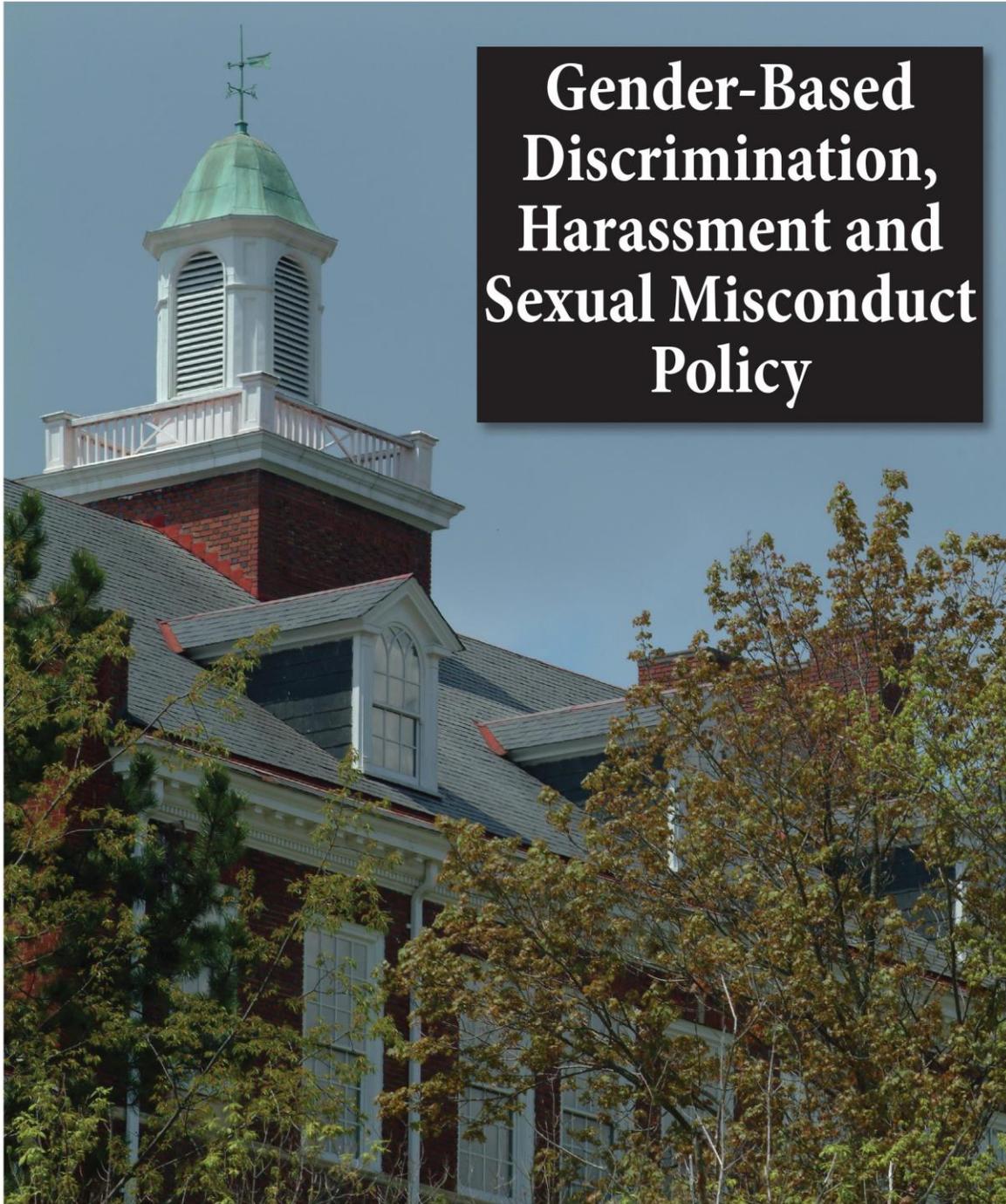


Davis & Elkins CollegeTM

Gender-Based Discrimination, Harassment and Sexual Misconduct Policy



Resources available to reported victims of sexual & gender-based misconduct (both immediately following an incident and on an ongoing basis) are set forth in Appendix A to this policy. The Davis & Elkins College Office of Public Safety is located in the Gatehouse and is available 24 hours a day by phone at 304-704-9111.

Updated 2019

Gender-based Discrimination, Harassment, and Sexual Misconduct Policies

The mission of Davis & Elkins College is to prepare and inspire students for success and for thoughtful engagement in the world. To that end, the College is committed to maintaining a healthy and safe learning, living, and working environment that promotes responsibility and respect among all members and guests of the campus community and where no one is unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination in any College program or activity on the basis of gender, sex, sexual orientation, sexual identity, gender identity, or gender expression.

This Policy addresses the College's responsibilities under Title IX and the Violence Against Women Reauthorization Act of 2013. As a recipient of federal funds, Davis & Elkins College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX"), which prohibits discrimination on the basis of sex in educational programs or activities, admission and employment. Under certain circumstances, Sexual and Gender-Based Misconduct (as defined in the Definitions Section below) constitutes sexual discrimination prohibited by Title IX. Section 304 of the Violence Against Women Reauthorization Act of 2013 requires colleges and universities receiving federal funds to have procedures in place to respond to matters of Sexual Assault, Domestic Violence, Dating Violence and Stalking. Inquiries concerning the application of Title IX and/or Section 304 of the Violence Against Women Reauthorization Act of 2013 may be referred to the College's Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights.

Davis & Elkins College's Title IX Coordinator is Ms. Kate Garlick. Ms. Garlick may be contacted by phone at (304) 637-1241 or by email at garlickk@dewv.edu. She may also be visited in person in her office, which is located in Liberal Arts, 1st Floor.

Sexual and Gender-Based Misconduct comprises a broad range of behaviors focused on sex and/or gender that include Sexual Harassment, Hostile Environment caused by Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Sexual Exploitation, and Stalking, and discrimination on the basis of sex or gender. (see Definitions Section below). Sexual and Gender-Based Misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship. Sexual and Gender-Based Misconduct can be committed by anyone regardless of gender identity, and it can occur between people of the same or different sexes or genders. The College will not tolerate any form of Sexual and Gender-Based Misconduct, and all Sexual and Gender-Based Misconduct is prohibited by this policy. This conduct, and any Retaliation or Intimidation associated with the investigation and/or sanctioning of such conduct, is prohibited by the College and may also violate federal and state law.

The College seeks to prevent Sexual and Gender-Based Misconduct offenses by providing:

- Education, prevention, and training programs that inform the community about the risks and myths that contribute to Sexual and Gender-Based Misconduct;
- Assistance and support, including procedures sensitive to individuals who have been reported to be the victim of a Sexual and Gender-Based Misconduct offense; and
- A process for the prompt and equitable investigation and resolution of incidents of Sexual and Gender-Based Misconduct that includes appropriate disciplinary sanctions for those who commit Sexual and Gender-Based Misconduct offenses, as well as the

imposition of remedial actions to address and remedy the effects of such offenses.

The College is committed to stopping incidents of Sexual and Gender-Based Misconduct, preventing their recurrence, and addressing and remedying its effects within the Davis & Elkins campus community. It makes this policy and accompanying information readily available to all students, employees and other members of the College community. Violations of this Policy may result in the imposition of sanctions up to and including termination, dismissal, or expulsion.

SECTION I - SCOPE & JURISDICTION

A. Scope of Policy

This policy applies to all Davis & Elkins College students, faculty, staff, volunteers, visitors, and other members of the Davis & Elkins College community regardless of their sexual orientation or gender identity, as well as to contractors, consultants, and vendors doing business or providing services to the College (“Third Parties”).

The College’s prohibition against sexual and gender-based misconduct applies not only in the educational, student residential and working environment, but also to all other work-related, student residential and educational life settings, such as business trips and business-related social functions, as well as educational field trips, athletic trips, and internship placements. Further, the prohibition applies whether or not the incident(s) occurs on the Davis & Elkins College campus and whether or not the incident(s) occurs during working/educational hours. This means that students, staff, faculty and third parties are protected under this policy in connection with all the College’s programs and activities. Moreover, the College will respond to reports of Sexual and Gender-Based Misconduct that arise from events that initially occurred off College property or outside a College program or activity if both parties are members of the College community. In responding to off- campus events, the College will consider the effects of the off-campus conduct on an individual’s working, residential life or educational experience, including the impact on the individual’s ability to participate in College activities or programs. Finally, the College’s prohibition against sexual and gender-based misconduct applies to not only physical contact, but also oral, written, electronic, and other technology-assisted communications, such email, voice mail, Internet communications and searches. In addition, this policy specifically prohibits associated incidents of retaliation and intimidation as defined below.

B. Period of Limitations

There is no specific period of time after an incident of sexual or gender-based misconduct is alleged to have occurred during which a report must be made. The College, however, strongly encourages timely reporting in order to preserve evidence for a potential legal or College resolution proceeding. Delays in reporting may limit the College’s ability to respond fully to the report.

If the alleged perpetrator is no longer a student or employee, the College may not be able to take disciplinary action against the individual, but it will still seek to meet its Title IX obligation by providing support for a reported victim, taking steps to end the harassment, preventing its recurrence, and addressing its effects.

Note: The use of alcohol and/or drugs is not an excuse for violation of this policy and will not constitute a valid defense.

C. Coordination with the College's Non-Discrimination and Anti-Harassment Policy

The College recognizes that harassment related to an individual's gender related status can occur in conjunction with misconduct related to an individual's race, color, gender, sex, sexual orientation, sexual identity, gender identity, gender expression, religion, ancestry, national origin, age, disability, veteran status, genetic information or any other characteristic protected by federal, state or local law ("protected characteristics"). Targeting individuals on the basis of these protected characteristics is also a violation of Davis & Elkins College policy. When misconduct relates to both a person's gender related status and other protected characteristics, the College will coordinate the investigation and resolution efforts by following the process set forth in this policy to address all harassment and discrimination.

SECTION II - NON-DISCRIMINATION STATEMENT

Davis & Elkins College, in compliance with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the West Virginia Human Rights Act is an equal opportunity institution that does not discriminate on the race, color, gender, sex, sexual orientation, sexual identity, gender identity, gender expression, religion, ancestry, national origin, age, disability, veteran status, genetic information or any other characteristic protected by federal, state or local law. This policy applies to all terms and conditions of employment, admission to and enrollment in the College, including, but not limited to, recruitment, selection, hiring, placement, transfer, promotion, training, compensation, benefits, discipline, termination, educational policies, admission policies, financial aid, scholarship and loan programs, housing, athletic and other College-administered programs and activities.

SECTION III - TITLE IX AND THE TITLE IX COORDINATOR & DEPUTY COORDINATORS

A. TITLE IX

Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX") is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. Title IX states in part:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

The principal objective of Title IX is to avoid the use of federal money to support sex discrimination in education programs and to provide individual citizens effective protection against those practices. Title IX applies, with a few specific exceptions, to all aspects of federally funded education programs or activities. In addition to traditional educational institutions such as colleges, universities, and elementary and secondary schools, Title IX also applies to any education or training program operated by a recipient of federal financial assistance.

Title IX prohibits all forms of discrimination on the basis of sex (gender), including pregnancy and related conditions, all forms of sexual violence, sexual assault and sexual harassment. This prohibition applies to all Davis & Elkins College faculty, staff, students and third parties in both

the educational and employment settings. If inappropriate gender-based or sexual misconduct occurred, the College will take prompt and effective steps to end the behavior, prevent its reoccurrence and address its effects.

B. TITLE IX COORDINATOR

The Title IX Coordinator is responsible for monitoring the overall Title IX implementation for Davis & Elkins College and coordinating compliance with all areas and departments covered under Title IX regulations. If a complaint is filed, the Title IX Coordinator will attempt to meet with the reported victim to explain the available options, the process used to investigate the complaint, and any available support, resources, and protective measures.

The President shall give the Title IX Coordinator the training, authority, and visibility to fulfill the required duties. The Title IX Coordinator shall have knowledge of Title IX requirements, of Davis & Elkins policies and procedures on sex and gender-based discrimination and harassment, and of all complaints raising Title IX issues throughout the College. Davis & Elkins shall appropriately train the Title IX Coordinator in all areas over which the Title IX Coordinator has responsibility.

The Title IX Coordinator shall be informed of all reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation is to be conducted by another individual or office.

The Title IX Coordinator shall have no other job responsibilities which create a conflict of interest with the responsibilities associated with being the Title IX Coordinator.

Davis & Elkins College Title IX Coordinator

Kate Garlick

Liberal Arts, 1st Floor

Office: (304) 637-1241

Email: garlickk@dewv.edu

Title IX Coordinator Responsibilities: The Title IX Coordinator is a neutral administrator in any Sexual or Gender-Based Misconduct investigatory and resolution proceedings, including any allegations pertaining to incidents of Retaliation and Intimidation as defined in Section V. The Title IX Coordinator is responsible for:

- Overseeing all Title IX complaints and investigations so as to provide prompt, fair, and equitable resolutions and working with all parties (the Title IX Coordinator does not, however, make unilateral decisions regarding whether or not a Sexual or Gender-Based Misconduct Policy violation has occurred);
- Identifying and addressing any patterns or systemic problems that may arise;
- Being available to meet with students and employees, provide support and answer questions;
- Working with other College officials;
- Coordinating training, education, and communication pertaining to Title IX, as well as periodic reviews of the College's climate and culture with regard to Sexual and Gender-Based Misconduct;

- Determining appropriate interim measures for a reported victim upon learning of a report or complaint of sexual or gender-based misconduct;
- Being available to assist with the College’s Office of Public Safety and local law enforcement if necessary;
- Ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers;
- Ensuring that the College carries out its Title IX responsibilities.
- The Title IX Coordinator also:
 - Assists reported victims with accessing medical and mental health treatment;
 - Assists reported victims with accessing support and resources; and
 - Meeting with members of the campus community as requested.

