

Policy and Procedures on Discrimination, Harassment, and Title IX Sexual Harassment



Contents

Davis & Elkins College Policy and Procedures on Discrimination and Harassment.....	4
I. PURPOSE AND SCOPE.....	4
II. JURISDICTION, COORDINATION, AND ENFORCEMENT	4
Title IX Jurisdiction	5
General Jurisdiction.....	5
III. PROHIBITED CONDUCT	6
IV. ADDITIONAL VIOLATIONS	10
V. ADDITIONAL DEFINITIONS	10
VI. REPORTING	13
Employee Reporting.....	13
Reports Involving Minors	14
Federal Reporting	14
Federal Statistical Reporting Obligations	14
Confidential reporting	15
Anonymous Reporting	16
Off-campus Reporting	16
Reporting to Law Enforcement.....	17
Timeframe for reporting	18
VII. PARTICIPANT PRIVACY, CONFIDENTIALITY, ACCOMODATIONS	18
VIII. RECORDINGS AND COMMUNICATION	19
IX. BIAS AND CONFLICT OF INTEREST	19
X. AMNESTY	19
XI. ADVISORS	20
XII. TIMELINES	21
XIII. INITIAL EVALUATION OF REPORTS OF PROHIBITED CONDUCT	22
XIV. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE	23
XV. SUPPORTIVE MEASURES	23
XVI. INFORMAL RESOLUTIONS	25
XVII. FORMAL RESOLUTION OF REPORTS OF TITLE IX SEXUAL HARASSMENT	26
Formal Complaints of Title IX Sexual Harassment	26
Dismissal	27

Mandatory Dismissal of Formal Complaints of Title IX Sexual Harassment	27
Discretionary Dismissals of Formal Complaints of Title IX Sexual Harassment	28
Consolidation of Formal Complaints of Title IX Sexual Harassment	28
Counterclaims.....	28
Notice of Allegations	28
Investigation of Title IX Sexual Harassment Allegations	29
Notice of a Title IX Sexual Harassment Investigation	29
Interviews and Gathering Evidence in a Title IX Sexual Harassment Investigation	30
Draft Investigation Report and Opportunity to Inspect and Review Evidence of Title IX Sexual Harassment.....	31
Final Investigation Report.....	32
Live Hearings on Title IX Sexual Harassment Allegations	32
Hearing Panel	33
Notice of Title IX Sexual Harassment Hearing.....	33
Pre-hearing Procedures and Ground Rules for Title IX Sexual Harassment Hearing.....	34
Participation of Advisors in a Title IX Sexual Harassment Hearing	34
Participation of Parties and Witnesses in a Title IX Sexual Harassment Hearing	34
Recording the Title IX Sexual Harassment Hearing.....	34
Hearing Location and Use of Technology in a Title IX Sexual Harassment Hearing.....	35
Title IX Sexual Harassment Hearing Structure	35
Determination Following a Title IX Sexual Harassment Hearing.....	36
Written Notice Regarding an Outcome of a Title IX Sexual Harassment Hearing	36
XVIII. FORMAL RESOLUTION OF REPORTS OF PROHIBITED CONDUCT THAT IS NOT TITLE IX SEXUAL HARASSMENT	36
Complaints Of Prohibited Conduct That Is Not Title IX Sexual Harassment	36
Dismissal of Complaints Of Prohibited Conduct That Is Not Title IX Sexual Harassment.....	37
Consolidation of Complaints of Prohibited Conduct That Is Not Title IX Sexual Harassment.....	38
Counterclaims of Prohibited Conduct That Is Not Title IX Sexual Harassment.....	38
Notice of Allegations of Prohibited Conduct That Is Not Title IX Sexual Harassment	38
Investigation of Complaints Of Prohibited Conduct That Is Not Title IX Sexual Harassment	39
Draft Investigation Report and Opportunity to Inspect and Review Evidence and Pose Additional Questions.....	40
Administrative Hearing	41

Written Notice Regarding an Outcome	41
XIX. REMEDIES AND SANCTIONS FOR POLICY VIOLATIONS	42
XX. APPEALS	43
XXI. WITHDRAWAL OR RESIGNATION PRIOR TO RESOLUTION	44
XXII. RECORD RETENTION	45
XXIII. TRAINING AND PREVENTION PROGRAMS.....	45
Appendix A	47
Appendix B.....	48
Appendix C.....	49
Appendix D	54

Davis & Elkins College Policy and Procedures on Discrimination and Harassment

I. PURPOSE AND SCOPE

Davis & Elkins College is committed to fostering a diverse and inclusive culture by creating and maintaining living, learning, and working environments that are free from discrimination and harassment which is consistent with the stated mission of challenging its students to a life-long commitment to develop their intellectual, ethical, spiritual, and leadership potential and to set and uphold standards of excellence.

Davis & Elkins College does not discriminate on the basis of race, sex, color, national or ethnic origin, creed, ancestry, marital/family status, veteran status, sex characteristics, pregnancy, religion, age, disability or blindness, or any other characteristic protected by local, state or federal law, to include Title VI, Title VII, Title IX, Section 504, and the Age Discrimination Act, in the administration of its admission policies, scholarship and loan programs, educational programs, employment, athletic programs, co-curricular activities, or other College administered programs.

This Policy sets forth the response and resolutions process for reports of discrimination, harassment, sexual harassment, sexual assault, dating and domestic violence, stalking, and retaliation. Davis & Elkins College has developed this Policy and Procedures to ensure a prompt, fair, and impartial resolution of reports of Prohibited Conduct. The Policy is intended to meet Davis & Elkins College's obligations under Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 ("Title IX"); the American with Disabilities Act (ADA); Section 504 of the Rehabilitation Act of 1973; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2013 ("VAWA"), with respect to its application to sex-based misconduct; and other applicable law and regulations.

II. JURISDICTION, COORDINATION, AND ENFORCEMENT

Jurisdiction

This policy applies to Prohibited Conduct occurring within Davis & Elkins College's Programs and Activities or takes place on property owned or controlled by Davis & Elkins College to include College sponsored events and buildings owned or controlled by recognized student organizations. This policy applies to all Davis & Elkins College students, faculty, staff, volunteers, visitors, contractors, consultants, vendors providing services to Davis & Elkins College, and individuals who are participating in a Davis & Elkins College Education Program or Activity. The procedures may vary, depending on the status of the individual, the location of the incident, and the specific type of Prohibited Conduct. Volunteers, visitors, contractors, consultants and vendors visiting the campus or providing services to Davis & Elkins College may not be entitled to the full rights or processes set forth in this policy.

There are two types of jurisdiction covered by this policy: Title IX Jurisdiction and General Jurisdiction.

Title IX Jurisdiction

Formal Complaints of “Sexual Harassment (Quid Pro Quo)”, “Sexual Harassment (Hostile Environment)”, “Sexual Assault”, “Domestic Misconduct”, and “Stalking” that occur in a Davis & Elkins College Education Program or Activity on the basis of sex and within the United States brought by a “Complainant” against a “Respondent” will be covered by Title IX jurisdiction and subject to the grievance procedures discussed below in Section XVI. Those instances are referred to as “Title IX Sexual Harassment.” Concerns of Sexual Assault, Domestic Misconduct, and Stalking that occur outside of Title IX jurisdiction will be handled under General Jurisdiction consistent with Davis & Elkins College’s obligations under the VAWA amendments to the Clery Act.

General Jurisdiction

For conduct that does not meet the Title IX jurisdiction, Davis & Elkins College retains the discretion to determine that Prohibited Conduct, as defined in this policy, that occurs outside of the United States or outside of a College Education Program or Activity, including online conduct that is not part of a College Education Program or Activity, may fall within the scope of this Policy. This policy may also apply to the effects of off-campus Prohibited Conduct that effectively deprives a person of access to Davis & Elkins College’s education Programs or Activities. Davis & Elkins College may also extend jurisdiction when the Title IX Coordinator determines that the conduct affects a substantial Davis & Elkins College interests. A substantial Davis & Elkins College interest may include:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, stated, or federal law.
- Any situation in which it is determined that the Respondent poses an immediate threat to the health or safety of any student, employee, or guest at Davis & Elkins College.
- Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- Any situation that substantially interferes with the educational interests or mission of Davis & Elkins College.

Alleged incidents of misconduct not covered by this Policy may be governed by other College policies, including but not limited to:

- **Davis & Elkins College Policy Manual Volume II: Community Policies**
- **Davis & Elkins College Policy Manual Volume III: Personnel Policies**
- **Davis & Elkins College Policy Manual Volume IV: Faculty Handbook**
- **Davis & Elkins College Policy Manual Volume V: Academic Policies**
- **Davis & Elkins College Policy Manual Volume VI: Student Life Policies**

Even if after a Formal Resolution Process, alleged misconduct may not be found to violate this Policy, the alleged misconduct may still be prohibited by the Davis & Elkins College under a different Rule, policy, or standard of behavior. Accordingly, Davis & Elkins College reserves the right to take additional action.

Coordination

The College's Title IX Coordinator is responsible for administering the policy and related procedures. Any inquiries regarding this policy and related procedures should be referred to Davis & Elkins College's Title IX Coordinator, Ms. Amy Kittle, who may be contacted as follows.

Davis & Elkins College Title IX Coordinator

Amy Kittle

Liberal Arts Hall, Room 209

304-621-1316

kittleamy@dewv.edu

The Title IX Coordinator is also responsible for developing appropriate training, education, and communication regarding this Policy and Procedure, including what constitutes Prohibited Conduct, the training required by the 2020 Title IX regulations, the Formal Complaint and Investigation process, and assisting with forms of preventative education. These efforts may be coordinated with Deputy Coordinators and with other units and groups on and off campus.

Enforcement

In addition to the authority of the Title IX Coordinator, those in supervisory positions at Davis & Elkins College have a special responsibility to discourage Prohibited Conduct, implement and enforce this Policy, and, as required by Section VI, are Responsible Employees mandated to also report such behavior. In addition to discouraging Prohibited Conduct, Responsible Employees in a supervisory position are required to ensure that employees they supervise complete Title IX training upon hire and once annually.

III. PROHIBITED CONDUCT

Davis & Elkins College prohibits Discrimination; Bias Based Hostile Environment Harassment, Sex Based Harassment, which includes Sexual Assault and Sexual Exploitation; Domestic Misconduct, which includes Dating and Domestic Violence; Stalking; and, Retaliation as defined below (collectively referred to as "Prohibited Conduct") by or against any student, employee, alum, independent contractors, trustees, or volunteers occurring or attempted in the Jurisdiction as defined in this Policy.

Discrimination: Discrimination is conduct that is based on an individual's race, sex, color, national origin ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, or sex characteristics and excludes an individual from participation in, denies the individual the benefits of, or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a Davis & Elkins College program or activity. Policy and procedures that intentionally or unintentionally create a disparate impact on a protected group or person are also considered a form of discrimination if they result in an exclusion from a benefit or access to an education program or activity. This includes failure and refusal to provide reasonable accommodations, consistent with state and federal law, to persons with disabilities or who are pregnant.

Biased Based Harassment: Bias Based Harassment is a form of Discrimination that creates a Hostile Environment, as defined by this Policy, and is based upon an individual's race, color, national origin, ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression. Harassment, which is a form of Discrimination, may take various forms, including, but not limited to, name-calling, graphic or written statements (including the use of social media, text messages, email, or other similar forms), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not necessarily have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Sexual Harassment: is a form of sex discrimination that creates a Hostile Environment (as defined in this Policy) based on sex, which includes, but is not limited to unwelcome sexual advances, requests for sexual favors, other verbal or physical conduct of a sexual nature, harassment based on stereotypical notions of what is female/feminine and male/masculine or failure to conform to gender stereotypes. Sexual Harassment may occur between people of the same sex or people of different sexes. All conduct must meet the applicable definitions and create a Hostile Environment before rising to the level of Prohibited Conduct under this Policy.

Title IX Sexual Harassment: Title IX Sexual Harassment means Quid Pro Quo Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, and severe, pervasive, and objectively offensive Sexual Harassment that it effectively denies as student or employee unequal access to an Educational Program or Activity that occurs in the Title IX Jurisdiction. Note the standards required for Title IX Sexual Harassment are more than the standards for Sexual Harassment and Hostile Environment Harassment.

Quid Pro Quo Sexual Harassment: occurs when an authorized agent of Davis & Elkins College explicitly or impliedly conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.

Hostile Environment: A hostile environment is created when a person is subjected to Bias Based or Sexual Harassment that is so severe, pervasive, *or* objectively offensive as determined by a reasonable person that it limits or denies a person's ability to participate in a Davis & Elkins College program or activity.

