

COLLEGE OF MICRONESIA-FSM BOARD POLICY NO. 4914

Sexual Misconduct Policy for Students¹

Date Adopted:

Date Revised:

Date Reviewed:

Reference: Title IX, Education Amendments of 1972 (Title IX)
Title VI of the US Civil Rights Act of 1964
Title VII of the US Civil Rights Act of 1964
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)
Family Educational Rights and Privacy Act of 1974 (FERPA)
The Campus Sexual Violence Elimination Act (Campus SaVE Act)
Checklist for Campus Sexual Misconduct Policies², White House Task Force to
Protect Students from Sexual Assault (April 2014)
COM-FSM Nondiscrimination Statement³
Board Policy No. 4901-Sexual Harassment Policy for Students⁴

I. Introduction

The College of Micronesia-FSM ("COM-FSM" or the "college") is committed to providing an environment free of conduct that unreasonably interferes with the learning process and academic experience of student.

As a recipient of US federal funds, the college 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 or gender in any educational program or activity that receives federal financial assistance, Title VI of the Civil Rights Act of 1964 ("Title VI"), which prohibits discrimination based on race, color, and national origin, Title VII of the Civil Rights of 1964 ("Title VII), which prohibits discrimination in employment on the bias of sex or gender, 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.

The college resolutely prohibits sex or gender-based discrimination, which encompasses sexual misconduct, and is fully committed to addressing and preventing such incidents.

¹This policy uses "they," "them," and "theirs" as third person singular gender-neutral pronouns, in recognition that individuals accessing this policy may have range of gender identities and forms of self-identification.

²<https://www.justice.gov/archives/ovw/page/file/910271/download>

³<http://www.comfsm.fm/catalog/2019-2020/Major-Policies-2019-2020.pdf>

⁴http://www.comfsm.fm/Policy/Board-Policy/Chapter-4/COM-FSM_BP4901.pdf

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II. Scope

This policy revokes, rescinds, replaces, and supersedes COM-FSM Board Policy No. 4901. The scope of this COM-FSM Sexual Misconduct policy includes:

- A. **Persons Covered:** The policy applies to all students of the college, with "*students*" defined as individuals enrolled in courses or programs at the College of Micronesia-FSM (COM-FSM or the "college").
- B. **Conduct Covered:** The policy addresses sexual misconduct, which includes but is not limited to sexual harassment, discrimination, and violence, such as sexual violence, stalking, and partner violence.
- C. **Location:** The policy applies both on and off-campus, extending its reach to incidents that occur in connection with college-related activities or relationships.
- D. **Programs and Activities:** The policy extends to all college-sponsored programs and activities, ensuring protection against sexual misconduct in any context associated with the college.
- E. **Relationships:** The policy is designed to protect against sexual misconduct within any college-related relationships involving students.

The college upholds confidentiality and privacy, which is further detailed in this policy, ensuring that information shared in the reporting process and when seeking support is handled discreetly and aligned with the precise confidentiality provisions specified herein.

III. Title IX Coordinator

The Title IX Coordinator oversees the college's process for handling reports of sexual misconduct, promoting compliance with Title IX. They offers support and information to the college community regarding harassment and discrimination. Questions or reports related to Title IX can be directed to the Coordinator or the U.S. Department of Education Office for Civil Rights⁵.

IV. Sexual Misconduct

COM-FSM is committed to providing an environment that supports the well-being and educational progress of students. As a result, the college prohibits sexual and gender-based harassment, discrimination, and violence, including sexual violence, stalking, and intimate partner violence, collectively referred to as "*sexual misconduct*" in this policy. Any attempt to engage in an act outlined in this policy, along with aiding or intentionally promoting such conduct, is likewise considered a breach of this policy. An act may transgress one or more aspects of this policy.

