counseling facilities, hence no “confidential” reporting office exists. No matter to whom the report is made, the School of Law will keep information regarding a complaint as private as possible (only sharing information with those individuals that have a need to know).

VIII. SUPPORTIVE MEASURES, EMERGENCY REMOVAL, AND ADMINISTRATIVE LEAVE

A. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the School’s educational program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School’s educational environment, or deter sexual harassment.

Supportive measures may include the following:

- counseling
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- mutual restrictions on contact between the parties

- changes in work locations
- leaves of absence
- increased security and monitoring of certain areas of the School's campus, and other similar measures.

The School will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the School to provide the supportive measures.

The Title IX Coordinator is responsible for coordinating the effective implementation of these supportive measures.

B. Emergency Removal

The School of Law reserves the right to remove a respondent from the School of Law's educational program or activity on an emergency basis. However, prior to any emergency removal, the Title IX Coordinator shall undertake an individualized safety and risk analysis; if the Title IX Coordinator determines that the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, then the Title IX Coordinator shall provide the respondent with written notice and an opportunity to challenge the decision by submitting a written appeal to the Dean or their Designee within two business days following the removal. The Dean or their Designee shall issue a decision regarding the appeal within three (3) business days. This paragraph shall not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

C. Administrative Leave

The School of Law reserves the right to place a non-student employee respondent on administrative leave during the investigation and resolution of a formal complaint.

IX. INVESTIGATION, RESOLUTION PROCESS, AND RIGHT TO APPEAL

The Title IX Coordinator, Deputy Title IX Coordinators, and Investigators are trained annually on the issues related to domestic violence, dating violence, sexual assault, and stalking, and instructed on how to conduct investigations, including instruction on technology used during a live hearing, and how to administer a conduct process that protects the safety of victims and promotes accountability. In proceedings under this policy, the standard of proof used to determine whether or not a violation of this policy has occurred is a preponderance of evidence, which means it is more likely than not the misconduct occurred.

The Title IX Coordinator reserves the right to sign reports against a student or employee in order to trigger the grievance and disciplinary procedures set forth in this policy. In addition, an individual does not have to be a member of the School of Law community to file a report under this policy. The School of Law reserves the right to outsource investigations (including the investigator, decision-maker, and advisor roles) to qualified third parties in its sole discretion. The

parties may request an alternate investigator upon written notice of an allegation of bias and supporting rationale to the Title IX Coordinator. The Title IX Coordinator will then determine whether or not it is appropriate to add and/or remove an investigator from the case.

The respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the grievance process.

A. INVESTIGATION:

1. Upon receiving a formal complaint, the Title IX Coordinator will assess the complaint to ensure this policy has appropriate jurisdiction (and will refer out to the appropriate individual or office if what is being alleged is outside the scope of this policy.)
2. If the formal complaint appears upon initial assessment to be a possible violation of the Sexual Misconduct Policy, the Title IX Coordinator will assign the case for investigation within three (3) business days and will provide written notice to the parties.
3. The Investigator(s) will conduct a prompt, thorough, and impartial investigation into the facts of the case and will interview the complainant, respondent, witnesses, or others who may have relevant information, and collect any other evidence deemed relevant to the case from the parties and witnesses. The Investigator(s) shall conduct an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person’s status as a complainant, respondent, or witness.
4. At the conclusion of the investigation (which normally does not exceed sixty (60) days) the Investigator(s) will deliver a report summarizing the relevant evidence to the Title IX Coordinator who will contact the parties and provide both with separate access to the relevant evidence and notify them of the date, time, and place of the live hearing.
5. The parties shall have an opportunity to correct any item allegedly submitted by the party that they state is factually inaccurate and to provide anything additional that they would like considered at the formal hearing to the Title IX Coordinator. The parties will have ten (10) business days after receiving access to the relevant evidence to submit additional evidence to the Title IX Coordinator. The Investigator(s) will determine whether any additional evidence is relevant and provide both parties the opportunity to review all additional evidence prior to the hearing.

