

COLLEGE OF MICRONESIA-FSM

BOARD POLICY No. 2300

General Policy on Sexual Misconduct

Date Adopted:

Date Revised:

Date Reviewed:

References: COM-FSM Board Policy No. 6020 (Sexual Harassment)
COM-FSM Board Policy No. 4901 (Sexual Harassment Policy for Students)
Title VII of the Civil Rights Act of 1964
Title IX, Education Amendments of 1972 (Title IX)
Family Educational Rights and Privacy Act of 1974 (FERPA)
Jeanne Clery Disclosure of Campus Policy and Campus Crime Statistics Act (1990),
as amended in 2015 (Clery Act)
Violence Against Women Act (1994), as amended in 2015 (VAWA)
Orbelin College & Conservatory, Sexual Misconduct Policy
Western University, Policy on Sexual Misconduct
University of Guam, Sexual Misconduct Policy
White House Task Force to Protect Students from Sexual Assault, Checklist for
Campus Sexual Misconduct Policies

The College of Micronesia-FSM (“COM-FSM” or the “college”) is committed to providing an environment that is free of conduct that unreasonably interferes with the academic and professional experience of any member of the college community, including visitors, volunteers, vendors, and contractors while on college property, participating in a college sponsored activity, or providing or receiving services to the college.

As a recipient of US federal funds, COM-FSM 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 and activities, admission, and employment, Title VII of the Civil Rights Act of 1964 (“Title VII”), which prohibits sex discrimination in employment, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by relevant provisions of the Violence Against Women Reauthorization Act of 2015 (“VAWA”), and relevant FSM national and state laws.

COM-FSM will not tolerate any type of sexual and/or gender-based harassment, discrimination, and violence, including sexual violence, stalking, and partner violence, which are referred to in this policy as “sexual misconduct.” The college is committed to taking all appropriate steps to eliminate these forms of sexual misconduct, prevent their recurrence, and address their effects. The college views this policy as a primary resource in preventing and responding to sexual misconduct. As such,

retaliation against anyone who makes a report, cooperates with an investigation, or participates in a grievance procedure is a violation of this policy.

All members of the college community are expected to play a role in preventing and responding to sexual and/or gender-based harassment, discrimination, and violence, including sexual violence, stalking, and partner violence, which are referred to in this policy as “sexual misconduct.” Reporting any knowledge of sexual misconduct is especially important, since it allows the college to connect a *reporting party* to resources and support and to foster individual and campus security and safety.

COM-FSM is committed to creating an institutional environment free from discrimination and harassment for students and employees. As such, discrimination and harassment based on the following categories are prohibited: race, color, sex, marital status, religion, creed, national origin, disability, age, genetic information, military or veteran status, sexual orientation, family relationship to an employee of the college, and gender identity and expression. In addition, should any applicable law be enacted in the future prohibiting discrimination and/or harassment based on a category not listed above, or should there be other changes in the applicable law governing discrimination and/or harassment, this policy will be deemed amended to the extent necessary to reflect such changes.

This general policy covers conduct prohibited under Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin, and Title IX, the 1972 amendment to the Higher Education Act of 1965 which prohibits discrimination based on sex in higher education. This policy also reflects the provisions of the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), a federal statute enacted in 1990, and the Campus Sexual Violence Elimination (SaVE) Act, which was passed as part of the reauthorization of the Violence Against Women Act (2015).

The college’s non-discrimination statement includes all gender- and/or sex-based discrimination and affirms that the college does not discriminate on the basis of gender and/or sex in its educational, extracurricular, athletic, or other programs or in the context of employment.

This general policy applies to all members, including students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors, alumni and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with the college or on college property.

This policy applies to sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and partner violence, which are referred to in this policy as “sexual misconduct,” both on and off campus. In particular, off-campus conduct is subject to this policy if the conduct occurred in the context of an education program or activity of the college or had continuing adverse effects on campus or in an off-campus education program or activity.

