GUIDELINES FOR BEST PRACTICES IN RESPONDING TO SEXUAL AND GENDER-BASED MISCONDUCT
ACKNOWLEDGEMENTS

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INTRODUCTION

Sexual and gender-based misconduct is harmful to an individual’s well-being, can be disruptive to students’ educational experiences, and can damage an institution’s reputation. While laws and regulations governing educational institutions’ and programs’ responsibility in such matters vary from country to country, the Standards of Good Practice for Education Abroad (5.1.6) tell us that having policies and procedures in place to prevent such misconduct wherever possible and to respond to it when it arises is not only best practice in our field but also mandated by the Standards.

An effective approach to the evolving expectations around sexual and gender-based misconduct prevention, reporting, and response requires constructive dialogue among all responsible parties that is guided by professionals with expertise in this area.

These guidelines follow the style of the Standards by offering specific advice and prompts for education abroad professionals to prevent, respond to, and report sexual and gender-based misconduct abroad. They are intended to be used by colleagues operating in countries around the world to create infrastructures that help to protect and support students facing sexual and gender-based misconduct and to guide conversations between partners operating in countries with different regulatory environments related to sexual and gender-based misconduct.

The key components of best practice in responding to allegations of sexual and gender-based misconduct are:

• Having comprehensive policies and procedures in place before participants leave the home campus.
• Ensuring students understand their rights and responsibilities in relation to the policies and procedures before they leave the home campus.
• Ensuring that those policies and procedures are consistently followed in all locations.
• Ensuring that those policies and procedures take local laws and context into account.

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1 Sexual and gender-based misconduct is frequently used as an umbrella term by colleges and universities. For purposes of this document, “sexual and gender-based misconduct” will be used broadly to include:

• Sexual and gender-based harassment including sexual assault and violence that are at a minimum, violations of state or federal criminal law, but are also violations of students’ and employees’ civil rights and violations of the institution’s code of conduct and employee handbooks.
• Involves verbal, nonverbal and physical acts of a sexual and/or gender-based nature that are unwelcome and create a hostile environment on the program. Examples include but are not limited to sexist jokes, gender harassment, flashing, groping, catcalls, rape, relationship-based violence, stalking, and revenge porn.
A NOTE ON U.S. FEDERAL LAWS:

Historically, U.S. federal laws have created specific obligations for U.S. colleges and universities regarding the prevention, reporting, and response to sexual and gender-based misconduct that occurs when participants are abroad. In 2017, The Forum on Education Abroad published the *Sexual Misconduct, Education Abroad and Title IX/Clery Act* guidance on compliance with those U.S. laws when they apply overseas. These current Guidelines are in part a response to the most recent Title IX Final Rule which negated overseas compliance, published in May 2020, and aim to provide colleagues with best practices in responding to incidents of sexual and gender-based misconduct. During the preparation of these guidelines, the Department of Education withdrew its Clery Act Handbook (and ostensibly, according to a cover memo, obligations for Clery compliance in study abroad and distance learning). Many institutions maintain such obligations in their Codes of Conduct, and future administrations may return to the prior approach to addressing crime, violence, and harassment in distance learning and study abroad. Therefore, when a program or partnership involves at least one partner institution that is based in the U.S., the following guidelines should be used in conjunction with the aforementioned guidance to ensure good practice and regulatory compliance.

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GUIDING PRINCIPLES

4.1* MISSION AND GOALS

*For ease of reference, sections are numbered to match the corresponding clauses of the Standards of Good Practice for Education Abroad, 6th Edition.

1. Engage with institutional experts and stakeholders, (e.g., legal counsel, Title IX coordinator, student life administrators, officials with authority, responsible employees, campus security authorities or equivalent) responsible for managing sexual and gender-based misconduct to create institutional policies and procedures for sexual and gender-based misconduct abroad that are a part of your organization’s mission, goals, objectives and outcomes.

