

## **Policy concerning Sexual Assault, Harassment, Discrimination, Stalking, and Relationship Violence**

It is the policy of Johnson C. Smith University (JCSU) to maintain an environment free from of sexual assault; sexual harassment and discrimination; relationship violence and stalking in all of its educational programs and activities. JCSU seeks to create and maintain a safe environment in which all members of the University community—students, faculty and staff—can learn and work free from the fear of these offenses. Members of the University community (students, faculty, and staff ) and University visitors are expected to comply with and abide by the University policies and procedures, as well as federal, state, and local laws, whether off campus or on campus. JCSU is committed to prevention and awareness education on all issues. It should be clearly understood that there is a fundamental difference between the nature and purpose of student discipline and criminal law. Regardless of the charge issued or procedures employed, sanctions issued by the University can be expected to be consistent with the educational mission of the institution.

JCSU is committed to investigating all possible violations of this policy about which the University knows or reasonably should know, regardless of whether a complaint alleging a violation of this policy has been filed and regardless of whether the conduct at issue actually occurred. The University's ability to investigate in a particular situation, or the extent of an investigation in any given situation, may be affected by any number of factors, including whether the complainant is willing to file a complaint or to consent to an investigation, the location where the alleged conduct occurred, and the University's access to information relevant to the alleged or suspected violation of this policy. In order to protect a victim's confidentiality and anonymity, a victim can make a confidential report about the incident, including identification of the assailant if known, at any time, whether legal or disciplinary action is desired.

Both men and women may be victims of sexual assault, sexual harassment and discrimination, relationship violence and stalking. Any behavior determined to constitute sexual assault; sexual harassment and discrimination; relationship violence and stalking will be treated as a serious matter and will subject an individual to appropriate disciplinary actions and/or criminal sanctions.

### **DEFINITIONS**

**Sexual Assault** is any non-consensual physical contact of a sexual nature, whether by an acquaintance or by a stranger, is a sexual assault. Physical resistance need not occur to fulfill the definition of sexual assault. Sexual assault does not require that a person explicitly say "no" to his or her attacker. Sometimes people are unable to give consent because they are unconscious, asleep or under the influence of alcohol or drugs. Consent CAN NEVER be given by anyone under the age of sixteen. Sexual assault includes, but is not limited to the following:

- rape,
- acquaintance rape, (friend, classmate, peer, co-worker, partner, etc.)
- date rape, (involves sexual assault by someone the victim has seen is dating.)
- Acquaintance gang rape, (involves sexual assault by more than one person and at least one of whom is known by the victim.

- incest,
- sexual assault with an object,
- forcible sodomy,
- forcible oral sex, and
- forcible fondling

**Relationship Violence**, also known as “Intimate Partner Violence,” means violence committed by a person who is, or has been, in a relationship of a social, romantic or intimate nature with a victim. The existence of such a relationship is to be determined by the length and type of a relationship and the frequency of interaction. Some examples of abusive behavior include: physical, emotional, psychological, financial, and sexual abuse.

**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 suffer substantial emotional distress. Examples of stalking behaviors include, but are not limited to: unwanted excessive calling or texting, monitoring behavior, taking excessive and invading pictures, physical closeness, or following through social media.

**Technology-aided Stalking**, also known as “cyber stalking,” generally consists of persistent offensive, disturbing or threatening communication through a variety of types of technology, including, but not limited to, the Internet, e-mail, chat rooms, or instant messaging or through other electronic means, such as cellular telephones or pagers. “Cyber” stalkers easily disguise themselves by adopting several false identities and then harass the target through unsolicited e-mails, disturbing private or public messages on bulletin boards or in chat rooms, and communiqués of threats.

**Sexual harassment** is any unwelcome sexual advance, request for a sexual favor and/or any other verbal or physical conduct of a sexual nature when:

- Submission or rejection of such conduct is made implicitly or explicitly a term or condition of an individual's employment, academic standing, instruction or education; and/or
- Submission to or rejection of such conduct by an individual is used as the basis for evaluation in making employment or academic decisions affecting the individual; and/or
- Such conduct has the purpose or effect of substantially interfering with an individual's employment, academic performance or living conditions by creating any intimidating, hostile or demeaning environment.

