AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES

Resolution: 414
(N-21)

Introduced by: Medical Student Section

Subject: Advocacy on the US Department of Education's Spring 2022 Title IX Rule on Sexual Harassment and Assault in Education Programs

Referred to: Reference Committee D

Whereas, Medicine has high rates of harassment that are significantly higher than most scientific fields[1-4]; and

Whereas, Gender-based and sexual harassment in the workplace has been correlated with burnout, lower mental health, job satisfaction, and sense of safety at work, as well as increased turnover intentions, especially among female physicians[5,6]; and

Whereas, Gender-based workplace discrimination and harassment have been shown to contribute significantly to burnout, and burnout has been associated with poor levels of patient care and increased risk to patient safety, while improved clinical outcomes have been associated with a diverse workforce, particularly female physicians[7,8]; and

Whereas, Title IX of the US Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive federal financial assistance[9]; and

Whereas, Many medical schools receive and rely on federal funding, and thus are required to comply with Title IX regulations[10,11]; and

Whereas, Title IX regulations apply to hospitals with residency programs, as established in Castro v Yale University[12-15]; and

Whereas, The significant amount of Title IX cases filed at higher education and medical institutions have been met with serious procedural barriers[16]; and

Whereas, In August 2020, new Title IX Regulations created under Betsy DeVos, former United States Secretary of Education, were enacted[17]; and

Whereas, Under new regulations, survivors have 180 days from the first instance of discrimination to file a Title IX complaint against their school; yet as the Betsy DeVos-era Title IX rule stands, schools can make up their own investigation timeline when a survivor reports sexual violence[17,18]; and

Whereas, Under the new regulations, schools are allowed to utilize a "clear and convincing evidence" standard rather than a preponderance of the evidence standard" for sexual harassment investigations, which benefits respondents rather than victims[19]; and

Whereas, Under the new regulations, schools are not required to investigate complaints of sexual assault if the events did not occur during a school event or on school property, which

does not take into account harassment that occurred outside of these parameters that may still impact a student's ability to participate in school[19]; and

Whereas, Most US schools returned to in-person curriculums in the fall of 2021, for the first time since Ms. DeVos' Title IX regulations were enacted in August 2020, highlighting process issues in real time[9,20]; and

Whereas, Upon students' return to in-person classes, in October 2021, the ED Act Now group convened with protests in Washington DC, hoping to address concerns and codify institutional responsibilities in light of Ms. DeVos' proposed Title IX rules in a timely and urgent manner[18]; and

Whereas, The Biden administration has pledged to re-write Title IX, but the preliminary recommendations will not be released until May 2022, and medical education organizations have an opportunity to take a stance on this topic[21]; and

Whereas, Researchers in our medical profession strongly recommend for a zero tolerance policy for gender-based violence[22,23]; and

Whereas, AAMC, AAOMC, and other relevant medical education bodies did NOT sign on to this letter: https://www.acenet.edu/Documents/Comments-ED-OCR-Title-IX-Hearing-061021.pdf , despite other healthcare education associated bodies signing on[24];

Whereas, According to the AAMC's Medical School Graduation Questionnaire in 2017, only 21% of students experiencing harassment reported to administration, leaving the majority of cases unreported due to students' fear of lack of accountability, fear of retaliation and perception that the incident was not significant enough to report[25]; and

Whereas, Victims of sexual harassment often will not report the harassment to their institutions because of fear of retaliation such as being "labeled as a troublemaker"[26]; and

Whereas, Medical training is fast-paced, and prolonged decisions regarding Title IX and other accommodations can have a significant impact on a trainee's career and right to an education[27]; and

Whereas, Perpetrators of harassment are often asked to leave higher education institutions without any questions or punishment, in order to decrease institutional liability, but this practice fails to address root behaviors of the harassers[28]; and

Whereas, *Sexual Harassment of Women: Climate, Culture and Consequences in Academic Science, Engineering and Medicine* states that "organizational tolerance for sexually harassing behavior" increases the risk of sexual harassment occurring within the organization[3]; and

Whereas, National Academy of Science, Engineering and Medicine (NASEM) and Association of American Universities (AAU) have created validated surveys that are recommended for qualitative and quantitative monitoring of sexual harassment[3,29]; and

Whereas, Know Your IX has published a list of best practices for supporting students rights' under Title IX, indicating that mental health support, timely notice and investigations, accountability and prevention of retaliation were best practices in Title IX-related investigations[30]; and