In addition, the Title IX Coordinator maintains an annual report documenting: (1) the number of reports or complaints received pursuant to the College’s Gender-Based Discrimination, Harassment and Sexual Misconduct Policy; (2) the categories of those involved in the allegations; (3) the number of Policy violations found; and (4) examples of sanctions imposed for each violation of this Policy.

C. DEPUTY TITLE IX COORDINATORS

The Deputy Title IX Coordinators work under the oversight of the Title IX Coordinator to assist with the handling of gender-Based discrimination, harassment and sexual misconduct complaints. The Title IX Coordinator may, at his or her discretion, designate one of the Deputy Title IX Coordinators as the Assigned Title IX Coordinator in connection with a given complaint.

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

Jane Corey

Director of Human Resources
Office: (304) 637-1344 | Cell: (304) 940-3575
coreym@dewv.edu
Liberal Arts Hall, Room 203
100 Campus Drive, Elkins, WV 26241

Scott Goddard

Vice President for Student Affairs
Office: (304) 637-1352 | Cell: (304) 642-1352
goddards@dewv.edu
Liberal Arts Hall, Suite 102
100 Campus Drive, Elkins, WV 26241

Robert Phillips

Vice President of Academic Affairs
Office: (304) 637-1292

phillipsr@dewv.edu
Liberal Arts Hall, Suite 106
100 Campus Drive, Elkins, WV 26241

Amanda Larkin
Assistant Athletic Director
Director for NCAA Compliance
Office: (304) 637-1222
larkina@dewv.edu
Hermanson Center, Room C
100 Campus Drive, Elkins, WV 26241

SECTION IV - PROHIBITED CONDUCT AND DEFINITIONS

A. PROHIBITED CONDUCT

1. Prohibition Against Sexual and Gender-Based Misconduct

Davis & Elkins College prohibits all forms of gender-based discrimination, harassment and sexual misconduct as defined in Paragraph B below. Sexual and gender-based misconduct is a broad term that includes discrimination on the basis of sex or gender, sexual harassment, sexual assault, domestic violence, dating violence, sexual exploitation, and stalking.

The College also prohibits hostile environment harassment, which includes acts of verbal, non-verbal, or physical aggression, intimidation, or hostility based on sex, gender identity, or gender expression, even if those acts do not involve conduct of a sexual nature.

Gender-based discrimination, harassment and sexual misconduct can occur between people of different sex or gender or of the same sex or gender. All members of the College community are expected to conduct themselves in a manner that does not infringe upon the rights of others.

2. Anti-Retaliation and Intimidation

In addition, the College strictly prohibits retaliation against anyone who files a complaint, serves as a witness, or otherwise participates in the enforcement of this Policy. The College does not allow threats or other forms of retaliation or intimidation against any students, employees, or third parties who file a complaint or participates in the enforcement of any College Policy. Any form of retaliation should be reported promptly to the Title IX Coordinator or Deputy Title IX Coordinators or, in instances where safety is an issue, the Office of Public Safety. Instances of retaliation or intimidation in violation of this Policy may result in disciplinary action independent of the sanctions or interim measures imposed in response to the underlying allegations.

Initiating a complaint under this Policy will not affect a reporting party or reported victim's employment, compensation or work assignments or, in the case of students, grades, class selection, or any other matter pertaining to student status.

B. GENDER-BASED DISCRIMINATION, HARASSMENT AND SEXUAL MISCONDUCT DEFINITIONS

For purposes of this Policy, gender-based discrimination, harassment and sexual misconduct is defined to include the following:

Sexual Harassment: For purposes of this policy, Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, other verbal, visual or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence or other offensive behavior directed toward an individual because of or on account of the individual's sex, whether by a person of the opposite or same gender, when either:

- Submission to, rejection, or toleration of such conduct is made explicitly or implicitly a term or condition of an individual's employment, education, living environment, or participation in a Davis & Elkins College program or activity; or
- Submission to, rejection, or toleration of such conduct is used as a basis for or a factor in decisions affecting that individual's employment, education, living environment or participation in a Davis & Elkins College program or activity; or
- Such conduct creates a hostile environment (see Hostile Environment Harassment).

Gender-Based Hostile Environment Harassment: For purposes of the Policy, gender-based hostile environment harassment is defined as the unlawful harassment against an individual on the basis of his or her gender, sex, sexual orientation, sexual identity, gender identity, or gender expression when the conduct is either:

- Sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit the individual's ability to participate in or benefit from the College's programs or activities; or
- The conduct has the purpose or effect of unreasonably interfering with an individual's employment or education.

The determination of whether an environment is "hostile" must be based on all of the circumstances, giving consideration to whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, 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, severity, and location of incident or incidents; and
- The identity, number, and relationships of persons involved.

A single or isolated incident of Gender-Based Hostile Environment Harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to provide a hostile environment, particularly if the harassment is physical in nature.

Forms of Sexual Harassment or Gender-Based Hostile Environment Harassment: Sexual harassment or hostile environment harassment based on one's sex or gender-related status may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or gender-related status, even if the acts do not involve conduct of a sexual nature. In either type of harassment, the effect will be evaluated based on the standard of a reasonable person in the position of the reported victim. Sexual harassment or gender-based hostile environment harassment can take many forms:

- It may be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- It does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- It may be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships (e.g., supervisor to subordinate, faculty member to student, coach to student-athlete, student leader to first year student), harassment can occur in any context and between persons of equal power status (e.g., student to student, staff to staff, faculty member to faculty member, visitor/contracted employee to staff).
- It may be committed by a stranger, an acquaintance, or someone with whom the reported victim has an intimate or sexual relationship.
- It may be committed by or against an individual or may be a result of the actions of an organization or group.
- It may occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.
- It may occur in the classroom, in the workplace, in residential settings, over electronic media (including the Internet, telephone, and text), or in any other setting.
- It may be a direct proposition of a sexual nature.
- It may be a one-time event or part of a pattern of behavior.
- It may be committed in the presence of others or when the parties are alone.
- It may affect the reported victim and/or third parties who witness or observe harassment.

Examples of behavior that might be considered Sexual or Gender-Based Hostile Environment Harassment include, but are not limited to:

- Threats, either directly or by implication, of adverse employment or academic action if sexual favors are not granted or punishing, either directly or by implication, for refusing to tolerate harassment, for refusing to submit to sexual activity, or for reporting harassment;
- Promising favorable treatment or continued employment in return for sexual favors;
- Change of academic or employment responsibilities (increase in difficulty or decrease of responsibility) based on sex or gender-related status;
- Unwanted, unnecessary and objectively inappropriate physical contact or suggestive body language, such as touching, patting, pinching, hugging, kissing, or brushing against an individual's body;
- Sexual assault;

- Physical coercion or pressure on an individual to engage in sexual activity or punishment for a refusal to respond or comply with sexual advances;
- Display or distribution of pornographic material or sexual explicit drawings, pictures, or written materials;
- Sexual rumors or ratings of sexual activity/performance or the circulation, display, or creation of emails or websites of a sexual nature;
- Excessively offensive remarks, including unwelcome graphic or suggestive comments about an individual's body, appearance or dress;
- Jokes and humor about sex or gender-specific traits;
- Inappropriate use of sexually explicit or offensive language or derogatory language directed at another person's sexuality, gender, gender identity, sexual orientation or gender expression;
- Insults and threats based on sex, gender, gender identity, sexual orientation or gender expression;
- The display in the workplace of sexually suggestive objects or pictures which create an intimidating or hostile work environment;
- The display or circulation of written materials or pictures degrading to an individual(s) or gender group where such display is not directly related to an educational/pedagogical, artistic, or work goal;
- Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex, or for failing to conform to stereotypical notions of masculinity and femininity, regardless of actual or perceived gender related status of the harasser or her/his/their target;
- Abusive, disruptive or harassing behavior, whether verbal or physical, which endangers another's mental or physical health, including but not limited to threats, acts of violence, or assault based on gender-related status and/or in the context of intimate partner violence; and
- Other unwelcome and unwanted conduct of a sexual nature, such as leering, name-calling, suggestive comments and sexual propositions or innuendos and other oral, written or electronic communications of a sexual nature that an individual communicates.

Sexual Assault: Sexual assault is defined by this Policy to include:

Non-Consensual Sexual Contact: Any intentional sexual touching, however slight and with any object or body part, that is without consent (as defined in this Policy) and/or by threat, intimidation, coercion, duress, violence, or by causing a reasonable fear of harm. This includes intentional contact with breasts, buttocks, groin, mouth, or genitals, as well as any other intentional bodily contact that occurs in a sexual manner.

Non-Consensual Sexual Intercourse: Any sexual penetration or copulation, however slight and with any object or body part that is without consent and/or by force or coercion.

Intercourse includes anal or vaginal penetration by a penis, object, tongue, or finger, and oral copulation (mouth and genital/anal contact), no matter how slight the penetration or contact.

Note: The above definitions will be utilized in determining whether an incident of sexual violence in violation of this Policy by the preponderance of the evidence standard has occurred (and not to determine whether a crime has been committed). The above definitions will also be utilized by the College for Clery Act reporting purposes. In compliance with the Violence Against Women Act, applicable criminal definitions for Sexual Assault in the State of West Virginia are set forth in Appendix A.

Dating Violence: “Dating Violence” is a form of intimate partner violence meaning violence by a person who has been in a romantic or intimate relationship with the victim. Violence can be psychological or physical abuse related to emotional and physical control.

Domestic Violence: The term “Domestic Violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction. In compliance with the Violence Against Women Act, the applicable criminal definition for domestic violence in the State of West Virginia is set forth in Appendix A.

Sexual Exploitation: Sexual exploitation is an act or omission to act that involves 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 one being exploited. Examples of sexual exploitation include, but are not limited to the following:

1. Creating pictures, movies, web cam, tape recording, graphic written narrative or other means of memorializing sexual behavior or a state of undress of another person without the other’s knowledge and consent;
2. Sharing items described in paragraph (1) above, beyond the boundaries of consent where consent was given. For example, showing a picture to friends where consent to view it was given for oneself only;
3. Observing or facilitating observation by others of sexual behavior or a state of undress of another person without the knowledge and/or consent of that person;
4. “Peeping Tom”/Voyeuristic behaviors;
5. Engaging in sexual behavior with knowledge of an illness or disease (HIV or STD) that could be transmitted by the behavior;
6. Engaging in or attempting to engage others in “escort services” or “dating services” which include or encourage in any way sexual behavior in exchange for money;
7. Surreptitiously providing drugs or alcohol to a person for the purpose of sexual exploitation; and

8. Causing another person to be exposed to pornographic material without the person's advance knowledge or consent.

Sexual and Gender-Based Misconduct: For the purposes of this Policy, sexual and gender-based misconduct is an umbrella term that includes sexual assault, sexual harassment, hostile environment harassment, domestic and dating violence, stalking, and, sexual exploitation.

Stalking: For purpose of this Policy, "Stalking" is defined as engaging in a course of conduct (e.g., repeatedly following, harassing, threatening or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method) directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer other emotional distress.

The College also considers Stalking to include the concept of cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Examples of stalking include:

- Unwelcome and repeated visual or physical proximity to a person;
- Repeated oral or written threats;
- Extortion of money or valuables;
- Unwelcome/unsolicited and repeated written communication, including letters, cards, emails, gifts, instant messages, and messages on on-line bulletin boards;
- Unwelcome/unsolicited and repeated communications about a person, their family, friends, or co-workers;
- Sending/posting unwelcome and/or unsolicited messages with another username;
- Implicitly threatening physical conduct or any combination of these behaviors directed toward an individual person.

In compliance with the Violence Against Women Act, the applicable criminal definition for Stalking in the State of West Virginia is set forth in Appendix A.

Retaliation: Retaliation is defined as taking adverse action against an individual making a complaint under this Policy or against any person cooperating or participating in the investigation of a complaint or the enforcement of any interim measures or sanctions under this Policy. Retaliation includes intimidation, threats, harassment, and other adverse action including adverse job action and adverse academic action against any reported victim or reporting party.

Intimidation: Intimidation is defined as implied threats or acts that cause an unreasonable fear of harm in another.

Aiding or Facilitating Sexual or Gender-Based Misconduct: Promoting, aiding, facilitating or encouraging the commission of any behavior prohibited under this Policy is also prohibited by this Policy.

C. OTHER DEFINITIONS

Assigned Title IX Coordinator: The “Assigned Title IX Coordinator” means either the Title IX Coordinator or the Deputy Title IX Coordinator assigned by the Title IX Coordinator to handle a given complaint.

Awareness Programs: Community-wide or audience specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

Bystander Intervention: Safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes: a.) recognizing situations of potential harm; b.) understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking actions to intervene.

Coercion: The improper use of force, threats, or unreasonable pressure to compel another individual to initiate or continue sexual activity against an individual’s will. Coercion includes continued pressure after an individual has made it clear that he/she does not want to engage in the behavior.

