MEMORANDUM

To: Campus Presidents and Professional School Deans
From: Frederick P. Schaffer
       General Counsel & Sr. Vice Chancellor for Legal Affairs
       Gloriana B. Waters
       Vice Chancellor for Human Resources Management
       Frank D. Sanchez
       Vice Chancellor for Student Affairs
Re: Implementation of Revised Sexual Misconduct Policy

Pursuant to the recent state law on campus sexual assault response, the CUNY Board of Trustees adopted two revised policies and a revised Bylaw on October 1, 2015: the CUNY Policy on Sexual Misconduct; the CUNY Drug/Alcohol Use Amnesty Policy; and Article 15 of the Board Bylaws (student disciplinary procedures), all of which became effective immediately. We write to provide you with links to these documents and to outline the requirements of these policies and the revised Bylaw.

SEXUAL MISCONDUCT POLICY

Dissemination of Information

- The campus Title IX Coordinator, in collaboration with the campus offices of Student Affairs, Public Safety, and Human Resources, must disseminate the Sexual Misconduct Policy; CUNY’s Notice of Non-Discrimination; the Title IX Coordinator’s name, phone number, office location and email address; and contact information for Public Safety. The information must be posted on the campus website and included in any student and faculty handbooks and residence life materials.
- The Students’ Bill of Rights, which is now a part of the Sexual Misconduct Policy, must be customized with campus information, and distributed annually to students, made available on the campus website, and posted in college campus centers and in CUNY-
owned, operated, or managed housing. The Title IX Coordinator has overall responsibility for this and should work in conjunction with Student Affairs on the distribution.

Receiving and Responding to Complaints

- The Students’ Bill of Rights must also be distributed to every student reporting an incident of sexual misconduct at the time of the report. The Title IX Coordinator must ensure that all appropriate offices that are likely to receive reports have copies of the Bill of Rights, including Public Safety, Student Affairs, Health Center, Counseling Center, Women’s Center, Residence Life and Human Resources.
- Campus Public Safety must have at all times (24/7) an appropriately trained individual available to provide complainants with information on reporting to the college and/or law enforcement, including information about the criminal justice process and the preservation of evidence.
- Public Safety Officers must be able to assist complainants with filing complaints and obtaining medical attention and services.
- Every respondent (individual accused of sexual misconduct) must be provided with a written summary of the allegations against him/her, regardless of whether a written complaint is filed by the individual reporting the incident. If a written complaint is filed, the respondent should not be provided with a copy, but rather should be provided only with a written summary.

Interim and Supportive Measures

- The Chief Student Affairs Officer (CSAO) continues to be responsible for interim and supportive measures for student complainants, as well as no-contact orders, and must work in coordination with the Title IX Coordinator, Public Safety, and HR Director (if any employees are involved). The CSAO/HR Director must allow any student/employee affected by an interim/supportive measure or a no-contact order to seek review of such measure or order. We will provide further written guidance on the review procedure shortly; if you have questions in the meantime, please contact Associate General Counsel Dan Simonette, (646) 664-9215.
- Similarly, the HR Director continues to be responsible for interim and supportive measures for employees, in coordination with the Title IX Coordinator.

Education and Training Requirements

- As outlined in our memo issued with EVC Rabinowitz dated August 13, 2015 (additional copy attached), the campuses have significant education and training requirements pursuant to the new law and the revised policy. While the Title IX Coordinator has overall responsibility for ensuring that educational programming takes place, Student Affairs, Public Safety, Human Resources, and any other appropriate offices must also take significant responsibility for implementing the educational programming.
• In addition to the education programs listed in that memo, each campus must also train all responsible employees and confidential employees on the law and policies and their responsibilities.
• The Title IX Coordinator must be trained annually in conducting sexual misconduct investigations and related issues.
• Please note that the recipient of the two-year education plan due by January 2016 is now Rodney Pepe-Souvenir, the University Title IX Coordinator.

Definitions

• Please note that in order to comply with the recently enacted New York State law (commonly known as the “Enough is Enough” legislation) certain definitions of key terms in the Sexual Misconduct Policy have changed. Please refer to the Definitions section of the Policy for a complete list.

Campus Climate Survey

• The University, with campus input, will develop and administer a CUNY-wide student climate assessment instrument every two years. The Title IX Coordinator, in collaboration with the campus offices of Student Affairs and Public Safety, must review and coordinate the campus response to the results.

DRUG/ALCOHOL USE AMNESTY POLICY

• The revised Drug/Alcohol Use Amnesty Policy provides amnesty for students from college discipline for improper or illegal alcohol or drug use or both when they report violence, including sexual violence, sexual harassment or gender-based harassment and/or call for medical assistance. Students are not required, though they should be encouraged, to complete education or treatment programs for drug/alcohol abuse.
• The Chief Student Affairs Officer is responsible for disseminating the Amnesty Policy widely throughout the College, including in residence halls, on the campus website, in student and employee handbooks, and in campus facilities.

ARTICLE 15 OF BYLAWS (STUDENT DISCIPLINARY PROCEDURES)

Disciplinary Committee Composition

• These procedures apply only to students. Employee discipline is governed by CUNY’s collective bargaining agreements and policies.
• The College must select a chairperson, two faculty/HEO members and two students from the regular faculty-student disciplinary panel to hear all matters involving allegations of sexual violence, including sexual assault and stalking. These individuals must receive special annual training before this designated panel may hear a case.
• In cases involving sexual misconduct, both the complainant and respondent may be accompanied by an advisor (including a lawyer) who may assist and advise during any meetings and hearings that occur after disciplinary charges have been filed. Prior to the time that charges are filed, the advisor may attend, but not participate in meetings.

