

5.1 Policy Regarding Sexual Harassment in the Workplace

Scope and Application of the Policy

The College is committed to creating and maintaining a learning and working environment free from all forms of sexual misconduct, relationship violence, and sexual harassment, including sexual assault, dating violence, domestic violence, and stalking. It is the College's policy to strictly prohibit all forms of sexual harassment. Sexual Harassment in the workplace is a form of misconduct. Any employee who is found to have violated this policy will be subjected to disciplinary action, up to and including termination of employment.

This policy applies to all employees of the College, regardless of the employee's job title or full-time or part-time status, and also applies to interns (paid and unpaid) and individuals who are not employees of the College but are employees of contractors, subcontractors, vendors, consultants, and other persons who provide services in the College's workplace. This policy applies to students who are employees of the College in their capacity as employees of the College.

Paul Smith's College employees should be aware that they may not engage in any conduct toward a student that would violate the College's Sexual Misconduct Policy found in Chapter 3 of the Student Community Guide. In accordance with Title IX, allegations of sexual harassment and other forms of sexual misconduct that involve a student as a complainant or respondent will be processed pursuant to the College's Sexual Misconduct Policy. Additionally, the Sexual Misconduct Policy applies in any other case where the College determines that Title IX requires its application. In all other cases, allegations of sexual harassment, including allegations of sexual assault, domestic violence, dating violence and stalking, involving employees will be processed under this Policy.

Definitions of Sexual Harassment & Other Forms of Prohibited Conduct

Sexual Harassment

Sexual harassment is a form of workplace discrimination and is unlawful under federal and state law. Sexual harassment includes harassment based on sex/gender, such as unwelcome sexual conduct, or offensive or discriminatory conduct based on sex/gender, self-identified or perceived gender, gender identity, gender expression, transgender status, and sexual orientation as well as harassment based on sex-stereotyping.

Sexual harassment may be verbal, written, visual or physical. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education, is used as the basis for education decisions affecting such individual, or where such conduct has the purpose or effect of creating an intimidating, hostile or offensive educational environment.

Merely by way of illustration, sexual harassment includes, but is not limited to:

- Physical assaults of a sexual nature, such as:
 - Touching, pinching, patting, grabbing, brushing against another's body or poking another employees' body.
 - Rape, sexual battery, nonconsensual sexual contact, molestation or attempts to commit these assaults (see below).
- Unwanted sexual advances or propositions.
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience.
- Written conduct such as authoring threatening, derogatory or offensive letters, e-mails, text messages, or social media posts.
- Sexual or discriminatory displays or publications anywhere in the working or learning environment, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on computers or cell phones in the campus environment.

- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or the status of being transgender.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.

New York law provides that workplace harassment is unlawful to the extent that it subjects a person to inferior terms, conditions or privileges of employment that rise above the level of petty slights or trivial inconveniences. The fact that a person was personally offended by a statement or incident does not alone constitute sexual harassment. Instead, the determination is based on a "reasonable person" standard and takes into account the totality of the circumstances. The College considers the context of a communication, the relationship of the individuals involved, whether an incident was an isolated occurrence or part of a broader pattern of conduct, the seriousness of the incident and the intent of the individual engaged in the allegedly offensive conduct. Paul Smith's College is an academic institution, and freedom of intellectual thought and expression is valued. The College will not construe this policy to prevent or penalize a statement, opinion, theory, or idea offered within the bounds of legitimate, relevant, and responsible teaching, learning, or academic discussion.

The College also prohibits "quid pro quo" (or "this for that") harassment. This type of harassment occurs when a person in a position of authority links the receipt of some benefit (such as a promotion or a passing grade) to another's submission to unwelcome sexual advances or sexual activity. It can be expressly stated, but it also can be implied by words or actions. No person should believe that any other person – no matter their title or position- has the right to pressure another person for sexual activity.

Paul Smith's College reserves the right to discipline conduct that is inconsistent with community standards even if it does not rise to the level of a hostile environment as defined by applicable law.