B. LIVE HEARING

1. The Title IX Coordinator shall appoint a Decision-Maker who (1) is not the Title IX Coordinator or Investigator(s); (2) is free from conflict of interest or bias, including bias for or against complainants or respondents; and, (3) who has been trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
2. A live hearing shall be held before the Decision-Maker.
 - A) The Decision-Maker has absolute discretion to determine the format for the hearing and to determine which witnesses are relevant to the outcome determination.

B) The Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

C) A Decision-Maker may decline to hear from a witness if the Decision-Maker concludes that the information is not necessary for their final determination.

- a) If either party wishes to call witnesses at the live hearing, the following must be submitted no later than twelve (12) business days before the hearing to the Decision-Maker and the Title IX Coordinator via e-mail:
 1. The name of any witness(es);
 2. A written statement and/or description of what each witness observed, if not already provided during the investigation;
 3. A summary of why the witness's presence is relevant to making a decision about responsibility at the hearing; and
 4. The reason the witness was not interviewed by the Investigator(s), if applicable.
- b) The Decision-Maker will determine if the proffered witness(es) has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the Investigator(s). The Decision-Maker shall determine whether such witness shall be allowed to testify at the live hearing, and shall notify the party who proffered the witness(es) of its determination no later than ten (10) business days of the live hearing.

3. **Cross-examination** shall be permitted under the following circumstances:

- The Decision-Maker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility (except as explained below*). Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
 - *Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- At the request of either party (or as the School may determine necessary due to COVID-19 social distancing guidance etc.), the School of Law will conduct the live hearing with the parties located in separate rooms with technology enabling the Decision-Maker and parties to simultaneously see and hear the party or the witness answering questions.

4. The School of Law shall keep an official record of the hearing in an audio format; ANY OTHER RECORDING IS PROHIBITED. Violators of this prohibition may be subject to disciplinary action. The audio recording of the live hearing shall be available to the parties upon request.
5. The outcome of the hearing, the reasons for the findings, and any sanction(s) imposed shall be conveyed to the complainant and the respondent simultaneously and in writing by email.

6. The complainant and the respondent have the right to appeal determinations regarding responsibility to the Dean of the School of Law. Appeals are discussed below.

Privilege: No Title IX Team member, including the Decision-Maker, may require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Advisor of Choice: The complainant and the respondent each have the opportunity to be advised by a personal advisor of their choice, at their expense, at any stage of the process and to be accompanied by that advisor at any meeting or hearing in which the complainant or the respondent is required to be present. If a party does not have an advisor, the School of Law shall provide a an advisor. An advisor may only consult and advise his or her advisee, but not speak for the advisee at any meeting nor may the advisor direct questions to any administrator, party, or witness in the process other than as set forth above.

Timeline: Typically, the investigation and hearing under this policy will not exceed ninety (90) days although the School of Law reserves the right to exceed this timeframe in order to conduct a thorough investigation or other appropriate proceedings. If the investigation does or is anticipated to exceed 90 days, the School of Law will notify the complainant and respondent in writing and will advise them of the reason for the delay and the anticipated timeframe for the completion of the investigation and/or resolution.

C. APPEAL

Both the complainant and the respondent have a right to appeal the finding on the following bases: (1) procedural irregularity that materially affected the outcome of the matter, (2) new evidence not available at the time of the hearing, (3) the Title IX Coordinator, Investigator(s), and/or Decision-Maker had a conflict of interest or bias that materially affected the outcome of the case, and/or (4) excessive sanction. Both parties will have **five (5) business days from notification** of the outcome to appeal in writing to the Dean via email at the following address:

Dean Larry Cunningham
lcunningham@charlestonlaw.edu

Once the Dean receives an appeal, he will notify the other party and provide the other party with an opportunity to review the submitted appeal and submit a written response within seven (7) business days. The Dean reserves the right to extend this deadline under exceptional circumstances.

Appellate review is a review of the record only (except as to a claim of new evidence). There are no additional meetings with the involved parties unless there are exceptional circumstances as determined by the Dean, in which case the Dean must offer both the complainant and the respondent the same opportunity to discuss the case.