2. Create policies and procedures for response to sexual and gender-based misconduct that align with your mission, goals, objectives and outcomes.

Prompts for self-assessment

a. When did you last review and update the definitions of sexual and gender-based misconduct and discuss your expectations and obligations with all partners?

b. What are your sexual and gender-based misconduct policies and procedures?

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4 The 2020 Title IX Regulations allow post-secondary institutions to decide which of its employees are “officials with authority”. An Official with Authority (OWA) means an employee of the institution is explicitly vested with the responsibility to implement corrective measures for sexual misconduct on behalf of the institution. Notice to any Official with Authority conveys actual knowledge to the institution.

5 Responsible Employee means any faculty member, other academic appointee, or staff employee who would reasonably be expected to have the authority or duty to report or take action to redress sexual misconduct. https://www.lawinsider.com/dictionary/responsible-employee

6 Per the Department of Education, “While not defined in statute, regulations provide that CSAs include: campus police or security department personnel; individuals or organizations identified in institutional security policies; and individuals with security-related responsibilities. The definition at § 668.46(a)(iv) states that a CSA also includes an official “who has significant responsibility for student and campus activities.” https://ifap.ed.gov/sites/default/files/attachments/2020-10/CleryAppendixFinal.pdf

7 Ongoing dialogue helps on-campus stakeholders understand the unique challenges and context of education abroad programs and ensures that education abroad office language, policies, and processes align with the campus sexual and gender-based misconduct policy (shaped by Title IX and Clery, even if the laws do not currently technically apply). Small or one-person education abroad offices may need even more support from their on-campus colleagues.

*For ease of reference, sections are numbered to match the corresponding clauses of the Standards of Good Practice for Education Abroad, 6th Edition.
4.2 COLLABORATION AND TRANSPARENCY

1. Facilitate open discussions with partners about the potential cultural, organizational, and legal issues related to incidents of sexual and gender-based misconduct in the host country and how these issues may affect policies and procedures, educational programming for faculty and staff, and guidance provided to students.

2. Establish clear expectations with partners on prevention, response, reporting, investigation and adjudication of any incidents of sexual and gender-based misconduct involving their students.

3. Define which personnel are considered responsible employees, officials with authority (or equivalent) and/or confidential resources\(^8\), including faculty and staff of sending institutions and any education abroad providers, host institutions, or other partners.

Prompts for self-assessment

a. What have you learned from your partners about their institutional policy and host country legal and cultural contexts?

b. How have you worked with partners to establish clear protocols for prevention, response, reporting, investigation and adjudication of any incidents of sexual and gender-based misconduct involving your students?

c. How have you identified which faculty/staff are responsible employees, officials with authority and/or confidential resources?

d. How have you set clear expectations with partner institutions on how prevention, response, reporting individual support, investigation, and adjudication of any incidents of sexual and gender-based misconduct involving their students will be handled?

e. How are incidents reported and in what format?

f. What are the limitations or restrictions on reporting to the home institution, due to confidentiality laws in the countries where you are operating and due to institutional policies?

g. How does your pre-departure and on-site orientation present information about the risks of sexual and gender-based misconduct, advise students about how to minimize those risks, and provide students with contextual cultural norms and legal definitions related to dating, sexuality, and sexual and gender-based misconduct?

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\(^8\) The US Office for Civil Rights recognizes campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, as a confidential resource. [Link](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjmhJucsIzsAhVTbc0KHQAzCDwQiANegQIBRA&url=https%3A%2F%2Fwww2.ed.gov%2Fabout%2Foffices%2Flist%2Focr%2Fdocs%2Fqa-201404-title-ix.pdf&usg=AOvVaw3WCjXwNDrujuKBr4gBFFb)
4.3 ETHICS

1. All responsible parties must define student rights when reporting sexual and gender-based misconduct regarding confidentiality and reporting to the home institution.