Confidential Employee: A College employee who is available to offer victims of gender-based discrimination, harassment and/or sexual misconduct support and guidance in a confidential environment. Confidential employees can provide individuals with both immediate and long-term assistance and options for obtaining additional support but are typically not required to disclose the reported victim’s identity to the Title IX Coordinator or Deputy Title IX Coordinator. The College’s confidential sources will preserve an individual’s privacy to the extent possible by the law.

Consent: Consent is defined as voluntary permission to engage in sexual activity. It may be given by words or actions, so long as those words or actions create clear, mutually understood permission to engage in (and the conditions of) sexual activity. Consent, which can be withdrawn at any time, must meet all of the following standards:

1. Active, not passive. Silence, in and of itself, cannot be interpreted as consent. There is no requirement that an individual resist a sexual act or advance, but resistance is a clear demonstration of non-consent. A person cannot give consent under force, threats, or unreasonable pressure (coercion). Coercion includes continued pressure after an individual has made it clear that he/she does not want to engage in the behavior.
2. Provided knowingly. Legally valid consent to sexual activity cannot be given by a person under the legal age to consent; or an individual who is known to be (or based on the circumstances should reasonably be known to be) mentally or physically incapacitated. An incapacitated individual is someone who cannot make rational, reasonable decisions because he or she lacks the capacity to understand the “who, what, when, where, why, or how” of a sexual interaction. This includes a person whose incapacity results from mental disability, sleep, involuntary physical restraint, unconsciousness, use of alcohol or other drugs.
3. Specific. Permission to engage in one form of sexual activity does not imply permission for another activity. In addition, previous relationships or prior consent do not imply consent to future sexual acts. It is the responsibility of the initiator of the act

to receive permission for the specific act. As a result, consent may be requested and given several times by multiple parties during a sexual encounter involving multiple acts. Moreover, consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

The above definitions will be used in the compilation and evaluation of reports or complaints alleging that the Davis & Elkins College Gender-Based Discrimination, Harassment and Sexual Misconduct Policy has been violated. In compliance with the Violence Against Women Act, the applicable criminal definition for Lack of Consent in the State of West Virginia is set forth in Appendix A.

Day. A “day” is a business day, unless otherwise specified.

Employee: For purposes of this Policy, an employee is any member of the faculty or staff (senior staff, administrative staff, professional/non-faculty staff and non-administrative staff) employed by Davis & Elkins on either a full or part-time basis. Solely for purposes of this definition, the term “employee of the College” does not include students who are employed by the College through a work-study or similar program.

Expulsion: An expulsion is a permanent separation of the student from the College. The student may never again register for classes, attend classes, or receive grades from the institution. The student may never be present on campus or at a campus sponsored event for any reason whatsoever.

Incapacitation: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because she/he lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if she/he is asleep, unconscious or otherwise unaware that sexual activity is occurring.

Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation may include slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness or emotional volatility.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual’s:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; or
- Level of consciousness.

Evaluating incapacitation also requires an assessment of whether a respondent should have been aware of the reported victim’s incapacitation based on objectivity and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the respondent’s position.

An individual who engages in sexual activity with someone the individual knows or

reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of this Policy.

Investigator means the person tasked with investigating a Complaint. All investigators shall receive annual training regarding such issues as the laws governing discrimination, harassment and retaliation; Title IX and VAWA/Campus SaVE Act (as defined below); as well as other related state and federal laws prohibiting discrimination, harassment and retaliation based on gender or sex, including sex discrimination, sexual harassment, sexual violence, domestic violence, dating violence and stalking; Student and witness privacy rights; and the Family Educational Rights and Privacy Act of 1974 (FERPA). The Investigator shall not be within the administrative control or authority of any employee Respondent.

Ongoing Prevention & Awareness Campaigns: Programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution.

Personally Identifiable Information. “Personally Identifiable Information” (as that term is defined by FERPA) includes, but is not limited to:

- A student's name;
- The name of a student's parent(s) or other family members;
- The address of a student or a student's family;
- A personal identifier, such as a student's Social Security number, student number, or biometric record;
- Other indirect identifiers, such as a student's date of birth, place of birth, or mother's maiden name;
- Other information that, alone or in combination, is linked or linkable to a specific student and that would allow a reasonable person in the College community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- Information requested by a person whom the College reasonably believes knows the identity of the student to whom the Education Record relates.

Preponderance of Evidence: Preponderance of evidence is the required standard for determining a policy violation. Administrators charged with rendering a decision of policy violation must be convinced, based on the information provided, that a policy violation was more likely to have occurred than to not have occurred in order to find a respondent responsible for violating a policy.

Primary Prevention Programs: Programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in a healthy and safe direction.

Proceeding: As provided by federal law, all activities related to a non-criminal resolution of an institutional disciplinary report, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings. Proceeding does not include communications and meetings between officials and reported victims concerning accommodations or protective measures to be provided to a reported victim.

Reported Victim: An individual who has experienced gender-based discrimination, harassment and/or sexual misconduct, regardless of whether that individual participates in the disclosure or review of that report by the College at any point.

Reporting Party: An individual who reports to the College a concern regarding possible sexual misconduct. A reporter need not be a reported victim.

Respondent: An individual who has been accused in a complaint of committing sexual or gender-based misconduct.

Responsible employee: A responsible employee is any employee who has the authority to take action to redress the harassment, has the duty to report other harassment or misconduct to appropriate officials, or is someone a student could reasonably believe has this authority or responsibility.

Risk Reduction: Options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

Student: Any individual who is not an employee of the College and who, at the time of the alleged sexual or gender-based misconduct and the filing of a report or complaint to the College, is either: (1) admitted as a student to the College and has been moved to deposited status (note: at the conclusion of every drop-add period, students who have been admitted and who have deposited, but who have not enrolled and who have not deferred their enrollment, forfeit their student status); (2) an enrolled student; (3) a Davis & Elkins student between academic terms or on a Leave of Absence (regarding whom the College has a reasonable expectation of their return); (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); or (5) a Davis & Elkins student who withdraws from the College while a disciplinary matter (including an investigation) is pending. A student ceases to be a student when he or she graduates; in the event that he or she is expelled for academic or conduct reasons; or in the event that the student formally withdraws from the College and there is no pending disciplinary investigation. Solely for purposes of this definition, the term “employee of the College” does not include students who are employed by the College through a work-study or similar program.

Suspension: A suspension is a separation of the student from the College for a defined period of time (minimum of one semester). During this period the student may not be registered for classes, attend classes, receive grades from the institution, or be present on campus or attend a College sponsored event for any reason. The student may be required to re-apply and be re-admitted after the suspension.

- Suspension from Residence Halls: The student’s privilege of living in College owned housing and visiting the residential areas of campus is suspended for a defined period of time.

Third Party: A “Third Party” is any guest of the College; alumnus or alumna; volunteer; or contractor, consultant, or vendor doing business or providing services to the College.

Title IX: Title IX means Title IX of the Education Amendments of 1972 (“Title IX”), which is a federal law that prohibits sexual discrimination in federally funded education programs and activities.

Title IX Coordinator & Deputy Title IX Coordinators: The Title IX Coordinator means the Davis & Elkins employee assigned by the President to coordinate the College’s compliance with Title IX; VAWA/Campus SaVE Act; and other related state and federal laws prohibiting discrimination, harassment and retaliation based on gender or sex, including sex discrimination, sexual harassment, sexual violence, domestic violence, dating violence, and stalking. The Deputy Title IX Coordinators work under the oversight of the Title IX Coordinator to assist with the handling of gender-based discrimination, harassment and sexual misconduct Complaints. The Title IX Coordinator may, at his or her discretion, designate one of the Deputy Title IX Coordinators as the Assigned Title IX Coordinator in connection with a given complaint.

VAWA means the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Crimes Statistics Act, commonly known as the Clery Act) (20 U.S.C. 1092(f)), under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act).

***SECTION V - REPORTING GENDER-BASED DISCRIMINATION,
HARASSMENT AND SEXUAL MISCONDUCT, RETALIATION OR
INTIMIDATION INCIDENTS***

For information regarding suggested actions for immediate and ongoing assistance to victims of Sexual and Gender-Based Misconduct, including important contact information for on and off campus resources, see Appendix A attached to this Policy.

Davis & Elkins College encourages all individuals to report incidents of gender-based discrimination, harassment and sexual misconduct, retaliation or intimidation to the appropriate individuals at the College via the reporting options below and to report any potential criminal conduct to law enforcement. Both the on and off-campus reporting options set forth below may be pursued simultaneously.

A report may be made by:

- A person who believes they experienced gender-based discrimination, harassment and sexual misconduct, retaliation or intimidation (a “Reported Victim”); or
- A person who has information that gender-based discrimination, harassment and sexual misconduct, retaliation or intimidation may have been committed by a College student,

employee, third party or a participant in a College program or activity (a “Reporting Party”).

Reported Victims have the option not to report alleged gender-based discrimination, harassment and sexual misconduct, retaliation or intimidation to the College or to law enforcement authorities and the College respects the decision in regards to reporting. If a reported victim chooses not to participate in the College review of the report, the College may, subject to the confidentiality provisions outlined in this Policy, pursue the report without that person’s participation. Moreover, if information about sexual or gender-based misconduct or associated incidents of retaliation or intimidation comes to the attention of the College, Davis & Elkins (1) may start an investigation even in the absence of a filed complaint and/or (2) may notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

Upon receipt of a non-confidential report, the matter will be referred to the Title IX Coordinator, who will review the facts and make an immediate assessment of any risk of harm to the reported victim or to the broader College community and will take steps necessary to address those risks. If warranted, these steps will include interim measures to provide for the safety of the reported victim and the College community.

A. REPORTING OPTIONS WITH THE COLLEGE

Reported victims or witnesses of gender-based discrimination, harassment and sexual misconduct or associated incidents of retaliation or intimidation are encouraged to talk to somebody about what happened – so individuals can get the support they need, and so the College can respond appropriately. The various confidential and non-confidential disclosure options available to members of the Davis & Elkins College community are set forth below:

1. Confidential Communications to College Resources

Reporting parties and Reported victims have the option to report incidents of gender-based discrimination, harassment and sexual misconduct or associated incidents of retaliation or intimidation to the confidential sources on campus listed below. Reporting parties and Reported victims may choose this option if they want to report the incident but do not want any immediate, formal action to be taken by the College. Confidential Sources can provide individuals with both immediate and long-term help. They will listen and help access additional assistance and explain options for obtaining additional protections and support from the College and others. Such protection and support may include, for example, victim advocacy services, academic support or accommodations, health or mental health services, and changes to living, working or course schedules. These confidential sources will also explain that Title IX includes protections against retaliation and intimidation, and that the Title IX Coordinator and Deputy Title IX Coordinators will not only take steps to prevent retaliation and intimidation, but also take strong responsive action should it occur. This includes retaliatory actions taken by the College and College administrators.

The College’s confidential sources will preserve an individual’s privacy to the extent possible by the law. This means that personally identifiable information shared with these individuals is not part of students’ or employees’ College records and will not be reported to other College personnel (including the Title IX Coordinator and Deputy Title IX Coordinators), to the respondent, or to others (unless the reported victim gives his or her consent to the disclosure of personally

identifiable information or the law requires it (as may be the case with alleged sexual or gender-based misconduct involving a minor or under conditions involving imminent harm to one or more members of the College community, for example)). It also means that disclosures to these individuals generally will not trigger a College investigation into an incident against the victim's wishes. See "Requesting Confidentiality from Davis & Elkins College." Reported Victims choosing this option can decide to make a formal complaint and/or criminal report at a future date, and thus have the incident fully investigated. These confidential sources will provide assistance in making such a report if the individual wishes them to do so.

a. Davis & Elkins College Professional and Pastoral Counselors

Professional, licensed counselors and pastoral counselors who provide mental health counseling to members of the College community (and including those who act in that role under the supervision of a licensed counselor) free of charge are not required to report any information about a Sexual or Gender-Based Misconduct incident to the Title IX Coordinator or Deputy Title IX Coordinators without the Reported Victim's permission.

The following offices and individuals provide confidential mental health and/or pastoral counseling to members of the Davis & Elkins College community:

Margaret Falletta
College Counselor
Jennings Randolph Hall
Office: (304) 637- 1363
Email: fallettam@dewv.edu

Laura Brekke
College Chaplain
Liberal Arts Hall 209
Office: (304) 637-1267

b. Student Health Service Care Providers

The College nurse and physician at Student Health Services 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 can be very helpful in later criminal proceedings and/or in seeking a protective order.

While the College nurse and physician at Student Health Services 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. In addition, the health care providers at Student Health Services are obligated to report Sexual and Gender-Based Misconduct incidents without any of the victim's identifying information to the Title IX Coordinator to enable the College to understand the existence of, and potential extent of, the problem (Title IX). If the incident is a

crime, these providers will report it without any identifying information to Office of Public Safety for inclusion in the daily crime log and annual statistical report and for issuance of any required timely warning (Clery Act).

The Davis & Elkins College Student Health Center is located in Gribble Hall and can be contacted at 304-637-1234. The Student Health Center may be visited in person during normal business hours or an appointment may be made. The Student Health Center's normal hours of operation are:

Days and Time of Operation

Monday – Friday

11:00 a.m. to 3:00 p.m.