Sexual harassment can occur in a variety of circumstances and can include victims of both genders and can occur between individuals of the same gender. A perpetrator of harassing behavior may be a supervisor, a co-worker, or a non-employee, such as a vendor or visitor. Victims may include any individual affected by the offensive conduct, not just the person to whom the harassment is directed. This policy is not limited to conduct that occurs on campus; this policy applies to all work performed on behalf of the College, including off-campus, and also prohibits off-duty conduct if that conduct creates or contributes to a sex-based hostile work environment.

Sexual assault

Sexual assault is a form of sexual harassment. Sexual assault is a sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault consists of the following specific acts:

- a. Non-consensual sexual intercourse. The sexual penetration, no matter how slight, of another with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- b. Non-consensual sexual contact. 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.

Dating Violence. Dating violence refers to violence (including but not limited to sexual or physical abuse or the threat of such abuse) 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 a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence can include behavior such as coercion, isolation or other forms of emotional, verbal or economic abuse if it reflects a threat of sexual or physical abuse as described above.

Domestic Violence. Domestic violence refers to 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 where the college is located, or 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 act of violence occurs. To categorize an incident as Domestic Violence, the people cohabitating must be current or former spouses or have an intimate relationship as described above.

Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. For the purposes of this definition, (i) a “course of conduct” means two or more acts, including, but not limited to, acts in which the individual 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; (ii) “reasonable person” means a reasonable person under similar circumstances and with similar identities to the complainant; and (iii) “substantial emotional distress” means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Making a Report of Prohibited Conduct

A College employee who is experiencing sexual harassment or another form of conduct prohibited under this policy or suspects that another employee is being harassed should inform his/her supervisor or manager, the Director of Human Resources, the Director of Campus Safety, or the Title IX Coordinator. A written complaint form is provided at the end of this policy. Individuals may but are not required to use this written complaint form. Verbal reports are accepted as well. Employees should report harassing behavior of non-employees, and non-employees may report harassment experienced by the non-employee pursuant to this policy as well.

A College employee with supervisory responsibilities over other employees who receives a complaint or information about workplace sexual harassment or other conduct prohibited by this policy is required to take appropriate action. Appropriate action may include immediately intervening if harassment is witnessed by the supervisor. If an employee makes a report to his/her supervisor or manager and believes the supervisor or manager is not taking appropriate action, the employee should report this inaction to any member of the College’s administration. In addition to being subject to discipline if they themselves engage in sex discrimination, sexually harassing conduct, or retaliation, persons with supervisory authority over other College employees will be subject to discipline for knowingly allowing sexual harassment to continue.

Investigation & Response

Following the receipt information concerning alleged or suspected sexual harassment or another policy violation, the College will conduct an investigation. The investigation will be initiated and completed as promptly as possible. The investigator(s) will be appointed by the Title IX Coordinator or his/her designee. The scope and exact nature of the investigation will depend upon the circumstances and the incident(s) at issue, and the College reserves the right to tailor the scope and procedures of the investigation to the circumstances. As a general rule, at a minimum, the complainant will be interviewed, the respondent will be interviewed, any relevant witnesses will be interviewed, and relevant documentation will be reviewed and considered. The respondent will be informed of the allegations. The complainant and the respondent will be provided an equitable and fair opportunity to provide information, including the opportunity to suggest relevant witnesses and to provide relevant documentation. The investigation will be fair and impartial. In order to ensure that no discriminatory or harassing conduct occurs during the investigation, the College may implement interim measures (e.g. instructing the individuals involved to refrain from communications with one another, addressing any immediate workplace environment issues) as appropriate. At the conclusion of the investigation, the investigator(s) will prepare a written report. The complainant and respondent will be provided an opportunity to review the report and to submit a written response to the report within 5 business days. If the investigator(s) determine that additional investigation is needed, this will be completed, and a final investigation report prepared.

The investigation report will be provided to an appropriate College official or body for a decision as to what action, if any, is appropriate. Where the respondent is a non-faculty staff member, a decision as to disciplinary action will be by an appropriate individual, such as a vice president, in consultation with Human Resources. Where the respondent is a faculty member, any disciplinary decision will be compliant with the Faculty Handbook. Where the complaint is brought against a non-employee, an appropriate vice president will determine the action to be taken, which may include restrictions on the individual’s presence on campus.