The subsequent descriptions indicate behaviors that contravene the standards, rights, dignity, and integrity of the college community (please note that this list is not exhaustive):

A. Unwanted Sexual and Gender-Related Harassment

1. *Sexual harassment* is any form of unwanted behavior with a sexual connotation. This encompasses unwelcome advances of a sexual nature, solicitations for sexual favors, as well as other expressions or actions, whether spoken, non-verbal, graphic, physical, or in any other form, that are sexually suggestive.

⁵<https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

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2. *Gender-based harassment* involves acts of verbal, non-verbal, or physical aggression, intimidation, or hostility directed towards an individual due to their gender, sex, or the use of stereotypes associated with gender or sex, even if these actions do not have a sexual nature, and are expressed through verbal communication, non-verbal cues, graphic content, physical actions, or any other means.

Sexual and/or gender-based harassment affecting students' academic experience occurs when it: (a) impacts an individual's academic work, participation in college programs, or the conditions of their learning; (b) influences decisions about the student; or (c) unreasonably interferes with a student's ability to learn, creating a hostile or offensive academic environment.

A single severe incident can disrupt the academic environment, especially if the harassment is physical. Persistent conduct, even if not severe, can also create a hostile academic environment, affecting a student's ability to learn, as judged both objectively and subjectively.

B. Sexual Assault. Any form of sexual contact or behavior that takes place without explicit consent from the other party. This encompasses sexual intercourse or any sexual contact achieved through force, coercion, the absence of consent, or when an individual is unable to provide consent due to incapacitation.

1. *Non-consensual Sexual Penetration* (e.g., rape): This involves any penetration of another person's sex organs, anus, or mouth when consent is not given. It also includes performing oral sex on another person without their consent. This category encompasses penetration or intrusion, no matter how slight, using an object or any part of the body.
2. *Non-consensual Sexual Contact* (e.g., fondling): This pertains to knowingly touching or fondling a person's genitals, breasts, thighs, groin, or buttocks, as well as touching a person with one's own genitals, breasts, or buttocks without their consent. This may involve direct or indirect contact, whether through clothing, bodily fluids, or with an object. It also covers causing or inducing a person, without their consent, to engage in similar touching or fondling of oneself or another person.
3. *Statutory Rape*: This refers to engaging in sexual intercourse with a person who is under the statutory age of consent as defined by the relevant laws in the Federated States of Micronesia⁶.

C. Sexual Exploitation. The act of taking sexual advantage of another individual, either for one's own gain or the benefit of a third party, in the absence of consent. It transpires when a person exploits another through non-consensual or abusive sexual actions for personal advantage or to benefit someone other than the exploited party. Examples of sexual exploitation encompass, but are not confined to:

1. Engaging in sexual voyeurism or allowing others to observe or witness the sexual or intimate activities of another person without their consent.
2. Involvement in indecent or lewd exposure or encouraging others to expose themselves when consent is not given.

⁶The states' statutory rape laws apply to children age 13 or younger in Yap and Kosrae, 15 or younger in Pohnpei, and 17 or younger in Chuuk. See https://www.state.gov/wp-content/uploads/2023/02/415610_MICRONESIA-2022-HUMAN-RIGHTS-REPORT.pdf

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3. Illegally recording an individual engaged in sexual or intimate activities within a private setting without their consent.
4. Disseminating sexual information, images, or recordings involving another person without obtaining their consent.
5. Involvement in the recruitment, harboring, transportation, provision, or acquisition of another individual for the purpose of sexual exploitation.
6. Inducing incapacitation in another person with the intent of engaging in sexual conduct, regardless of whether prohibited sexual actions transpire.

D. Intimate Partner Violence⁷ (Also known as dating violence, domestic violence, or relationship violence). Any act or threat of violence within a sexual, dating, domestic, or intimate relationship. It encompasses a wide range of behaviors, including sexual misconduct. It can be a single incident or a pattern of ongoing actions, such as threats, assault, property damage, or violence directed at oneself, one's partner, or their family and friends.