Gribble Hall

2. Reporting to Appropriate College Officials

Individuals who believe that they have been the subject of or have witnessed an incident of gender-based discrimination, harassment and sexual misconduct and/or associated incidents of retaliation or intimidation are encouraged to report the conduct to College officials so that they can take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions), and, if it is determined that sexual and gender-based misconduct has occurred, take appropriate steps to address the situation.

When a reported victim or reporting party makes a report, he or she has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. Moreover, the College will remain ever mindful of the reported victim or reporting party's well-being and will take ongoing steps to protect the reported victim or reporting party from retaliation or harm and work with the individual to implement interim measures as necessary and appropriate. Retaliation or intimidation, whether by students, college employees or third parties, will not be tolerated.

There are three ways to report an incident of Gender-based discrimination, harassment and sexual misconduct and/or associated incidents of retaliation or intimidation to the College:

a. Reporting to the Title IX Coordinator or Deputy Title IX Coordinators

A report may be made to the Title IX Coordinator or Deputy Title IX Coordinators regardless of whether the reporting party is a student, employee, or third party:

Davis & Elkins College Title IX Coordinator

Kate Garlick

Title IX Coordinator

Section 504 Coordinator

Office: (304) 637-1241

Email: garlickk@dewv.edu

Liberal Arts Hall, 1st Floor

100 Campus Drive, Elkins, WV 26241

Davis & Elkins College Title IX Deputy Coordinators

Jane Corey

Director of Human Resources
Office: (304) 637-1344 | Cell: (304) 940-3575
coreym@dewv.edu
Liberal Arts Hall, Room 203
100 Campus Drive, Elkins, WV 26241

Scott Goddard

Vice President for Student Affairs
Office: (304) 637-1352 | Cell: (304) 642-1352
goddards@dewv.edu
Liberal Arts Hall, Suite 102
100 Campus Drive, Elkins, WV 26241

Robert Phillips

Vice President for Academic Affairs
Office: (304) 637-1292
phillipsr@dewv.edu
Liberal Arts Hall, Suite 106
100 Campus Drive, Elkins, WV 26241

Amanda Larkin

Assistant Athletic Director
NCAA Compliance Director
Office: (304) 637-1222
larkina@dewv.edu
Hermanson Center, Room C
100 Campus Drive, Elkins, WV 26241

The Title IX Coordinator and Title IX Deputy Coordinators may be contacted in any of the following manners:

- File a complaint or report on the gender-based discrimination, harassment and sexual misconduct incident form, which is available on the Davis & Elkins website at <https://secure.dewv.edu/form/incident-report-form>
- Leave a private voice message for the Title IX Coordinator or a Title IX Deputy Coordinator;
- Send an email to the Title IX Coordinator or a Title IX Deputy Coordinator;
- Mail a letter to the Title IX Coordinator or a Title IX Deputy Coordinator; or
- Visit in person the Title IX Coordinator or a Title IX Deputy Coordinator.

b. Reporting to Public Safety and Security

A report may also be made to the Office of Public Safety, regardless of whether the reporting party or reported victim is a student, employee, or third party. The Office of Public Safety office is located at the Gatehouse. Public Safety Officers can be accessed at (304) 704-9111, 24 hours a day.

The Office of Public Safety personnel will immediately report to the Title IX Coordinator (or in his or her absence a Title IX Deputy Coordinator) all relevant details about the alleged incident that the College will need to determine what happened – including the names of the victim and alleged perpetrator, any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

c. Reporting to a “Responsible employee”

Any member of the College community has the option to report an incident of gender-based discrimination, harassment and sexual misconduct and/or associated incidents of retaliation or intimidation to a “Responsible employee” of the College.

A “Responsible employee” is a College employee who either has the authority to redress sexual and gender-based misconduct, has the duty to report incidents of sexual and gender-based misconduct or other student misconduct, or is an individual who a student could reasonably believe has this authority or duty.

When a member of the College community tells a responsible employee about an incident of gender-based discrimination, harassment and sexual misconduct and/or associated incidents of retaliation or intimidation, the individual has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A Responsible employee will immediately inform the Title IX Coordinator (or in his or her absence a Title IX Deputy Coordinator) all relevant details about the alleged incident that the College will need to determine what happened – including the names of the victim and alleged perpetrator, any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. Any Responsible employee who knew about a violation of this Policy and took no action to stop it or failed to report the prohibited act may be subject to disciplinary action.

To the extent possible, information reported to a Responsible employee will be shared only with people responsible for handling the College’s response to the report. A responsible employee will not share information with law enforcement without the reported victim’s consent or unless the reported victim has also reported the incident to law enforcement.

The following positions have been designated by the College to be responsible employees:

Board of Trustees Members; the President; the Vice Presidents; the Deans; the Directors; Coordinators; Supervisors; All Athletic Department Coaches and Staff; All Admissions Staff; All Public Safety Staff; All Student Life Staff; All Resident Assistants; Resident Directors; Professional Academic Staff; and Faculty.

Before a reported victim or reporting party reveals any information to a responsible employee, a responsible employee should make reasonable efforts in light of the circumstances to ensure that the victim understands the employee’s reporting obligations – and, if the reported victim or reporting party wants to maintain confidentiality, direct the reported victim or reporting party to confidential resources.

If the reported victim wants to tell the responsible employee what happened but also maintain

confidentiality, the responsible employee should tell the victim that the College will consider the request, but cannot guarantee that the College will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Title IX Coordinator of the Reported Victim's request for confidentiality.

Responsible employees will not pressure a reported victim to request confidentiality, but will honor and support the reported victim's wishes, including for the College to fully investigate an incident. For the same reason, responsible employees will not pressure a reported victim to make a report or formal complaint if the reported victim is not ready to.

3. Anonymous Reporting to the College

Although the College encourages a reported victim or reporting party to talk to someone, the College provides an online webpage for anonymous reporting (<https://secure.dewv.edu/form/incident-report-form>). The system notifies the user (before s/he enters information) that entering Personally Identifying Information may serve as notice to the College for the purpose of triggering a Title IX investigation. In addition, the **Campus Conduct Hotline** at (866) 943-5787 may be utilized.

4. Timeframe for Filing a Report

Davis & Elkins does not limit the timeframe for filing a report. Reports can be submitted at any time following an incident, although the College's ability to take any action may be limited by the matriculation or employment status of the alleged respondent.

C. REPORTING OPTIONS OUTSIDE THE COLLEGE

1. Off-Campus Privileged and Confidential Communications

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

Women's Aid In Crisis, Inc.

(www.waicwv.com/)

P.O. Box 2062

Elkins, WV 26241

Phone: (304) 636-8433

Fax: (304) 636-5564

Davis Medical Center

812 Gorman Avenue

Elkins, WV 26241

(304) 636-8080

National Sexual Assault Hotline

(800) 656-4673

Employee Assistance Program (For Employees)

www.MagellanHealth.com/member

International access: 1-800-662-4504

Toll-Free: 1-800-588-8412
For TTY Users: 1-800-456-4006

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

2. Filing a Report with Law Enforcement

Any member of the College community who has experienced an incident of sexual misconduct and gender-based misconduct involving potential criminal conduct has the option to report the conduct to the law enforcement agency that has jurisdiction over the location where the incident occurred by calling 911. In Elkins, the Elkins City Police Department may be contacted at (304) 636-0678 or by calling 911. If the conduct is reported to the College, the individual will be informed of his or her option to also report any potential criminal activity to law enforcement. The College, however, may be obligated to report the matter to local law enforcement as required by law.

The 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.

Victim support and resources are available even if a student, employee or third party elects not to pursue criminal charges or file a report or complaint with the College. Because sexual misconduct and gender-based misconduct may, 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, the College provides 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.

If an individual chooses to report an incident to law enforcement, any of the following on and off-campus resources may be contacted for assistance in filing a report with local law enforcement:

REPORTING NON-CONFIDENTIAL RESOURCES

Davis & Elkins College Office of Public Safety

(304) 704-9111

Davis & Elkins College Title IX Coordinator

Kate Garlick

Title IX Coordinator

Section 504 Coordinator

Office: (304) 637-1241 | Cell: (304) 614-9203

Email: garlickk@dewv.edu

Liberal Arts Hall, 1st Floor
100 Campus Drive, Elkins, WV 26241

Davis & Elkins College Title IX Deputy Coordinators

Jane Corey

Director of Human Resources
Office: (304) 637-1344 | Cell: (304) 940-3575
coreym@dewv.edu

Liberal Arts Hall, Room 203
100 Campus Drive, Elkins, WV 26241

Scott Goddard

Vice President for Student Affairs
Office: (304) 637-1352 | Cell: (304) 642-1352
goddards@dewv.edu

Liberal Arts Hall, Suite 102
100 Campus Drive, Elkins, WV 26241

Robert Phillips

Vice President for Academic Affairs
Office: (304) 637-1292
phillipsr@dewv.edu

Liberal Arts Hall, Suite 106
100 Campus Drive, Elkins, WV 26241

Amanda Larkin

Assistant Athletic Director
NCAA Compliance Director
Office: (304) 637-1222
larkina@dewv.edu

Hermanson Center, Room C
100 Campus Drive, Elkins, WV 26241

CONFIDENTIAL RESOURCES

Student Health Services

Ground Floor of Gribble Hall, Ext. 1234
Office: (304) 637-1234

College Counselor

Jennings Randolph Hall

By Appointment
(304) 637-1363
Email: fallettam@dewv.edu

College Chaplain

Liberal Arts Hall 209

Office: (304) 637-1267

Campus Victim Advocate

Albert Hall, 207

Office: (304) 637-1321

Email: talbotc@dewv.edu

Women's Aid In Crisis, Inc.

(www.waicwv.com)

P.O. Box 2062

Elkins, WV 26241

Phone: (304) 636-8433

Fax: (304) 636-5564

Davis Medical Center

812 Gorman Avenue

Elkins, WV 26241

(304) 636-3300

A criminal investigation into a matter does not preclude the College from conducting its own investigation. If a report is filed with both the College and law enforcement, the College will proceed with its normal investigatory process. The College may, however, need to temporarily delay its fact-finding portion of the investigatory process while law enforcement is gathering initial evidence. This delay typically takes three to 10 calendar days, although it may take longer in certain instances. If a delay in the College's Title IX investigatory process occurs, it will take Interim Measures to protect the reported victim in the educational or work setting as applicable. Moreover, the Title IX Coordinator will continue to update the parties on the status of the investigation and inform them when the College's Title IX investigatory process resumes, which will occur promptly after law enforcement notifies the College that it has completed its evidence gathering stage of the criminal investigation. The College will not, however, delay its investigatory process until the ultimate outcome of the criminal investigation or the filing of any charges.

Anonymous Reporting to Law Enforcement: Any member of the Davis & Elkins College community who has experienced or witnessed an incident of sexual misconduct and gender-based misconduct may also decide to report the alleged incident anonymously to law enforcement. Law enforcement will record the date and time of the alleged assault, the mode of operation of the assailant, and any description of the assailant given. If the assailant's name is reported, it will be recorded. Also, law enforcement stores the information in the event a pattern of crimes by the assailant is detected. The purpose of an anonymous confidential report is to comply with the reported victim's wish to keep the matter confidential, while taking steps to ensure the future safety of the reported victim and others. Anonymous reports to law enforcement do not relieve responsible employees of their reporting duties under Title IX. Anonymous and confidential reports are counted and disclosed in the annual crime statistics for the College.

3. Filing a Report with External Agencies

In addition to the College's internal remedies, members of the campus community should also be aware that the Office of Civil Rights investigates and prosecutes complaints of prohibited sex 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 College.

Employees, Employment Applicants, Volunteers and other Third Parties: In addition, employees, applicants for employment and other third Parties may also file a formal complaint of sex discrimination with the following federal agency:

U. S. Equal Employment Opportunity Commission

Philadelphia District Office
21 South 5th Street, 4th Floor
Philadelphia, PA 19106
Phone: (215) 440-2600
TTY: (215) 440-2610

SECTION VI - REQUESTING CONFIDENTIALITY & REQUESTS NOT TO PURSUE RESOLUTION

Davis & Elkins encourages victims and witnesses of an incident of sexual and gender-based misconduct, retaliation or intimidation to talk to somebody about what happened – so reported victims can get the support they need, and so the College can respond appropriately.

Different College employees have different abilities to maintain a reported victim's confidentiality.

- Some are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” Disclosures to these employees will **not** trigger a College investigation into an incident against the reported victim’s wishes.
- Some employees are required to report all the details of an incident of which they have knowledge (including the identities of both the reported victim and respondent) to the College’s Title IX Coordinator. A report to these employees (called “responsible employees”) constitutes a formal report to the College.

This Policy is intended to make members of the College community aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn should they become a victim of sexual and gender-based misconduct. The College encourages reported victims to talk to someone.

1. Evaluation of Requests for Confidentiality or Not to Pursue Resolution

Reported victims may (i) request that the College not investigate the information or allegation(s) reported, (ii) request confidentiality, (iii) refuse to file a report, and/or (iv) refuse to cooperate in the investigation and/or resolution of allegation(s).

The College takes such requests and decisions seriously; however, such requests and decisions may limit the College’s ability to investigate and take reasonable action in response to a report of sexual or gender-based misconduct. In such cases, the College will evaluate such requests and decisions in the context of the College’s commitment to provide a reasonably safe and non-discriminatory environment.