The College uses a “preponderance of evidence” standard in determining whether this policy has been violated. The College’s policy is to investigate all complaints thoroughly and promptly. To the fullest practical extent, the College will keep complaints and the terms of their outcomes confidential, except to inform the parties of the complaint of the outcome of the complaint. If an investigation confirms that a violation of the Policy has occurred, the College will take corrective action, including discipline, up to and including immediate termination of employment.

External Complaint Options

The College reserves the right to take action to correct -- including to discipline -- behaviors that violate the College's professional conduct expectations even if the conduct does not violate the law. Therefore, not all situations that violate College policy necessarily will constitute a violation of the law or allow for a legal remedy. The following agencies enforce laws prohibiting sexual harassment. An individual who has experienced sexual harassment may file a complaint with the College only, may file a complaint with an enforcement agency in addition to filing with the College, or may file only with an enforcement agency. An employee who is dissatisfied with the College's handling of a complaint also may file a complaint of sexual harassment with an agency listed below. Complaining internally to the College does not extend your time to file with an enforcement agency or in court. You do not need an attorney to file a complaint with an enforcement agency and there is no cost to file with an enforcement agency.

The **New York State Division of Human Rights (DHR) enforces the Human Rights Law (HRL)**, codified as N.Y. Executive Law, art. 15, § 290 et seq., which prohibits sexual harassment in employment in New York State, and protects employees, and other individuals working in an employer's workplace. A complaint alleging a violation of the Human Rights Law may be filed either with DHR, subject to a one year statute of limitations (three years in cases of sexual harassment), or in New York State Supreme Court, subject to a three year statute of limitations.

The DHR will investigate the complaint to determine if unlawful harassment occurred and if the circumstances amount to a violation of the law. If unlawful discrimination is found after a hearing, the DHR or the court may award relief, which varies, but may include requiring the employer to take action to stop the harassment, or redress the damage caused, including reversing an unlawful employment action, paying monetary damages, attorneys' fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400 www.dhr.ny.gov. The DHR can be contacted at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form and contact information for DHR's regional offices across New York State.

The **United States Equal Employment Opportunity Commission (EEOC)** enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An employee must file a complaint with the EEOC within 300 days from the conduct giving rise to the complaint. The EEOC also investigates complaints, but does not hold hearings or award relief. The EEOC may take other action including pursuing cases in federal court on behalf of complaining parties, or issuing a Right to Sue Letter that allows an individual to pursue his/her claims in federal court. Federal courts may award remedies if discrimination is found to have occurred.

The EEOC can be contacted by calling 1-800-669-4000 (1-800-669-6820 (TTY)), or visiting their website at www.eeoc.gov or via email at info@eeoc.gov If an individual files an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the individual's right to proceed in federal court.

There may be local laws that address sexual harassment in addition to federal and state laws.

If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. An employee who believes that a crime has been committed, or if the employee believes he/she is in physical danger, is urged to file a report with the local police department immediately.

Retaliation

No one who in good-faith makes a complaint of sexual harassment or participates in an investigation into sexual harassment -- whether an internal College process or an external enforcement agency process -- may be retaliated against. The fact that a statement is not determined to be proven or established following investigation does not mean that the statement lacked good faith. If a person makes a statement knowing that it is false, the person has acted without good faith. Retaliation is against College policy and it is against the law. The College's position against retaliation is further set forth in Policy 5.3.

5.3 Policy Regarding Retaliation for Reporting Any Type of Harassment or Discrimination

The College forbids retaliation against anyone who, in good-faith, reports discrimination or harassment, assists in making a discrimination or harassment complaint, cooperates in a discrimination or harassment investigation, files an Equal Employment Opportunity Commission or Division of

Human Rights claim, participates in an Equal Employment Opportunity Commission, Division of Human Rights, or other governmental agency investigation, or encourages another to make a complaint or report.

Retaliation includes any conduct, whether or not in the workplace or employment-related, which might deter a reasonable person from making or supporting a charge of discrimination or harassment and is directed at someone who engages in the foregoing activities.

If you feel you have been retaliated against, you are to notify the Director of Human Resources, appropriate vice president, or the Title IX Coordinator.

It is the College's policy that all employees are informed of the College's position on workplace harassment and participate in Sexual Harassment Prevention Training on an annual basis.