Intimate partner violence may qualify as a Title IX issue, especially for students, when it involves gender-based discrimination or creates a hostile educational environment. If a student experiences intimate partner violence that affects their access to education or participation in school activities, it can trigger Title IX protections. Therefore, the college shall address and investigate such incidents to ensure a safe and supportive educational environment, taking appropriate actions to prevent and respond to gender-based violence.

E. Stalking. A persistent and unwanted pattern of behavior aimed at causing fear in a specific person. It may involve repeated and frightening communications, unwanted gifts, following the victim, making threats, damaging property, online harassment, spreading rumors, or obtaining personal information through various means.

F. Retaliation. Any adverse action or attempt to seek revenge against individuals involved in reporting or investigating allegations of sexual misconduct. It can take various forms, such as threats, intimidation, ongoing abuse, violence, or harm, whether in person or online. Additionally, it includes negative repercussions in education for students who engage in good faith reporting, investigation, or resolution of alleged policy violations, or actions that discourage reasonable participation in protected activities.

G. Public Nudity. When an individual exposes their private parts or engages in sexual conduct or masturbation in a public location or where such conduct could offend those nearby. This prohibition aims to prevent the creation of hostile environments and does not restrict academic freedom, which safeguards intellectual and expressive representations of the body and classroom materials, including nudity.

⁷Intimate partner violence can be considered a Title IX concern, particularly for students, if it involves gender-based discrimination or leads to a hostile educational environment. When a student's access to education or participation in school activities is impacted by intimate partner violence, Title IX protections come into play. As a result, the college is obligated to address and investigate such incidents, ensuring a secure and nurturing educational environment while taking necessary measures to prevent and respond to gender-based violence.

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V. Consent, Coercion, and Incapacitation

- A. Consent.** In this policy, consent is defined as a clear, voluntary, and ongoing agreement, expressed through understandable words or actions, to engage in specific sexual or intimate contact. Obtaining effective consent from all parties is essential to prevent sexual violence and is mandated by this policy. The key components of effective consent include:
1. *Informed:* All parties must fully understand what they are agreeing to.
 2. *Freely and actively given:* Consent should not be the result of coercion, force, threats, intimidation, or pressure.
 3. *Mutually understandable:* Consent must be expressed clearly through words or actions. It cannot be assumed based on silence, lack of verbal objection, or prior relationships.
 4. *Specific to the situation:* Consent must exist at the time of the sexual activity and applies to each instance separately. It may be withdrawn at any time, and additional consent must be given for any further activity.
- B. Coercion.** It involves improper pressure to force someone into unwanted sexual activity, such as threats or manipulation.
- C. Incapacitation.** It occurs when an individual cannot make an informed decision about sexual activity due to unconsciousness, physical helplessness, or a lack of awareness. Signs of incapacitation include loss of physical control, unawareness of circumstances, and difficulty communicating. Being intoxicated or impaired by drugs or alcohol does not excuse sexual misconduct.

VI. Reporting Sexual Misconduct

- A. Reporting Option on Campus.** Students have the option to report a violation of the college's Sexual Misconduct Policy through various channels on campus. Reports can be made in person, over the phone, via email, or by using the online intake form available on the college's Title IX webpage⁸. The following administrators are designated to receive these reports:
1. Title IX Coordinator
 2. Campus Security and Safety
 3. Campus Deans
 4. Director of Student Life
 5. Dean of Academic Programs
 6. Instructional Coordinator
 7. Student Services Coordinator
- B. Anonymous Reporting Alternative.** Students also have the option of making an anonymous report. Any student can submit an anonymous report regarding incidents of sexual and/or gender-based harassment, discrimination, and violence, which may encompass sexual violence, stalking, and intimate partner violence, collectively referred to as “*sexual misconduct*” in this policy.

⁸[1]http://www.comfsm.fm/vpss/discrimination_harassment_complaint%20form-1.pdf

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An anonymous report can be filed without disclosing the student's identity, the identity of the alleged perpetrator, or requesting any specific actions. It is important to note that the college's ability to respond to an anonymous report may be limited, depending on the level of detail provided about the incident or individuals involved.