Whereas, AMA Code of Ethics 9.1.3 “Sexual Harassment in the Practice of Medicine” defines sexual harassment, but does not outline best guidelines for institutional enforcement or advocate for enforcement in institutions of medical training/education;

Whereas, Our organization is committed to equal access to medical education, maintaining the diversity of the physician workforce, and selecting trainees who possess both academic and non-academic qualifications to be a physician as outlined in H-200.95, H-310.929 and H-295.995; therefore be it

RESOLVED, That our American Medical Association work with relevant stakeholders to release a statement and advocate that the US Department of Education replace their 2020 Title IX rule on sexual harassment and assault in educational settings, including undergraduate and graduate medical education, with a comprehensive rule that preserves the safety and wellbeing of all people affected by sexual assault. (Directive to Take Action)

Fiscal Note: Not yet determined

Received: 11/07/21

AUTHORS STATEMENT OF PRIORITY

Given that the Biden administration is currently reviewing the restrictive Title IX rule adopted in August 2020 and planning on releasing new recommendations by May of 2022, this issue is of timely importance that the AMA speaks on this matter and provides guiding data on the path to ending sexual harassment and violence, in accordance with the asks of this resolution. As many students returned to campuses for in-person instruction, the devastating impact of the 2020 Title IX resolution became apparent for the first time. Our AMA, the largest body of medical professionals, cannot stand by as more victims are shamed or silenced, especially when 52% of medical trainees experience harassment.

Our AMA must use its unique position at the intersection of medicine and advocacy to publicly speak on behalf of victims, particularly those in educational settings, and to contribute to this pivotal national reform. Our input on this issue will progress the development of the Biden administration’s recommendations in a meaningful way, while also elucidating the steps that the AMA and medical education bodies must take to support victims in medical education, who are not granted any protections or support under H-515.956, in support of college students, and H-80.999, in support of patients. Our AMA cannot stay silent on this issue that silences so many of our patients as well as so many of our own.

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RELEVANT AMA POLICY

H-295.955 Teacher-Learner Relationship In Medical Education

The AMA recommends that each medical education institution have a widely disseminated policy that: (1) sets forth the expected standards of behavior of the teacher and the learner; (2) delineates procedures for dealing with breaches of that standard, including: (a) avenues for complaints, (b) procedures for investigation, (c) protection and confidentiality, (d) sanctions; and (3) outlines a mechanism for prevention and education. The AMA urges all medical education programs to regard the following Code of Behavior as a guide in developing standards of behavior for both teachers and learners in their own institutions, with appropriate provisions for grievance procedures, investigative methods, and maintenance of confidentiality.

CODE OF BEHAVIOR

The teacher-learner relationship should be based on mutual trust, respect, and responsibility. This relationship should be carried out in a professional manner, in a learning environment that places strong focus on education, high quality patient care, and ethical conduct.

A number of factors place demand on medical school faculty to devote a greater proportion of their time to revenue-generating activity. Greater severity of illness among inpatients also places heavy demands on residents and fellows. In the face of sometimes conflicting demands on their time, educators must work to preserve the priority of education and place appropriate emphasis on the critical role of teacher.
In the teacher-learner relationship, each party has certain legitimate expectations of the other. For example, the learner can expect that the teacher will provide instruction, guidance, inspiration, and leadership in learning. The teacher expects the learner to make an appropriate professional investment of energy and intellect to acquire the knowledge and skills necessary to become an effective physician. Both parties can expect the other to prepare appropriately for the educational interaction and to discharge their responsibilities in the educational relationship with unfailing honesty.
Certain behaviors are inherently destructive to the teacher-learner relationship. Behaviors such as violence, sexual harassment, inappropriate discrimination based on personal characteristics must never be tolerated. Other behavior can also be inappropriate if the effect interferes with professional development. Behavior patterns such as making habitual demeaning or derogatory remarks, belittling comments or destructive criticism fall into this category. On the behavioral level, abuse may be operationally defined as behavior by medical school faculty, residents, or students which is consensually disapproved by society and by the academic community as either exploitive or punishing. Examples of inappropriate behavior are: physical punishment or physical threats; sexual harassment; discrimination based on race, religion, ethnicity, sex, age, sexual orientation, gender identity, and physical disabilities; repeated episodes of psychological punishment of a student by a particular superior (e.g., public humiliation, threats and intimidation, removal of privileges); grading used to punish a student rather than to evaluate objective performance; assigning tasks for punishment rather than educational purposes; requiring the performance of personal services; taking credit for another individual's work; intentional neglect or intentional lack of communication.
On the institutional level, abuse may be defined as policies, regulations, or procedures that are socially disapproved as a violation of individuals' rights. Examples of institutional abuse are: policies, regulations, or procedures that are discriminatory based on race, religion, ethnicity, sex, age, sexual orientation, gender identity, and physical disabilities; and requiring individuals to perform unpleasant tasks that are entirely irrelevant to their education as physicians.
While criticism is part of the learning process, in order to be effective and constructive, it should be handled in a way to promote learning. Negative feedback is generally more useful when delivered in a private setting that fosters discussion and behavior modification. Feedback should focus on behavior rather than personal characteristics and should avoid pejorative labeling. Because people's opinions will differ on whether specific behavior is acceptable, teaching programs should encourage discussion and exchange among teacher and learner to promote effective educational strategies. People in the teaching role (including faculty, residents, and students) need guidance to carry out their educational responsibilities effectively.
Medical schools are urged to develop innovative ways of preparing students for their roles as educators of other students as well as patients.
BOT Rep. ZZ, I-90; Reaffirmed by CME Rep. 9, A-98; Reaffirmed: CME Rep. 2, I-99; Modified: BOT Rep. 11, A-07; Reaffirmed: CME Rep. 9, A-13; Reaffirmed BOT Rep. 9, I-20

