



BOWDITCH & DEWEY, LLP | OCTOBER 25, 2023


SEXUAL MISCONDUCT & TITLE IX TRAINING

BRIGID HARRINGTON

Brigid Harrington



PART 4: AIC POLICY AND PROCEDURES



SEXUAL MISCONDUCT POLICY
Revised 10/24/22

I. INTRODUCTION 4

A. Statement of Policy 4

B. Applicability 4

C. Reports and Formal Complaints of Prohibited Conduct 4

D. Period of Limitations 5

E. Statement of Non-Discrimination and Coordination of Policies 5

F. Individuals with Disabilities 6

G. College Title IX/Sexual Misconduct Conduct Coordinators 6

II. PROHIBITED CONDUCT 7

A. Title IX – Sexual Harassment..... 7

B. College - Other Prohibited Conduct 9

C. Retaliation 11

III. CONSENT 12

A. Incapacity..... 12

B. Consent Cannot Be Obtained by Force..... 13



SEXUAL MISCONDUCT POLICY

Revised 10/24/22

I. INTRODUCTION	4
A. Statement of Policy	4
B. Applicability	4
C. Reports and Formal Complaints of Prohibited Conduct	4
D. Period of Limitations	5
E. Statement of Non-Discrimination and Coordination of Policies	5
F. Individuals with Disabilities	6
G. College Title IX/Sexual Misconduct Conduct Coordinators	6
II. PROHIBITED CONDUCT	7
A. Title IX – Sexual Harassment.....	7
B. College - Other Prohibited Conduct	9
C. Retaliation	11
III. CONSENT	12
A. Incapacity.....	12
B. Consent Cannot Be Obtained by Force.....	13

BOWDITCH

AIC SEXUAL MISCONDUCT POLICY

APPLIES TO

- Students
- Employees (faculty and staff)
- Third parties (guests, vendors, contractors, etc.)



SEXUAL MISCONDUCT POLICY

Revised 10/24/22

I. INTRODUCTION	4
A. Statement of Policy	4
B. Applicability	4
C. Reports and Formal Complaints of Prohibited Conduct	4
D. Period of Limitations	5
E. Statement of Non-Discrimination and Coordination of Policies	5
F. Individuals with Disabilities	6
G. College Title IX/Sexual Misconduct Conduct Coordinators	6
II. PROHIBITED CONDUCT	7
A. Title IX – Sexual Harassment.....	7
B. College - Other Prohibited Conduct	9
C. Retaliation	11
III. CONSENT	12
A. Incapacity.....	12
B. Consent Cannot Be Obtained by Force.....	13

BOWDITCH

AIC SEXUAL MISCONDUCT POLICY (CONT'D)

ONE GRIEVANCE PROCESS FOR ALL SEXUAL MISCONDUCT

- Title IX sexual misconduct
- Off-campus conduct that meets definitions in policy
- On-campus conduct that meets definitions in policy

BOWDITCH

KEY DEFINITIONS

CONSENT

BOWDITCH

- Freely and affirmatively communicated willingness to participate in sexual activity
 - Expressed by words or unambiguous actions
 - Person who initiates sexual activity must get consent
 - Consent is required for all sexual activities

A PERSON WHO IS INCAPACITATED IS UNABLE TO GIVE CONSENT BECAUSE THEY LACK THE ABILITY TO MAKE INFORMED, RATIONAL JUDGMENT

- Result of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place
- Incapacitation can result from drug and alcohol consumption
 - An extreme form of intoxication

CANNOT BE OBTAINED BY FORCE

- Includes threats, intimidation, coercion

DISCUSS: WHAT IS COERCION?