Any member of the college community who intervenes to prevent sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and partner violence, which are referred to in this policy as “sexual misconduct,” seeks the support of peers or colleagues, or reports such conduct to the Title IX Coordinator or another *responsible employee* will be supported by the college, and protected from retaliation.

A. Privacy and Confidentiality

COM-FSM is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. Throughout the process, every effort shall be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report.

All college proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX, and applicable US federal laws, including FSM national and state laws. No information shall be released from such proceedings except as required or permitted by law and college policy.

For purposes of this policy, privacy and confidentiality have distinct meanings.

1. Privacy

Privacy generally means that information related to a report of sexual misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those college employees who “*need to know*” in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

2. Confidentiality

Confidentiality means that information shared by an individual with a designated college confidential resource cannot be revealed to any other individuals without the expressed permission of the individuals, unless the information involves suspected abuse of a minor or there is an imminent risk of harm to self or others.

3. Requests to protect confidentiality of reporting parties

If a person who reports an incidence of sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence (in this policy called the *reporting party*) requests that their name or other identifiable information not be shared with the person alleged to have engaged in such conduct (in this policy called the *responding party*), or requests that the college take no formal action in response to a report, the college will honor the *reporting party's* request to the extent possible based on a careful balancing of such requests with any legal reporting requirements, the risk of harm to any individual and the college's duty to maintain a safe and nondiscriminatory environment for all.

The Title IX Coordinator will assess such requests by examining the seriousness of the reported conduct, whether the reported misconduct was perpetrated with a weapon, the respective ages and roles of the *reporting* and *responding parties*, whether there have been other reports of misconduct or discrimination by the *responding party*, whether the college possesses other means to obtain relevant evidence of sexual misconduct, whether the report reveals a pattern of misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group, and the rights of the *responding party* to receive notice and relevant information before disciplinary action is initiated.

Where possible, the Title IX Coordinator will honor requests for confidentiality or that no action be taken so long as the college can meet its obligation to stop, address, and prevent the recurrence of the discriminatory conduct. If the college is unable to take action consistent with the wishes of the *reporting party*, the Title IX Coordinator will inform the *reporting party* about the chosen course of action, which may include an investigation and potential disciplinary action against the *responding party*. The *reporting party* will not be compelled to participate in a formal hearing if they choose not to participate. The college, however, may choose to move forward with an investigation and potential disciplinary action if there is an individual or public safety concern and sufficient independent information exists to establish that this policy has been violated. Any action taken by the college will be designed to stop any sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and intimate partner violence, address its effects, and prevent its occurrence. In all instances, the college will take immediate action as necessary to protect and assist the *reporting party*.

If the college honors the request for confidentiality, the *reporting party* must understand that the college's ability to meaningfully investigate the incident and pursue disciplinary action against a *responding party* may be limited.

B. Title IX Coordinator

Title IX Coordinator oversees the college's central review process for receiving, investigating, and resolving reports of sexual misconduct to ensure that the college has taken prompt and equitable action to eliminate any hostile environment, prevent its recurrence and address its effects. The Title IX Coordinator promotes overall institutional compliance with Title IX and related laws, including adherence to procedural time frames, documenting and reporting data, and providing training and education to policy implementers and to the campus community for prevention purposes.

Members of the community are encouraged to consult the Title IX Coordinator regarding questions and concerns about reporting, support and interim measures for anyone experiencing or affected by sexual and/or gender-based harassment, discrimination and violence, including sexual violence, stalking, and partner violence, which are referred to in this policy as "sexual misconduct," and regarding information about options and processes to resolve the report.

Students, employees, or other individuals may direct questions or reports related to the application of Title IX to the Title IX Coordinator, and/or the U.S. Department of Education Office for Civil Rights. Questions or reports involving employees may also be directed to the US Equal Employment Opportunity Commission, info@eeoc.gov.

Due to the fact that circumstances differ between students and employees, the policies and procedures to follow as an employee with a complaint are outlined in BP No. 6020 and AP No. 6020, and for students with a complaint are outlined in BP No. 4901 and AP No. 4901.