A Hostile Environment can be created by anyone involved in a College program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a Hostile Environment.

In determining whether a Hostile Environment exists, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as severe, pervasive, or objectively offensive. The following factors will be considered: the degree to which the conduct affected one or more students' education or individual's employment; the nature, scope, frequency, duration, and location of incident or incidents; and the identity, number, and relationships of persons involved.

Sexual Assault: any sexual act directed against another person, without the consent of the victim, including instances where the victim lacks the ability to Consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. Sexual Assault includes the following:

Non-Consensual Penetration: Actual or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the affirmative consent of the victim. This includes penetration forcibly and/or against the person's will in instances where the victim is incapable of giving affirmative consent because of their youth or because of their temporary or permanent mental or physical incapacity.

Fondling: (criminal sexual contact) the intentional touching of clothed or unclothed body parts of another person for the purpose of sexual degradation, sexual gratification, or sexual humiliation, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity or intoxication;

Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or

Statutory Rape: sexual intercourse with a person who is under the statutory age of consent.

Sexual Exploitation: is an act or a failure to act that involved a member of the Davis & Elkins College community taking non-consensual, unjust, humiliating, or abusive sexual advantage of another, either for the individual's own advantage or to benefit anyone other than the person being exploited. Sexual advantage may include, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third Parties to observe private sexual acts; disclosing, causing to be disclosed or threatening to disclose, with the intent to harass, intimidate, threaten, humiliate, embarrass, or coerce, an image of another which shows the intimate parts of the depicted person or shows the depicted person engaged in sexually explicit conduct which was captured under circumstances where the person depicted had a reasonable expectation that the image would not be publicly disclosed; engaging in voyeurism, and intentionally exposing another to a sexually transmitted infection.

Domestic Violence: any felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the State of West Virginia and includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who—

- is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; shares a child in common with the victim; or

- commits acts against a minor or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

Dating violence: an act of violence or threat of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship is determined based on a consideration of the (1) length of the relationship, (2) type of relationship, and (3) frequency of interaction between the persons involved in the relationship.

Stalking: Stalking means 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.

- Course of Conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third Parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Substantial Emotional Distress for purposes of this definition, means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Retaliation: an adverse action or other form of negative treatment, including but not limited to, intimidation, threats, coercion, discrimination or harassment, carried out in response to a good-faith reporting of or opposition to Prohibited Conduct; an individual's or group's participation, including testifying or assisting in the Davis & Elkins College resolution of Reports and Complaints of Prohibited Conduct, an individual's or group's refusal to participate in the Davis & Elkins College Policies and Procedures on Discrimination and Harassment; or other form of good faith opposition to what an individual reasonably believes to be Prohibited Conduct under this Policy.

Individuals are also protected from retaliation for making good faith requests for accommodations on the basis of religion, pregnancy, or disability.

To be a Policy violation, the challenged actions or treatment must be sufficiently serious to discourage a reasonable person from reporting, participating, or opposing participation in activities described in this Policy.

Individuals who feel they are experiencing retaliation should report to the Title IX Coordinator immediately. This may be done online, in person, or by email to the Title IX Coordinator. Reports of Retaliation may be resolved under this policy in conjunction with the connected protected activity or may be resolved under the Student of Code of Conduct or through Human Resources.

Charging an individual with a Policy violation for making a materially false statement in bad faith in the course of the resolution of Prohibited Conduct Formal Complaint does not constitute Retaliation. The exercise of rights protected under the First Amendment also does not constitute Retaliation.

IV. ADDITIONAL VIOLATIONS

The following actions are prohibited under this policy: unauthorized disclosures, false statements, and failure to report. Reported instances of these additional violations may be resolved through an investigation occurring under the purview of this policy or resolved under either the Student Code of Conduct or through the Office of Human Resources at the discretion of the Title IX Coordinator.

Unauthorized Disclosure: Distributing or otherwise making public materials created or produced during an Investigation or Resolution Process except as required by law or as expressly permitted by Davis & Elkins College, or publicly disclosing a Party's identifiable information without consent. Unauthorized Disclosures may also be considered Retaliation.

False Statements: Making a materially false statement in bad faith in the course of the resolution of a Report or a Formal Complaint under this Policy is prohibited and does not constitute Retaliation as defined in this Policy, provided, however, that a determination regarding responsibility (or lack thereof), alone, is not sufficient to conclude that any Party made a materially false statement in bad faith. Materially false statements or intentional misrepresentation will be resolved through the Student Code of Conduct process or through Human Resources.

Failure to Report: Unless otherwise noted by this policy, all employees of Davis & Elkins College are required to report instances of Prohibited Conduct that are disclosed or known to the employee. Failure to Report will be made known to the Director of Human Resources and the Cabinet member responsible for the functional area in which the employee works.

V. ADDITIONAL DEFINITIONS

Advisor: An individual that a Complainant or Respondent chooses to accompany them to meetings and/hearings that occur as part of the Resolution Process for Reports of Prohibited Conduct. Advisors can be a friend, parent, family member, or attorney, or any other person who is not a Confidential Employee.

Assigned Title IX Coordinator: The Title IX Coordinator may, at their discretion or in the case of a bias or a conflict of interest, designate one of the Deputy Title IX Coordinators as the Assigned Title IX Coordinator for resolution of a given complaint. This person will be referred to as the Assigned Title IX Coordinator.

Complainant: An individual who was reported to have experienced Prohibited Conduct as defined in this Policy.

Consent: An agreement, approval, or permission as to some act or purpose that is given knowingly, willingly, and voluntarily by a competent person. Silence, by itself, cannot constitute Consent. Consent to one sexual act does not constitute or imply consent to a different act. Previous consent cannot imply consent to future acts, and Consent is required regardless of any current or previous relationship status or sexual history together. Consent can be withdrawn at any time.

A person is not competent and lacks the ability to consent when coerced into sexual activity, such as, for example, through the use of physical force, threat of physical or emotion harm, undue pressure, isolation, or confinement. Individuals who are incapacitated cannot give consent.

Davis & Elkins College Program or Activity: All operations of Davis & Elkins College, including those locations, events, and circumstances where Davis & Elkins College exercises substantial control to include any Davis & Elkins College sponsored events and any building owned or controlled by a student organization recognized by Davis & Elkins College.

Day(s): Refer to those days ordinarily recognized by the College as work or business days.

Employee(s): A person employed by Davis & Elkins College either full or part time. For the purposes of this Policy, an Employee may include Student Employees and Graduate Assistants when Prohibited Conduct is alleged to have occurred in the scope of their employment. For the purposes of this Policy, Student Employees are generally not required to report known or disclosed instances of Prohibited Conduct unless they serve in a supervisory capacity such as resident assistants.

Formal Complaint: A written statement made by a Complainant or the Title IX Coordinator that alleges Title IX Sexual Harassment or other Prohibited Conduct and requests an investigation or initiation of the resolution of the Formal Complaint as described in this Policy.

Hearing: A term to describe a meeting or a proceeding that is held to consider evidence that will be used to determine whether or not this Policy was violated. This policy references two types of hearings: Live Hearings and administrative hearings as described in sections XVII and XVIII.

Incapacitation: A state beyond drunkenness or intoxication in which someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent. Indicators that an individual may be incapacitated include, but are not limited to, inability to communicate coherently, inability to dress or undress without assistance, extreme clumsiness, slurred speech, vomiting, emotional volatility, difficulty in walking without assistance, loss of coordination, or inability to perform other physical or cognitive tasks without assistance. States of incapacitation may also include sleep, unconsciousness, or any other state where the individual is unaware that sexual activity may be occurring.

Officials with Authority is an official of Davis & Elkins College with the authority to institute corrective action on behalf of the Davis & Elkins College and notice to whom causes Davis & Elkins College to respond to Title IX Sexual Harassment. Officials with Authority include the following: Title IX Coordinator, Title IX Deputy Coordinators, President, Vice Presidents, Cabinet Members, and Dean of Students. A list of Officials with Authority at Davis & Elkins College is located in Appendix D of this Policy.

Party(ies): Complainant(s) and Respondent(s), collectively.

Preponderance of the Evidence: A standard of proof used to determine whether or not the evidence provided indicates that is more likely than not that the alleged Prohibited Conduct occurred in order to find a Respondent responsible for violating a policy.

Relevant Evidence: Evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, or retaliation occurred, or in determining the credibility of the Parties or witnesses

Respondent: An individual enrolled or employed, group, office program, or department who has been reported to have engaged in conduct that could constitute Prohibited Conduct as defined in this Policy and is a member of Davis & Elkins College. In some cases, at the Title IX Coordinator's discretion, Respondents may also be individuals providing services as a Volunteer, Vendor, Official Guest or Contractor for Davis & Elkins College. The procedural rights under this Policy will vary depending on one's status.

Reasonable Person: means a reasonable person under similar circumstances and with similar identities.

Report: Information received by Title IX Coordinator provided by a Responsible Employee, Third Party Reporter, or a Complainant that alleges Prohibited Conduct has occurred within the Davis & Elkins College's jurisdiction as defined in this Policy.

Responsible Employees: are employees in a leadership or supervisory position or who have significant responsibility for the welfare of students or employees. Responsible Employees include faculty, staff, coaches, directors, resident assistants, and advisors.

Student: Any individual who is not an employee of Davis & Elkins College and who is either: (1) admitted as a student to the College and has been moved to deposited status (2) an enrolled student (includes students auditing courses); (3) a Davis & Elkins College student between academic terms or on a Leave of Absence; or, (4) a graduate awaiting a degree (note: students are classified as such until they receive their degree; students who petition the College to complete their degree via distance or some other arrangement forfeit their student status if they do not complete their degree during the period of time specified in their agreement with the College). A student ceases to be a student when they graduate; in the event that they are expelled for academic or conduct reasons; or in the event that the student formally withdraws from Davis & Elkins College.

Third Party Reporter: An individual who is not a Complainant or a Respondent who reported instances of conduct that could constitute Prohibited Conduct as defined in this Policy.

Title IX Administrator: A title that collectively refers to the roles that are needed to implement this Policy and Procedures. It includes Title IX Coordinator, Deputy Coordinators, Investigators, Decision Makers, Appeal Officers, and Advisors appointed by Davis & Elkins College. This may include an internal employee, or an external professional retained for this purpose.

Davis & Elkins College Program or Activity: All operations of Davis & Elkins College, including those locations, events, and circumstances where Davis & Elkins College exercises substantial control and any building owned or controlled by a student organization recognized by Davis & Elkins College.

VI. REPORTING

Anyone who has witnessed or is aware of any of Prohibited Conduct occurring in Davis & Elkins College's Program or Activities is strongly encouraged to report any concern or Prohibited Conduct to the Coordinator. Reports may be made to the Title IX Coordinator in person, by mail, electronic mail, by phone, or online at: <https://dewv.guardianconduct.com/conduct-incidents>.

Employee Reporting

Unless otherwise noted in this Policy all Employees must report incidents of Prohibited Conduct to the Title IX Coordinator.

Amy Kittle

Title IX Coordinator
Liberal Arts Hall, Room 209
304-621-1316
detitleix@dewv.edu
<https://dewv.guardianconduct.com/>

Kate Garlick

Deputy Title IX Coordinator
Vice President for Student Life
Liberal Arts Hall, Room 102
(304) 637-1241 | garlickk@dewv.edu

Mike Mattison

Deputy Title IX Coordinator
Provost, Vice President for Academic Affairs
Liberal Arts Hall, Room 106
(304) 637-1292 | mattisonm@dewv.edu

Nicole Rose

Deputy Title IX Coordinator
Senior Woman Administrator
Hermanson Center
(304) 637-1202 | rosen@dewv.edu

Taran Welford

Deputy Title IX Coordinator
Director of Human Resources
Liberal Arts Hall, Room 205
(304) 637-1344 | welfordt@dewv.edu

Reports Involving Minors

Any report involving the abuse of a minor will be shared with law enforcement agencies and child protective services in accordance with West Virginia state law and Davis & Elkins College Policy on the Protection of Minors.

Federal Reporting

In addition to Davis & Elkins College the internal remedies, members of the campus community should also be aware that the Office of Civil Rights investigates and prosecutes complaints of prohibited discrimination. This agency may be contacted as follows:

Office for Civil Rights (OCR), Headquarters
400 Maryland Avenue, SW Washington, DC 20202-1100
Customer Service Hotline: 800-421-3481 TDD: 877-521-2172 Facsimile: (202) 453-6012
Email: OCR@ed.gov Web: www.ed.gov/ocr

Office for Civil Rights, Philadelphia Office U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: (215) 656-8541 Facsimile: (215) 656-8605
Email: OCR.Philadelphia@ed.gov

Complaints with the Office for Civil Rights must be filed within one hundred eighty (180) days of the last act that the reported victim believes was discriminatory. There is no time limit for making a report to the Davis & Elkins College.