9.1.3 Sexual Harassment in the Practice of Medicine
Sexual harassment can be defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
Sexual harassment in the practice of medicine is unethical. Sexual harassment exploits inequalities in status and power, abuses the rights and trust of those who are subjected to such conduct; interferes with an individual’s work performance, and may influence or be perceived as influencing professional advancement in a manner unrelated to clinical or academic

performance harm professional working relationships, and create an intimidating or hostile work environment; and is likely to jeopardize patient care. Sexual relationships between medical supervisors and trainees are not acceptable, even if consensual. The supervisory role should be eliminated if the parties wish to pursue their relationship.
Physicians should promote and adhere to strict sexual harassment policies in medical workplaces. Physicians who participate in grievance committees should be broadly representative with respect to gender identity or sexual orientation, profession, and employment status, have the power to enforce harassment policies, and be accessible to the persons they are meant to serve.
Issued: 2016

G-600.067 References to Terms and Language in Policies Adopted to Protect Populations from Discrimination and Harassment
Our AMA will: (1) undertake a study to identify all discrimination and harassment references in AMA policies and the code of ethics, noting when the language is consistent and when it is not; (2) research language and terms used by other national organizations and the federal government in their policies on discrimination andharassment; (3) present the preliminary study results to the Minority Affairs Section, the Women's Physician Section, and the Advisory Committee on LGBTQ Issues toreach consensus on optimal language to protect vulnerable populations including racial and ethnic minorities, sexual and gender minorities, and women, fromdiscrimination and harassment; and (4) produce a report within 18 months with study results and recommendations.
Res. 009, A-19

H-140.837 Policy on Conduct at AMA Meetings and Events
It is the policy of the American Medical Association that all attendees of AMA hosted meetings, events and other activities are expected to exhibit respectful, professional, and collegial behavior during such meetings, events and activities, including but not limited to dinners, receptions and social gatherings held in conjunction with such AMA hosted meetings, events and other activities. Attendees should exercise consideration and respect in their speech and actions, including while making formal presentations to other attendees, and should be mindful of their surroundings and fellow participants.
Any type of harassment of any attendee of an AMA hosted meeting, event and other activity, including but not limited to dinners, receptions and social gatherings held in conjunction with an AMA hosted meeting, event or activity, is prohibited conduct and is not tolerated. The AMA is committed to a zero tolerance for harassing conduct at all locations where AMA business is conducted. This zero tolerance policy also applies to meetings of all AMA sections, councils, committees, task forces, and other leadership entities (each, an "AMA Entity"), as well as other AMA-sponsored events. The purpose of the policy is to protect participants in AMA-sponsored events from harm.
Definition
Harassment consists of unwelcome conduct whether verbal, physical or visual that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, marital status, citizenship or otherwise, and that: (1) has the purpose or effect of creating an intimidating, hostile or offensive environment; (2) has the purpose or effect of unreasonably interfering with an individual's participation in meetings or proceedings of the HOD or any AMA Entity; or (3) otherwise adversely affects an individual's participation in such meetings or proceedings or, in the case of AMA staff, such individual's employment opportunities or tangible job benefits.
Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and written, electronic, or graphic material that denigrates or shows hostility or aversion toward an individual or group and that is

placed on walls or elsewhere on the AMA's premises or at the site of any AMA meeting or circulated in connection with any AMA meeting.