Acts that constitute sexual harassment take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to, unwelcome sexual propositions, invitations, solicitations and flirtations; unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene phone calls; unwelcome and inappropriate touching, patting, pinching, or obscene gestures.

**Gender Based Harassment** is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not

involving conduct of a sexual nature when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities. For example, persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity also may violate this Policy based harassment that is committed.

**Special Judicial Affairs Board** is standing group typically comprised of faculty and staff who have received appropriate training and/or have experience in handling complaints regarding sexual assault, harassment, discrimination, stalking, and relationship violence. A quorum for a judicial hearing typically consists of a minimum of three faculty members and four staff members. A student may waive a quorum requirement and proceed with his or her hearing without a quorum present; however there must be a minimum of three panel members present to conduct a hearing. The Special Judicial Affairs Panel will be staffed by the Director of Counseling Services.

The use of alcohol and other drugs, in conjunction with a sexual offense, does not mitigate accountability for the commission of the offense, or diminish the seriousness of the offense. When determining responsibility and appropriate sanctions, university administrators will consider the extent to which alcohol or other substances were used with the intent of harming another individual.

Victims are encouraged to contact JCSU Counseling Services and/or JCSU I MATTER Program for assistance with advocacy services. If this is a situation in which relationship violence exists and a student chooses to remain with the abusive partner, she or he can contact our community partner Safe Alliance at 704-375-9900 to report an incident. Safe Alliance can also provide confidential services. If a victim wishes to leave the abusive partner, she or he is urged to seek assistance and engage in safety planning, since research has shown that risk of harm increases during the time immediately following separation. Some examples of abusive behavior include physical, emotional, psychological, financial, and sexual abuse. No police report is required for a victim to receive assistance.

## **REPORTING INCIDENTS OF SEXUAL ASSAULT AND OTHER FORMS OF VIOLENCE**

Obtaining assistance after a student is sexually assaulted, harassed, stalked or is in an abusive relationship is extremely important and can involve different points of on-campus contact for students, faculty and staff, including the Campus Police, and Counseling Services, and/or the Dean of Student Success. Each provides different forms of assistance which together address many of the needs of survivors.

- Contact Law Enforcement Personnel Immediately  
JCSU urges any student who has been the victim of a sexual assault or other act of violence or abuse, or any student or employee who has witnessed a sexual assault or other act of violence

against a student, to immediately report the incident to Campus Police if the attack occurred on-campus, or to call 911 or go to the local CMPD precinct if the incident took place off-campus.

- Seek Immediate Medical Attention

It is critical that victims of a physical assault receive comprehensive medical attention as soon as possible. For a sexual assault in particular, immediate treatment and the preservation of evidence of the attack (i.e. retain the clothing worn during the attack and do not shower) is crucial to a criminal investigation. If a student believes that she/he may be the victim of date rape by being drugged, she/he should go directly to a hospital to receive a toxicology examination since such drugs only remain in a person's system for a short period of time. In all circumstances, Campus Police can assist the victim in obtaining medical care.

- Seek On-Campus Assistance

JCSU encourages student victims to contact the Dean of Student Success to obtain assistance in accessing counseling services, or to make any necessary changes to the student's academic program or residential housing situation.

- Obtaining an On-Campus Advocate

Student victims of any offenses this policy covers shall be provided with on-campus support in the form of an advocate from the JCSU I MATTER or an appropriately trained counselor to assist them in handling the various aspects of their ordeal, such as: 1) explaining to victims their options of whether or not to report the incident to campus or law enforcement authorities; 2) providing guidance if they require medical attention; 3) providing guidance in obtaining crisis intervention and/or ongoing counseling services (or a referral to obtain the necessary services if such services are not available on campus); and 4) assisting victims throughout the University's disciplinary process from initial complaint to completion.