In order to make such an evaluation, the Title IX Coordinator may conduct an inquiry into the alleged sexual or gender-based misconduct and may weigh such requests and decisions against the following factors:

1. The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
 - a. Whether there have been other sexual or gender-based misconduct complaints about the same alleged perpetrator;
 - b. Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
 - c. Whether the alleged perpetrator threatened further sexual or gender-based misconduct or other violence against the victim or others;
 - d. Whether the sexual or gender-based misconduct was committed by multiple perpetrators.
2. The seriousness of the alleged sexual or gender-based misconduct, including but not limited to:
 - a. Whether the sexual or gender-based misconduct was perpetrated with a weapon;
 - b. Whether the reported victim is a minor;
 - c. The respondent’s right to receive information about the allegations if the information is maintained by the College as an "Education Record" under FERPA;
 - d. Whether the college possesses other means to obtain relevant evidence of the sexual or gender-based misconduct (e.g., security cameras or security personnel, physical evidence);

- e. Whether the reported victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group or person.

The presence of one or more of these factors could lead the College to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the College will likely respect the reported victim's request for confidentiality or not to pursue resolution. If the College honors the request, it will offer interim measures and/or remedial action to the victim and the community, but will not otherwise pursue formal resolution.

There are times when the College may not be able to honor a reported victim's request (for confidentiality or not to pursue resolution) in order to provide a safe, non-discriminatory environment for all members of the College community. If the Assigned Title IX Coordinator determines that he or she cannot honor the reported victim's request for confidentiality, the Assigned Title IX Coordinator or designee will inform the reported victim prior to starting the investigatory process and will, to the extent possible, only share information with people responsible for handling the College's response. The College, however, will not require a victim to participate in the investigatory process or any disciplinary proceedings.

The College will remain ever mindful of the reported victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to implement interim measures. Retaliation against the reported victim or reporting party, whether by students, College employees or third parties, will not be tolerated. The College will also:

1. Assist the reported victim in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus;
2. Provide other security and support, which could include issuing a no-contact order (or orders), helping arrange a change of living or working arrangements or course schedules (including for the respondent pending the outcome of an investigation) or adjustments for assignments or tests; and
3. Inform the reported victim of his or her right to report a crime to campus security or local law enforcement – and provide the reported victim with assistance if the reported victim wishes to do so.

In addition to the above, because the College is under a continuing obligation to address the issue of sexual and gender-based misconduct, reports of sexual and gender-based misconduct (including non-identifying reports) will prompt the College to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual and gender-based misconduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

***SECTION VII - GENERAL PROVISIONS APPLICABLE TO ALL REPORTS
& COMPLAINTS OF GENDER-BASED DISCRIMINATION,
HARASSMENT AND SEXUAL MISCONDUCT***

A. TIME FRAME FOR RESOLUTION

The investigation and resolution of all reports or complaints of gender-based discrimination, harassment and sexual misconduct will generally be completed within 60 to 90 days. Extenuating circumstances, including, but not limited to, the complexity and severity of a complaint may arise that require the process to extend beyond 60 to 90 days. In general, a reported victim and respondent can expect to receive periodic updates from the Title IX Coordinator and/or Investigator as to the status of the review or investigatory process.

This timeframe may be extended by the Title IX Coordinator for good cause based on factors such as, but not limited to, criminal investigations, schedule and availability of witnesses, holidays or semester breaks, and the complexity of the complaint. If the investigatory process cannot be completed within 60 days, the Title IX Coordinator will notify the reported victim and respondent(s) of that fact and provide a timeframe for completing the investigatory process.

B. PRIVACY

The College is committed to protecting the privacy of all individuals involved in a report and/or complaint of gender-based discrimination, harassment, and sexual misconduct. When a report is made to the College, all individuals involved in the investigatory process, including but not limited to the reported victim, respondent, witnesses, or the investigators, etc., will be notified of the College's expectation that the privacy of all parties involved in the report will be maintained. The College will make all reasonable efforts to maintain the privacy of parties involved in a gender-based discrimination, harassment and sexual misconduct investigatory process. Privacy generally means that information related to a report of misconduct will only be shared with those College employees who "need to know" in order to assist in the active review, investigatory process, or resolution of a report. While not bound by confidentiality, those individuals who are not considered to be confidential resources will be discreet and respect the privacy of all individuals involved in the process. Breaches of privacy or retaliation against any person involved in the investigatory process may result in disciplinary action.

C. PUBLIC AWARENESS EVENTS

Public awareness events such as candlelight vigils, protests, or other forums in which students might disclose incidents of Sexual Misconduct, are not considered notice to the College of sexual or gender-based misconduct for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the College will provide information about students' Title IX rights at these events.

D. FALSE INFORMATION AND MALICIOUS ACCUSATIONS

Any individual who knowingly files false and malicious accusations of gender-based harassment, discrimination and/or sexual misconduct, retaliation or intimidation, who knowingly provides false information to College officials, or who intentionally misleads College officials who are involved in the investigation or resolution of a report of gender-based harassment, discrimination and/or sexual misconduct, retaliation or intimidation may be subject to disciplinary action or other sanctions up to and including termination or dismissal. Erroneous reports or complaints of gender-based harassment, discrimination and/or sexual misconduct, retaliation or intimidation made in good faith are exempted from this provision.

E. CLERY ACT STATISTICAL AND TIMELY WARNING REPORTING OBLIGATIONS

Statistical Reporting: The Clery Act is a federal law requiring institutions of higher education to collect and report statistics on certain crimes in an annual security report (https://www.dewv.edu/sites/default/files/shared/annual_security_and_fire_safety_report_05_2017.pdf). Campus Security Authorities at the College have a duty to provide the College's Office of Public Safety with information regarding certain crimes when they are reported to them. All personally identifiable information is kept confidential from the report, but statistical information regarding Clery reportable crimes must be shared, including the date and location of the incident (but not the specific address) and information about the reported crime to allow for proper classification. This report provides the College community with information about the extent and nature of crime on the College's campus and helps ensure greater community safety.

Timely Warning Notifications: If a report of sexual or gender-based misconduct reveals that there is an immediate threat to the health or safety of students or employees on campus, or that an ongoing serious or continuing threat to the campus community exists, an emergency Timely Warning notification will be issued. The purpose of the Timely Warning notification is to enable individuals to protect themselves and to increase safety awareness, as well as seek information that will lead to eradication of the threat. The victim's names and other personally identifiable information will not be included in any emergency notification or public safety advisory.

F. AMNESTY POLICY

Individuals may be hesitant to report conduct which they have experienced or witnessed, to participate in an investigation and/or grievance proceeding, or to speak truthfully because they fear College disciplinary action due to their own consumption of alcohol or other drugs at or near the time of the incident. While the College does not condone underage drinking or drug use, the College may extend limited immunity from College sanctioning in the case of illegal drug and alcohol use to victims, witnesses and those reporting incidents and/or assisting the victims of sexual offenses, provided that they are acting in good faith in such capacity.

G. DOCUMENTATION

The College will retain documentation (including but not limited to the records of each report and formal complaint, notifications, the investigation report, any written findings of fact, petitions for appeal, and any written communication between the parties), for at least seven years. Documentation pertaining to expulsions or degree revocations will be retained indefinitely or in accordance with College policy.

H. INDIVIDUALS WITH DISABILITIES AND INTERNATIONAL STUDENTS

This Policy is accessible to students, employees and third parties with disabilities. The College will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations as needed to participate in the steps and procedures outlined in this Policy.

In addition, this Policy is accessible to students who are English language learners and is distributed on campus in such a way that all students are aware of their rights under Title IX and the Violence Against Women Act.

I. SHARING RECORDS WITH LAW ENFORCEMENT

The College will share with law enforcement, as necessary and appropriate, information or records permitted to be released under any exception to the privacy protections of the Family Educational Rights and Privacy Act (FERPA), including the Health and Safety Emergency exception and/or

records/information otherwise protected by any other state laws or local ordinances. It should be noted that FERPA applies only to records created by the College and to information derived from tangible records. FERPA does not protect the confidentiality of information in general and, therefore, does not apply to the disclosure of information derived from a source other than an education record, even if education records exist which contain that information. As a general rule, information that is obtained through personal knowledge or observation and not from an education record is not protected from disclosure under FERPA. Thus, a non-confidential verbal report of an offense of violence or sexual assault can be reported to the appropriate law enforcement agency.

In those instances when a student is formally charged by law enforcement with a crime of violence or sexual assault, the College may provide to local law enforcement the name of the student found responsible for violating the College's Code of Student Conduct, the Code of Student Conduct violation, and the final results of the disciplinary proceedings.

In the event there is a concern that some information/record regarding a sexual or gender-based misconduct incident may not be shared because of FERPA constraints, the College's legal counsel will be consulted.

J. BYSTANDER INTERVENTION

The College encourages all community members to take reasonable and prudent actions to prevent or stop an act of gender-based discrimination, harassment and/or sexual misconduct or associated incidents of retaliation or intimidation. Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

K. ADVISORS

The reported victim and the respondent have the right to have one advisor of his/her choice present during any meeting or interview regarding a report or complaint alleging that the College Gender-Based Discrimination, Harassment and Sexual Misconduct Policy has been violated. This may include, but is not limited to, any part of an investigatory process, informal or formal resolution, appeal and/or sanction proceeding conducted under this Policy. The Advisor may not have personal involvement regarding any facts or circumstances of the alleged misconduct. The Advisor's only functions shall be to accompany the reported victim and respondent to the meeting, interview and/or proceeding and assist and/or consult with the reported victim and respondent. The Advisor may not act as a spokesperson for the reported victim or respondent or answer questions on their behalf. The Advisor may be an attorney but participation shall be limited, as stated above.

SECTION VIII – RESPONDING TO INCIDENTS OF GENDER-BASED DISCRIMINATION, HARASSMENT & SEXUAL MISCONDUCT

Once the College receives a report of or is put on notice of an incident of sexual or gender-based misconduct or associated incidents of retaliation or intimidation, the College will generally proceed as follows:

A. INTERIM MEASURES

Once the College receives a report of or is put on notice of an incident of sexual or gender-based misconduct or associated incidents of retaliation or intimidation, the Assigned Title IX Coordinator, in consultation with other appropriate administrators necessary, will determine

whether any interim and protective measures (“Interim Measures”) and/or interim disciplinary sanctions are warranted and appropriate.

The College may implement such measures regardless of whether a report has been made (with either campus officials or law enforcement agencies) or whether an investigation has commenced. Moreover, a victim who has not reported the misconduct to a Title IX Coordinator(s), Office of Public Safety or a responsible employee has the option to disclose the misconduct to a professional counselor from the Counseling or Health Centers or an on or off-campus victim advocate, who in turn can request Interim Measures on the victim’s behalf from the College. Under this option, victims should be aware that when a counselor or advocate requests interim measures on their behalf from the Title IX Coordinator and discloses that the reason for the request is sexual or gender-based misconduct, the request may trigger the College’s Title IX obligation to investigate. To the extent the counselor or advocate makes such a disclosure, but, consistent with the victim’s wishes, asks that the College not investigate or otherwise notify the alleged perpetrator of the report, the Title IX coordinator will consider whether it can honor the request while still providing a safe and nondiscriminatory environment for all students, as set forth in the College’s Confidentiality Policy and take interim measures to protect the victim as necessary.

1. Interim and Protective Measures

When warranted to protect the parties (reported victim, reporting party, respondent, witnesses, etc.) the Assigned Title IX Coordinator may implement one or more interim measures, if appropriate and/or reasonably available, including, but not limited to the following:

- a. Issuing of mutual no-contact orders to prevent any contact between the victim, the respondent, witnesses and/or other community members to ensure the safety of all parties and the integrity of the process;
- b. Providing an escort to ensure that he or she can move safely between classes, work and/or activities;
- c. Changing on-campus housing, if any, to a different on-campus location and providing assistance from College support staff in completing the relocation;
- d. Rescheduling class work, assignments and examinations;
- e. Changing work arrangements or schedules;
- f. Providing academic support services such as providing alternative course completion options, dropping a course without penalty or transferring to a different class section (with the agreement of the appropriate faculty);
- g. Limiting an individual’s or organization’s access to certain College facilities or activities pending resolution of the matter;
- h. Transportation accommodations, such as shuttle service, cab voucher or parking arrangements, to ensure safety and access to other services; and
- i. Preserving eligibility for academic, athletic or other scholarships, financial aid, internships, study abroad, or foreign student visas.

Note: Failure to comply with the terms of interim measures may be considered a separate violation of this Policy.

2. Interim Measures for Respondents:

a. For Student Respondents:

- Request that the Office of Student Affairs temporarily suspend the student respondent from the College; or
- Request that the Office of Student Affairs summarily suspend the respondent from campus housing on an interim basis and/or restrict his or her movement on campus.

The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. The appropriate Assigned Title IX Coordinator will consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the victim; the age of the parties involved; the severity or pervasiveness of the alleged behaviors or activities; any continuing effects on the Victim; whether the victim and respondent share the same residence hall, class, transportation or job location; and whether other judicial measures have been taken to protect the Victim (e.g., civil protection orders).

In general, when taking interim measures, the College will seek to minimize the burden on the victim. For example, if the victim and respondent share the same class or residence hall, the College will typically not remove the victim from the class or housing while allowing the respondent to remain. The College does, however, make such decisions on a case-by-case basis.