Upon review of the record, the Dean (or his Designee) may respond as follows:

- (1) Affirm the Decision-Maker's decision in all respects
- (2) Modify the Decision-Maker's decision
- (3) Vacate and dismiss the Decision- Maker's decision
- (4) Vacate and remand to the Decision-Maker for further proceedings.

The Dean or his/her Designee shall issue a written decision to both parties within thirty (30) days. The decision of the Dean or his/her Designee on any appeal will be final.

D. DISMISSAL OF COMPLAINT

The School of Law reserves the right to dismiss the formal complaint or any allegations therein, if at any time during the hearing or investigation: (1) a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; (2) the respondent is no longer enrolled or employed by the School; or (3) specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations. A dismissal under this section is at the sole discretion of the School of Law. Upon dismissal of a complaint, the Title IX Coordinator shall send written notice of the dismissal to the parties including the reason(s) for dismissal.

E. SANCTIONS

For accused individuals who are students, the possible outcomes for violations of this policy include:

- Expulsion
- Suspension
- A letter of reprimand to be made a permanent part of the student's file
- Public service
- Remedial Education
- Denial of Degree.

For accused individuals who are faculty or staff members, the possible outcomes include:

- Termination from the School of Law
- Demotion
- Suspension
- Transfer
- A letter of reprimand to be made a permanent part of the employee's file (Faculty members should review the Faculty Handbook for further information).

Sanctions are effective immediately. If the respondent appeals the Decision-Maker's determination, the sanction(s) will continue in effect during the appeal. The sanction(s) may be lifted only if, as a result of the final outcome of the appeal, the respondent is found not responsible for one or more of the policy violations as stated in the Dean's written determination.

F. REMEDIES

In certain circumstances, remedial measures may be required to stop harassment, prevent its recurrence, and remedy its effects. These measures include, but are not limited to:

- counseling
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- mutual restrictions on contact between the parties
- changes in work locations
- leaves of absence
- increased security and monitoring of certain areas of the School's campus, and other similar measures.

G. INFORMAL RESOLUTION

When appropriate, certain student-on-student or employee-on-employee complaints may be resolved by the Title IX Coordinator or Deputy Coordinators without a formal resolution. Both parties must give voluntary, informed, and written consent to attempt informal resolution. Either party may elect to go through the formal process at any point prior to the resolution. The Title IX Coordinator will facilitate the resolution and give final sanction(s) as deemed suitable and provide written notice simultaneously to the parties. Possible remedial measures and/or sanctions may include, but are not limited to:

- Permanent no-contact orders
- Written apology and/or explanation of the circumstances surrounding the grievance
- Community service.

X. HOW TO BE AN ACTIVE BYSTANDER

Bystanders play a critical role in the prevention of sexual and relationship violence. Bystanders are persons who observe red-flag behavior and have the opportunity to intervene to prevent the sexual misconduct from occurring. "Red flag" behavior includes things like seeing a person who is too drunk to provide self-care being isolated by a person. A bystander can intervene to stop the potential offender from taking the incapacitated person away by interrupting, calling for help, calling a friend of the person to come get them, or distracting the potential offender by speaking up and calling out the behavior. Not allowing the isolation stops the sexual assault from being able to occur. 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. If you see sexual misconduct in any form and do not feel safe to intervene to stop it, call 911. Further information regarding bystander intervention is provided in CSOL's training programs and may be found by contacting Shera Silvis.

XI. SECURITY

The Charleston School of Law has a Director of Security and security officers supplied through an independent contractor, AlliedBarton. Additionally, the Charleston School of Law hires off-duty City of Charleston Police Department Officers to monitor the areas near School of Law facilities during early morning and evening hours. The School of Law has a verbal agreement with the City of Charleston Police Department to immediately exchange information of criminal activity in the area of the School of Law, consistent with similar arrangements between the City of Charleston Police Department and other area schools.