### Handling Sexual Assault, Sexual Harassment/Discrimination, Stalking and Domestic and Intimate Partner Violence Complaints On-Campus

The University shall act promptly in response to information that a student has been sexually assaulted, sexually harassed/discriminated or has been the victim of domestic or intimate partner violence or stalking by another member of the JCSU community. Upon formal or informal knowledge of a sexual offense, formal written notification should be made to the Title IX Coordinator or Deputy Coordinator within 3 business days of such knowledge. If there is sufficient information provided an investigation will occur by the Title IX Coordinator, Deputy Coordinator or designee. If it appears that there is sufficient evidence to warrant disciplinary charges against a student or staff member, such charges shall be brought pursuant to the appropriate University procedures. If the alleged accuser is a student and the matter is brought before a Special Judicial Affairs Panel hearing, the victim and alleged accuser are entitled to the same opportunities to have others present and to be informed of the outcome of the proceedings. The victim and the accuser are entitled to a report of the results of the proceeding in writing simultaneously, to include the outcome of any disciplinary procedure arising from the allegation, procedures for appealing the results of the proceeding, any changes that occur prior to the time the results become final and when the results become final. If a student is found guilty of committing a sexual assault or other act of violence against another JCSU student or employee

after a disciplinary hearing, the penalties may include suspension, expulsion from residence halls, up to and including permanent dismissal from JCSU.

In addition, if during the course of the investigation and/or disciplinary process the alleged accuser, or anyone on his/her behalf, seeks to contact the victim so as to harass, intimidate, threaten or coerce the victim in any way, the University reserves the right to bring additional disciplinary action against the actor. Such conduct by any member of the JCSU community will not be tolerated.

### **SPECIAL PROCEDURES FOR HEARING INVOLVING SEXUAL ASSAULT, HARASSMENT, DISCRIMINATION, STALKING, AND RELATIONSHIP VIOLENCE**

Given applicable law and the sensitivities involved in alleged Student Standards of Conduct violations involving the offenses covered in this policy, the University will follow the general process discussed in the Procedures for Administrative Hearings and Judicial Affairs Board Hearings with the following exceptions:

- If a student selects an Administrative Hearing, the hearing will be conducted by the Chairman of the Special Judicial Affairs Panel with proper oversight, guidance and participation by a University Title IX Coordinator as necessary and appropriate.
- If a student selects a full Judicial Affairs Board hearing, the hearing will be conducted by Special Judicial Affairs Panel that has the requisite training or experience handling this type of sensitive matter.
- Hearing procedures will be conducted with the utmost respect for preserving confidentiality and will be modified as necessary to comply with Title IX and to accommodate students who do not want to be present in the same room as the accused. Students must also submit questions to the Special Judicial Affairs Panel in advance of the hearing and will not be permitted to personally question or cross-examine each other.

### **APPEALS FROM DETERMINATIONS AND/OR SANCTIONS INVOLVING SEXUAL ASSAULT, HARASSMENT, DISCRIMINATION, STALKING, AND RELATIONSHIP VIOLENCE**

In connection with determinations made at an Administrative Hearing or at a Special Judicial Affairs Panel Hearing involving offenses covered by this policy, the University will follow the general appeals process discussed above, *except that* the accused student or the complaining student may appeal the determination reached and/or sanctions imposed in accordance with the same process outlined for appeals not involving these offenses in this policy. If not sanctions were imposed in connection with a determination, the appealing student should direct all appeals to the Dean of Student Success in accordance with the general appeal process in the Judicial Affairs section of this handbook.

### **REPORTING PROCEDURES**

JCSU is aware that offenses covered under this policy are difficult subjects to address with sensitivity and objectivity. The institution is concerned with the rights of all members of its community. All parties to a complaint are entitled to fundamental fairness in the handling of the complaint. Individuals are encouraged to report any incident of a sexual offense and to obtain the support and assistance of friends, family and faculty/staff in presenting their concerns.

JCSU is committed to investigating all possible violations of this policy about which the University knows or reasonably should know, regardless of whether a complaint alleging a violation of this policy has been filed and regardless of whether the conduct at issue actually occurred. The University's ability to investigate in a particular situation, or the extent of an investigation in any given situation, may be affected by any number of factors, including whether the complainant is willing to file a complaint or to consent to an investigation, the location where the alleged conduct occurred, and the University's access to information relevant to the alleged or suspected violation of this policy.