To make an anonymous report, students can submit a written document through campus mail or email to the Title IX Coordinator.

Upon receiving the anonymous report, the Title IX Coordinator will carefully assess its contents to decide on the necessary actions. These actions may encompass individual or community-based remedies as deemed appropriate. This evaluation process will be conducted in collaboration with the Campus Security and Safety Supervisor, ensuring full compliance with the mandates of the Clery Act and the Campus SaVE Act⁹.

- C. Confidentiality.** The college is committed to upholding confidentiality as much as possible within the bounds of the law and its policies. While making a report, students will be informed about the college's confidentiality policy, ensuring that their privacy is respected and protected to the fullest extent possible.
- D. Clery Act Reporting Obligation.** The college is obligated to comply with the Clery Act, which mandates the reporting of certain crimes that occur on or near campus. This includes incidents of sexual misconduct. As such, the college will ensure that all reporting is done in compliance with Clery Act requirements.
- E. Third Party Anonymous Reporting.** Students may have concerns about their identity being known when making an anonymous report. As a result, the college will establish a procedure for third-party anonymous reporting, affording concerned individuals, like friends or family members, the ability to report an incident on behalf of a student while ensuring the student's anonymity is maintained.
- F. Prohibition of Retaliation.** The college policy unequivocally prohibits retaliation against any individual who makes a report or participates in any related proceedings. Retaliation in any form will not be tolerated and will be dealt with in accordance with college policy.
- G. Amnesty for Drug, Alcohol, and Other Student Conduct Policies.** The college recognizes that students may be reluctant to report incidents of sexual misconduct due to concerns about their own conduct, such as violations of drug or alcohol policies. The college will grant amnesty to students who report sexual misconduct, ensuring that they are not subject to disciplinary actions related to such policy violations. This amnesty is designed to encourage reporting and support survivors.

⁹The Campus Sexual Violence Elimination Act (Campus SaVE Act) is a federal law in the United States that was enacted as part of the Violence Against Women Reauthorization Act of 2013. It amends the Clery Act, which requires colleges and universities that participate in federal student financial aid programs to disclose information about crime on and near their campuses. The Campus SaVE Act specifically focuses on addressing and preventing sexual violence, including sexual assault, domestic violence, dating violence, and stalking, within higher education institutions. It imposes certain requirements on colleges and universities, including: mandatory reporting, education and prevention programs, victim rights, disciplinary procedures, and Clery Act reporting.

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H. False Reporting. False reporting, for the purposes of this policy, refers to intentionally making a knowingly inaccurate, misleading, or fabricated report of sexual misconduct, harassment, or discrimination, with the intent to deceive or falsely incriminate another person. This includes knowingly providing false information during an investigation or disciplinary process. Consequences of false reporting include:

1. *Academic and Disciplinary Actions:* Any student found to have intentionally made a false report may be subject to academic and disciplinary actions, as deemed appropriate by the college's policies and procedures.
2. *Legal Action:* False reporting, particularly in cases that result in harm to the reputation or well-being of an innocent party, may be subject to legal action in accordance with applicable laws.
3. *Loss of Confidentiality Protections:* Individuals who intentionally make false reports may forfeit certain confidentiality protections they might otherwise have received under the college's policies.