Complaints involving employee on employee misconduct may be reported to the Equal Employment Opportunity Commission. The EEOC has jurisdiction over some Title IX employment claims.

U.S. Equal Employment Opportunity Commission Headquarters
131 M Street, NE Washington, DC 20527
Phone: 800-669-4000 TTY 800-669-6820

U.S. Equal Employment Opportunity Commission, Pittsburg Area Office
William S. Moorhead Federal Building
1000 Liberty Ave, Suite 1112
Pittsburg, PA 15222
Phone: 800-669-4000 TTY: 800-669-6820

Federal Statistical Reporting Obligations

The Clery Act requires that certain institutional officials have a duty to report the following for federal statistical reporting purposes and inclusion in the College's daily crime logs and Annual Security and Fire Safety Report¹.

¹ <https://www.dewv.edu/student-life/campus-services/public-safety/>

- All “primary crimes” which includes criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidate, or destruction/damage/vandalism to property.
- Violence Against Women Act crimes which include sexual assault, domestic violence, dating violence, and stalking
- Arrests and referrals for disciplinary action for weapon law violations, liquor law violations, and drug violations
- Hazing

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on or off campus or surrounding area) will be included in the daily crime log and Annual Security and Fire Safety Report.

Confidential reporting

Some Employees or offices are available to provide individuals with assistance, support, and additional information without reporting to the Title IX Coordinator. Although not required to report to the Title IX Coordinator, all confidential employees will provide information about the Title IX Coordinator and how to make a report of Prohibited Conduct to Complainants. Confidential Employees are generally prohibited from disclosing confidential information unless:

- they given permission by the person who disclosed the information;
- there is an imminent threat of harm to self or others;
- the conduct involves suspected abuse of a minor under the age of 18; or,
- as otherwise required or permitted by law or court order.

The following Davis & Elkins College resources can provide counseling, information, and support in a confidential setting:

College Chaplain: Tanner Capps

Liberal Arts Hall, Room 210: (304) 637-1222

Email: cappstf@dewv.edu

Assistant Professor, Ronda Engstrom

Campus Location: Albert Hall (304) 637-1365

Email: engstromr@dewv.edu

Community Care of West Virginia

School Based Health Center

Campus Location: Robert C. Byrd Center

(304) 473-5626

The providers at Community Care of West Virginia can provide treatment for injuries and for potential exposure to sexually transmitted diseases. They also provide emergency contraception and other health services. They can assist in preserving evidence or documenting any injuries, including by helping find a Sexual Assault Nurse Examiner, who is specifically trained to collect evidence. Taking these steps promptly after an incident of sexual assault can be very helpful in later criminal proceedings and/or in seeking a protective order. Professionals at Community Care West Virginia are obligated to maintain confidentiality and not report an individual's identity to the College. Under West Virginia law, a medical provider may be required to notify law enforcement of a reported sexual assault involving minors and/or weapons. The individual, however, may decline to speak with a law enforcement officer or participate in a criminal prosecution

Some Confidential Resources may be required to report non-identifying information to the Director of Public Safety for Clery Act crime reporting purposes and may be required to release certain information under legal action or a court order. Please clarify the scope of confidentiality with the Confidential Employee before disclosing information to them.

Anonymous Reporting

Reports can also be made anonymously by telephone, in writing, or electronically via the Incident Report Form (<https://dewv.guardianconduct.com/conduct-incidents>). Depending on the level of information available about the incident or the individuals involved, Davis & Elkins College's ability to respond to an anonymous report may be limited. Davis & Elkins College will, however, take whatever steps it deems appropriate and in the best interests of the overall Davis & Elkins College community, consistent with the information available.

The Campus Conduct Hotline is a service utilized by Davis & Elkins College that allows individuals to anonymously report concerns that may impact the campus community to a trained specialist. Callers will be given a case number, and it is optional to identify yourself or to provide contact information. Concerns will then be submitted to the campus administration for investigation. Using the provided case number, callers can check the status of the investigation and learn of any actions that may have been taken.

Campus Conduct Hotline

www.campusconduct.com

Phone: 866-943-5787

Off-campus Reporting

Off campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the College unless requested and a Complainant signs a consent or waiver form. Confidential off campus resources include:

Centers Against Violence

(www.centersagainstvviolence.org)

P.O. Box 2062 Elkins, WV 26241

Phone: (304) 636-8433 Fax: (304) 636-5564

Hotline: (800)-339-1185
Texting Line: (304) 840-SAFE (7233)

RAINN: Rape, Abuse & Incest National Network
(<https://www.rainn.org/resources>)
Hotline: (800) 656-4673

National Domestic Violence Hotline
(<https://www.thehotline.org/>)
Hotline: (800) 799-SAFE (7233)

Employee Assistance Program (For Full-time Employees)
(www.healthadvocate.com/standard3)
Toll-Free: 1-888-293-6948 For TTY Users: Dial 711

Davis Medical Center
812 Gorman Avenue Elkins, WV 26241
(304) 636-8080

Davis & Elkins College encourages individuals to seek assistance from a medical provider or crisis response service immediately after an incident that may require medical attention. This provides the opportunity to address physical well-being or health concerns, preserve any available evidence, and begin a timely investigative and remedial response. Call 911, visit the Emergency Department, or contact your regular provider for off campus medical care.

While these off-campus providers and advocates may agree not to share confidential information with Davis & Elkins College, they may have reporting or other obligations under state law.

Reporting to Law Enforcement

Emergency medical assistance and law enforcement assistance are available 24 hours a day seven day a week. Members of the College community who believe their safety or the safety of others is threatened should call the Public Safety Office at 304-704-911 or call 911 to reach local law enforcement. Any member of the Davis & Elkins College's community who has experienced Prohibited Conduct or behaviors that are potentially criminal in nature has the option to report the conduct to law enforcement agency that has jurisdiction over the location where the incident occurred. If requested, Davis & Elkins College will provide assistance in reporting to the law enforcement agency with appropriate jurisdiction.

Elkins City Police: 304-636-0678

Randolph County Sherrieff's Office: 304-636-2100

West Virginia State Police: 304-637-0200

Davis & Elkins College and the police/legal system work independently from one another. Individuals can file reports with the College, with law enforcement, with both systems, or with neither. Because the

standards for finding a violation of criminal law are different from the standards in this Policy, neither the results of a criminal investigation nor the decision of law enforcement to investigate, or decline to investigate a matter, is determinative of whether a violation of this Policy has occurred.

Supportive Measures are available even if a student, employee or third-party elects not to pursue criminal charges or file a report or Formal Complaint with Davis & Elkins College. Because Prohibited Conduct, in some instances, constitute both a violation of College policy and a criminal activity, and because the College Resolution Process is not a substitute for instituting legal action, Davis & Elkins College will provide guidance and, if requested, assistance regarding how to report an incident to law enforcement authorities who have jurisdiction over the location where the incident occurred. Reporting to law enforcement or other local authorities may facilitate obtaining personal safety orders or other similar lawful orders issued by a criminal or civil court. See Section XV of this Policy for more information about Supportive Measures.

Timeframe for reporting

Davis & Elkins College does not limit the timeframe for filing a Formal Complaint of Prohibited Conduct. Reports can be submitted at any time following an incident. In order to maintain and support a community that is respectful and free from Prohibited Conduct and to maximize the College's ability to respond promptly and effectively, the College urges individuals to come forward with reports of Prohibited Conduct as soon as possible. The longer the period of time from the incident until the time when it is reported may make it more difficult for Davis & Elkins College to take action as memory fades, people graduate, leave the campus community, or physical evidence, such as text messages or video camera footage, may no longer be available.

VII. PARTICIPANT PRIVACY, CONFIDENTIALITY, ACCOMODATIONS

Davis & Elkins College recognizes that privacy is important. Davis & Elkins College will attempt to protect Parties' privacy to the extent reasonably possible. The Title IX Coordinator, Investigators, Advisors, Facilitators of Informal Resolution, Decision Makers, and any others participating in the process on behalf of Davis & Elkins College shall keep the information obtained through the process private and, to the extent possible, confidential. This means that information will be disclosed on a need-to-know basis. All other participants in the process (including the Complainant, Respondent, Advisors, and witnesses) are encouraged to respect the privacy of the Parties and the confidentiality of the proceedings and circumstances giving rise to the dispute and to discuss the matter only with those persons who have a genuine need to know.

While Davis & Elkins College is committed to respecting the confidentiality of all Parties involved in the process, it cannot guarantee complete confidentiality. Examples of situations in which absolute confidentiality cannot be maintained include, but are not limited to, the following:

- when Davis & Elkins College is required by law to disclose information (such as in response to a subpoena or court order);
- when disclosure of information is determined by the Title IX Coordinator to be necessary for conducting an effective resolution or investigation of the allegations;
- when confidentiality concerns are outweighed by Davis & Elkins College interest in protecting the safety or rights of others; and/or,
- when a Formal Complaint is filed.

Davis & Elkins College is committed to providing reasonable accommodations and support to qualified individuals. Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with the Director of the Naylor Center and/or the Director of Human Resources and in consultation with the person requesting the accommodation, determine what accommodations are reasonable and appropriate for full participation under procedures in this Policy.

VIII. RECORDINGS AND COMMUNICATION

No unauthorized audio or video recording of any kind is permitted during any meeting, interview, or hearing that occurs in respect to this Policy. All investigative interviews will be recorded by the College, and participants will be notified if additional meetings are to be recorded by Davis & Elkins College, which is at the sole discretion of Davis & Elkins College.

A Davis & Elkins College assigned email account shall be the official means of communication with Parties and witnesses to schedule interviews, meetings, and Administrative Hearings and to provide information regarding Notices, Dismissals, Appeals, Informal Resolutions, and Outcome Decisions. Davis & Elkins College Students and Employees are expected to check their email on a frequent and consistent basis in order to stay informed of the progress of the resolution of Reports and/or Complaints. Students and Employees have the responsibility to recognize that communications related to this Policy and Procedure may be time critical. Once emailed, the communication is considered delivered.

IX. BIAS AND CONFLICT OF INTEREST

All Title IX Administrators participating in a Resolution Process must be impartial and free from bias or conflict of interest, including bias for or against a specific Complainant or Respondent or for or against complainants and respondents generally. If an acting Title IX Administrator has concerns that they cannot conduct a fair or unbiased process, they must report those concerns to the Title IX Coordinator.

A Complainant and/or Respondent may challenge the participation of a specific Title IX Administrator because of perceived conflict of interest, bias, or prejudice. Such challenge, including the rationale must be made in writing to the Title IX Coordinator as soon as possible or within 48 hours of notice of the name of the Title IX Administrator.

At their discretion, the Title IX Coordinator will determine whether such a conflict of interest exists and whether that Title IX Administrator should be replaced. Postponement of an Investigation or hearing may occur if it determined that Title IX Administrator has bias or a conflict of interest and a replacement cannot be immediately identified. In some instances, involving an Administrative or Live Hearing in which there are multiple Decision Makers, a Title IX Administrator may not be replaced.

X. AMNESTY

Sometimes students are reluctant to seek help after experiencing Prohibited Conduct and may be reluctant to help others who may have experienced Prohibited Conduct because they fear being held responsible by the Davis & Elkins College or law enforcement for drug use or underage alcohol consumption.

While Davis & Elkins College does not control the decisions of law enforcement, Davis & Elkins College generally will not pursue disciplinary action against a student who makes a good faith report to the Davis & Elkins College or who participates truthfully as a Party or witness in the Resolution Process related to Prohibited Conduct, for personal consumption of alcohol or other drugs (underage or illegal) or other minor misconduct which would otherwise be a violation of the Davis & Elkins College Student Handbook, provided the misconduct did not endanger the health or safety of others. Davis & Elkins College may, however, engage in an assessment or educational discussion or pursue other non-disciplinary options regarding the ancillary misconduct, including alcohol or other drug use.

XI. ADVISORS

Throughout the Resolution Processes for Prohibited Conduct as defined in this Policy, the Complainant and a Respondent may each have an Advisor of their choice, who may be, but is not required to be an attorney, to provide support and guidance. An advisor may accompany the Complainant/Respondent to any meeting with the Title IX Coordinator, the Investigator, or Decision Makers.

With the exception of the Live Hearing described in section XVII, a Party's advisor has an exclusively non-speaking role, and may not otherwise present evidence, argue, or assert any right on behalf of the Party. An Advisor may not be called as a witness for the purposes of sharing information that their advisee has told them while serving in the role as an Advisor unless the Party consents in writing to that information being shared.