Even when the Assigned Title IX Coordinator has determined that the College may not be able to respond fully to an allegation of Sexual and Gender-Based Misconduct and initiate formal action against a respondent because of the victim's request for confidentiality, the Assigned Title IX Coordinator will take immediate action to protect the victim and the College community while keeping his or her identity confidential. These actions may include: providing support services to the victim; changing living arrangements or course schedules, modifying assignments or tests; and providing increased monitoring, supervision or security at locations or activities where the misconduct is alleged to have occurred.

Throughout the College's investigation and resolution process, the Assigned Title IX Coordinator will periodically check with the victim to ensure interim measures are effective and, if not, identify alternatives.

B. INITIAL MEETINGS WITH THE ASSIGNED TITLE IX COORDINATOR

1. Meeting with the Reporting Party and/or Reported Victim

Within five business days following the filing of a report or being put on notice of a possible incident of Sexual or Gender-Based Misconduct or associated incidents of Retaliation or Intimidation (or as soon as is reasonably practicable), the assigned Title IX Coordinator will contact the reporting party or reported victim to schedule an initial meeting to discuss the report and avenues for its resolution. If the report was made by a reporting party, the assigned Title IX Coordinator will attempt to meet with such person and gather information from him or her before speaking with the reported victim. Following the initial meeting with the reported victim, the assigned Title IX Coordinator will, if applicable and warranted by the facts, promptly determine the interim measures to be provided to him or her. If interim measures have already been

implemented, the assigned Title IX Coordinator will evaluate whether they should continue to be provided and whether other interim measures should also be implemented.

During the initial meeting with the reported victim, the assigned Title IX Coordinator will, as applicable:

- Review and provide a written copy of this Policy, including a review of applicable rights under the Policy and how to access the Policy (see Appendix B);
- Provide written notification of the counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services available for victims both within the College and in the community and the availability of changes to academic, living, transportation, and working situations or protective measures regardless of whether the victim reports to law enforcement;
- Explain the avenues for formal and, if applicable, informal resolution of the Complaint;
- Explain the steps involved in a Formal Title IX investigation;
- Advise the reported victim that he or she may have an advisor of his or her choice present throughout the Title IX investigation and resolution process. The advisor may be anyone of the reported victim's choosing, including an attorney retained at the individual's initiative. Any advisor may participate as a silent observer in any meeting or proceeding related to the investigation or resolution process;
- Discuss confidentiality standards and concerns;
- Determine whether the reported victim wishes to pursue an informal (if applicable) or formal resolution through the College, law enforcement, both or no resolution of any kind;
- Refer the reported victim to counseling and other on- and off-campus resources, as appropriate;
- Discuss the importance of preserving relevant evidence or documentation of relevance to the investigatory process (e.g., texts, emails, notes, photographs, etc.);
- Discuss protection from and reporting of retaliation and intimidation; and
- Discuss with the reported victim, as appropriate, possible interim measures that can be provided to him or her during the pendency of the investigative and resolution processes. (If interim measures above have already been implemented, the Title IX Coordinator will evaluate whether they should continue to be provided and whether other Interim Measures should also be implemented.) The College may implement such measures regardless of whether a report has been filed (with either campus officials or law enforcement agencies) or whether the investigatory process has commenced.

2. Meeting with the Responding Party

If the reported victim wishes to pursue resolution through the College or if the College otherwise deems that further investigation is warranted, as soon as is practicable after the assigned Title IX Coordinator's initial assessment, the assigned Title IX Coordinator will schedule an initial meeting with the respondent. During the initial meeting with the respondent, the assigned Title IX Coordinator will, as applicable:

- Provide the respondent sufficient information to allow him or her to respond to the substance of the allegation, including, if possible, the name of the reported victim and the date, location, and nature of the alleged sexual or gender-based misconduct;

- Review with and provide the respondent a written copy of this Policy and how to access it, including a review of his or her rights under the Policy (see Appendix B);
- Explain the College's procedures for resolution of the complaint;
- Explain the steps involved in a formal Title IX investigation;
- Advise the Respondent that he or she may have an advisor of his or her choice present throughout the Title IX inquiry, investigation, and resolution process. The advisor may be anyone of the respondent's choosing, including an attorney retained at the individual's initiative. Any advisor may participate as a silent observer in any meeting or proceeding related to the investigation or resolution process.
- Discuss confidentiality standards and concerns with the respondent;
- Discuss non-retaliation and intimidation requirements with the respondent;
- Inform the respondent of any interim measures already determined and to be provided to the reported victim that directly affect the respondent (e.g., changing the respondent's class schedule or moving the respondent to an alternate residence hall);
- Discuss the importance of preserving evidence or documentation relevant to the investigation (e.g., texts, emails, notes, photographs, etc.);
- Refer the respondent to a counselor or other resources, as appropriate; and
- Discuss with the respondent, as appropriate, possible interim measures that can be provided to the respondent during the pendency of the investigative and resolution processes. The College may implement such measures if requested and/or appropriate, and reasonably available, whether a formal complaint has been filed (with either campus officials or law enforcement agencies) or whether an investigation has commenced (by either campus officials or law enforcement agencies).

C. TITLE IX COORDINATOR'S INITIAL ASSESSMENT

The Title IX Coordinator will make an assessment, after meeting with the reported victim and if possible and prudent the respondent, as to whether or not there are reasonable grounds for believing that the conduct at issue constitutes gender-based discrimination, harassment and/or sexual misconduct.

In the event that the assigned Title IX Coordinator determines there are no reasonable grounds for believing that the conduct at issue constitutes gender-based discrimination, harassment and/or sexual misconduct as defined by this Policy, the Title IX Coordinator will determine in separate consultation as appropriate with the reported victim, the respondent and/or other College administrators and document the appropriate resolution of the complaint. Appropriate resolution measures will include the consideration of broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual and gender-based misconduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting College policies, procedures and practices.

If, however, in the judgment of the Title IX Coordinator, reasonable grounds for believing that the conduct at issue constitutes gender-based discrimination, harassment and/or sexual misconduct, the Title IX Coordinator will determine whether (a) the case can possibly be resolved through informal resolution; or (b) a formal Title IX Investigation is warranted to resolve the case.

D. INFORMAL RESOLUTION

Informal resolution is often used for less serious, yet inappropriate, behaviors and may be an alternative to the formal resolution process. The assigned Title IX Coordinator will determine if informal resolution is appropriate, based on the willingness of the parties and the nature of the conduct at issue. Informal resolution will not be the primary resolution mechanism used to address a report of Sexual Assault, Dating Violence, Domestic Violence, Sexual Exploitation of any kind or in other cases of serious violations of the Gender-Based Discrimination, Harassment and Sexual Misconduct Policy as determined by the Title IX Coordinator or in other cases of serious violations of this Policy, though it may be made available should the parties and the assigned Title IX Coordinator believe that it could be beneficial.

While informal resolution measures will not be used as the primary resolution mechanism for cases involving those incidents described in the preceding paragraph, Informal resolution measures may be used as appropriate: (1) To determine remedial actions when the assigned Title IX Coordinator determines there are no reasonable grounds for believing that a report constitutes gender-based discrimination, harassment and/or sexual misconduct as defined by this Policy; (2) To determine disciplinary sanctions and/or remedial actions when the respondent has admitted that he or she has violated this Policy; (3) To determine disciplinary sanctions and remedial actions when the respondent, as a result of the formal investigation process, has been found by the preponderance of the evidence to have violated this Policy; or (4) To determine appropriate remedial actions whenever a reported victim does not wish to start or continue a formal investigatory process, and no pattern, predation, threat, violence or weapon presents the College with the obligation to proceed formally despite the reported victim's request.

It is not necessary to pursue informal resolution first, and anyone participating in informal resolution can stop that process at any time and request a formal resolution. Participating parties must voluntarily elect to pursue an informal resolution process without pressure or compulsion from others. The College or the parties may, at any time, elect to end such proceedings and initiate formal resolution instead. In such cases, information provided by the parties in the course of the investigation and conflict resolution may be considered in the subsequent formal resolution. Moreover, the reported victim and respondent may be accompanied by an advisor at any meetings related to the informal resolution process. If a satisfactory resolution is reached the matter will be considered completed. If these efforts are unsuccessful, the formal resolution process will commence.

Information shared or obtained during an informal resolution process will be treated as confidential to the extent permitted by law. Any agreements reached in an informal resolution process must be approved by the Title IX Coordinator to ensure consistency with the College's Title IX obligations.

The Title IX Coordinator will maintain records of all reports and conduct resolved through informal resolution. Informal resolution will typically be completed within 60 business days as is reasonable and practicable.

E. FORMAL RESOLUTION PROCEDURES

It is the goal of Davis & Elkins to provide for an adequate, reliable and impartial investigation of each report, including the opportunity for both the reported victim and respondent to present witnesses and evidence.

1. Assignment of Investigator

If the Title IX Coordinator determines that a formal Title IX Investigation is warranted to resolve a report of sexual or gender-based misconduct or informal resolution efforts were not successful, the assigned Title IX Coordinator will appoint an investigator or an investigative team (“Investigator”) who has specific training and experience investigating allegations of gender-based discrimination, harassment and sexual misconduct. The Title IX Coordinator will notify both the reported victim and the respondent in writing of the formal Title IX investigation and the name of the investigator(s).

Either the respondent and/or the reported Victim may protest the appointment of the investigator(s) by identifying a possible conflict of interest in writing to the assigned Title IX Coordinator within 24 hours of receiving notice of the name of the investigator(s). The assigned Title IX Coordinator will carefully consider such statements and will assign a different Investigator(s) if it is determined that a material conflict of interest exists.

2. Investigator’s Activities

The Title IX investigation will be conducted in a manner appropriate in light of the circumstances of the case. The formal investigatory process may include, but is not limited to, conducting interviews of the reported victim, the respondent(s), and any witnesses (witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual’s character); reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering, examining and preserving other relevant documents and physical, written (including medical records), and electronic evidence (including social media, communications between parties, security camera footage, etc.). The parties will have an equal opportunity to present relevant witnesses and evidence to the investigator, as well as identify witnesses who may have relevant information. Moreover, both the reported victim and respondent(s) may have an advisor accompany (but not actively participate) him or her through the investigation process.

In gathering the facts and arriving at a conclusion, the Investigator may consider the Respondent’s prior conduct history if:

- The respondent was previously found to be responsible for a violation of an institutional policy which has bearing on or was connected to the current allegation and/or was substantially similar to the present allegation; and/or
- The information indicates a pattern of behavior by the respondent.

Additionally, the investigator will refrain from posing questions about or considering the reported victim’s sexual history with anyone other than the respondent. The mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of gender-based discrimination, harassment and sexual misconduct. The investigator(s) will strive to conduct the investigation in a manner that does not inflict additional trauma on the reported victim and will take reasonable care to protect the privacy of involved parties.

Note: The investigator should obtain, when applicable and when possible, the written consent of any third-party witnesses to the disclosure of any personally identifiable information (as that term is defined by FERPA) contained in the complaint, the investigative report, and/or any other documents the disclosure of which is contemplated by this policy in order to further the resolution of the complaint. If the investigator is unable to obtain the consent of such third-party witnesses,

he or she must redact the investigative report to the extent necessary to avoid disclosure of such witness's personally identifiable information, while ensuring that such redaction does not prevent resolution of the complaint.

s Findings & Outcome Notification

The investigatory process, which will typically be completed within 30 business days after the investigation begins, will result in a written report detailing the investigation and including a synthesized presentation of the facts and key points that will lead to the determination of whether there is reasonable cause to believe that the respondent(s) engaged in a Gender-Based Discrimination, Harassment and Sexual Misconduct Policy violation. The written report will include an overview of each interview, a summary of key points, and an assessment of each individual's credibility.

The written report will be provided to the Title IX Coordinator and be used in the decision making process to determine whether or not the Policy has been violated. The assigned Title IX Coordinator, in conjunction with the lead investigator, will present the report to the remaining Title IX and Deputy Coordinators (minus the person charged with granting an appeal) to determine an outcome as to whether or not the Gender-Based Discrimination, Harassment and Sexual Misconduct Policy has been violated based on the preponderance of evidence standard. The decision will be rendered by the Title IX Coordinator and Deputies (minus the Coordinator who will serve as the appeal person).

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. Preponderance of evidence is the required standard for determining a policy violation. Administrators charged with rendering a decision of policy violation must be convinced based on the information provided that a policy violation was more likely to have occurred than to not have occurred in order to find a respondent responsible for violating a policy.

Written notice of the outcome, rationale for the decision, and instructions for filing an appeal will be provided to both parties

4. Sanctions

Should a respondent accept responsibility for a Policy violation, or if it is determined that the preponderance of evidence establishes that it is more likely than not that the respondent violated the Policy, the assigned Title IX Coordinator will determine an appropriate sanction in conjunction with the appropriate administrator.

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

- If the Respondent is a third party: The sanction will be administered by the Title IX Coordinator.

The Administrative Officer must be a neutral and impartial decision-maker. Any Administrative Officer who has reason to believe s/he cannot make an objective determination must recuse oneself from the process.

The sanction rendered by the appropriate administrator will be issued within five (5) business days following the receipt of the written decision or the respondent's admission of responsibility. Consideration may be given to the nature of, and circumstances surrounding, the violation, prior disciplinary violations, precedent cases, the College's safety concerns, or any other information deemed relevant by the appropriate administrators. The severity of the offense will determine the severity of the sanction. See Appendix C for the College's Sanctioning Matrix. Copies of the decision and sanction will be provided to the reported victim and respondent, via the assigned Title IX Coordinator, via hand delivery or certified mail.