VII. Investigation Protocol

- A. Role of the Title IX Coordinator.** Title IX Coordinator is responsible for ensuring compliance with Title IX regulations, investigating complaints, and coordinating the college's response to sexual misconduct. Their role includes facilitating supportive measures for both the complainant and respondent, conducting investigations, and ensuring a fair and equitable process.
- B. Investigating Body.** A trained and impartial investigator or investigative team is designated to conduct the investigation. This may involve selecting a member of the college's staff or an external investigator.
- C. Reasonably Prompt Timeframe.** Investigations should be conducted promptly and without unnecessary delays. A typical timeframe for completing the investigation might be within 60-90 days¹⁰. The college should communicate regularly with both parties about the progress of the investigation.
- D. Preservation of Evidence.** The college shall establish protocols for preserving evidence. This may include the collection and storage of physical evidence, documentation of witness statements, and maintaining digital records. Both parties should be encouraged to preserve any evidence they may have.
- E. Equitable Rights.** Both the complainant and respondent should be provided with equal rights throughout the investigation process, including the right to:
 1. Be informed of the allegations against them.
 2. Present evidence and witnesses on their behalf.
 3. Have an advisor or support person of their choice.

¹⁰The reasonable timeframe for investigating cases under Title IX can vary depending on the complexity of the case, the availability of evidence and witnesses, and the specific policies and procedures of the institution. However, federal guidance and best practices suggest that investigations should be conducted promptly and without unnecessary delays. Typically, investigations under Title IX are expected to be completed within a reasonable timeframe, which often falls in the range of 60 to 90 days. This timeframe allows for a thorough and fair investigation while also ensuring that complainants and respondents receive timely resolution of their cases.

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4. Receive updates on the status of the investigation.

F. Confidentiality Request. If a victim requests confidentiality, the college should take this request seriously and assess it in the context of the safety and well-being of the college community. While the college will strive to honor such requests, they should also be aware that confidentiality may limit their ability to fully investigate the incident and provide appropriate remedies.

G. College's Response. The college's response to a sexual misconduct investigation may include disciplinary actions, supportive measures for the complainant, and, if necessary, measures to prevent further incidents, such as no-contact orders. The response should be consistent with the college's policies and applicable laws.

VIII. Grievance and Adjudication

A. Grievance Process. The grievance process is the formal procedure by which complaints of sexual misconduct or Title IX violations are addressed. It involves the submission of a formal complaint, an investigation, and potential resolution through adjudication. Their role includes facilitating supportive measures for both the complainant and respondent, conducting investigations, and ensuring a fair and equitable process.

1. *Submission of a Formal Complaint.* The complainant submits a formal complaint to the Title IX Coordinator or another designated official (*see* Section V(a) of this policy). The complaint should include a clear statement of the alleged violation.
2. *Investigation.* A trained and impartial investigator or investigative team is designated to conduct an investigation into the complaint. The investigation may include interviews with the parties involved, witnesses, and gathering evidence. *Adjudication.* After the investigation, the adjudication phase begins to determine whether a violation occurred and, if so, what remedies or sanctions are appropriate.

B. Adjudication Process. The adjudication process involves a fair and equitable review of the investigation findings and a decision on the case.

1. *Preponderance-of-the-Evidence.* The standard of evidence known as “*preponderance-of-the-evidence*” is a crucial component in the adjudication of Title IX cases. This standard requires that, in order to establish that a violation occurred, the evidence must demonstrate that it is more likely than not that the alleged violation took place. In practical terms, this means that the evidence should tip the scales slightly in favor of one side's argument.
2. *Adjudicators.* Adjudicators are individuals responsible for reviewing the investigation findings and making determinations. The college's president is responsible for selecting and appointing adjudicators based on recommendations from the Title IX Coordinator.
3. *Participation in Adjudication.* Both the complainant and respondent have the right to attend or participate in the adjudication process. They can have an advisor or support person present.
4. *Right and Roles of Both Parties.* Both parties have the right to:
 - a. Receive notice of the hearing and the allegations against them.
 - b. Present witnesses and evidence on their behalf.
 - c. Be informed of the findings and conclusions.