During the Live Hearing as described in section XVII, an advisor's role is limited to quietly conferring with the Complainant/Respondent through written correspondence or whisper. An advisor may not speak for the party they are supporting or address any other participant or the Hearing Officer except as necessary to conduct cross-examination as explained in the Resolution of Title IX Sexual Harassment Reports, Section XVII. Advisors must conduct the cross-examination of all witnesses directly, orally, and in real time at the hearing. Neither party may conduct cross-examinations personally.

If a Party does not have an advisor, the College will, upon request, appoint an Advisor who will be selected from a group of trained employees. Advisors appointed by the institution cannot be Confidential Employees as defined by this Policy. Advisors should not disclose details of their interactions with their advisees to institutional officials or Decision Makers absent an emergency or a health and safety concern.

Davis & Elkins College, which includes any official acting on behalf of Davis & Elkins College, has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. Advisors who are disruptive, disrespectful, or refuse to follow this Policy will be removed. Davis & Elkins College has the right to take appropriate steps to ensure compliance with the Policy including by placing limitations on the advisor's ability to participate in future meetings and proceedings.

Advisors, whether Davis & Elkins College appointed or not, are expected to maintain the privacy of the records shared with them and will be required to execute a non-disclosure agreement. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Davis & Elkins College. Unauthorized Disclosures is a violation of this Policy and may also be

considered Retaliation. Davis & Elkins College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by privacy expectations.

XII. TIMELINES

Davis & Elkins College will make a good faith effort to complete the resolution of reports of Prohibited Conduct as promptly and thoroughly as circumstances permit and will communicate regularly with the Parties to update them on progress and timing of the process to ensure a fair process.

Davis & Elkins College anticipates the following timelines for different steps of the process and procedures.

Initial Evaluation: The Initial Evaluation typically takes five (5) to ten (10) Days.

Supportive Measures: Supportive Measures are available when Prohibited Conduct is reported and whether or not a Formal Complaint is filed. Supportive Measures are available throughout the entire Resolution Process, and in some cases after a Resolution Process; however, Supportive Measures are first offered during the Initial Evaluation which typically takes five (5) to ten (10) Days. See Section XV for more information about Supportive Measures.

Informal Resolution: Informal Resolutions can occur at any time prior to a Decision Outcome, and typically take anywhere from five (5) to twenty (20) Days to complete after the request to pursue an Informal Resolution has been made. See Section XVI for more information about Informal Resolutions.

Formal Resolution: The overall Formal Resolution Process takes between sixty (60) and ninety (90) Days depending on how long each step from Report to Formal Complaint to Decision Outcome takes. See Section XVII and XVIII for more information about Formal Resolutions.

Investigation: Investigations typically take approximately sixty (60) Days to complete.

Live Hearing: The Live Hearing, which includes, a ten (10) day review period of the evidence and another ten (10) day review period of the final investigation report, typically takes twenty (20) to forty (40) Days to complete.

Administrative Hearing: The Administrative Hearing, which includes, the final review and questioning process, take twenty to (20) to thirty (30) Days to complete.

Decision Outcome: Once an Administrative or Live Hearing has concluded, it takes approximately five (5) Days for a Decision to be rendered and communicated to the Parties in writing.

Appeals: Appeals are possible at several stages in the Resolution Process: each time a Dismissal is made and after a Decision Outcome has been made. Each appeal window is five (5) Days and may take longer in instances where Appeals are challenged. See Section XX for more information about Appeals.

Davis & Elkins College will make a good faith effort to complete the procedures outlined in this Policy within in sixty (60) to ninety (90) Days, including any appeals, which can be extended as necessary. The Title IX Coordinator has authority to extend such timelines for good cause. Good cause may include, but

is not limited to, considerations such as the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; health conditions of a Party or Title IX Administrator, or the need for language assistance or accommodation of disability. The Parties will receive regular updates on the progress of the Resolution Process to explain any extension or delays and next steps in the process.

Davis & Elkins College's action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

XIII. INITIAL EVALUATION OF REPORTS OF PROHIBITED CONDUCT

Once a report of Prohibited Conduct is received by the Title IX Coordinator, the Title IX Coordinator shall review the report to determine the appropriate next steps. After receiving a report of conduct that, if true, would constitute a violation of this Policy, the Title IX Coordinator will contact the Complainant, request to meet with Complainant to discuss the resources, rights, and options available and provide a copy of this Policy and (when relevant) Davis & Elkins College's VAWA brochure via email which:

- explains the availability of Supportive Measures and on campus resources that provide support;
- provides information about off campus resources that provide mental health support, victim advocacy, and legal assistance;
- explains that Supportive Measures are available with or without filing a Formal Complaint with Davis & Elkins College or law enforcement;
- informs the Complainant that even if they decide not to file a Formal Complaint, the Title IX Coordinator may do so by filing a Formal Complaint;
- explains that they have the option to seek Supportive Measures regardless of whether they choose to participate in a Davis & Elkins College related proceeding or Investigation;
- explains the option to seek medical treatment and information on preserving potentially key forensic and other evidence that may be helpful in obtaining an order of protection or in other legal processes;
- explains the process for filing a Formal Complaint of and the Resolution Processes for Prohibited Conduct;
- includes Davis & Elkins College's procedural options for Formal and Informal Resolutions;
- explains the right to and Advisor of their choosing; and,
- includes Davis & Elkins College's prohibition of Retaliation against the Complainant, Respondent, the witnesses, reporting Parties, and that Davis & Elkins College will take prompt action when Retaliation is reported.

If the allegations reported, if true, would **not** constitute Prohibited Conduct as defined in this Policy, the Title IX Coordinator will not proceed under this Policy. Instead, if the allegations reported, if true, would **not** constitute Prohibited Conduct as defined in this Policy, the Title IX Coordinator may take one of the following actions: implement a remedy that is not punitive to the Respondent, an Informal Resolution (contingent upon the voluntary agreement of both Parties to participate), refer the matter to the appropriate office for discussion, education, or resolution under a different policy or process, or if the reported conduct would not constitute a violation of any Davis & Elkins College Policy, take no further action. The Title IX Coordinator will notify the Complainant of any referral.

XIV. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

Where there is an immediate threat to the health or safety of any students or other individuals arising from reported Prohibited Conduct, Davis & Elkins College can remove a Student Respondent, partially or entirely, on an emergency basis from the Davis & Elkins College's education Program or Activity. Davis & Elkins College will make the decision to remove a Student-Respondent from the Davis & Elkins College Education Program or Activity based on an individualized assessment and risk analysis completed by the appropriate members from the CARE Team (or trained designee) in conjunction with the Title IX Coordinator. If the Davis & Elkins College makes such a decision, the Student Respondent will be provided with written notice and an opportunity to appeal the decision immediately following the removal as specified in Section XX below.

Davis & Elkins College may place an Employee Respondent on administrative leave during the pendency of a Complaint. Student Employees may also be placed on administrative leave from their employment during the pendency of a Formal Complaint in circumstances in which the Prohibited Conduct was alleged to have occurred in the scope of their employment.

All others who are subject to this Policy may also be subject to administrative leave or removal during the pendency of the resolution of a Formal Complaint.

The College, in its discretion and based on the circumstances, will determine whether any administrative leave imposed is to be imposed with or without pay or benefits.

XV. SUPPORTIVE MEASURES

Supportive Measures are non-disciplinary, nonpunitive individualized services, accommodations, and other assistance that Davis & Elkins College offers and may put in place, without fee or charge, after receiving notice of Prohibited Conduct via a report to the Title IX Coordinator. Supportive Measures are designed to restore or preserve access to Davis & Elkins College's Education Program and Activity, environment, to protect the safety of all Parties and Davis & Elkins College's environment, and/or to deter Prohibited Conduct, while not being punitive in nature or unreasonably burdening any Party.

Supportive Measures are available regardless of whether the matter was reported to Davis & Elkins College for the purpose of initiating any Formal Resolution Process and before, after, and regardless of whether a Formal Complaint is filed. A Complainant who requests Supportive Measures retains the right to file a Formal Complaint of Title IX Sexual Harassment, either at the time a Supportive Measure is requested or at a later date.

The Title IX Coordinator will contact a Complainant after receiving a report of possible Prohibited Conduct to discuss the availability of Supportive Measures and to explain that Supportive Measures are available with or without the filing of a Formal Complaint of Prohibited Conduct. The Title IX Coordinator will consider the Complainant's wishes with respect to implementation of Supportive Measures. Supportive Measures may also be requested by and made available to Respondents, witnesses, and other impacted members of the Davis & Elkins College community.

The Title IX Coordinator will ultimately serve as the point of contact for any individual requesting Supportive Measures. To determine the appropriate Supportive Measure(s) to be implemented, Davis &

Elkins College will conduct an individualized assessment based on the unique facts and circumstances of a situation. The Title IX Coordinator may work with other administrators and offices when necessary to determine and implement Supportive Measures. Whether a possible Supportive Measure would unreasonably burden the other Party is a fact determination made by the Davis & Elkins College in its discretion that takes into account the specific nature of the education programs, activities, opportunities and benefits in which an individual is participating.

Examples of Supportive Measures include, but are not limited to, the following:

- Academic support services and accommodations, including the ability to reschedule classes, exams and assignments, transfer course sections, or withdraw from courses without penalty;
- Academic schedule modifications (typically to separate Complainant and Respondent);
- Work schedule or job assignment modifications (for Davis & Elkins College employment);
- Changes in work or housing location;
- An escort or transportation to ensure safe movement on campus;
- Safety Planning;
- On-campus counseling services and/or assistance in connecting to community-based counseling services;
- Assistance in connecting to community-based medical services;
- Student Financial Aid Counseling;
- VISA and immigration assistance;
- No contact directives (to instruct individuals to stop all attempts at communication or other interactions with one another);
- Placing limitations on an individual's access to certain Davis & Elkins College facilities or activities;
- Work schedule or job assignment modifications, including suspending employment with or without pay consistent with any applicable written procedures (for Davis & Elkins College positions);
- Information about and/or assistance with obtaining personal protection orders;
- Leaves of absence;
- Increased monitoring and security of certain areas of the campus; or,
- A combination of any of these measures.

Davis & Elkins College will maintain Supportive Measures provided to the Complainant or Respondent as confidential to the extent that maintaining such confidentiality would not impair the College's ability to provide the Supportive Measures.

Davis & Elkins College is committed to providing reasonable accommodations and support to qualified individuals. Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with the Director of Disability Services and/or the Director of Human Resources and in consultation with the person requesting the accommodation, determine what accommodations are reasonable and appropriate for full participation under procedures in this Policy.

XVI. INFORMAL RESOLUTIONS

Informal Resolution is an alternative Resolution Process that does not include an Investigation or Hearing. Informal Resolution is typically a spectrum of facilitated, or structured, and adaptable processes between the Complainant, the Respondent, and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the Davis & Elkins College community. Informal Resolutions can include, but are not limited to, Education, Mediation (including shuttled mediation), Restorative Practice, Supportive Resolution, and instances when a Respondent accepts responsibility for Prohibited Conduct.

Informal Resolution may be administered by the Title IX Coordinator or their designee.

Admission of responsibility for a policy violation is not required for participation in Informal Resolution Processes, but Parties must agree to end the behavior, prevent its recurrence, and address its effects through Informal Resolution.

Informal Resolution may be available, under appropriate circumstances, at any time prior to reaching a determination regarding responsibility through a Formal Resolution Process. It is not necessary to pursue an Informal Resolution prior to an Investigation or Formal Resolution Process.

When the reported allegations are of Title IX Sexual Harassment, Informal Resolution process may not begin unless and until a Formal Complaint of Title IX Sexual Harassment is filed and Informal Resolution is not available in cases involving a Student-Complainant and Employee-Respondent.

The Title IX Coordinator reserves the right to determine whether Informal Resolution is appropriate in a specific case. The Title IX Coordinator may consider the following factors to assess whether or not an Informal Resolution is appropriate:

- the likelihood of potential resolution;
- power dynamics between the Parties;
- the nature and severity of the misconduct;
- Respondent's disciplinary history;
- whether an emergency removal or other interim actions are needed;
- the skill of the Informal Resolution facilitator with the type of Complaint;
- the Formal Complaint complexity; and,
- goals of the Parties.

Before the Title IX Coordinator begins the Informal Resolution Process, both Parties must provide informed consent in writing. In addition, where both Parties and the College determine that Informal Resolution is worth exploring, the College will provide the Parties with a written notice disclosing:

- the allegations;
- the requirements of the Informal Resolution Process;
- any consequences resulting from participating or withdrawing from the process; and,

- information about the records relating to an Informal Resolution that may be maintained by the College.