The privacy of individuals who make reports of possible violations of this policy, who are accused of violating the policy or who are otherwise involved in the reporting or investigatory process, will be respected to the fullest extent possible. Likewise, information obtained during the course of the University's investigation and resolution of possible violations will be handled as confidentially as possible.

The university strongly encourages persons who have been sexually assaulted to report the assault, to seek assistance, and to pursue judicial action for their own protection and that of the entire campus community. When conducting the investigation, the university's primary focus will be on addressing the sexual assault and not on other university policy violations that may be discovered or disclosed. Anyone who has been sexually assaulted may choose to pursue both criminal prosecution and university judicial disciplinary processes. To preserve evidence for the option of pursuing criminal prosecution or university internal disciplinary processes, a person should report the sexual assault to the university and/or the local police. Choosing not to pursue university or criminal action, however, does not remove the responsibility of the university to investigate and/or take action. JCSU is committed to investigating all possible violations of this policy about which the University knows or reasonably should know, regardless of whether a complaint alleging a violation of this policy has been filed and regardless of whether the conduct at issue actually occurred.

### **Responsibility of Confidentiality**

Any student may discuss the matter with any faculty/staff or University representative. Students are encouraged to see a Counselor in the Office of Counseling Services. The University recognizes that confidentiality is particularly important to victims of sexual offense, dating violence, and domestic violence. If the victim seeks counseling with a licensed professional and/or works with an advocate from the campus, those communications will be confidential. JCSU encourages victims in all circumstances to seek counseling in order to speak about her/his options and to begin the recovery period.

When a report of sexual assault is made, both the accused and the accuser, and all identified witnesses who are named in the investigation, will be notified of the university's expectation of confidentiality. Breaches of confidentiality or retaliation against: the person bringing the complaint; any person assisting with the investigation; or the person or individuals being charged with the complaint; will result in disciplinary review. The university will make all reasonable efforts to maintain the confidentiality of parties involved in sexual assault investigations. The role of the Counselor is to make the student aware of University and community resources, to listen and provide assurance of confidentiality to the extent permissible by law, and to provide

the Victim and the Accused of their Rights located at the end of this policy. The Counselor will neither investigate nor adjudicate complaints of sexual harassment or sexual assault.

### **Parental/Legal Guardian/Partner Notification**

The university is committed to providing support to anyone involved in a sexual assault. In some instances when there is a health or safety concern, the university may need to notify the parents, guardian, or partner of the individual involved in the sexual assault. In making this determination, the university will consider the wishes of those involved, as well as their personal safety, and the safety of the campus community. In addition, when the person sexually assaulted is under the age of 18 or under 21 and physically or mentally impaired, both privileged and limited confidential sources generally are required to report the abuse to the appropriate social service agency or the police.

### **Privileged Communication Reporting vs. Limited Confidential Reporting**

Before selecting a reporting resource you may want to consider the following information. Under the law, there is a difference between "privileged" and "limited confidential" reporting:

**Privileged Reporting** consists of those communications that legally cannot be disclosed, without the reporter's consent, to any other person, except under very limited circumstances such as an imminent threat of danger to self or others. When reporting to a privileged source, the information shared between the reporting person and the care provider is privileged and ordinarily will not be disclosed, even to other members of the university community such as Campus Police or the Student Affairs Office.

Examples of privileged reporting resources include:

- » Counseling Services Staff (Counselors, or Social Workers)
- » University Health Service Staff (Physicians, Nurses, or Nurse Practitioners)
- » Campus Clergy

**Limited Confidential Reporting** consists of those communications that will not be disseminated to others except on a need-to-know basis. Primary to a limited confidential reporting source is balancing the wishes of the reporting person while protecting the overall university community and assuring the appropriate disciplinary measures are taken including criminal, civil, and administrative.

A limited confidential reporting source has the obligation to enlist designated campus resources to ensure that necessary steps are taken to protect the community as a whole and that appropriate disciplinary measures are considered and imposed. Such disclosures will be limited to a finite group of people all with the same confidentiality obligations. These steps will include investigating the assault and disclosing the confidential communications to others on a need-to-know basis. The university will take all reasonable steps to keep this information confidential.