Examples of Disciplinary Sanctions

Disciplinary Sanctions may include, but are not limited to:

- Disciplinary sanctions for students found to have violated the College's Gender-Based Discrimination, Harassment and Sexual Misconduct Policy may include any of the sanctions outlined in the Code of Student Conduct, including but not limited to education, referral to counseling, warnings, probation, suspension, suspension from participation in activities or privileges, suspension from the College or the residence halls, or expulsion.
- Sanctions for faculty, staff or volunteers may include, for example, 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.

If the decision rendered is accepted by both the reported victim and respondent and no appeal is made, the Title IX Coordinator or Deputy Coordinator overseeing the case and the appropriate administrator will implement the sanction, and act promptly and effectively to remedy the effects of the incidents upon the reported victim and the campus community.

5. Appeals

Both parties have the right to appeal the finding within five (5) business days upon receipt of the written notice. Disagreement with the finding and/or with the sanctions does not, by itself, represent grounds for appeals. Legitimate grounds for an appeal are confined to those instances in which there was a demonstrable procedural error and/ or new evidence, not previously available, becomes available.

- If the respondent is a student: The written appeal shall be submitted to the Vice President for Academic Affairs.
- If the respondent is a staff member, volunteer, or third party: The written appeal shall be submitted to the Vice President for Student Affairs.
- If the respondent is a faculty member: The written appeal shall be submitted to the Director of Human Resources.

If an appeal is granted by the appeal officer as noted above, the appeal officer will notify the Title IX and Deputy Coordinators of the error or new evidence, and they will reconsider the case and render a new decision according to the evidence based upon the preponderance of evidence standard.

6. Remedial Action

In addition to the imposition of disciplinary sanctions, the Title IX Coordinator may take remedial action to remedy a hostile environment. Such remedies may be imposed to protect the victim and the College community and are considered separate from, and in addition to, any disciplinary sanction or interim measure that may have been provided prior to the conclusion of the College's investigation.

Examples of Remedial Action for the reported victim as determined by the Title IX Coordinator may include, but are not limited to:

- Providing an effective escort to ensure that the reported victim can move safely between classes and activities;
- Ensuring the reported victim and respondent(s) do not share classes or extracurricular activities;
- Moving the respondent or reported victim (if the reported victim requests to be moved) to a different residence hall;
- Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- Arranging for the reported victim to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and
- Reviewing any disciplinary actions taken against the reported victim to see if there is a causal connection between the sexual assault and the misconduct that may have resulted in the Reported Victim being disciplined.

Examples of Remedial Action for the Broader College Community

Remedies for the broader College community, as determined by the Title IX Coordinator may include, but are not limited to:

- Training or retraining employees on the College's responsibilities to address allegations of sexual and gender-based misconduct and how to conduct Title IX investigations;
- Developing materials on sexual and gender-based misconduct;
- Conducting bystander intervention and sexual and gender-based misconduct prevention programs with students;
- Issuing policy statements or taking other steps that clearly communicate that the College does not tolerate sexual and gender-based misconduct and will respond to any incidents and to any student who reports such incidents;
- Conducting a campus climate check to assess the effectiveness of efforts to ensure that the College is free from sexual and gender-based misconduct, and using that information to inform future proactive steps that the school will take;

- Targeted training for a group of students if, for example, the sexual and gender-based misconduct created a hostile environment in a residence hall or on an athletic team; and
- Developing a protocol for working with local law enforcement.

When the College is unable to conduct a full investigation into a particular incident (i.e., when the reported victim insists on confidentiality, when it received a general report of sexual and gender-based misconduct without any personally identifying information, etc.), the Title IX Coordinator will pursue remedies for the broader College community in an effort to limit the effects of the conduct at issue and prevent its recurrence.

Note: The College does not permit a student respondent to formally withdraw from the College if a complaint is pending against the Respondent. Should a student decide to leave the College and not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to Davis & Elkins College unless all sanctions have been satisfied. A hold may be placed on the student's account to prohibit re-enrollment and the release of transcripts.

SECTION IX – PREVENTION AND AWARENESS PROGRAMS

The College is committed to preventing and eliminating discrimination and harassment of students, faculty, and staff. To that end, the College will broadly disseminate the Gender-Based Discrimination, Harassment, and Sexual Misconduct Policy, distribute a list of resources available to respond to concerns of sexual harassment and discrimination and related retaliation and intimidation, and develop and present appropriate primary prevention and awareness programs for new students and employees, as well as on-going prevention and awareness programs for students and faculty as necessary and applicable.

A. PREVENTION AND EDUCATIONAL RESOURCES

Davis & Elkins College provides resources for education about and prevention of Sexual and Gender-Based Misconduct. On-campus prevention and awareness resources regarding Sexual and Gender-Based Misconduct are available online, across campus, and at the following offices:

Davis & Elkins College Office of Public Safety
(304) 704-9111

Title IX Coordinator, Kate Garlick
Liberal Arts Hall, 1st Floor

The Office of Student Life
Liberal Arts Hall 102

Student Health Services
Ground Floor of Gribble Hall

College Counselor
Jennings Randolph Hall

College Chaplain
Liberal Arts Hall 209

B. TRAINING

Primary and ongoing sexual and gender-based misconduct prevention and awareness training, which includes training with respect to sexual assault offenses, is provided for members of the Davis & Elkins College community according to the following schedule:

- All students - annually;
- New full-time faculty and staff - within six months of hire;
- All responsible employees - annually;
- All campus security authorities – annually;
- All investigators – annually;
- Title IX Coordinator and Deputy Coordinators – annually;
- All Public Safety and Security officers - annually.

1. Employee Awareness and Prevention Programs

Training for employees includes practical information about how to prevent and identify sexual and gender-based misconduct, including same-sex sexual and gender-based misconduct; the behaviors that may lead to and result in sexual and gender-based misconduct; the attitudes of bystanders that may allow conduct to continue; the potential for re-victimization by responders and its effect on the reported victim; appropriate methods for responding to a reported victim who may have experienced an incident of sexual and gender-based misconduct, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The College's training also specifically reviews the College's Policy and prohibition of the crimes of Sexual Assault, Dating Violence, Domestic Violence and Stalking; the definitions of these terms in West Virginia; the state of West Virginia's definition of 'consent' in relation to sexual activity; and a review of safe and positive options for bystander intervention and information on risk reduction (see Appendix D). It further explains responsible employees' reporting obligations, including what should be included in a report, consequences for failing to report, procedures for responding to a victim's request for confidentiality, and the contact information for the College's Title IX Coordinator. The College also trains responsible employees to inform victims of the reporting obligations of responsible employees; the victim's option to request confidentiality and available confidential advocacy, counseling or other support services; and the victim's right to file a Title IX complaint with the College and to report a crime to campus or local law enforcement.

2. Student Awareness and Prevention Programs

At a minimum, the following topics (as appropriate) are covered during the College's sexual and gender-based misconduct student training:

- Title IX and what constitutes sexual assault, including same-sex assault, under the College's Sexual and Gender-Based Misconduct Policy;
- The College's definition of consent applicable to sexual conduct, including examples;

- How the College analyzes whether conduct was unwelcome under Title IX;
- How the College analyzes whether unwelcome sexual conduct creates a hostile environment;
- Reporting options, including formal reporting and confidential disclosure options;
- Identification of the offices or individuals with whom victims can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance;
- Identification of those employees who are considered responsible employees;
- The College’s investigation procedures and proceedings when a sexual and gender-based misconduct report is made;
- Sanctions relating to sexual and gender-based misconduct;
- Effects of trauma, including neurobiological changes;
- The role alcohol and drugs often play in sexual and gender-based misconduct incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual assault and other forms of sexual and gender-based misconduct;
- Strategies and skills for bystanders to intervene to prevent possible sexual assault;
- How to report criminal sexual and gender-based misconduct incidents to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance;
- A review of the state of West Virginia’s definition of “consent” in relation to sexual activity;
- A review of safe and positive options for bystander intervention and information on risk reduction (see Appendix D); and
- Title IX’s protections against retaliation.

The College’s training also encourages students to report incidents of sexual and gender-based misconduct and explains that students (and their parents or friends) do not need to determine whether incidents of sexual assault or other sexual and gender-based misconduct created a hostile environment before reporting the incident. The training also highlights that the College’s primary concern is student safety, and the use of alcohol or drugs never makes the survivor at fault for an incident of sexual and gender-based misconduct.

SECTION X - ANNUAL REPORT

The Title IX Coordinator maintains and delivers an annual report to the Cabinet documenting: (1) the number of reports or complaints received pursuant to this policy; (2) the categories of those involved in the allegations; (3) the number of policy violations found; and (4) examples of sanctions imposed for policy violations.

APPENDIX A - IMMEDIATE AND ON-GOING ASSISTANCE FOLLOWING A SEXUAL OR GENDER-BASED MISCONDUCT INCIDENT

Davis & Elkins College recognizes that deciding how to respond to an incident of sexual or gender-based misconduct can be difficult and encourages all individuals to seek the immediate use and support of all available resources on and off campus, regardless of when or where the incident occurred. Confidential and non-confidential care and support resources, which are listed below, are available both on and off campus on an immediate and ongoing basis.

A. IMMEDIATE ASSISTANCE AND RESOURCES

It is the College's goal to empower individuals who believe they have experienced an incident of sexual or gender-based misconduct to make the decisions that are best for them. Various campus and community advocates, counselors and emergency first responders are available to offer assistance in this regard. Moreover, seeking assistance and advice promptly from one of these resources may also be important to ensure one's physical safety or to obtain medical care or other support. It may also be necessary to preserve evidence, which can assist the College and/or law enforcement in responding effectively. Assistance is available 24 hours a day, 7 days a week. The [Resource Guide](#) provides contact information for the various campus and community advocates, counselors and emergency first responders available to provide assistance.

Get to a Safe Place: First and foremost, an individual who is the victim of sexual assault (non-consensual sexual contact and non-consensual sexual intercourse), domestic violence, dating violence, stalking or other violent actions is urged to get to a safe place away from the perpetrator or from any other potential danger as soon as possible. Individuals on campus that are not in a safe place should contact the Office of Public Safety at (304) 704-9111 (24 hours) or local law enforcement at 911 immediately (24 hours). Individuals off campus should contact local law enforcement at 911 immediately (24 hours).

Preserve Evidence: Collecting evidence does not obligate an individual to any particular course of action, but can assist law enforcement should criminal charges ultimately be pursued. For evidence collection purposes, it is important that, if possible, victims do not shower, bathe, wash, comb their hair, use the toilet, smoke, brush their teeth, eat or drink, and wash clothes, sheets, blankets or other items. Anything of evidentiary value should be placed in a paper bag (plastic bags are discouraged). Also, victims are urged to photograph visible injuries. Pictures of injuries should be taken in both close-up and wide-angle formats. A credit card, coin or dollar bill should be used in the pictures for reference of size.

Contact a Confidential Counselor or Health Care Providers: Individuals who believe that they or someone they know has been a victim of sexual or gender-based misconduct may seek medical, counseling, support and reporting information from any of the College or off-campus confidential resources listed in the [Resources Guide](#). Discussing a matter with these offices or individuals is not considered a report to the College or a request that any action be taken by the College in response to a sexual or gender-based misconduct incident unless specifically requested by the victim. Conversations with these resources are confidential, except as described in the [Resources Guide](#).

The confidential counselors and healthcare members listed in the [Resources Guide](#) can provide individuals with both immediate and long-term help. They will listen and help access additional assistance, and explain options for obtaining additional support from the College and others. They can also arrange for medical care and accompany victims, or arrange for someone to accompany individuals, to seek such care. In addition, they can provide assistance in filing a complaint with local law enforcement. These resources may be used regardless of whether the victim wants to file

an official report or participate in College investigation and resolution proceedings or the criminal process. They are familiar with the College's investigation and resolution process, can explain what to expect, and provide support while College or legal processes are pending, all on a confidential basis.

Contact a Non-Confidential College Resource: In addition to confidential resources, any individual who has experienced or witnessed an incident of sexual or gender-based misconduct has the option and is encouraged to contact any of the non-confidential College resources listed in the Resource Table below for immediate assistance.

Upon the receipt of the initial report, the victim's immediate health and safety needs will be assessed by the First Responder (usually a Public Safety Officer). The First Responder will outline all of the options for the reported victim, including but not limited to medical treatment, access to an on-campus safe room, the importance of preserving relevant evidence or documentation, and filing a report with the appropriate law enforcement authority. Additionally, the First Responder will advise the reported victim that the College has a duty to investigate the report in order to remedy the effects of any hostile environment created for the reported victim and the campus community.

Make a Report to Local Law Enforcement (Non-Confidential): Any individual who has experienced an incident of sexual or gender-based misconduct involving potential criminal conduct has the option to report the conduct to the law enforcement agency that has jurisdiction over the location where the incident occurred. If the conduct is reported to the College, a victim will be informed of his or her option to also report any potential criminal activity to law enforcement. A criminal charge and a report with the College may be pursued at the same time, however, individuals may pursue a Complaint with the College without pursuing criminal charges and vice versa. The College, however, may still be obligated to investigate the matter even if the victim elects not to file a formal complaint with the College. Because the standards for finding a violation of criminal law are different from the standards in this Policy, criminal investigations or reports are not determinative of whether or not sexual or gender-based misconduct under this Policy has occurred. Any of the College resources listed in the [Resource Guide](#) can provide assistance in filing a complaint with local law enforcement.