At any time prior to reaching a resolution, either Party may withdraw from the Informal Resolution Process and proceed with the appropriate Formal Resolution Process. The Complainant may also request that a Complaint be dismissed.

Once an Informal Resolution is agreed to by all Parties, the resolution is binding, and the Parties generally are precluded from resuming or starting the applicable formal grievance process related to specific misconduct that was alleged. Any breach of the terms of an Informal Resolution agreement may result in disciplinary action.

The Title IX Administrator facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision Maker, or an Appeal Officer in the same case. In instances when a Title IX Administrator has a conflict of interest or bias, the Informal Resolution will be facilitated by the Associate Dean of Students.

XVII. FORMAL RESOLUTION OF REPORTS OF TITLE IX SEXUAL HARASSMENT

Formal Complaints of Title IX Sexual Harassment

After a report has been received by the Title IX Coordinator, a Complainant has the option to file a Formal Complaint against a Respondent alleging Title IX Sexual Harassment and requesting that Davis & Elkins College investigate those allegations. In order to file a Formal Complaint, the Complainant must notify the Title IX Coordinator in writing of the allegations and request that West Virginia investigate or otherwise resolve those allegations in accordance with this Policy and Procedures. This may be done online, in person, or by email to the Title IX Coordinator.

When a Complainant does not wish to File a Formal Complaint on their own behalf, the Title IX Coordinator may, in their discretion, file a Formal Complaint.

When deciding to File a Formal Complaint, the Title IX Coordinator will consider the risk that the Respondent might commit additional acts of Prohibited Conduct; whether or not there have been additional reports against the same Respondent for the same or similar conduct; whether or not the Prohibited Conduct was committed by multiple Respondents; the seriousness of the alleged misconduct; and, whether or not the Complainant is a minor.

When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party to the resolution process. While the Complainant may choose not to participate in the resolution process initiated by the Title IX Coordinator signing a Formal Complaint, the Complainant will still be treated as a party entitled to inspect and review evidence and to receive all notices, including the notice of allegations, the notice of hearing, and the notice of outcome.

For reports of Title IX Sexual Harassment, a Formal Complaint **must** be filed before Davis & Elkins College can commence the investigation or the Informal Resolution process.

In instances in which there is no Formal Complaint, Davis & Elkins College may still be obligated to stop, remedy, or prevent any concerns or possible hostile or discriminatory environments. However, individual discipline may not be issued unless the Investigation and Hearing have occurred.

Dismissal

Mandatory Dismissal of Formal Complaints of Title IX Sexual Harassment

When the Title IX Coordinator receives a Formal Complaint alleging conduct, which if true, would meet the definition of Title IX Sexual Harassment, the Title IX Coordinator will evaluate the allegations in the Formal Complaint to determine whether the allegations satisfy the following conditions:

- The Title IX Sexual Harassment conduct is alleged to have been perpetrated against a person in the United States;
- The Title IX Sexual Harassment conduct is alleged to have taken place within the College's Programs and Activities; and,
- At the time of the filing or signing of the Formal Complaint, the Complainant is not participating in or attempting to participate in the Davis & Elkins College's programs or activities.

If the Title IX Coordinator determines that all of the above conditions are satisfied, Davis & Elkins College will address the allegations in the Formal Complaint under these procedures for Formal Resolution of Reports of Title IX Sexual Harassment. If the Title IX Coordinator determines that the allegations in the Formal Complaint do not meet the definitions of Title IX Sexual Harassment or that not all of the conditions above are satisfied, the Title IX Coordinator will dismiss the Formal Complaint for Title IX purposes. However, if the Title IX Coordinator dismisses the Formal Complaint for Title IX purposes, it may resolve the Formal Complaint under this Policy as Prohibited Conduct that is not Title IX Sexual Harassment or other Davis & Elkins College policy and procedures as appropriate.

Additionally, if the Title IX Coordinator initiates the investigative process as a Title IX Sexual Harassment matter based on the allegations in the Formal Complaint, but, during the course of the investigation, the Title IX Coordinator determines that all of the above conditions are no longer satisfied, The Title IX Coordinator will dismiss the Formal Complaint for Title IX purposes and instead pursue the matter under this Policy as Prohibited Conduct that is not Sexual Harassment, other Davis & Elkins College Policy and procedures as appropriate, or as appropriate and applicable, dismiss the Formal Complaint in its entirety.

If the Title IX Coordinator determines that Formal Complaint of Title IX Sexual Harassment will not be adjudicated under the Formal Resolution of Reports of Title IX Sexual Harassment for one or more of the reasons outlined above, either at the outset after reviewing the Formal Complaint or during the course of the investigation, the Parties will receive written notice of the dismissal and the reasons for that dismissal. Complainants and Respondents may appeal the decision to dismiss a Formal Complaint as explained below in Section XX.

Discretionary Dismissals of Formal Complaints of Title IX Sexual Harassment

In addition, the reasons discussed above under Mandatory Dismissals, Davis & Elkins College may, in its discretion, choose to dismiss a Formal Complaint or any allegations therein, if at any time during the Formal Resolution of Title IX Sexual Harassment Report, if:

- A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by Davis & Elkins College; or,
- Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

The Title IX Coordinator retains discretion on a case by case basis to determine if it will dismiss a Formal Complaint for Title IX purposes based on any of the above reasons. Just because one or all of the conditions above are satisfied, does not mean that the Title IX Coordinator will automatically dismiss the Formal Complaint; instead the Title IX Coordinator will determine is appropriate under the circumstances.

The Parties will receive simultaneous written notice of the dismissal and the reasons for that dismissal. Complainants and Respondents may appeal the decision to dismiss a Formal Complaint as explained below in Sections XX.

Consolidation of Formal Complaints of Title IX Sexual Harassment

In their discretion, the Title IX Coordinator may consolidate multiple Formal Complaints for resolution under this Policy. Consolidation might involve a single Complainant or multiple Complainants, a single Respondent or multiple Respondents, and allegations of conduct that is temporally or logically connected (even where some of that alleged conduct is not Title IX Sexual Harassment or where the above conditions are not met with respect to some of the alleged conduct). The decision to consolidate Formal Complaints is not subject to appeal.

Counterclaims

Davis & Elkins College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Davis & Elkins College may permit the filing of counterclaims but will assess to ensure that the allegations in the counterclaim are made in good faith.

Counterclaims may also be resolved through the same investigation as the underlying Formal Complaint or investigated separately, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

Notice of Allegations

If a Complainant files, or the Title IX Coordinator signs, a Formal Complaint of Title IX Sexual Harassment within the scope of this Policy, the Title IX Coordinator will simultaneously send both Parties a written Notice of Allegations that contains the following:

- Notice that the Informal and Formal Resolution processes comply with the requirements of Title IX;

- Notice of the allegations potentially constituting Title IX Sexual Harassment, providing sufficient detail for a response to be prepared before any initial interview, including (1) identities of the Parties, if known; (2) the conduct allegedly constituting Title IX Sexual Harassment; and (3) the date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged Title IX Sexual Harassment and a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that each party may have an Advisor of their choice who may be, but is not required to be, an attorney and who may inspect and review evidence;
- Information regarding the availability of support and assistance through College resources and the opportunity to meet with the Title IX Coordinator in person to discuss resources, rights, and options;
- Notice of the College's prohibition of Retaliation of the Complainant, the Respondent, and witnesses; that the College will take prompt action when Retaliation is reported; and how to report acts of Retaliation; and
- Notice that the Student Handbook prohibits knowingly making false statements and knowingly submitting false information during the grievance process.

If, during the course of an investigation, the Title IX Coordinator decides to investigate additional allegations about the Complainant or Respondent relating to the same facts or circumstances but not included in the earlier written notice, the Title IX Coordinator will provide an amended Notice of Allegations to the Parties.

Investigation of Title IX Sexual Harassment Allegations

Once a Formal Complaint has been signed, and there is no Informal Resolution, an investigation will be conducted. An investigation affords Complainants and Respondents an opportunity to submit information and other evidence and to identify witnesses. Although the Parties have the option to submit evidence and suggest witnesses to be interviewed, the burden of gathering information in the investigation is with Davis & Elkins College.

When the Formal Resolution process is initiated, the Title IX Coordinator will designate an investigator or an investigative team who will be responsible for gathering evidence directly related to the allegations raised in a Formal Complaint of Title IX Sexual Harassment.

Notice of a Title IX Sexual Harassment Investigation

If there is no Informal Resolution, a Notice of Investigation will be issued simultaneously to Complainants and Respondents. That correspondence will include the following:

- An overview of the Investigation/Formal Resolution process;
- A reminder that Informal Resolution process is available until which time a finding of responsibility is rendered;
- Information about Complainants and Respondents Rights, which includes a right to an Advisor;
- A reminder that the burden of proof and burden of evidence gathering sufficient to reach a determination regarding responsibility rests on Davis & Elkins College and not on the Parties;

- That Davis & Elkins College cannot access, consider, disclose, or otherwise use a Complainant's or Respondent's records that are made or maintained under legal privilege without voluntary written consent from the person who is protected by that privilege;
- That Complainants and Respondents will have equal opportunity to present witnesses, including fact and expert witnesses, and other evidence;
- Notice that while Parties are expected to respect the private and serious nature of the Resolution Process and to refrain from engaging in behavior that could be seen as Retaliation, neither Complainants or Respondents are restricted from discussing the allegations or gathering or presenting evidence; and,
- The Investigator (s) name and contact information.

Notice of Allegations and Notice of Investigation may be combined as appropriate at the discretion of the Title IX Coordinator.

Interviews and Gathering Evidence in a Title IX Sexual Harassment Investigation

Interviews. The Investigator(s) will interview the Parties and relevant witnesses in order to review the disciplinary process and to hear an overview of each party's account of the incident. Before any interview, Complainants and Respondents being interviewed will be informed in writing of the date, time, location, participants, and purpose of the interview. Such notice will be provided with sufficient time for the Party to prepare for the interview. The Respondent will be informed in writing if, during the investigation, additional information is disclosed that may constitute additional Title IX Sexual Harassment (or other Prohibited Conduct if the Formal Complaint has been consolidated) under the Policy. Following the interview, each party will be provided with a draft summary of their statement so that they have the opportunity to comment on the summary and ensure its accuracy and completeness. The Parties' feedback may be attached or otherwise incorporated into the final investigative report to the extent deemed relevant by the Investigator(s).

Evidence. During the interview, and while gathering evidence, Complainants and Respondents will be given the opportunity to identify witnesses and to provide other information, such as documents, communications, photographs, and other evidence. Although Davis & Elkins College has the burden of gathering evidence sufficient to reach a determination regarding responsibility, all Parties are expected to share any relevant information and/or any information that is requested by the Investigator(s). Such information shared by the Parties with the Investigator(s) may include both inculpatory and exculpatory evidence.

The Investigator(s) will review all information identified or provided by the Parties, as well as any other evidence they obtain. Evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint will be shared with the Parties for their review and comment, as described more fully below.

All evidence must be provided to the investigator during the scope of the investigation.

Draft Investigation Report and Opportunity to Inspect and Review Evidence of Title IX Sexual Harassment

After all the evidence is gathered, and the Investigator has completed witness interviews, the Investigator will prepare a draft investigative report. Each party, and the party's Advisor, if any, will receive the draft investigative report.

The Investigator(s) will also provide the Parties, and their Advisors, if any, with copies of all evidence directly related to the allegations of the Formal Complaint that was gathered during the investigation. Before doing so, the Investigator(s) may redact information in the evidence that is not directly related to the allegations of the Formal Complaint; information prohibited from disclosure pursuant to a recognized legal privilege; information about the Complainant's sexual predisposition or prior sexual behavior (unless such evidence about the Complainant's prior sexual behavior are offered to prove someone other than the Respondent committed the alleged conduct, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respond to the Respondent and are offered to prove consent), and/or a party's medical or mental health information/records unless the party consents in writing to the disclosure. The evidence may be provided in either an electronic format or a hard copy. Parties and their Advisors may not disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. Disseminating evidence in such a way could be considered Retaliation under this Policy.

The Parties will have ten (10) days to review the draft investigative report and evidence and to submit a written response. The Parties' written responses must include any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigation. Any Party providing new evidence in their written response should identify whether that evidence was previously available to them, and if so, why it was not previously provided. The Parties' feedback will be attached to the final investigation report.