2. All responsible parties must define student rights when being accused of sexual and gender-based misconduct regarding confidentiality and reporting to the home institution.

3. Set clear expectations about which partner handles prevention, response, reporting, investigation and adjudication of any incidents of sexual and gender-based misconduct.

4. Responsible parties must articulate any limitations due to institutional and legal issues in both the home and host country.

5. Responsible parties must articulate who will bear the financial responsibility of responding to the incident.

Prompts for self-assessment

a. How do you identify conflicts between home and host country legal obligations and institutional policy regarding sexual and gender-based misconduct and/or confidentiality?

b. How will those conflicts be managed?

c. How have you set clear expectations with sending institutions on how reporting, individual support (for reporters and the responder [if a student]), investigation, and adjudication of any incidents of sexual and gender-based misconduct involving their students will be handled?

d. Who has accepted financial responsibility for the response to the incident?

4.4 EQUITY, DIVERSITY, AND INCLUSION

1. Develop consistent policies and procedures with all partners to respond to allegations of sexual and gender-based misconduct regardless of the identity of the reporting or responding party.

2. Responsible parties must examine, identify, and address systemic biases and deficiencies in policies and practices related to sexual and gender-based misconduct.

Prompts for self-assessment

a. How have you ensured that your policies and procedures are equitably applied to all reporters of and responders to sexual and gender-based misconduct even if outside the “typical” incident?

b. How have you set clear expectations with partners on how response, reporting individual support, investigation, and adjudication of any incidents of sexual and gender-based misconduct involving students will be handled?

c. How are incidents reported and in what format?

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9 For example, in the European Union, GDPR may conflict with institutional policies and protocols regarding responding to sexual and gender-based misconduct. It is imperative that the home institution recognize any conflicts and develop proactive remedies.

10 Typical here refers to male actions toward a female. Sexual and gender-based misconduct can occur between all genders and can be initiated by any gender.
5.1 POLICIES, PROCEDURES, AND GUIDELINES

1. Understand local legal and regulatory constraints of your partners when developing your policies and protocols.

2. Review and update all waivers, informed consent, partner agreements and other documents on a regular and as needed basis (at least annually).

3. Facilitate open discussions with partners about the potential cultural, organizational, and legal issues related to incidents of sexual and gender-based misconduct in the host country and how these issues may affect policies and procedures, educational programming for faculty and staff, and guidance provided to students.

4. Identify and resolve any conflicts between legal obligations and institutional policy regarding confidentiality and duty of care between all partners.

Prompts for self-assessment

a. How do you learn from your partners about their institutional policies and host country legal and cultural contexts?

b. How have you set clear expectations with partners for response, reporting, investigation, support and adjudication of any incidents of sexual and gender-based misconduct involving students?

c. How have you identified partner faculty/staff as responsible employees, officials with authority and/or confidential resources (or equivalent)?

d. How have you identified any conflicts between legal obligations and institutional policies regarding confidentiality and duties of care between all partners? What have you done to resolve those conflicts?
5.2 FINANCIAL AND HUMAN RESOURCES

1. Responsible parties should be educated on best practices related to the prevention, reporting, and response to sexual and gender-based misconduct, even where not required by law, because these practices educate and support students.

2. All partners should endeavor to understand their own legal environment as it relates to sexual and gender-based misconduct and to educate their partners about those legal and policy frameworks.

3. All partners should endeavor to understand the local legal and policy context where programs operate and the implications these have on program and institutional policies and protocols.

4. Responsible parties should seek to understand their partner organization’s expectations around sexual and gender-based misconduct prevention, reporting, and response.

5. Partners should identify in advance resources available to support students and personnel, e.g., legal counsel, healthcare, counseling, etc., to help all involved in the aftermath of a case of misconduct. These resources may be available online or locally to the program or both.

6. Any administrative violation of any partner’s sexual and gender-based misconduct policies is basis for corrective action.