Criminal incidents reported to School of Law officials and AlliedBarton personnel may be referred to the City of Charleston police who have jurisdiction on the campus and the authority to make arrests. AlliedBarton security officers have arrest powers on School of Law property and will exercise them in cases which may involve imminent harm. All crime victims and witnesses are strongly encouraged to immediately report a crime to on-duty security personnel, designated School of Law officials (the "Title IX Team"), and the appropriate police agency. Prompt reporting will assure timely warning notices on-campus and timely disclosure of crime statistics.

The Charleston School of Law does not have any off-campus student organizations. AlliedBarton security officer's jurisdiction is limited to School of Law property. City of Charleston Police have primary jurisdiction in all areas in the vicinity of the School of Law.

XII. REPORTING A COMPLAINT OF SEXUAL MISCONDUCT DIRECTLY TO LOCAL POLICE

If you choose to pursue criminal charges in your case, the City of Charleston Police Department will be notified and generate their own report, which will be forwarded to a detective in the Special Victims Unit. The Charleston Police Department works in concert with the Solicitor for the Ninth Judicial Circuit, who houses the Victim and Witness Assistance Program. This program has trained professional staff who will help you understand and navigate the criminal justice process. The School of Law strongly encourages any complainant of sexual misconduct to report the incident to the local police when the incident may constitute a crime. The School of Law, upon a complainant's request, will assist the victim in contacting the City of Charleston Police Department. A complainant also has the right to decline to notify local police (unless they are under the age of 18).

XIII. CONCURRENT LAW ENFORCEMENT AND ADMINISTRATIVE TITLE IX INVESTIGATIONS

This shall serve as notice that the School of Law fully supports a complainant's desire to pursue separate law enforcement action on a complaint of sexual misconduct which also is determined by the City of Charleston Police to be a violation of South Carolina State Law. If the Charleston Police Department is investigating such a complaint, the Title IX Coordinator and/or Deputy Title IX Coordinator will cooperate fully with the local police; however, no mutual aid agreement currently exists to share information between the local police and the School of Law in a formalized manner.

To contact the City of Charleston Police Department directly, dial 9-1-1 or 843-577-7434 from any telephone or in person at 80 Broad Street Charleston, SC 29401-0304. It is important to note that Title IX does not allow the School of Law to wait for the completion of a criminal investigation to undertake its responsibilities with regard to stopping sex-based harassment/discrimination, preventing its recurrence, and addressing its effects. Consequently, if law enforcement is investigating, the CSOL may yield to police for up to 10 days to allow law enforcement to conduct preliminary fact-finding into the matter. After that timeframe, the School of Law must proceed with its own factfinding into the matter. The School of Law will not share a student's FERPA protected information with law enforcement without due process (i.e., subpoena, search warrant, bench order, etc. must be presented for the School of Law to release this information unless a health or safety exception exists that would permit such a release).

XIV. EDUCATION AND PREVENTION PROGRAMS

The School of Law engages in comprehensive educational programming to prevent domestic violence, dating violence, sexual assault, and stalking. Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students and faculty that:

- Identifies domestic violence, dating violence, sexual assault, and stalking as prohibited conduct
- Defines what behavior constitutes domestic violence, dating violence, sexual assault, and stalking
- Defines what behavior and actions constitute consent to sexual activity in the State of South Carolina
- Provides safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or to intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than the bystander
- Provides information on risk reduction so that students and employees may recognize warning signs of abusive behavior and how to avoid potential attacks
- Provides an overview of information contained in the Annual Security Report and in this Sexual Misconduct Policy in compliance with the Clery Act.

The School of Law has developed an annual educational campaign consisting of presentations that include distribution of educational materials to new students; participating in and presenting information and materials during new employee orientation; participating in the spring and fall faculty orientation program; and presenting programs throughout the year.

The Title IX Coordinator and Title IX Team shall receive training on the definition of sexual harassment, the scope of the School's educational program or activity, how to conduct an investigation and the grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision-Makers shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior

sexual behavior are not relevant. The School will provide training to investigators on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train the Title IX Coordinator, investigators, Decision-Maker(s), and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints.