Seek Medical Care (Health Care Options): Whether a member of the College community who has experienced an incident of sexual assault (non-consensual sexual contact and non-consensual sexual intercourse), domestic violence, dating violence or other violent actions elects to report the incident or not, it is important that medical attention be sought as soon as possible. This will allow the individual to get care for any injuries that may have resulted from the assault, receive medications in order to prevent sexually transmitted infections in the event of a sexual assault and to properly collect and preserve evidence, if the patient consents to do so. A medical examination within 72 hours is critical in preserving evidence of sexual assault and proving a criminal or civil case against a perpetrator.

A listing of local hospitals that have rape kits and/or Sexual Assault Nurse Examiners (SANE), which will assist law enforcement should criminal charges ultimately be pursued by the victim, are set forth in the Resources Guide.

Getting to the Hospital: For victims with injuries that require emergency medical care, it is imperative that Office of Public Safety be contacted at (304) 704-9111 (24 hours) or that Emergency Medical Services be contacted at 911 to request emergency transport.

Transportation Assistance: If there are no pressing medical needs, the individual may make arrangements for travel to the hospital or contact any of the College or off-campus resources listed in the Resource Guide for assistance in seeking medical attention off campus.

Request Interim Measures: Interim measures are those services (counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, etc.), accommodations (academic, living, transportation and working situations), protective measures or other assistance that the College puts in place for reported victims after receiving notice of alleged sexual and gender-based misconduct but before any final outcomes – investigatory, disciplinary or remedial – have been determined. These services and accommodations are available regardless of whether the reported victim reports to law enforcement.

The College offers victims of sexual and gender-based misconduct two options for reporting the misconduct and requesting interim measures required by Title IX. The first option allows the victim to report the misconduct to the Title IX Coordinator(s), Office of Public Safety or a responsible employee. The second option allows a victim who has not reported the misconduct to a Title IX Coordinator(s), Office of Public Safety or a responsible employee to disclose the misconduct to a professional counselor from the Counseling or Health Centers or off-campus victim advocate, who in turn can request interim measures on the victim’s behalf from the College. Under the second option, victims should be aware that when a counselor or advocate requests interim measures on their behalf from the Title IX Coordinator and discloses that the reason for the request is sexual or gender-based misconduct, the request may trigger the College’s Title IX obligation to investigate. To the extent the counselor or advocate makes such a disclosure, but, consistent with the victim’s wishes, asks that the College not investigate or otherwise notify the alleged perpetrator of the report, the Title IX Coordinator will consider whether it can honor the request while still providing a safe and nondiscriminatory environment for all students, as set forth in the College’s Confidentiality Policy and take interim measures to protect the victim as necessary.

B. ONGOING ASSISTANCE

1. Counseling, Advocacy and Support

The counseling and support programs listed in the [Resource Guide](#) are available for victims of sexual or gender-based misconduct at any time, whether or not the victim chooses to make an official report or participate in a College disciplinary or criminal process.

2. Interim Measures

Upon learning of an incident of sexual or gender-based misconduct involving a member of the College community, the Title IX Coordinator will take immediate steps and interim measures to ensure the safety and well-being of the victim, such as the ability to move residence halls, change work schedules, alter academic schedules, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring). Additional interim measures that may be implemented while the investigatory process is pending may include the issuance of no contact orders. See Request Interim Measures in Section A above for additional information.

3. No Contact Orders Issued By a Court of Law

The College will enforce active no contact orders (and restraining orders) issued by a court of law. If you are a student and have a court issued no contact order, please contact the Title IX Coordinator or the Office of Public Safety. Please be aware that if you notify the College of an existing no contact order, the Title IX Coordinator may follow up with you as prescribed by Title IX.

APPENDIX B – VIOLENCE AGAINST WOMEN ACT DISCLOSURES

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

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). *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" is determined by local law enforcement authorities.* 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.

Domestic Violence

W.V.S. [§48-27-202](#) defines Domestic Violence as:

§48-27-202. Domestic violence defined. "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. *The decision to investigate and sanction an incident under this procedure does not constitute a determination that the incident is a criminal offense. The decision to criminally charge an incident is determined by local law enforcement authorities.*

Stalking

In the State of West Virginia (West Virginia Code §61-2-9), Stalking is defined as:

- (a) Any person who willfully and repeatedly follows and harasses a person with whom he or she has or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not the intention is reciprocated, a member of that person's immediate family, his or her current social companion, his or her professional counselor or attorney, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.
- (b) Any person who willfully and repeatedly follows and makes a credible threat against a person with whom he or she has or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not the intention is reciprocated, or against a member of that person's immediate family, his or her current social companion, his or her professional counselor or attorney with the intent to place or placing him or her in reasonable apprehension that he or she or a member of his or her immediate family will suffer death, sexual assault, kidnaping, bodily injury or battery is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.
- (c) Any person who repeatedly harasses or repeatedly makes credible threats against a person with whom he or she has, or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not the intention is reciprocated, or against a member of that person's immediate family, his or her current social companion, his or her professional counselor or attorney, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.
- (g) For purposes of this section:
 - (1) "Harasses" means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress;
 - (2) "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;
 - (3) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition; and
 - (4) "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.

See W.V.S. §61-2-9a. West Virginia law enforcement agencies will utilize the above in determining whether to pursue criminal Stalking charges. *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 "stalking" is determined by local law enforcement authorities.*

Consent

The state of West Virginia (W.V.S. §61-8B-2) defines lack of consent, which is applicable to criminal prosecutions for sex offenses in West Virginia, as follows:

- (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 confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to subsections (a) and (b) of section ten of this article.

APPENDIX C – REPORTED VICTIM AND RESPONDENT RIGHTS

Reported Victim Rights: Reported Victims are afforded the following rights in the College's investigative and resolution process:

- To be treated with respect, dignity and sensitivity throughout the process;
- To seek and receive appropriate support services at the College;
- To the presence of an advisor throughout the process;
- To confidentiality and protection under the Family Education Rights and Privacy Act (FERPA). The College will make all reasonable efforts to ensure preservation of privacy, restricting information to those with a legitimate need to know;
- To be informed of the College's Gender-Based Discrimination, Harassment, and Sexual Misconduct Policy;
- To a prompt and thorough investigation of the allegations;
- To challenge any individual taking part in an administrative review process if a conflict of interest is present;
- To participate or decline to participate in the College's investigation. However, the College will determine an outcome with the information available pursuant to applicable proceedings;
- To refrain from making self-incriminating statements;
- To be notified, in writing, of the case resolution – including the outcome of any sanctions/remedial action and appeal;

- To report incidents of criminal sexual and gender-based misconduct to law enforcement if she/he wishes to do so;
- To understand that information collected in this process may be subpoenaed in criminal or civil proceedings.

Respondent(s) Rights: Respondents are afforded the following rights in the College’s investigative and resolution process:

- To be treated with respect, dignity and sensitivity throughout the process;
- To seek and receive appropriate support services at the College;
- To the presence of an advisor throughout the process;
- To confidentiality and protection under the Family Education Rights and Privacy Act (FERPA). The College will make all reasonable efforts to ensure preservation of privacy, restricting information to those with a legitimate need to know;
- To be informed of the College’s Gender-Based Discrimination, Harassment, and Sexual Misconduct Policy;
- To a prompt and thorough investigation of the allegations;
- To challenge any individual taking part in an administrator review process if a conflict of interest is present;
- To participate or decline to participate in the College’s investigation. However, the College will determine an outcome with the information available pursuant to applicable proceedings;
- To refrain from making self-incriminating statements;
- To be notified, in writing, of the case resolution – including the outcome of any sanctions/remedial action and appeal;
- To understand that information collected in this process may be subpoenaed in criminal or civil proceedings.

APPENDIX D – SANCTIONING MATRIX

Prohibited Behavior/Conduct	Range of Sanctions
Sexual/Gender-Based Misconduct Constituting Sexual Assault	Expulsion/Termination
Sexual/Gender-Based Misconduct Not Constituting Sexual Assault	Expulsion/Termination Suspension Probation
Unwanted Sexual Touching	Expulsion/Termination Suspension Probation Community Service

	Educational/Counseling Consultation
Non-physical Sexual Harassment	Expulsion/Termination Suspension Probation Community Service Educational/Counseling Consultation
Discrimination	Expulsion/Termination Suspension Probation Community Service Educational/Counseling Consultation
Retaliation/Intimidation False Allegations	Expulsion/Termination Suspension Probation Community Service Educational/Counseling Consultation

APPENDIX E - Sexual Assault, Dating Violence, Domestic Violence, and Stalking Risk Reduction Tips

- Program the Office of Public Safety's telephone number (304) 704-9111 into your cell phone.
- Be aware that you are a potential victim of crime. Stay alert and attuned to people and circumstances around you.
- Immediately notify Office of Public Safety of suspicious activity or people.
- Avoid the use of excessive alcohol and other drugs. Persons under the influence are much more likely to be the victims of a serious crime.
- Do not allow non-residents into residential facilities.
- Lock your room when you are out - even for just a few minutes. Keep your door locked when sleeping.
- Never lend your room or apartment key to anyone.
- Keep your valuables in a safe place. Do not leave valuables in the open and unattended. Utilize GPS or "locate" software for your electronics.
- Do not prop open locked outside doors and stairwell doors; ensure they close and lock behind you. Do not allow anyone other than your personal guests to enter the building behind you.

With no intent to victim-blame and recognizing that only sexual predators are responsible for sexual assault, the following are some strategies to reduce one's risk of sexual assault or harassment (Rape, Abuse, & Incest National Network, www.rainn.org)

- Be aware of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
- Try to avoid isolated areas. It is more difficult to get help if no one is around.
- Walk with purpose. Even if you don't know where you are going, act like you do.
- Trust your instincts. If a situation or location feels unsafe or uncomfortable, it probably isn't the best place to be.
- Try not to load yourself down with packages or bags as this can make you appear more vulnerable.
- Make sure you take your cell phone and it is charged.
- Don't allow yourself to be isolated with someone you don't trust or someone you don't know.
- Avoid putting music headphones in both ears so that you can be more aware of your surroundings, especially if you are walking alone.
- When you go to a social gathering, go with a group of friends. Arrive together, check in with each other throughout the event and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
- Trust your instincts. If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately by calling 911 or Office of Public Safety.
- Don't leave your drink unattended even while talking, dancing, using the restroom or making a phone call. If you have left your drink alone, just get a new one.

- Don't accept drinks from people you don't know or trust. If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, do not drink from the punch bowls or other large common open containers.
- Watch out for your friends, and vice versa. If a friend seems out of it, is way too intoxicated for the amount of alcohol they have had, or is acting out of character, get him or her to a safe place immediately.
- If you suspect you or a friend has been drugged, contact law enforcement immediately. Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).
- If you need to get out of an uncomfortable or scary situation here are some things that you can try:
 - Remember that being in this situation is not your fault. You did not do anything wrong; it is the person who is making you uncomfortable who is to blame.
 - Be true to yourself. Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable doing.
 - Have a code word with your friends or family so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
 - Lie. If you don't want to hurt the person's feelings, it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use are: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.
- Try to think of an escape route. How would you try to get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?
- If you and/or the other person have been drinking, you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

Safe and Positive Options for Bystander Intervention

Bystander Intervention is a helping behavior whereby an individual or individuals utilize safe and positive options in emergency or non-emergency situations to prevent harm or intervene when there is a risk of sexual assault, dating violence, domestic violence, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene when it is safe to do so.

The most basic and best action an active bystander can take is to call Office of Public Safety or local law enforcement at 911.

Additional ways to be an active bystander include:

- Being vigilant by watching out for your friends and fellow students or employees;
- If you see someone who is too intoxicated to consent, enlist their friends to help them leave safely;

- Intervening and asking if a person needs help (e.g., “Do you need a ride?” or “Do you want me to call Security or the police?”);
- Confronting people who seclude, hit on, and try to make out with, or have sex with people who may be incapacitated;
- Speaking up when someone discusses plans to take sexual advantage of another person;
- Believing someone who discloses sexual assault, abusive behavior, or experience with stalking;
- Encouraging victims to self-report;
- Refer people to on- or off-campus resources listed in this document for support in health, counseling, or with legal assistance.

(Bystander intervention strategies adapted in part from Old Dominion University and Stanford University).

Additional intervention strategies include:

- Trust your gut. If something looks like it might be a bad situation, it probably is;
- Avoid using violence when intervening; approach in a friendly, honest and direct manner;
- Keep an eye on someone who has had too much to drink. Do not leave another person alone in a situation in which you feel uncomfortable; develop a buddy system;
- If you see someone who is too intoxicated to consent, enlist their friends to help them leave safely;
- Create and negotiate possible solutions; maintain an open dialogue; communicate clearly;
- Be aware if someone is deliberately trying to intoxicate, isolate or corner someone else;
- Use distraction techniques such as humor, reframing, redirection or personalization to reduce tension between individuals and to stall for time in which to intervene;
- Recruiting help; group interventions can make individuals aware of patterns of behaviors of concern;
- Focusing on your feelings about the behavior rather than criticizing the person;
- Encourage respect; speak up if you find a behavior offensive (e.g., do not laugh at offensive jokes but rather indicate your disapproval); and
- Use body language that indicates disapproval of or concern about a behavior (e.g., silent stare, crossed arms, wrinkling of the nose, raised eyebrows and wide eyes, stepping between two people).