Prompts for self-assessment

a. How have you worked with your professional experts on campus to understand what sexual and gender-based misconduct is and the laws that require response?

b. How have you worked to understand best practice in prevention, reporting and responding to sexual and gender-based misconduct and how to apply them when students are on an education abroad experience?

c. How have all responsible parties sought to learn what the U.S. as well as the local legal environment requires?

d. How have you sought to understand the local legal and policy context in which your partners operate?

e. If an administrative violation of a partner’s sexual and gender-based misconduct policies occurred, how was corrective action taken?
STUDENT LEARNING AND DEVELOPMENT

6.1 BEFORE PROGRAM

1. Facilitate open discussions with students about their rights and responsibilities regarding sexual and gender-based misconduct, with specific attention paid to the definition of consent in the home and the host countries.

2. Educate students on confidential resources, who they are, and how they can be of support.

3. Provide information to students about how sexual and gender-based misconduct should be reported and to whom and offer both confidential and non-confidential avenues for reporting.

4. Establish clear expectations with students on response, reporting, investigation, and adjudication of any incidents of sexual and gender-based misconduct.

5. Orientations for all students should provide best practices for reducing sexual or gender-based misconduct that may include, but are not limited to, effective bystander training, strategies to avoid unwanted sexual encounters and high-risk situations, and reliable resources to consult.

6. Partners should be transparent in sharing sexual and gender-based misconduct incident data with students.

Prompts for self-assessment

a. When and how do you facilitate conversations with students about their rights and responsibilities around sexual and gender-based misconduct while abroad?

b. How have you set clear expectations with students regarding response, reporting, investigation and adjudication of any incidents of sexual and gender-based misconduct while abroad?

c. Who have you and your partners identified as confidential resources?

d. How have you educated the students as to who is a confidential resource and who is not?
6.2 DURING PROGRAM

1. Revisit students’ rights and responsibilities regarding sexual and gender-based misconduct on-site.

2. Provide an on-site orientation - to include local policy/legal context and how it differs from U.S. law, local cultural norms around sexual consent and behavior, situational/risk information, etc.

3. Articulate to students how the process works regarding your response, reporting, investigation and adjudication on site, with attention to both the reporting and the responding party.

4. Articulate to students how law enforcement response, reporting, investigation and adjudication may occur on location.

5. Educate students on confidential resources and how they can be of support.

6. Educate students on local healthcare and mental health support resources and how they can be accessed.

Prompts for self-assessment

a. When and how do you facilitate conversations with students about their rights and responsibilities around sexual and gender-based misconduct?

b. How have you articulated to students how response, reporting, investigation, and adjudication of any incidents of sexual and gender-based misconduct will occur?

c. Who have you identified as a confidential resource and how has that information been relayed to students?
6.3 AFTER PROGRAM

1. Provide a process whereby students can still report incidents of sexual and gender-based misconduct that happened during the program upon return.

2. Responsible parties need to articulate the process for responding, reporting, investigating and adjudicating incidents reported after the program but that occurred during the program.

3. Identify any conflicts between legal obligations and institutional policies regarding confidentiality and duty of care that were revealed during the program.

4. Resolve these gaps to you and your partners' satisfaction.

5. Debrief incidents of sexual or gender-based misconduct.

6. Review the prevention strategies, response, reporting, investigation, and adjudication procedures that were employed during the program and address any issues that impeded on students' rights or reasonable expectations.

Prompts for self-assessment

a. How do you inform students that it is not too late to report incidents that may have happened while on the program?

b. How have all responsible parties articulated a process to respond, report, investigate and adjudicate incidents reported after the program has ended but occurred during the program?

c. How do you identify any conflicts between legal obligations and institutional policy regarding confidentiality and duty of care that were revealed during the program?

d. How do you resolve these gaps to you and your partners’ satisfaction?

e. What is your review process for analyzing the response, reporting, investigation and adjudication procedures that were employed during the program?