

E. Sexual harassment and sexual violence allegedly perpetrated by medical students

Definitions

U.S.A. College of Medicine students are expected not to engage in sexual harassment or sexual violence toward anyone inside or outside the University community in accordance with University policies under Title IX. For reference, go to:

<http://www.southalabama.edu/studentaffairs/titlenine/> The term “**sexual harassment**” includes, but is not limited to, verbal or non-verbal conduct that is intimidating, demeaning, hostile, or offensive with an inappropriate focus on sex, sexual history, individual gender-based characteristics, or sexual orientation; unwelcomed verbal or physical advances; attempts to subject a person to unwanted sexual attention or to coerce a person into sexual relations; and/or retaliation for a refusal to comply with sexual demands. Sexual harassment is a form of sex discrimination. The term “**sexual violence**” means any physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent. Lack of consent means that the person who has alleged the occurrence of sexual violence has not said “yes,” or otherwise specifically and unambiguously indicated agreement to participate in the act, including instances in which she/he is unable to give informed consent because of her/his youth, or temporary or permanent mental or physical incapacity, including, but not limited to, being under the influence of alcohol or drugs. Acts in this category include rape, sexual assault, sexual battery, and sexual coercion. Sexual contact can include, but is not limited to: unwelcomed sexual behavior, including kissing, intentional touching of another person’s intimate body parts or the clothing covering these intimate areas, and unwelcomed sexual penetration, which includes sexually intended intrusion, however slight, into any opening of a person’s body, by parts of another person’s body, or any other object. Sexual violence is a form of sex discrimination. See:

<http://www.southalabama.edu/studentaffairs/titlenine/pdf/policy.pdf>

Investigation

The Title IX Deputy Coordinator is appointed by the College of Medicine to investigate any and all complaints of sexual harassment and sexual violence against currently enrolled medical students. To extent permitted by law and the enforcement of this policy, the University will endeavor to protect the privacy of all individuals involved and to ensure that the complainant and the accused are treated fairly. Information about individual complaints and their disposition is considered confidential and will be shared only as determined, in the University’s discretion, to be appropriate. However, confidentiality can be observed only to the extent that it does not interfere with the University’s ability to investigate the allegations or to take corrective action.

Consequently, the University cannot ensure confidentiality but will evaluate any request for confidentiality in the context of its responsibility to provide a safe and nondiscriminatory environment for all members of the USA community. The Deputy Coordinator will meet with victim, alleged perpetrator, and any witnesses identified, but a meeting between a victim and an alleged perpetrator cannot be compelled. If the alleged

offense is a relatively minor form of harassment, eg. stalking by text messages, and both parties agree, the Deputy Coordinator can mediate a resolution, eg. cease the conduct or be turned over to SPEC. Either party may change his/her mind at any time during this process and request a SPEC hearing. Under no circumstances, can an allegation of sexual violence be mediated; all such cases go before SPEC after the Deputy Coordinator has completed the investigation. Conversely, a complaint found to have been brought frivolously or in bad faith by a medical student will result in that medical student being brought before SPEC for disciplinary action.

Victim's Rights

1. The right to be present during the SPEC meeting. If the victim fails to appear after reasonable advanced notice, the hearing may be held in his/her absence.
2. The right to present evidence by witnesses, either live or by written statement.
3. The right to question all witnesses at the SPEC meeting.
4. The right to appeal the decision of SPEC on the same grounds as the accused.
5. The right to have his/her sexual history excluded from consideration at the SPEC meeting.
6. The right to immunity from University discipline charges stemming from use of narcotic or intoxicating substances, with or without the victim's consent, in the sequence of events leading up to the alleged sexual harassment or sexual violence.
7. The right to be free from retaliation.
8. The right to confidentiality to the extent possible under the circumstances.

Procedures

SPEC meetings/hearings are not subject to challenge or postponement on the grounds that criminal or civil charges involving the same incident have been dismissed, reduced, or are pending. No individual can force a complaint of sexual harassment or sexual violence to be dropped. Prior to the SPEC meeting, the alleged perpetrator may be removed from his/her academic classes/assignment pending the outcome of the SPEC meeting.

Reasonably in advance of a scheduled SPEC meeting, the victim, the witnesses and the alleged perpetrator will be notified of the date and time of the meeting. The victim and the alleged perpetrator will also be provided notice in writing of the lists of specific allegations, witnesses, written statements, and other forms of evidence to be presented at the meeting. They will also be provided a list of the members of SPEC and may petition the Chair of SPEC to excuse Committee members perceived to be biased against either party. The SPEC meeting will be conducted in private. Witnesses will be admitted for testimony and questioning by the parties and Committee members only and then be asked to leave. Witness statements, submitted by either party, will be read aloud. The testimony and statements will be recorded, but the deliberations of the Committee will not be recorded.

The victim and the alleged perpetrator may each have one person present during the meeting, who may be an attorney, to advise him/her. This person may not address the

SPEC, speak on behalf of the victim or alleged perpetrator, question witnesses, or otherwise actively engage in the hearing. The victim and the alleged perpetrator may each appear in person, make an oral statement, and answer questions from the SPEC members. Either party may choose to remain silent, and no adverse inference will be raised against him/her. Should either the victim and/or alleged perpetrator fail to appear for the meeting, the meeting will proceed in his/her/their absence.

The SPEC shall make its determination in writing based upon the relevant evidence presented at the meeting/hearing. The complainant has the burden of providing evidence of the alleged sexual harassment and/or violence, as well as the burden of proving that it is more likely than not that the alleged sexual harassment and/or violence occurred. In sexual harassment cases, the standard used must be whether a reasonable person similarly situated to the victim would consider the proven conduct to be so unreasonable, severe, or pervasive as to interfere with academic, educational, or employment performance or participation. In sexual violence cases, the proven conduct must fit within the definition of sexual violence outlined above. Both the victim and the alleged perpetrator will be notified in writing of the determination and any recommendations for discipline/outcomes.

Within seven working days of the date of the determination, either the victim or the alleged perpetrator may contest, in writing, to the Chair of SPEC that: 1) A substantial mistake of fact occurred; 2) A fundamental misinterpretation of official policies is evident; or 3) A significant procedural defect took place. These are the only bases for contesting the determination. If the determination of the SPEC is contested, SPEC will reconvene to review the contentions. If SPEC concurs with the contentions, it will correct the procedural defect, reinterpret the policy as appropriate, or review the fact which was originally presented in error. SPEC will then review and revise its determination and recommendations as appropriate.

Final Decision by the Dean

The final SPEC recommendations will be forwarded to the Dean after the seven day period for contest has passed or at the conclusion of a contest. Both parties will be offered an opportunity to provide information to the Dean for consideration during his/her review of the Committee's recommendations.

The Dean may accept the recommendation, reverse it, or refer it back to SPEC for reconsideration. The decision of the Dean is final and there shall be no appeal. Both the complainant and the accused will be notified in writing about the outcome of the complaint, i.e., whether or not a violation of the policy was found to have occurred. The University will disclose to the harassed person/complainant information about the sanction(s) imposed upon the person found to have engaged in sexual harassment and/or sexual violence to the extent the sanction relates directly to the harassed person. When the conduct involves sexual violence or a non-forcible sex offense (incapable of giving consent), the University will disclose to the alleged victim the final results of the proceeding against the alleged perpetrator. In the event a violation was found, the disclosure will include the sanction(s) imposed.