Sexual Harassment

Sexual harassment also constitutes discrimination, and is unlawful and is absolutely prohibited. For the purposes of this policy, sexual harassment includes:

- making unwelcome sexual advances or requests for sexual favors or other verbal, physical, or visual conduct of a sexual nature; and
- creating an intimidating, hostile or offensive environment or otherwise unreasonably interfering with an individual's participation in meetings or proceedings of the HOD or any AMA Entity or, in the case of AMA staff, such individual's work performance, by instances of such conduct.

Sexual harassment may include such conduct as explicit sexual propositions, sexual innuendo, suggestive comments or gestures, descriptive comments about an individual's physical appearance, electronic stalking or lewd messages, displays of foul or obscene printed or visual material, and any unwelcome physical contact.

Retaliation against anyone who has reported harassment, submits a complaint, reports an incident witnessed, or participates in any way in the investigation of a harassment claim is forbidden. Each complaint of harassment or retaliation will be promptly and thoroughly investigated. To the fullest extent possible, the AMA will keep complaints and the terms of their resolution confidential.

Operational Guidelines

The AMA shall, through the Office of General Counsel, implement and maintain mechanisms for reporting, investigation, and enforcement of the Policy on Conduct at AMA Meetings and Events in accordance with the following:

1. Conduct Liaison and Committee on Conduct at AMA Meetings and Events (CCAM)

The Office of General Counsel will appoint a "Conduct Liaison" for all AMA House of Delegates meetings and all other AMA hosted meetings or activities (such as meetings of AMA councils, sections, the RVS Update Committee (RUC), CPT Editorial Panel, or JAMA Editorial Boards), with responsibility for receiving reports of alleged policy violations, conducting investigations, and initiating both immediate and longer-term consequences for such violations. The Conduct Liaison appointed for any meeting will have the appropriate training and experience to serve in this capacity, and may be a third party or an in-house AMA resource with assigned responsibility for this role. The Conduct Liaison will be (i) on-site at all House of Delegates meetings and other large, national AMA meetings and (ii) on call for smaller meetings andactivities. Appointments of the Conduct Liaison for each meeting shall ensure appropriate independence and neutrality, and avoid even the appearance of conflict of interest, in investigation of alleged policy violations and in decisions on consequences for policy violations.

The AMA shall establish and maintain a Committee on Conduct at AMA Meetings and Events (CCAM), to be comprised of 5-7 AMA members who are nominated by the Office of General Counsel (or through a nomination process facilitated by the Office of General Counsel) and approved by the Board of Trustees. The CCAM should include one member of the Council on Ethical and Judicial Affairs (CEJA); provided, however, that such CEJA member on the CCAM shall be recused from discussion andvote concerning referral by the CCAM of a matter to CEJA for further review and action. The remaining members may be appointed from AMA membership generally, with emphasis on maximizing the diversity of membership. Appointments to the CCAM shall ensure appropriate independence and neutrality, and avoid even the appearance of conflict of interest, in decisions on consequences for policy violations. Appointments to the CCAM should be multi-year, with staggered terms.

2. Reporting Violations of the Policy

Any persons who believe they have experienced or witnessed conduct in violation of Policy H-140.837, "Policy on Conduct at AMA Meetings and Events," during any AMA House of Delegates meeting or other activities associated with the AMA (such as meetings of AMA councils, sections, the RVS Update Committee (RUC), CPT Editorial Panel or JAMA Editorial

Boards) should promptly notify the (i) Conduct Liaison appointed for such meeting, and/or (ii) the AMA Office of General Counsel and/or (iii) the presiding officer(s) of such meeting or activity.

Alternatively, violations may be reported using an AMA reporting hotline (telephone and online) maintained by a third party on behalf of the AMA. The AMA reporting hotline will provide an option to report anonymously, in which case the name of the reporting party will be kept confidential by the vendor and not be released to the AMA. The vendor will advise the AMA of any complaint it receives so that the Conduct Liaison may investigate.

These reporting mechanisms will be publicized to ensure awareness.

3. Investigations

All reported violations of Policy H-140.837, "Policy on Conduct at AMA Meetings and Events," pursuant to Section 2 above (irrespective of the reporting mechanism used) will be investigated by the Conduct Liaison. Each reported violation will be promptly and thoroughly investigated. Whenever possible, the Conduct Liaison should conduct incident investigations on-site during the event. This allows for immediate action at the event to protect the safety of event participants. When this is not possible, the Conduct Liaison may continue to investigate incidents following the event to provide recommendations for action to the CCAM. Investigations should consist of structured interviews with the person reporting the incident (the reporter), the person targeted (if they are not the reporter), any witnesses that the reporter or target identify, and the alleged violator.