Generally, only information that is provided to, or otherwise obtained by, the Investigator(s) during the course of the investigation will be considered in the determination of whether the alleged Prohibited Conduct occurred and whether a Policy violation occurred. Any and all information for consideration by the Hearing Panel must be provided to the Investigator(s) prior to the final investigation report and will not be allowed during the hearing unless it can be clearly demonstrated that such information was not reasonably available to the Parties at the time of the investigation or that the evidence has significant relevance to a material fact at issue in the investigation. If, after the final investigation report is issued, a party provides or identifies evidence that they did not previously provide or identify despite that evidence being reasonably available to them during the investigation process, the Hearing Officer may, at their discretion, draw a negative inference from the party's delay in providing or identifying the evidence. At the Title IX Coordinator's discretion, new evidence submitted after the Draft Investigation Report is issued, may result in additional investigation.

The Investigator(s) will review the feedback to the report, interview additional relevant witnesses (as deemed appropriate) and create an updated Draft Investigative Report. If there is new evidence, the Parties will be permitted to review the updated Draft Investigation Report following the procedures above.

Final Investigative Report

After the time has run for both Parties to provide any written response to the draft investigative report and evidence, and after the Investigator(s) complete(s) any additional investigation, the Investigator(s) will complete a Final Investigative Report. The Investigator(s) will submit the Final Investigative Report of relevant information to the Title IX Coordinator. The Title IX Coordinator will review the Final Investigative Report for completeness and relevance, and direct further investigation as necessary before the Final Investigative Report is provided to the Complainant and Respondent.

The Investigator(s) and/or Title IX Coordinator, as appropriate, may exclude and/or redact information or evidence from the Final Investigative Report as follows:

- Information that is not relevant to the allegations raised in the Formal Complaint;
- information prohibited from disclosure pursuant to a recognized legal privilege;
- Information about a Complainant's prior or subsequent sexual activity, unless such information about the Complainant's prior sexual behavior unless it is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent; and
- Medical or mental health information, treatment and/or diagnosis, unless the party voluntarily consents.

After the Title IX Coordinator reviews the report and any further investigation, if necessary, is completed, the final report will be shared with the Complainant, Respondent, and their Advisors. The Parties will have ten (10) business days to respond in writing to the final investigative report. The Complainant and Respondent must also submit in writing by that time the names of any witnesses the Complainant/Respondent wishes to testify and a summary of information each witness would provide through their testimony. Names of witnesses provided by the Complainant/Respondent will be shared with the other party.

After the ten-business-day deadline, the Complainant and Respondent may not provide any additional written information for the hearing, unless that information was not reasonably available prior to the closing of the ten-business-day window. The Hearing Officer determines whether to grant exceptions to this ten-business-day deadline.

The Title IX Coordinator will determine what, if any, final changes or additions are made to the final investigative report based upon its review of the report and feedback as described above from the Complainant and Respondent. The matter will then be referred to a Hearing Officer.

Live Hearings on Title IX Sexual Harassment Allegations

Hearings that occur for the purpose of formally resolving Formal Complaints of Title IX Sexual Harassment will be live and occur in real time. Complainants, Respondents, and Witnesses will answer questions posed by the Hearing Officer and Advisors in front of the Hearing Panel. Questions regarding

Prohibited Conduct that does not constitute Title IX Sexual Harassment but is also being heard by the Hearing Panel during the same hearing will be handled at the discretion of the Hearing Officer.

Hearing Panel

The Hearing Officer Panel will be formed by the Title IX Deputy Coordinators minus the Deputy Coordinator who is designated as the Appeal Officer. See Section XX on Appeals for more information.

The Title IX Deputy Coordinators at Davis & Elkins College are:

Kate Garlick

Deputy Title IX Coordinator
Vice President for Student Life
Liberal Arts Hall, 1st Floor
(304) 637-1241 | garlickk@dewv.edu

Taran Wolford

Deputy Title IX Coordinator
Director of Human Resources
Liberal Arts Hall, Room 205
(304) 637-1344 | wolfordt@dewv.edu

Mike Mattison

Deputy Title IX Coordinator
Provost, Vice President for Academic Affairs
Liberal Arts Hall, Room 106
(304) 637-1292 | mattisonm@dewv.edu

Nicole Rose

Deputy Title IX Coordinator
Senior Women's Administrator
Myles Center for the Arts
(304) 637-1202 | rosen@dewv.edu

The Chair will be determined by the following:

- If the Respondent is a student: The Chair will be the Vice President for Student Life.
- If the Respondent is an employee: The Chair will be the Assistant Director of Human Resources.
- If the Respondent is a member of Faculty: The Chair will be the Vice President for Academic Affairs.

The Deputy Coordinator that will serve the designated appellate decision-maker will not participate in the hearing.

Notice of Title IX Sexual Harassment Hearing

Both the Complainant and the Respondent will be notified in writing of the date and time of the hearing and the name of the Hearing Officer at least five business days in advance of the hearing, with the

hearing to occur no fewer than ten days after the Parties are provided with the Final Investigative Report.

Pre-hearing Procedures and Ground Rules for Title IX Sexual Harassment Hearing

The Hearing Officer and/or the Title IX Coordinator may establish pre-hearing procedures relating to issues such as scheduling, hearing structure and process, witness and Advisor participation and identification, and advance determination of the relevance of certain topics. The Hearing Officer will communicate with the Parties prior to the hearing with respect to these issues and establish reasonable, equitable deadlines for party participation/input.

The Hearing Officer also has wide discretion over matters of decorum at the hearing, including the authority to excuse from the hearing process any participants who are unwilling to observe rules of decorum

Participation of Advisors in a Title IX Sexual Harassment Hearing

Both Parties must be accompanied by an Advisor to the hearing. If a party does not have an Advisor for the hearing, the Davis & Elkins College will provide an Advisor of Davis & Elkins College's choice for that party. Each party's Advisor must conduct any cross-examination of the other party and any witnesses. Apart from conducting cross-examination, the Parties' Advisors do not have a speaking role at the hearing; an Advisors' participation is limited to conferring with the party at intervals set by the Hearing Officer.

Participation of Parties and Witnesses in a Title IX Sexual Harassment Hearing

A party or witness who elects to participate in the process is expected, although not compelled, to participate in all aspects of the process (e.g., a witness who chooses to participate in the investigation is expected to make themselves available for a hearing if requested to do so).

If a party does not appear for the hearing, their Advisor may still appear for the purpose of asking questions of the other party and witnesses. If a non-participating party's Advisor also does not appear for the hearing, Davis & Elkins College will appoint an Advisor to participate in the hearing for the purpose of asking questions of the other party on behalf of the nonparticipating party.

Parties are reminded that, consistent with the prohibition on Retaliation, intimidation, threats of violence, and other conduct intended to cause a party or witness to not appear for a hearing are expressly prohibited.

The Hearing Officer may, at their discretion, exclude witnesses or witness testimony the Hearing Officer considers irrelevant, duplicative, or prohibited (such as prior sexual history or privileged information). The Hearing Officer will explain any decision to exclude a witness or testimony as not relevant.

Recording the Title IX Sexual Harassment Hearing

A Respondent, Complainant, Advisor, and/or witness may not bring electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) to a hearing, unless authorized by the Hearing Officer.

The Title IX Coordinator will arrange for there to be an audio recording, or audiovisual recording, or transcript (or combination) of the hearing, which will be made available to the Parties for review upon request and kept on file by Davis & Elkins College for seven years.

Reasonable care will be taken to create a quality recording or transcript and if making recording minimize technical problems, however, technical problems that result in no recording or an inaudible recording are not a valid basis for appeal.

Hearing Location and Use of Technology in a Title IX Sexual Harassment Hearing

The hearing will be live, with all questioning conducted in real time. Upon request, the Parties may be located in separate rooms (or at separate locations) with technology enabling the Hearing Officer and the Parties to simultaneously see and hear the party or witness answering questions. At the discretion of the Title IX Coordinator, a Live Hearing may be conducted entirely virtually through the use of remote technology so long as the Parties and Hearing Officer are able to hear and see one another in real time.

Title IX Sexual Harassment Hearing Structure

The Hearing Officer has general authority and wide discretion over the conduct of the hearing. Although the Hearing Officer has discretion to modify the hearing structure, the general course of procedure for a hearing is as follows:

- Introductions;
- Opening Statement from the Complainant (optional);
- Opening Statement from the Respondent (optional);
- Questioning of the Complainant by the Hearing Officer;
- Cross-examination of the Complainant by the Respondent's Advisor;
- Questioning of the Respondent by the Hearing Officer;
- Cross-examination of the Respondent by the Complainant's Advisor;
- Hearing Officer questioning of other witnesses (if applicable);
- Cross-examination of other witnesses by the Parties' Advisors;
- Additional question of the Complainant and Respondent by the Hearing Officer at their discretion;
- Closing comments from the Complainant (optional); and,
- Closing comments from the Respondent (optional).

The evidence collected as part of the investigative process will be made available at the hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove someone other than the Respondent committed the alleged conduct, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege are not admissible, unless the person holding the privilege has waived the privilege.

Determination Following a Title IX Sexual Harassment Hearing

Following the Hearing, the Hearing Panel, by way of a majority vote, will consider all relevant evidence and make a determination, by Preponderance of Evidence standard, whether the allegations of Prohibited Conduct occurred and, if so, whether Respondent has violated the Policy. While the Title IX Coordinator will be present, they are not a decision-maker.

Written Notice Regarding an Outcome of a Title IX Sexual Harassment Hearing

After a determination regarding responsibility and, if applicable, a determination regarding appropriate remedies and/or sanction has been made, Complainants and Respondents will receive a simultaneous written notification including the decision regarding responsibility and, as applicable, remedies and sanctions. The written notification will include the following:

- Identification of the allegations potentially constituting Title IX Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint of Title IX Sexual Harassment, with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings supporting the determination using a preponderance of the evidence standard;
- Conclusions regarding the application of Davis & Elkins College Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Davis & Elkins College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College's Education Program or Activity will be provided by Davis & Elkins College to the Complainant; and
- Davis & Elkins College's permissible basis for the Complainants and Respondents to appeal, and instructions on how to do so. The written notification of outcome becomes final seven days after it is sent to the Parties, unless an appeal is filed on or before that day.

XVIII. FORMAL RESOLUTION OF REPORTS OF PROHIBITED CONDUCT THAT IS NOT TITLE IX SEXUAL HARASSMENT

Complaints Of Prohibited Conduct That Is Not Title IX Sexual Harassment

Once a report of Prohibited Conduct has been received by the Title IX Coordinator, and when Informal Resolution is not elected or is unsuccessful, a Complainant has the option to file a Formal Complaint against a Respondent alleging Prohibited Conduct and requesting that Davis & Elkins College resolve those allegations through an Investigation. To file a Complaint, the Complainant may do so orally, in writing, online, in person, or by email to the Title IX Coordinator.

If the Complainant does not wish to File a Formal Complaint on their own behalf, the Title IX Coordinator may, in their discretion, file a Formal Complaint if they determine that Davis & Elkins College is on notice that it would be legally required to respond.

When deciding to File a Complaint, the Title IX Coordinator will consider the following:

- the College's legal obligations to provide a safe, non-discriminatory educational or work environment;
- risk that the Respondent might commit additional acts of Prohibited Conduct;
- whether or not there have been additional reports against the same Respondent for the same or similar conduct;
- the scope of the alleged Prohibited Conduct, including possible patterns, possible ongoing discrimination or harassment, and/or whether or not the alleged Prohibited Conduct impacts multiple individuals;
- whether or not the Prohibited Conduct was committed by multiple Respondents;
- the seriousness of the alleged misconduct;
- The age and relationship of the Parties, including whether or not the Respondent is a Davis & Elkins College employee;
- the Complainant's request not to proceed;
- the Complainant's reasonable safety concerns about initiating a Complaint; and,
- the availability of evidence to assist a Decision-Maker reaching a determination.

When the Title IX Coordinator files a Complaint, the Title IX Coordinator is not a Complainant or otherwise a Party to the Resolution Process. When the Complainant may choose not to participate in the resolution initiated by the Title IX Coordinator, the Complainant may still be treated as a Party entitled to inspect and review evidence and to receive all notices, including the notice of allegations, the notice of hearing, and the notice of outcome. At no time, will Davis & Elkins College retaliate against a Complainant to force participation in the grievance process.

If a Party chooses not to participate in the Resolution Process or becomes unresponsive, the Recipient reserves the right to continue without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process. Employee witnesses may be compelled to participate.

In instances in which there is no Complaint, Davis & Elkins College may still be obligated to stop, remedy, or prevent any concerns or possible hostile or discriminatory environments.