XV. HOW TO CONTACT THE DEPARTMENT OF EDUCATION, OFFICE OF CIVIL RIGHTS

To file a complaint directly with the U.S. Department of Education's Office for Civil Rights, use the following contact information.

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg.
400 Maryland Avenue, SW
Washington, DC 20202-1100

Telephone: 800.421.3481
FAX: 202.453.6012; TDD: 800.877.8339
Email: OCR@ed.gov

Appendix A:

RESOURCES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT & STALKING

On-Campus

| Name | Address | Telephone & Email |
|---|----------------------------------|--|
| Title IX Coordinator & Director of Human Resources, <i>Shera Silvis</i> | 385 Meeting Street, Second Floor | 843.377.4904 ssilvis@charlestonlaw.edu |
| Deputy Title IX Coordinator & Associate Dean for Academic Affairs, <i>Margaret Lawton</i> | 385 Meeting Street, Third Floor | 843.377.2423 mlawton@charlestonlaw.edu |
| Campus Security | 385 Meeting Street, First Floor | 843.377.4911 csolsecurity@charlestonlaw.edu |
| Financial Aid Assistance, Office of Financial Aid, Bobby Greer | 385 Meeting Street, Second Floor | 843.377.4901 bgreer@charlestonlaw.edu |

CSOL has no on campus health, mental health, counseling, victim advocacy, legal assistance or visa/immigration assistance available. These resources must be obtained from the City of Charleston or the State of South Carolina. See “In the City” below for these resources. Please contact the Title IX Coordinator for additional information.

In the City Area

| | |
|-----------------------------|---|
| <u>Local Police</u> | <u>911</u> |
| <u>Hospital</u> | <p>Bon Secours St. Francis Hospital (West Ashley) 2095 Henry Tecklenburg Drive Charleston, SC 29414 843.402.1000</p> <p>East Cooper Regional Medical Center 2000 Hospital Dr, Mt Pleasant, SC 29464 843.881.0100</p> <p>Medical University of South Carolina (Forensic Collection available) 171 Ashley Avenue Charleston SC 29425 843.792.2300</p> <p>Roper Hospital 316 Calhoun St., Charleston, SC 29401 843.724.2000</p> <p>Trident Medical Center 9330 Medical Plaza Dr North Charleston, SC 29406 843.797.7000</p> <p>Trident Summerville Medical Center 295 Midland Pkwy Summerville, SC 29485 843.832.5000</p> |
| <u>Mental Health</u> | <p>Charleston and Dorchester Community Mental Health 843.852.4100 843.414.2350 (emergencies) www.cdcmhc.org</p> <p>Berkeley Community Mental Health 843.761.8282 www.bcmhc.org</p> |

| | |
|---|---|
| <u>Victim Advocacy</u> | Victim Services Unit 843.856.2189 100 Ann Edwards Lane Mt. Pleasant, SC 29464 |
| <u>Legal Assistance</u> | Downtown Location: 843.853.6456 North Charleston Location: 843.720.7044 |
| <u>Visa & Immigration Assistance</u> | USCIS Local Office 1821 Sam Rittenberg Boulevard Charleston, SC 29407 www.us-immigration.com/uscis.html |
| <u>Battered Women's Shelter</u> | My Sister's House 843.744.3242 http://mysistershouse.org/ Center for Women 843.763.7333 http://www.c4women.org/ |
| <u>Rape Crisis Center</u> | People Against Rape (PAR) 843.745.0144 198 Rutledge Avenue Charleston, SC 29403 http://www.peopleagainstrape.org/ |
| <u>LGBTQ Alliance</u> | Alliance for Full Acceptance (AFFA) 843.883.0343 3623 Old Charleston Road Johns Island, SC 29455 http://affa-sc.org/ |
| <u>Magistrate</u> | Charleston County Magistrate 843.795.1140 615 Riverland Drive Charleston, SC 29412 |
| <u>Local County Courthouse</u> | Charleston County Courthouse 843.958.5000 100 Broad Street, Suite 106 Charleston, South Carolina 29401-2258 |

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