Examples of designated limited confidential reporting resources include:

- » Housing, Residence Life & Student Activities Staff
- » Student Success
- » Campus Police or Any Police Authority
- » University Faculty or Staff

*Note: A friend or a peer who is not a privileged reporting source is considered a limited confidential source and may be required to report the sexual assault to the university or the police*

### **Timely Reporting/Crisis Assistance**

The university supports and encourages anyone who has been sexually assaulted to report the incident to the reporting source of their choice. Prompt reporting may preserve options that delayed reporting does not, including the preservation of physical evidence, crisis counseling, and immediate police response. However, those who delay reporting can report the incident at any time, understanding that this may rule out the collection of physical evidence.

The university recognizes that a person who has been sexually assaulted may choose not to report the crime to a limited confidential source or a privileged source. In those situations, the University allows an individual who has been sexually assaulted to file an anonymous report which allows the reporting person time to decide what course of action they want to take and also allows the crime to be counted in the campus crime statistics. To access this Silent Witness form, go to the University website at

<http://old.jcsu.edu/redesign/academics/campuspolice/silentwitness.htm>. Please note that even with anonymous reports, the university has an obligation to investigate; however, anonymous reporting may limit the ability to conduct an effective investigation. The University is committed to investigating all possible violations of this policy about which the University knows or reasonably should know, regardless of whether a complainant alleging a violation of this policy has been filed and regardless of whether the conduct at issue actually occurred.

While complete confidentiality cannot be guaranteed, every effort will be made to maintain confidentiality. Generally, the wishes of a victim not to report a sexual assault or incident of domestic/intimate partner violence or stalking to the police will prevail, though the University reserves the right to notify the police and the Title IX Coordinator when it believes that such reporting is necessary for the protection of the JCSU community. Such notification, however, will generally be done without divulging the victim's identity and for the purpose of providing a campus-wide safety alert. In addition, the University must adhere to legal mandates such as Title IX, medical reporting laws, and the Campus Save Act. For example, JCSU is required to make an annual security report documenting all occurrences of crimes on campus, including sexual offenses. However, this report does not include any information identifying the individuals (including the victims) linked to these crimes.

### **INVESTIGATIVE PROCEDURES**

Incidents of offenses covered under this policy should be reported to the Title IX Coordinator or the Deputy Title IX Coordinator as soon as possible after the alleged act of the sexual offense. Once the Title IX Coordinator or Deputy Coordinator has received a report of an offense covered by this policy, he or she will contact and involve law enforcement as necessary and appropriate.

The complainant also has the right to file civil or criminal charges with the appropriate law enforcement agency. Any pending criminal investigation or criminal proceeding may have some impact on the timing of the University's Title IX investigation, but the University will commence the Title IX investigation as soon as it is practicable under the circumstances. The University reserves the right to conduct its own investigation prior to the completion of any criminal investigation or criminal proceeding, and the University may proceed with disciplinary

action regardless of criminal or civil prosecutions pending in court. The imposition of University disciplinary action is independent of any action taken in the criminal and civil courts and may occur prior to a court's action.

The Title IX Coordinator, Deputy Coordinator or his or her designee will conduct an investigation with any other University official deemed appropriate under the circumstances, including law enforcement. The University will strive to complete all investigations within sixty (60) days of the filing of a complaint or the date on which the University becomes aware of a suspected violation of this policy; unless the University determines that more time is needed to complete the investigation.

In connection with any investigation, the complainant and the accused are encouraged to provide as much information as possible.

At the conclusion of the investigation, the Title IX Coordinator, Deputy Coordinator or his or her designee will initiate appropriate judicial disciplinary proceedings with the Sexual Assault Board and/or the Student Conduct Board. In matters where the assailant is an employee of the University, findings of the investigation will be sent to the Assistant Vice President for Human Resources, who will submit a report and a recommendation to the respective Vice President and the President.

