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think beyond the possible

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LEGALEASE

"SIMPLIFYING LEGAL ISSUES"

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Sexual Misconduct Policy Approved

Picture this: A colleague walks into your office and advises you that he or she has experienced sexual misconduct from another member of the University community. With a sense of urgency, you review in your head the University policies to sort out how best to handle the claim and to report the issue. In the past, you may have asked yourself: "What policy applies – the Sexual Harassment Policy or the Sexual Assault Policy?" Now, under the University's Sexual Misconduct Policy, a single policy serves as the only policy for reporting and addressing all forms of sexual misconduct complaints.

Consistent with guidance provided by the U.S. Department of Education Office of Civil Rights (DOE), the University previously issued an interim Sexual Misconduct Policy, which became effective August 17, 2013. During the 2013-14 academ-

plaints were handled via that interim policy. At the same time, over the past year, the University collected

ulty, staff and students, and from various University organizations. After the input was incorporated into the interim policy, the policy became final upon the approval of the Board of Trustees on May 31, 2014.

The adoption of the unified policy meets the University's obligation to have a single policy to address all forms of sexual misconduct by stopping sexual misconduct, remedying its effects, and preventing its recurrence. The DOE oversees compliance with Title IX, the federal law that prohibits discrimination on the basis of sex by any organization in receipt of federal funds, including colleges and universities. In a 2011 "Dear Colleague Letter," the DOE provided direction to all colleges and universities across the United States regarding issues of sexual violence and sexual misconduct on campuses and the grievance processes necessary to address those issues. Then, on April 29, 2014, the White House Task Force to Protect Students from Sexual Assault issued its first report and launched a website, NotAlone.gov, to provide guidance and resources regarding sexual assault prevention, awareness and policies and processes. The DOE's "Dear Colleague Letter" and the Task Force report provide guidance to colleges and universities, which the DOE and the Department of Justice will use to evaluate compliance with the law. The University's combination of the sexual harassment policy with the sexual assault policy is consistent with the federal guidance by establishing a single, consistent policy for addressing sexual harassment and sexual assault or sexual violence involving Univer-

Sexual Misconduct Policy Approved (Continued)

sity community members.

Some highlights of the Policy include:

- Reiterating that each member of the University community has an obligation to report sexual misconduct, whether they witness it, hear about it from a person who experienced it, or hear about it from another person. The obligation exists if the University community member receives information that permits the member to identify either 1) the complainant or the respondent by name or by other identifying information, or 2) the location at which the sexual misconduct occurred.
- Identifying the Title IX Coordinator - Dr. Marilyn Mobley, Vice President of the Office of Inclusion, Diversity & Equal Opportunity - and several Deputy Title IX Coordinators who oversee the University's handling of sexual misconduct issues. The policy also identifies the Designated Reporting Representatives who receive complaints from members of the University community so that the complaints can be appropriately investigated and appropriate action can be taken.
- Providing definitions of the types of sexual misconduct that fall under the policy and the elements of each type of misconduct, such as forced sexual intercourse or sexual harassment.
- Stating the rights of both the complainant and the respondent to a fair and impartial process to investigate and address sexual misconduct matters.
- Clarifying the confidentiality provision of the policy so that the term "confidential" applies only to those communications about sexual misconduct that are protected by law (such as to a licensed counselor at University Counseling Services, health care provider at University Health Services, licensed advocate at the Center for Women, rape crisis center etc.). Otherwise, complaints of sexual misconduct must be reported and appropriate action taken.
- Encouraging reporting of sexual misconduct by considering the use of educational options or training (rather than punishment) for witnesses and bystanders who witness sexual misconduct while possibly in violation of another policy (e.g., those who report sexual misconduct who have witnessed the misconduct while engaged in underage drinking).
- Formalizing the position of the Sexual Misconduct Investigator/Deputy Title IX Coordinator to investigate complaints of sexual misconduct.
- Creating a "Community Standards Board" as the panel to hear sexual misconduct cases and appeals.
- Setting a time frame of 60 days for complaints to be investigated and decided, except in complex cases or extenuating circumstances.
- Reiterating that CWRU's processes for investigating and handling sexual misconduct complaints must proceed independently of any outside processes, such as any criminal process.

The full text of the Policy can be found at http://www.case.edu/diversity/sexualconduct/policies/sexualmisconduct.html. If you have questions about the policy, please contact the Office of Inclusion, Diversity & Equal Opportunity at x8877, the Office of Student Affairs at x 2020, or the Office of General Counsel at x4286.

Export Compliance at CWRU: Restricted Party Screening

Federal export control laws, which restrict the transfer of certain items, data, and technology to nondomestic persons, organizations, or countries, can impact the educational and research efforts of United States universities. These regulations can apply when items are being shipped or hand-carried abroad, when regulated technical information or software code is shared with nondomestic persons or entities abroad or in the United States, or when exported items, information, or software are received by a person or organization officially identified as a restricted party.

In 2013, CWRU leadership created a formal coordinated Export Management Program. The program works to educate CWRU personnel so that they are aware of situations in which export control problems can arise. It also partners with numerous CWRU administrative offices to promote best practices for international travel, safeguard CWRU's physical facilities and electronic assets, and ensure that CWRU's contracts and business transactions reflect CWRU's export compliance policies.

An important aspect of ensuring that business transactions are compliant with the federal export regulations is to refrain from engaging in business relationships with a person or organization that is officially identified as a restricted party. Several federal agencies maintain restricted party lists, such as the Department of Commerce's Denied Persons list, the Department of Commerce's Entity list, the Department of State's Arms Export Control Act Debarred Parties list, and the Department of Treasury's Specially Designated Nationals and Blocked Persons list. In fact, there are over thirty relevant restricted party lists. Generally, the lists serve the purposes of strengthening national security, advancing foreign policy goals, and protecting U.S. economic assets.

In April, 2013, the University of Massachusetts at Lowell was fined $100,000 by the Department of Commerce (Bureau of Industry and Security) for the unlicensed export of an atmospheric sensing device and accessories to Pakistan's Space and Upper Atmosphere Research Commission ("SUPARCO"). Although the items themselves were not highly regulated, the University of Massachusetts violated the export regulations because SUPARCO was on the Department of Commerce's Entity List. The fine was waived on the condition that the University of Massachusetts agreed not to commit any additional export violations during the following two years. If the University had performed a "restricted party screening" (i.e., checked the federal restricted party lists) prior to formally engaging in the business relationship, it could have discovered that SUPARCO was a restricted party and could have refrained from making the transactions.

Before the University engages in business transactions with nondomestic persons or entities, it is appropriate for specific CWRU offices to perform restricted party screening to confirm that the person, group, company, university, or organization is not on any of the federal restricted party lists. Examples are when CWRU enters into an international collaboration agreement or makes a payment to a vendor. CWRU subscribes to an online software tool so that the restricted party screenings can be performed quickly. The software tool consolidates all of the thirty-plus lists so that they are searchable simultaneously. A search of the thirty-plus lists typically takes less than three seconds to run. The CWRU Export Management Program has begun working with its partnering CWRU administrative offices so that the restricted party screening is conducted when necessary.