Dismissal of Complaints Of Prohibited Conduct That Is Not Title IX Sexual Harassment

If a Complainant files a Complaint, Davis & Elkins College may, in its discretion, choose to dismiss a Formal Complaint of Prohibited Conduct or any allegations therein, if at any time during the Resolution Process:

- Davis & Elkins College is unable to identify the Respondent after taking reasonable steps to do so;
- the Respondent is no longer enrolled or employed by Davis & Elkins College;

- specific circumstances prevent the recipient from gathering the evidence sufficient to reach a determination in regards to the allegations in the Complaint; and/or,
- Davis & Elkins College determines the conduct alleged would not constitute a policy violation, if proven.

Dismissal decisions are appealable by the Parties.

Consolidation of Complaints of Prohibited Conduct That Is Not Title IX Sexual Harassment

In their discretion, the Title IX Coordinator may consolidate multiple Complaints for resolution under this Policy. Consolidation might involve a single Complainant or multiple Complainants, a single Respondent or multiple Respondents, and allegations of conduct that are logically connected (even where some of that alleged conduct is not Prohibited Conduct). The decision to consolidate Complaints is not subject to appeal and at the discretion of the Title IX Coordinator.

Counterclaims of Prohibited Conduct That Is Not Title IX Sexual Harassment

Davis & Elkins College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Davis & Elkins College permits the filing of counterclaims but will assess to ensure that the allegations in the counterclaim are made in good faith.

Counterclaims may also be resolved through the same Investigation as the underlying Formal Complaint or investigated separately, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

Notice of Allegations of Prohibited Conduct That Is Not Title IX Sexual Harassment

If a Complainant or the Title IX Coordinator files a Formal Complaint of Prohibited Conduct within the scope of this Policy, the Title IX Coordinator will simultaneously send both Parties a written Notice of Allegations that contains the following:

- sufficient detail for a person to be prepared before any initial interview, including identities of the Parties, if known; the conduct allegedly constituting Prohibited Conduct; the date and location of the alleged incident, if known;
- the specific policies and offenses implicated;
- a statement that the Respondent is presumed not responsible for the alleged Prohibited Conduct and a determination regarding responsibility is made at the conclusion of the grievance process;
- a statement that the Parties are entitled to an equal opportunity to assess the relevant and not otherwise impermissible evidence;
- a statement the Parties are entitled to an Advisor of their choosing who may accompany them throughout all steps of the Formal Resolution Process;
- instructions to preserve any evidence that is directly related to the allegations;
- notice that Davis & Elkins College prohibits knowing making false statements, including submitting false information during the Formal Resolution Process;

- information about the confidentiality of the process, including the expectations of the Parties and their Advisors regarding information learned through the process;
- information regarding the availability of support and assistance through Davis & Elkins College resources and the opportunity to meet with the Title IX Coordinator in person to discuss resources, rights, and options; and,
- notice of Davis & Elkins College's prohibition of Retaliation of the Complainant, the Respondent, and witnesses; that Davis & Elkins College will take prompt action when Retaliation is reported; and how to report acts of Retaliation.

In instances institutional discrimination, disparate policies, or in which climate or culture Investigations are required and that do not have an identifiable Respondent, the Notice of Allegations will be provided to the Cabinet Member that oversees the area being investigated.

If, during the course of an Investigation, the Title IX Coordinator decides to investigate additional allegations about the Complainant or Respondent relating to the same facts or circumstances but not included in the earlier written notice, the Title IX Coordinator will provide an amended Notice of Allegations to the Parties.

Investigation of Complaints Of Prohibited Conduct That Is Not Title IX Sexual Harassment

Once a Formal Complaint has been filed, and there is no Informal Resolution, an Investigation will be conducted. An Investigation affords Complainants and Respondents an opportunity to submit information and other evidence and to identify witnesses. Although the Parties have the option to submit evidence and suggest witnesses to be interviewed, the burden of gathering information in the Investigation is with Davis & Elkins College.

When the Formal Resolution Process is initiated, the Title IX Coordinator will designate an Investigator or an investigative team, one of whom may be the Title IX Coordinator, who will be responsible for gathering evidence directly related to the allegations raised in a Formal Complaint of Prohibited Conduct.

Interviews. The Investigator(s) will interview the Parties and relevant witnesses in order to review the disciplinary process and to hear an overview of each Party's account of the incident. Before any interview, the individual being interviewed will be informed in writing of the date, time, location, participants, and purpose of the interview. Such notice will be provided with sufficient time for the individual to prepare for the interview. Following the interview, each Party will be provided with a draft summary of their statement and provided an opportunity to comment on the summary and ensure its accuracy and completeness. The Parties' feedback may be attached or otherwise incorporated into the final investigative report to the extent deemed relevant by the Investigator(s).

Evidence. During the interview, and while gathering evidence, Parties will be given the opportunity to identify witnesses and to provide other information, such as documents, communications, photographs, and other evidence. Although Davis & Elkins College has the burden of gathering evidence sufficient to reach a determination regarding responsibility, all

Parties are expected to share any relevant information and/or any information that is requested by the Investigator(s).

The Investigator(s) will review all information identified or provided by the Parties, as well as any other evidence they obtain. Evidence obtained as part of the Investigation that is relevant to the allegations in the Formal Complaint will be shared with the Parties for their review and comment, as described below.

All evidence must be provided to the Investigator during the scope of the Investigation.

Draft Investigation Report and Opportunity to Inspect and Review Evidence and Pose Additional Questions

After all the evidence is gathered, and the Investigator has completed witness interviews, the Investigator will prepare a draft investigative report. The primary Decision Makers will receive a copy of the draft investigative report.

- If the Respondent is a student: The primary Decision Maker will be the Vice President for Student Life.
- If the Respondent is an employee: The primary Decision Maker will be the Assistant Director of Human Resources.
- If the Respondent is a member of Faculty: The primary Decision Maker will be the Vice President for Academic Affairs.

The Parties, and their Advisors, if any, at a minimum will be provided with descriptions of all evidence directly related to the allegations of the Formal Complaint that was gathered during the Investigation. Before doing so, the Investigator(s) may redact information in the evidence that is not relevant to the allegations of the Complaint; information prohibited from disclosure pursuant to a recognized legal privilege or other statutory or regulatory prohibition; and/or a Party's medical or mental health information/records unless the Party consents in writing to the disclosure.

Complainants, Respondents, and Decision Makers may not disseminate, in whole or in part, any part of the draft investigative report or descriptions of evidence or use such evidence for any purpose unrelated to the formal Resolution Process as described in this Policy. Disseminating evidence in such a way could be considered Retaliation under this Policy.

The Parties will have five (5) Days to review the draft investigative report or descriptions of the evidence and to submit a written response. The Parties' written responses must include any comments, feedback, additional documents, evidence, requests for additional Investigation, names of additional witnesses, additional questions to be asked, or any other information they deem relevant to the Investigation. The Parties will submit their written responses, including additional questions to be asked, to the primary Decision Maker and Title IX Coordinator.

The Decision Maker will have five (5) Days to review the draft report, descriptions of the evidence, and the written responses and additional questions the Parties requested to be asked. After assessing the

requests for permissibility and relevance, the Decision Maker may direct the Investigators to conduct follow up interviews if necessary.

Any Party providing new evidence in their written response should identify whether that evidence was previously available to them, and if so, why it was not previously provided so that the primary Decision Maker can determine relevance. The Parties' feedback will be attached to the final Investigation report. Only information provided prior to the final Investigation report will be considered in a determination of whether a policy violation occurred. Any and all information for consideration by Decision Makers must be provided prior to the final Investigation report.

Once the review and request period are complete, the Investigator will incorporate the information into the final investigative report which will be provided to the Title IX Coordinator for review.

Administrative Hearing

The Title IX Coordinator will review the report for completeness and relevance, and direct further Investigation as necessary before the report is provided to the Decision Makers.

After the Title IX Coordinator reviews the report and any further Investigation, if necessary, is completed, the final report will be provided to the Decision Makers which is comprised of the Deputy Coordinators (minus the Deputy Coordinator who will serve as the Appeal Officer). The lead Investigator will present the report to the Title IX Coordinator and Hearing Panel.

While Complainants and Respondents will be notified in advance of the Administrative Hearing, they will not be present.

The Decision Makers, by way of a simple vote will consider all relevant evidence and make a determination, by preponderance of evidence standard, whether the Respondent has violated the Policy or if institutional discrimination or disparate policies are substantiated. While present, the Title IX Coordinator is not a decision-maker in the Administrative Hearing.

If it is determined that the preponderance of evidence standard cannot be met or that there is no reasonable cause to determine a policy violation, the matter will be closed subject to a final appeal.

Written Notice Regarding an Outcome

As soon as possible, but within in five (5) Days after an Administrative Hearing and after a determination regarding responsibility and, if applicable, a determination regarding appropriate remedies and/or sanction has been made, the Parties will receive a simultaneous written notification including the decision regarding responsibility and, as applicable, remedies and sanctions. The written notification will include the following:

- Identification of the allegations potentially constituting Prohibited Conduct;
- Information about the policies and procedures used to evaluate the allegations.
- Findings supporting the determination using a preponderance of the evidence standard;
- Conclusions regarding the application of this Policy to the evidence;

- A statement of and rationale for the result as to each allegation, including a determination regarding responsibility;
- Any disciplinary sanctions imposed on the Respondent that Davis & Elkins College is permitted to share pursuant to state or federal law;
- Whether or not remedies will be provided; and,
- Davis & Elkins College's procedures and permissible bases for the Complainants and Respondents to appeal.

The written notification of outcome becomes final five (5) Days after it is sent to the Complainants and Respondents, unless an appeal is filed on or before that day.

XIX. REMEDIES AND SANCTIONS FOR POLICY VIOLATIONS

In the event the Decision Makers find the Respondent responsible for a violation of Davis & Elkins College's policies, appropriate remedies and sanctions will be determined by the Deputy Title IX Coordinator as listed below in conjunction the Title IX Coordinator. Remedies are designed to restore or preserve equal access to the College's Education Program or Activity and may be disciplinary or punitive.

- If the Respondent is a student: The sanction will be administered by the Vice President for Student Life.
- If the Respondent is an employee: The sanction will be administered by the Assistant Director of Human Resources.
- If the Respondent is a member of Faculty: The sanction will be administered by the Vice President for Academic Affairs.

Upon a finding of responsibility, the Complainant will be provided with remedies designed to restore access to the College's educational and employment Programs and Activities.

Sanctions for a finding of responsibility for Student Respondents include any of the sanctions outlined in the Davis & Elkins College Student Handbook, education, growth plans, community service, referral to counseling, warnings, probation, suspension, suspension from participation in activities or privileges, suspension from the College or the residence halls, or expulsion. In determining (a) sanction(s), the designated Deputy Coordinator will consider whether the nature of the conduct at issue warrants removal from the College, either permanent (expulsion) or temporary (suspension).

Sanctions for the finding of responsibility for student groups and organizations include any of the sanctions outlined in the Davis & Elkins College Student Handbook, warnings, probation, suspension, termination of the group, expulsion, loss of privileges, or other actions determined to be appropriate.

Sanctions for findings of responsibility for Employee and Faculty Respondents include education, referral to counseling, and disciplinary actions such as warnings, reprimands, withholding of a promotion or pay increase, reassignment, restriction in activities or privileges, temporary suspension without pay, compensation adjustments, or termination.

Other factors pertinent to the determination of what sanction applies include, but are not limited to, the nature of the conduct at issue, prior disciplinary history of the Respondent, previous Davis & Elkins

College response to similar conduct, and Davis & Elkins College interests (e.g., in providing a safe environment for all).

Third Parties, such as visitors, contractors, consultants, vendors providing services to Davis & Elkins College may be subject to appropriate corrective action, including, but not limited to, issuance of a no trespass order or cancellation of relationship with the Davis & Elkins College.

XX. APPEALS

A Complainant and Respondent both have the right to appeal the following:

- Title IX Coordinator's decision to dismiss a Formal Complaint of Prohibited Conduct;
- Emergency Removal decisions; and,
- decisions regarding responsibility for policy violation or outcome.

Appeals may only be made by Complainants and Respondents and not Advisors or other third Parties.

A Party wishing to appeal the Title IX Coordinator's decision to dismiss a Formal Complaint of Prohibited Conduct must file a written appeal statement within five (5) business Days of the date the decision to dismiss is communicated to the Parties.

A Party wishing to appeal a decision regarding responsibility or outcome must file a written appeal statement within five (5) business Days of the date the written decision is sent to the Parties.

The written appeal statement must identify the ground(s) upon which the appeal is being made. The only grounds for appeal are:

- new information not reasonably available at the time of the decision that could affect the outcome of the matter;
- the Title IX Coordinator or other Title IX Administrator had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent specifically that affected the outcome of the matter;
- the Sanction is excessively severe considering the cumulative conduct/disciplinary record of the Respondent; and/or,
- procedural error(s) that affected the outcome of the matter. An appeal is not a re-hearing of the case.