- Continued pressure after a clear decision

TITLE IX SEXUAL HARASSMENT

- Occurs within Title IX Jurisdiction
- 5 Categories:
 1. Quid pro quo
 2. Sexual Harassment (severe, pervasive AND objectively offensive)
 3. Sexual Assault
 4. Dating/Domestic Violence
 5. Stalking



TITLE IX SEXUAL HARASSMENT - JURISDICTION

- Occurs in the U.S.
- Occurs within the College's educational program or activity
 - Location, events, or circumstances over which College exercises substantial control
 - Control over Respondent and context
 - Building owned by College or student organization
- Complainant must be participating or attempting to participate in education program or activity at the College.



TITLE IX SEXUAL HARASSMENT – QUID PRO QUO

BOWDITCH

- An employee of the College conditioning the provision of an aid, benefit or service of the College on an individual's participation in unwelcome sexual conduct
 - Does not involve student vs. student relationships
 - Can involve employee vs. employee

TITLE IX SEXUAL HARASSMENT – SEXUAL HARASSMENT

BOWDITCH

- Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity.
 - If does not meet severe, pervasive, and objectively offensive, it may be another type of sexual misconduct

- Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Includes:
 - Rape
 - Sodomy
 - Sexual Assault with an Object
 - Fondling
 - Incest

What about attempts?

TITLE IX SEXUAL HARASSMENT – DOMESTIC/DATING VIOLENCE

BOWDITCH

A CRIME OF VIOLENCE COMMITTED BY A:

- Current or former spouse or intimate partner
 - Intimate partner – relationship with romantic or physical intimacy, or emotional dependence
 - Anywhere from “hook-up relationship” to marriage
- Individual with child in common
- Person who is cohabiting with or has cohabited with
- Social relationship of romantic/intimate nature
 - Determined based on reporting individual’s statement about length/type of relationship and frequency of interaction

TITLE IX SEXUAL HARASSMENT – STALKING

- Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to
 - Fear for their safety or the safety of other's
 - Suffer substantial emotional distress
- Course of conduct = 2 or more acts, including indirect acts through third parties



JURISDICTION – NON-TITLE IX

- Includes conduct outside of the U.S.
- Includes off-campus conduct which has the effect of interfering with a Community Member's equal access to the College's employment or educational programs and activities.



NON-TITLE IX SEXUAL HARASSMENT

BOWDITCH

ANY UNWELCOME CONDUCT OF A SEXUAL NATURE WHEN:

- Submission to or rejection of such conduct is an explicit or implicit term or condition of employment or academic standing (quid pro quo)
- Creates a hostile environment
 - Must be sufficiently severe OR pervasive

SEXUAL EXPLOITATION

TAKING NON-CONSENSUAL OR ABUSIVE SEXUAL ADVANTAGE OF ANOTHER

- Voyeurism, exhibitionism
- Sharing nude or sexually explicit photographs
- Graffiti
- Prostitution offenses
- Knowingly exposing another to STIs

OTHER SEXUAL MISCONDUCT

- Inducing incapacitation
 - For the purpose of prohibited conduct
- Aiding or facilitating misconduct
- Attempt

RETALIATION IS PROHIBITED

Seeking retribution against an individual for exercising their rights under the policy, making a report or complaint, testifying, participating, or refusing to participate in investigation

BOWDITCH

REPORTING

34 C.F.R. 106.45(B)(10)



REPORTS

- Can be made to designated employees
 - Student Affairs
 - HR
 - Athletics
 - Police
- Can be made anonymously
 - Formal complaint cannot be made anonymously
- TIXC may file formal complaint

BOWDITCH

APPEALS

- Can be made from dismissal, or Chief Hearing Officer's determination
- Bases:
 - Procedural irregularity that affected outcome
 - New evidence that was not reasonably available at time of determination which could affect outcome
 - Conflict of interest/bias
 - Sanction inconsistent with gravity of offense

IF APPEAL IS GRANTED

- May refer back to Chief Hearing Officer for procedural irregularity or new information
- Bias/inappropriate sanctions may be addressed directly by Appellate Officer

QUESTIONS?



Brigid Harrington

bharrington@bowditch.com

617-757-3351