Based on this investigation, the Conduct Liaison will determine whether a violation of the Policy on Conduct at AMA Meetings and Events has occurred.

All reported violations of the Policy on Conduct at AMA Meetings and Events, and the outcomes of investigations by the Conduct Liaison, will also be promptly transmitted to the AMA's Office of General Counsel (i.e. irrespective of whether the Conduct Liaison determines that a violation has occurred).

4. Disciplinary Action

If the Conduct Liaison determines that a violation of the Policy on Conduct at AMA Meetings and Events has occurred, the Conduct Liaison may take immediate action to protect the safety of event participants, which may include having the violator removed from the AMA meeting, event or activity, without warning or refund.

Additionally, if the Conduct Liaison determines that a violation of the Policy on Conduct at AMA Meetings and Events has occurred, the Conduct Liaison shall report any such violation to the CCAM, together with recommendations as to whether additional commensurate disciplinary and/or corrective actions (beyond those taken on-site at the meeting, event or activity, if any) are appropriate.

The CCAM will review all incident reports, perform further investigation (if needed) and recommend to the Office of General Counsel any additional commensurate disciplinary and/or corrective action, which may include but is not limited to the following:

- Prohibiting the violator from attending future AMA events or activities;
- Removing the violator from leadership or other roles in AMA activities;
- Prohibiting the violator from assuming a leadership or other role in future AMA activities;
- Notifying the violator's employer and/or sponsoring organization of the actions taken by AMA;
- Referral to the Council on Ethical and Judicial Affairs (CEJA) for further review and action;
- Referral to law enforcement.

The CCAM may, but is not required to, confer with the presiding officer(s) of applicable events activities in making its recommendations as to disciplinary and/or corrective actions.

Consequence for policy violations will be commensurate with the nature of the violation(s).

5. Confidentiality

All proceedings of the CCAM should be kept as confidential as practicable. Reports, investigations, and disciplinary actions under Policy on Conduct at AMA Meetingsand Events will be kept confidential to the fullest extent possible, consistent with usual business practices.

6. Assent to Policy
As a condition of attending and participating in any meeting of the House of Delegates, or any council, section, or other AMA entities, such as the RVS Update Committee (RUC), CPT Editorial Panel and JAMA Editorial Boards, or other AMA hosted meeting or activity, each attendee will be required to acknowledge and accept (i) AMA policies concerning conduct at AMA HOD meetings, including the Policy on Conduct at AMA Meetings and Events and (ii) applicable adjudication and disciplinary processes for violations of such policies (including those implemented pursuant to these Operational Guidelines), and all attendees are expected to conduct themselves in accordance with these policies.
Additionally, individuals elected or appointed to a leadership role in the AMA or its affiliates will be required to acknowledge and accept the Policy on Conduct at AMA Meetings and Events and these Operational Guidelines.
[Editor's note: Violations of this Policy on Conduct at AMA Meetings and Events may be reported at 800.398.1496 or online at https://www.lighthouse-services.com/ama. Both are available 24 hours a day, 7 days a week.
Please note that situations unrelated to this Policy on Conduct at AMA Meetings and Events should not be reported here. In particular, patient concerns about a physician should be reported to the state medical board or other appropriate authority.]
BOT Rep. 23, A-17; Appended: BOT Rep. 20, A-18; Modified: BOT Rep. 10, A-19l Modified: CCB Rep. 2, I-20

H-200.951, "Strategies for Enhancing Diversity in the Physician Workforce"
Our AMA (1) supports increased diversity across all specialties in the physician workforce in the categories of race, ethnicity, gender, sexual orientation/gender identity, socioeconomic origin and persons with disabilities; (2) commends the Institute of Medicine for its report, "In the Nation's Compelling Interest: Ensuring Diversity in the Health Care Workforce," and supports the concept that a racially and ethnically diverse educational experience results in better educational outcomes; and (3) encourages medical schools, health care institutions, managed care and other appropriate groups to develop policies articulating the value and importance of diversity as a goal that benefits all participants, and strategies to accomplish that goal.
CME Rep. 1, I-06; Reaffirmed: CME Rep. 7, A-08; Reaffirmed: CCB/CLRPD Rep. 4, A-13; Modified: CME Rep. 01, A-16; Reaffirmation: A-16; Modified: Res. 009, A-21; Modified: CME Rep. 5, A-21