Davis & Elkins College may deny an appeal if it is not based on one of the grounds for appeal outlined above.

Appeal Officer

- If the Respondent is a student: The written appeal shall be submitted to the Vice President for Academic Affairs.
- If the Respondent is an employee: The written appeal shall be submitted to the Vice President for Student Life.

- If the Respondent is a faculty member: The written appeal shall be submitted to the Director of Human Resources.

The Appeal Officer's role is limited to reviewing the underlying record of the Investigation and hearing, the appealing Party's ("Appellant") written appeal statement, any response to that statement by the non-appealing Party.

Response to Appeal

The Appeal Officer will provide written notice to the non-appealing Party that an appeal has been submitted and will give the non-appealing party an opportunity to review the appeal statement. The non-appealing Party may submit a written response to the appeal. The written response is due two (2) Days from the date Davis & Elkins College provides written notice of the appeal to the non-appealing Party. Davis & Elkins College will provide the Appellant an opportunity to review non-Appealing Party's response, but no further submissions are permitted.

Written Decision

The Appeal Officer will provide written notification of the final decision to the Appellant and non-appealing Party simultaneously. The Appeal Officer will typically notify the Parties of its decision regarding an appeal in writing within five (5) business Days from receipt of the appeal statement. If the decision will take longer, the Parties will be informed. The decision of the Appeal Officer will be final, and no subsequent appeals are permitted.

XXI. WITHDRAWAL OR RESIGNATION PRIOR TO RESOLUTION

Should a Respondent withdraw or resign from Davis & Elkins College, the Resolution Process typically ends with a Dismissal, as Davis & Elkins College has lost primary disciplinary jurisdiction over the Respondent. However, Davis & Elkins College may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the Prohibited Conduct or determine whether a degree should be issued or revoked.

The Student Respondent who withdraws or leaves while the process is pending may not return to Davis & Elkins College in any capacity. The Office Admissions and/or Human Resources will be notified accordingly.

The Employee Respondent who resigns with unresolved allegations pending is not eligible for academic admission or rehire at Davis & Elkins College. The Office of Admissions and Human Resources will be notified accordingly.

All records retained by the Title IX Coordinator will reflect the withdrawal and resignation status of the Respondent.

All responses to future inquiries regarding employment references or information requests related to the NCAA attestation process will include that the Respondent left Davis & Elkins College pending a disciplinary matter and may include disclosure of the status of the matter, including any disciplinary sanctions as part of the NCAA attestation process.

XXII. RECORD RETENTION

Davis & Elkins College shall retain for a period of seven (7) years after the date of case closure: the official file relating to a Informal Resolution or Formal Resolution, including any Supportive Measures, Investigation, Administrative Hearing, Sanctioning, and/or Appeals processes involving allegations of Prohibited Conduct as defined in this Policy.

XXIII. TRAINING AND PREVENTION PROGRAMS

Davis & Elkins College is committed to creating a safe and respectful campus environment by implementing comprehensive prevention programs that address sexual assault, domestic violence, dating violence, and stalking. In accordance with the Jeanne Cleary Act requirements, the College provides ongoing education and awareness initiatives for all students, faculty, and staff, including bystander intervention training with the goal of promoting healthy relationships and a safe campus environment that empowers individuals to report incidents promptly.

All Title IX Administrators and individuals who are responsible for the implementation, modification, or termination of Supportive Measures will be trained on the following on an annual basis:

- definitions of Prohibited Conduct;
- how to apply those definitions consistently and impartially;
- issues related to Prohibited Conduct;
- scope of Davis & Elkins College's Education Program and Activities;
- Jurisdiction of this Policy;
- Reporting, confidentiality, and privacy requirements;
- Supportive Measures and Reasonable Modifications;
- Informal Resolutions;
- the Investigation process and how to conduct an investigation process that protects the safety of Complainants;
- how to assess credibility;
- Administrative Hearings;
- Remedies and Sanctions;
- Appeals;
- Relevance and Permissibility of Evidence;
- Record Keeping requirements related to this Policy; and,
- how to serve equitability and impartially to avoid Bias and Conflicts of Interest.

If needed, Decision Makers will also be trained on any technology that might be used during an Administrative Hearing.

All Confidential Employees will be trained on the following on an annual basis:

- to provide the Title IX Coordinator's contact information when a student or employee discloses information that may involve Prohibited Conduct; and,
- how to provide and document any Supportive Measures or off campus resources that are offered or provided.

At a minimum, all employees will be trained on the following on an annual basis:

- Davis & Elkins College obligation to address Discrimination and Harassment in its Education Program or Activity;
- definitions of Prohibited Conduct;
- scope of Davis & Elkins College's Education Program and Activities;
- how to report instances of Prohibited Conduct to the Title IX Coordinator; and,
- to provide the Title IX Coordinator's information to an individual who discloses pregnancy.

At a minimum, all students are trained on the following during their time as a student at Davis & Elkins College²:

- Title IX Sexual Harassment and related issues specific to Dating & Domestic Violence, Sexual Misconduct, Stalking;
- Consent;
- Hazing;
- Bystander Intervention;
- Alcohol & Other Drugs; and,
- Active Shooter.

All training materials are available upon request and do not rely on sex stereotypes.

² While students are assigned trainings on an annual basis, not all topics are assigned to each student each year.

Appendix A

Complainant's Rights

- To be treated with respect, dignity, and sensitivity throughout the process;
- To seek and receive appropriate support services at Davis & Elkins College;
- To have the presence of an Advisor throughout the process;
- To confidentiality and protection under the Family Education Rights and Privacy Act (FERPA);
- To be informed of Davis & Elkins College's Policy and Procedures on Prohibiting Discrimination and Harassment;
- To participate or decline to participate in Davis & Elkins College's Resolution Processes; however, Davis & Elkins College may move forward resolving the report with or without participation in accordance with this Policy.
- To have Complaints investigated and resolved within the time frames establish in Davis & Elkins College's Policy and Procedures on Discrimination and Harassment;
- To challenge any Title IX Administrator taking part in the Resolution of Reports of Prohibited Conduct due to a conflict of interest or bias;
- To refrain from making self-incriminating statements;
- To choose to report incidents of criminal misconduct to law enforcement;
- To discuss this matter with your Advisor and others so long as these discussions do not result in retaliation; and,
- To understand that information collected under this Policy may be subpoenaed in criminal or civil proceedings.

Appendix B

Respondent's Bill of Rights

- To be treated with respect, dignity, and sensitivity throughout the process;
- To seek and receive appropriate support services at Davis & Elkins College;
- To have the presence of an Advisor throughout the process;
- To confidentiality and protection under the Family Education Rights and Privacy Act (FERPA);
- To be informed of Davis & Elkins College's Policy and Procedures on Discrimination and Harassment;
- To have Complaints investigated and resolved within the time frames establish in Davis & Elkins College's Policy and Procedures on Discrimination and Harassment;
- To challenge any Title IX Administrator taking part in the Resolution of Reports of Prohibited Conduct due to a conflict of interest or bias;
- To participate or decline to participate in Davis & Elkins College's Resolution Processes; however, Davis & Elkins College may move forward resolving the report with or without your participation in accordance with this Policy which could still result in a finding of responsibility;
- To refrain from making self-incriminating statements;
- To report incidents of criminal misconduct to law enforcement if they wish to do so;
- To discuss this matter with your Advisor and others so long as these discussions do not result in retaliation; and,
- To understand that information collected under this Policy may be subpoenaed in criminal or civil proceedings.

Appendix C

In compliance with Violence Against Women Reauthorization Act of 2013, the local definitions of the crimes of sexual assault, domestic violence and stalking, as well as the definition of consent, are set forth below. These are the criminal definitions – not the Policy definitions required under Title IX. **The decision to investigate and sanction an incident under the College’s Policy does not constitute a determination that the incident is a criminal offense. The decision to criminally charge an incident as a “sexual assault” or “domestic violence” is determined by local law enforcement authorities.**

Sexual Assault

In the State of West Virginia, Sexual Assault is legally referred to as a Sexual Offense and law enforcement will utilize the legal definitions set forth below to determine whether criminal charges will be pursued. See W.V.S. §61-8B (Sexual Offenses). Below is a listing of Sexual Offenses crimes in the State of West Virginia.

§61-8B-3. Sexual assault in the first degree.

(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) Inflicts serious bodily injury upon anyone; or

(ii) Employs a deadly weapon in the commission of the act; or

(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment in a state correctional facility for not less than twenty-five nor more than one hundred years and a fine of not less than five thousand dollars nor more than twenty-five thousand dollars.

§61-8B-4. Sexual assault in the second degree.

(a) A person is guilty of sexual assault in the second degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or

(2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary not less than ten nor more than twenty-five years.

§61-8B-5. Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

§61-8B-7. Sexual abuse in the first degree.

(a) A person is guilty of sexual abuse in the first degree when:

(1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or

(2) Such person subjects another person to sexual contact who is physically helpless; or

(3) Such person, being fourteen years old or more, subjects another person to sexual contact who is younger than twelve years old.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment for not less than five nor more than twenty-five years and fined not less than one thousand dollars nor more than five thousand dollars.

§61-8B-8. Sexual abuse in the second degree.

(a) A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than twelve months, or fined not more than five hundred dollars and confined in the county jail not more than twelve months.

§61-8B-9. Sexual abuse in the third degree.

(a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.

(b) In any prosecution under this section it is a defense that:

(1) The defendant was less than sixteen years old; or

(2) The defendant was less than four years older than the victim.

(c) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than five hundred dollars and confined in the county jail not more than ninety days.

Consent

§61-8B-2. Defines lack of consent as:

(a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion;

(2) Incapacity to consent; or

(3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(c) A person is deemed incapable of consent when such person is:

(1) Less than sixteen years old;

(2) Mentally defective;

(3) Mentally incapacitated;

(4) Physically helpless; or

(5) Subject to incarceration, confinement or supervision by a state, county, or local government entity, when the actor is a person prohibited from having sexual intercourse or causing sexual intrusion or sexual contact pursuant to §61-8B-10 of this code.

Domestic Violence

Please note that the state of West Virginia does not legally define Dating Violence.

§48-27-202 defines Domestic Violence as: §48-27-202. "Domestic violence" or "abuse" means the occurrence of one or more of the following acts between family or household members, as that term is defined in section two hundred four of this article:

- (1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
- (2) Placing another in reasonable apprehension of physical harm;
- (3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;
- (4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and
- (5) Holding, confining, detaining or abducting another person against that person's will. West Virginia law enforcement agencies will utilize the above in determining whether to pursue criminal Domestic Violence charges.

Stalking

§61-2-9a. defines Stalking and Harassment as:

(a) Stalking. — Any person who engages in a course of conduct directed at another person with the intent to cause the other person to fear for his or her personal safety, the safety of others, or suffer substantial emotional distress, or causes a third person to so act, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, confined in jail for not more than six months, or both fined and confined.

(b) Harassment. — Any person who harasses, or repeatedly makes credible threats against another is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months, or fined not more than \$1,000, or both fined and confined.

- (1) "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition;
- (2) "Course of conduct" means a pattern of conduct composed of two or more acts in which a defendant directly, indirectly, or through a third Party by any action, method, device, or means:
 - (A) Follows, monitors, observes, surveils, or threatens a specific person or persons;
 - (B) Engages in other nonconsensual contact and/or communications, including contact through electronic communication, with a specific person or persons; or

(C) Interferes with or damages a person's property or pet;

(3) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;

(4) "Harasses" means a willful course of conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress and which serves no legitimate or lawful purpose;

(5) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and

(6) "Repeatedly" means on two or more occasions.

(i) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended, shall have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

(j) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed 10 years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(k) It is a condition of bond for any person accused of the offenses described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

(l) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

(m) The Governor's Committee on Crime, Delinquency, and Correction, after consultation with representatives of labor, licensed domestic violence programs, and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency rules pursuant to §29A-3-1 *et seq.* of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

Appendix D

Officials with Authority

President, Chris Wood

Vice President for Business & Administration, Diana White

Vice President for Academic Affairs & Deputy Coordinator, Mike Mattison

Vice President for Advancement, Scott Goddard

Director for Human Resources & Deputy Coordinator, Taran Wolford

Assistant Director for Human Resources, Erin Quint

Vice President for Student Life & Deputy Coordinator, Kate Garlick

Assistant Dean of Students, Brian Wilson

Director of Athletics, Jennifer Riggleman

NCAA Compliance Officer, Trey Short

Senior Woman Administrator & Deputy Coordinator, Nicole Rose

Director of Public Safety,

Senior Director of Enrollment, Angie Scott

Title IX Coordinator, Amy Kittle