• In all other cases, the respondent may have an advisor present at the disciplinary hearing, but is not necessarily permitted to have an advisor present during other meetings.

• In all cases, the complainant and respondent have the right to attend and participate in the disciplinary hearing.

• The respondent and complainant have the right to review, but not to receive, copies of documents or other tangible evidence that the college intends to introduce at the hearing. This includes evidence that the college intends to introduce in support of the penalty the college seeks (see below for more information on the penalty phase). In cases that are being investigated as criminal matters, the college must consult with OGC before providing access to the evidence the college intends to introduce.

**Mediation**

• Mediation is a mechanism of resolving allegations before disciplinary charges are filed. Cases involving sexual violence may not be resolved through mediation. In cases of non-violent sexual misconduct mediation is permitted, but the parties cannot meet face to face in that process, and both complainant and respondent must agree to any resolution.

**Admission & Acceptance of Penalty without Hearing**

• Once disciplinary charges have been brought, the respondent may admit to the charges and accept the penalty recommended by the Chief Student Affairs Officer. The penalty must be noted on the transcript in the same manner it would be noted if the penalty were imposed after a disciplinary hearing. Before a complaint is resolved in this manner, the complainant must be consulted and given the opportunity to object. If the resolution is reached over the complainant’s objection, the complainant must be provided a written statement of the reasons, and the complainant may appeal the resolution to the President.

**Disciplinary Hearings**

• Disciplinary hearings are closed hearings, unless the respondent requests otherwise. Cases involving allegations of sexual violence are not permitted to be open hearings regardless of the respondent’s request.

• In cases involving allegations of sexual misconduct, the complainant and respondent are permitted to cross examine one another, but only through a representative or through written questions provided to the chairperson. The right of cross examination through a representative only applies if the witness testifies at the hearing. In other words, the respondent cannot force the complainant to answer questions unless the complainant testifies, and vice versa.

• In cases involving allegations of sexual misconduct, evidence of the mental health of a party may not be introduced.
• In cases involving allegations of sexual misconduct, evidence of either party’s prior sexual history is not admissible except for sexual history between the complainant and respondent. In addition, past findings of domestic/dating/intimate partner violence, stalking, or sexual assault may be admissible at the penalty phase of the hearing.

**Determination of Penalty**

• Before the hearing begins, both the respondent and complainant must advise the Chief Student Affairs Officer (or designee) whether they intend to introduce evidence pertaining to penalty, in the event that the respondent is found to have engaged in the alleged misconduct. After all the evidence pertaining to the allegations is submitted, the committee members will deliberate to determine whether some or all of the allegations are supported by the evidence. Whenever possible, that decision will be communicated to both the complainant and respondent on the same day that the hearing is conducted.

• If the committee determine that the respondent engaged in some or all of the misconduct alleged, the committee will allow the college, the respondent and the complaint to submit evidence pertaining to the appropriate penalty. At the penalty phase of the hearing, the college may introduce evidence pertaining to the respondent’s past disciplinary record at the college or another institution and pertaining to criminal convictions, but may not introduce arrests that did not result in a conviction. Both the complainant and respondent may submit or make an impact statement and may also present witnesses who will testify about the respondent’s character. As noted above, if the college intends to introduce documents or other tangible evidence relating to the penalty, the respondent must be given the opportunity to review it at the same time he/she is given the opportunity to review evidence pertaining to the allegations. If the complainant submits documentary or tangible evidence for the penalty phase, the respondent must be permitted to review it, and vice versa. However, this review should not occur until after a determination has been made that the respondent engaged in some or all of the misconduct alleged.

• After evidence regarding the penalty is submitted, the committee must send a decision to the respondent and, in cases involving a crime of violence or a non-forceable sex offense, the complainant, within 7 days.

**Appeals**

• Respondent or complainant may appeal a committee decision to the president on the grounds of (i) procedural error, (ii) newly discovered evidence not reasonably available at the time of hearing, or (iii) disproportionate penalty, and if the president’s penalty is for expulsion or suspension of one term or more, either party may appeal to the Board of Trustees’ Committee on Student Affairs. Each party may submit a written opposition to the other’s appeal.

**Transcript Notations**

• If the respondent is found responsible for any of the following (known as “Clery reportable crimes of violence”): murder, rape, fondling, incest, statutory rape, arson,
robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, or arson, the committee should strongly consider, but is not required to impose, a penalty of either suspension or expulsion. If a penalty of suspension or expulsion is imposed in these circumstances, then the transcript must be annotated to reflect suspension or expulsion after a finding of responsibility for a code of conduct violation.

- If the respondent withdraws from the college after disciplinary charges are brought but not resolved, the respondent’s transcript must be annotated to reflect that she/he withdrew with conduct charges pending.
- The CSAO is responsible for ensuring that required notations are communicated to campus registrars. Article XV provides the process for removing transcript notations, though the notation for expulsion for a Clery reportable crime cannot be removed unless the finding is vacated. The CSAO is responsible for ensuring that transcript notations are removed under appropriate circumstances.

If you have questions about any of these policies or their implementation, please contact Rodney Pepe-Souvenir, Associate Director for Diversity and Compliance/University Title IX Coordinator, at (646) 664-3314; Paulette Dalpes, Deputy to the Vice Chancellor for Student Affairs, at (646) 664-8787; or Jane Sovern, Deputy General Counsel, at (646) 664-9209.

c:  
Chancellor Milliken  
Cabinet  
Chief Academic Officers  
Chief Student Affairs Officers  
Rodney Pepe-Souvenir, University Title IX Coordinator  
Title IX Coordinators  
Legal Designees  
HR Directors  
Labor Designees  
Bill Barry, University Director of Public Safety  
Directors of Public Safety  
Student Conduct Officers