

POLICY ON SEX/GENDER HARASSMENT, DISCRIMINATION AND MISCONDUCT

INTRODUCTION

Members of the Southern College of Optometry (“SCO” and /or the “College”) community, guests, visitors and invitees have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence and stalking. All members of the campus community, including all guests, visitors and invitees, are expected to conduct themselves in a manner that does not infringe upon the rights of others. The College believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator’s attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and establish a mechanism and procedures for determining when those expectations have been violated. This policy supplements and does not replace other handbooks and policies of SCO.

The College’s sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

The College uses the “clear and convincing” standard as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt,” “innocence” and “burdens of proof” are not applicable, and the College never assumes a responding party is in violation of College policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

Investigations will be conducted consistent with the guidelines provided in the applicable college handbook, including, but not limited to, those contained within the Student, Faculty and Employee Handbooks. All appeals of matters involving due process and/or findings of an investigation(s) shall be subject to final determination by the President or

Board designee, who shall have the right to amend or alter actions to be taken by the College.

TITLE IX COORDINATOR

The College's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports directly to the Director of Human Resources, and is housed in the Office of Human Resources. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator:

Name:	Janice Frazier-Scott
Title:	Title IX Coordinator Office of Human Resources
Location/Address:	Human Resources Department, Room 807
Phone Number:	(901) 722-3271
Email:	jfrazier-scott@sco.edu

Should the Title IX Coordinator be unavailable or inaccessible, or if a complainant is uncomfortable reporting to this individual for any reason, a report may be filed with the Director of Human Resources or with any member of the senior leadership team.

Additionally, anonymous reports can be made by victims and/or third parties using the reporting hotline at (888) 726-7444. Note that these anonymous reports may prompt a need for the institution to investigate.

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
[Email: OCR@ed.gov](mailto:OCR@ed.gov)
Web: <http://www.ed.gov/oc>

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "No".

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College, subject to other provisions existing or as may be dictated within other handbooks or policies regarding relationships. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical and impermissible by the College policies. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student or employee out of being supervised or evaluated by someone with whom they have established a consensual relationship. Failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

SEXUAL VIOLENCE -- RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- Make your limits known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought before sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.

- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity, then you DO NOT have consent.
- Mixed messages from your partner are an indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. Your partner may not have figured out how far he/she wants to go with you yet. You must respect the timeline for sexual behaviors with which the person is comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and nonverbal communication and body language.

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

1. **Sexual Harassment**
2. **Non-Consensual Sexual Contact (or attempts to commit same)**
3. **Non-Consensual Sexual Intercourse (or attempts to commit same)**
4. **Sexual Exploitation**

1. **SEXUAL HARASSMENT**

Sexual harassment is: unwelcome sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is: sufficiently severe, persistent or pervasive and objectively offensive that it unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational program and/or employment.

Quid Pro Quo Harassment is:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational or employment progress, development, or performance. This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational or employment program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade, or a supervisor insists that a direct report have sex with him/her in exchange for a promotion/favorable evaluation or any other condition of employment. This is harassment regardless of whether the student or the employee accedes to the request.
- A student or an employee repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus.
- Explicit sexual pictures are displayed in a professor's office.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- Male students take to calling a particular student a nickname because of her resemblance to a public figure. Soon, everyone adopts this nickname for her, and she is the target of relentless inappropriate remarks.

2. NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is: any intentional sexual touching, however slight, with any object, by a person upon another person, that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

3. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is: any sexual intercourse, however slight, with any object, by a person upon another person, that is without consent and/or by force.

Intercourse includes: vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

4. SEXUAL EXPLOITATION

Occurs when one person takes non-consensual or abusive sexual advantage of another for his/ her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;

- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

ADDITIONAL APPLICABLE DEFINITIONS:

Consent:

- Consent is active, not passive.
- Consent is clear, and knowing, and voluntary [or affirmative, conscious and voluntary], words or actions, that give permission for specific sexual activity.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age and competent to give such consent.

Incapacitation:

- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
- Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout. The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
- Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
- This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student or to another is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent.

Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

- NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

Use of alcohol or other drugs will never function to excuse any behavior that violates this policy. This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
5. Bullying, defined as: repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person,

physically or mentally that is not speech or conduct otherwise protected by the 1st Amendment.

6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other:

- A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a form of the Intimate Partner Violence.
- An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.

7. Stalking

- **Stalking 1:** A course of conduct directed at a specific person on the basis of actual/perceived membership in a protected class that is unwelcome, AND would cause a reasonable person to feel fear.
- **Stalking 2:** Repetitive and menacing pursuit, following, harassing and/or interfering with the peace and/or safety of another

8. Any other college policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

RETALIATION

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity [subject to limitations imposed by the 1st Amendment and/or Academic Freedom]. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of college policy.

SANCTIONS

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

Student Sanctions (listed below and defined in the Student Handbook)

- Warning
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- Revocation of Degree
- Transcript Notation
- Organizational Sanctions
- Other Actions

Employee Sanctions (listed below and defined in the Employee Handbook)

- Warning – Written or Verbal
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay
- Revocation of Tenure
- Termination

Sanctioning for Sexual Misconduct

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).*
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.*

* The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

CONFIDENTIALITY, PRIVACY AND REPORTING POLICY

All College employees (faculty, staff, and administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at College:

Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional counselors and their staff
- Off-campus:
 - Licensed professional counselors
 - Local rape crisis counselors
 - Domestic violence resources,
 - Local or state assistance agencies,
 - Clergy/Chaplains

All of the above employees or agents will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors and/or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees or agents will submit timely anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client or patient.

Formal Reporting Options

All College employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees. Remedial actions may result without formal College action.

If a victim does not wish for his/her name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party’s rights and privacy.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Janice Frazier-Scott
SCO Tower, Human Resources Department, Room 807
(901) 722-3271
Jfrazier-scott@sco.edu

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of College policy and can be subject to disciplinary action for failure to comply with College policies.

Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal

statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

INVESTIGATIONS, DUE PROCESS AND FINDINGS

The Title IX Coordinator shall oversee the Investigations, Due Process and Findings of all complaints in coordination with the policies and procedures in place at the College; all of which shall be subject to final appeal and determination by the President.