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5. *Possible Results.* The results of the adjudication process may include sanctions for the respondent, remedies for the complainant, and accommodations for both parties. Sanctions can range from educational programs to suspension or expulsion.
 - a. Sanctions for the Respondent
 - i. *Educational Programs:* The respondent may be required to attend educational programs designed to address the underlying issues that led to the dispute. These programs could focus on topics such as conflict resolution, diversity and inclusion, or ethics.
 - ii. *Warning or Reprimand:* In less severe cases, the respondent may receive a written warning or reprimand, which serves as an official acknowledgment of their misconduct without more serious consequences.
 - iii. *Probation:* The respondent might be placed on probation, which typically involves heightened scrutiny and certain restrictions for a specified period. This can serve as a warning that more severe consequences may follow if they repeat their behavior.
 - iv. *Suspension:* In more serious cases, the respondent could face a temporary suspension from their educational institution. The length of the suspension will depend on the severity of the misconduct. *Expulsion:* In the most severe cases, the respondent may be expelled from the institution, resulting in permanent dismissal.
 - b. Remedies for the Complainant
 - i. *Protection Orders:* If the dispute involves issues of personal safety, the complainant may be granted a protection order to prevent the respondent from contacting or approaching them.
 - ii. *Restitution:* In cases involving financial harm or property damage, the respondent may be required to provide restitution to the complainant.
 - iii. *Emotional Support:* The complainant might receive access to counseling or emotional support services to help them cope with the effects of the dispute.
 - iv. *Academic Accommodations:* If the dispute has adversely affected the complainant's academic progress, they may receive accommodations, such as extra time on assignments or exams.
 - c. Accommodation for Both Parties
 - i. *No-Contact Orders:* In situations where continued contact between the parties is undesirable, both the complainant and the respondent may be subject to no-contact orders.

IX. Prevention and Education/Training

A. Prevention Initiatives. COM-FSM is committed to creating a safe and respectful environment, free from sexual misconduct. the college shall implement various prevention initiatives:

1. *Awareness Campaigns.* The college shall regular awareness campaigns to inform all students, including faculty, and staff about the significance of preventing sexual misconduct. These campaigns include posters, informational materials, workshops, and online resources.

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2. *Bystander Intervention Training.* The college shall offer training to empower individuals to intervene when they witness behavior that may lead to sexual misconduct. The programs teach participants how to safely and effectively support those in potentially harmful situations.
3. *Consent Education.* The college shall provide educational sessions for students, including faculty, and staff on consent, emphasizing the importance of clear and enthusiastic consent in all sexual interactions.
4. *Safe and Inclusive Campus Spaces.* COM-FSM is committed to creating and maintaining campus spaces that are safe, inclusive, and free from harassment. The college shall work to ensure that its physical and digital environments are welcoming and secure for all.
5. *Reporting Mechanism.* COM-FSM is dedicated to conducting prompt and thorough investigations of all reports. The college shall offer accessible and confidential channels for reporting incidents of sexual misconduct. COM-FSM is dedicated to conducting prompt and thorough investigations of all reports.

B. Education and Training Programs. COM-FSM is committed to creating a safe and respectful environment, free from sexual misconduct. the college shall implement various prevention initiatives:

1. *Mandatory Training Session.* All new students, faculty, and staff at COM-FSM are required to complete sexual misconduct prevention and awareness training session. This training shall cover the definition of sexual misconduct, the college's applicable policies and procedures, and the resources available to survivors.
2. *Ongoing Education.* The college shall provide ongoing education and training programs for its community members to deepen understanding, raise awareness, and encourage active involvement in the prevention of sexual misconduct.
3. *Specialized Training.* Staff members in roles that may be involved in reporting, investigating, or responding to sexual misconduct cases shall receive specialized training to ensure fair and equitable handling of incidents.
4. *Community Workshops and Events.* The college shall facilitate workshops, seminars, and events that are open to all members of the community. These events cover topics related to consent, healthy relationships, bystander intervention, and more.
5. *Collaborative Efforts.* The college shall collaborate with external organizations, experts, and community partners to enhance its efforts in preventing sexual misconduct. These partnerships enable the college to access valuable resources and knowledge in addressing this issue.

See Administrative Procedure No. 4914