The University reserves the right to suspend or place on immediate administrative leave any member of the campus community accused of violating this policy, or to take any other interim measures the University deems appropriate, pending the outcome of an investigation and/or disciplinary procedures. The President of the University may also suspend any student organization charter pending a full review.

## **SANCTIONS**

1. Individual student sanctions will be imposed in accordance with the University's Standard of Conduct. Any student found responsible for a violation of the Sexual Assault, Sexual Harassment, Discrimination, Stalking and Domestic and Intimate Partner Violence Against Students Policy will face sanctions from warning up to and including expulsion, depending on the severity of the incident, and taking into account any previous disciplinary infractions.

2. Organizations found to condone, promote, or be involved in sexual offense will have their University recognition withdrawn. Other possible actions include: (a) informing the national and regional offices of the organization about the activity; (b) prohibiting participation in campus activities, events and programs; (c) requiring relevant community service and/or participation by all members in sexual harassment/sexual assault awareness programs and (d) loss of all University privileges such as use of equipment, meeting rooms advertising space and on-campus fundraising.

3. Sanctions up to and including dismissal from employment may be imposed on employees found in violation of this policy; and sanctions up to and including dismissal from the University if a student.

## **The Rights of the Victim and the Accused**

To encourage reporting of sexual assault, relationship violence, stalking and sexual harassment and to ensure fairness to all participants in the process, the following is a list of rights that shall be afforded to both the victim and the accused during university proceedings.

### **The Rights of the Victim**

1. The right to be treated with respect and dignity regardless of gender, cultural background, age, sexual orientation, income, physical and cognitive abilities, sexual, medical or mental health history.
2. The right to timely access to emergency and crisis counseling services and the right to be informed of other University and community resources, including but not limited to University Police, affirmative action, University Health Services, and community counseling centers.
3. The right to be accompanied by an Advocate while receiving victim services.
4. The right to information regarding reporting requirements, legal rights, and legal resources.
5. At the victim's request, the right to have allegations of student misconduct investigated by the appropriate University office and adjudicated by Student Judicial programs.
6. The right to a full explanation of the Student Judicial Hearing process prior to its initiation.
7. The right to be informed about on campus no contact orders and off campus protection orders.
8. The right to have an advisor present throughout a Student Judicial Hearing.
9. The right to be present during the entire Student Judicial Hearing.
10. The right to be physically separated from the accused during the hearing, including testifying by a written statement or by phone from a separate room, if desired.
11. The right to be free from direct questioning by the accused student. Rather, questions will be asked by and through student judicial board members only.
12. The right not to have irrelevant past sexual history discussed during the Student Judicial Hearing.
13. The right to write a victim impact statement for the use in the student judicial process.
14. The right to be informed in a timely manner of the student judicial board's findings and of the outcome of the hearing.
15. The reasonable right to confidentiality. A victim's identity will not be publicly confirmed or denied by Student Judicial Programs except in cases of lawfully issued subpoenas or other exceptional circumstances outlined within FERPA.

## **The Rights of the Accused**

1. The right to be treated with respect and dignity regardless of gender, cultural background, age, sexual orientation, income, physical and cognitive abilities, sexual, medical or mental health history.
2. The right to a written statement of charges.
3. The right to an explanation of the Student Judicial Hearing process.
4. The right to have the case adjudicated by students who have been trained to hear alleged violations of the Code of Student Conduct.
5. The right to a fair and impartial Student Judicial Hearing.
6. The right to be informed of the Student Judicial Hearing date.
7. The right to have an advisor present through the Student Judicial Hearing.
8. The right to hear all evidence and witnesses presented to the Student Judicial Board.
9. The right to have questions asked of any witness presenting evidence at the Student Judicial Hearing.
10. The right to testify on one's behalf.
11. The right to be judge solely on evidence available and presented at the hearing.
12. The right to be informed in a timely manner of the board's findings and of the outcome of the hearing.
13. The right to appeal the decision of the Student Judicial Board.

The comprehensive policy which outlines procedures for addressing incidents of sexual assault; sexual harassment and discrimination; relationship violence and stalking committed against students while on or off-campus including offenses committed while using cyber-technology including, but not limited to, social media, email, or other web based technologies may be found on the Student page of the JCSU website.