



**Annual  
Security and  
Fire Safety  
Report**

Fall 2020

*A guide for current and prospective students and employees prepared in compliance with the  
Jeanne Clery Disclosure of Campus Security Policy & Crime Statistics Act*

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[Davis & Elkins College Guide for Returning to Campus Appendices](#)

Dear Davis & Elkins College Community,

Davis & Elkins College is committed to providing a safe learning, working and residential environment for students, faculty, staff and visitors. To that end and in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), we offer this report. This report also offers a good faith effort to comply with requirements of the Violence Against Women Reauthorization Act of 2014 (VAWA). VAWA has amended the Clery Act to require institutions to compile statistics, policies, procedures and programs for incidents of domestic violence, dating violence, sexual assault and stalking.

We urge members of the campus community to use this report as a guide for safe practices on and off campus. This report is sent via email to enrolled students and current employees on an annual basis to notify them that the report is available for view. The email includes a brief summary of the contents of this report and the web address where the report can be found online ([www.dewv.edu/consumer-information/health-and-safety/](http://www.dewv.edu/consumer-information/health-and-safety/)). A copy of the report can also be obtained from:

Office of Public Safety  
Gatehouse  
100 Campus Drive  
Elkins, WV 26241  
(304) 704-9111

The 2020 Annual Security and Fire Safety Report would not be complete without mentioning our national and worldwide pandemic known as COVID 19. Davis and Elkins College early on in the pandemic established a well thought out and effective plan to re-open the college in the fall of 2020. That plan helped us 'stay the course' and remain open through the fall semester. Davis and Elkins College Guide for Returning to Campus Policy is available on our website and is [attached](#) to this report.

We encourage you to read this information and consider how it can help you and the D&E community to prevent and protect yourself against crime. Thank you for taking the time to review this information and for helping to make Davis & Elkins College a safer community.

Sincerely,

*Michael R. Jordan*

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# Clery Act and Violence Against Women Reauthorization Act Compliance

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The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 USC 1092(f), is the landmark federal law, originally known as the Campus Security Act, that requires colleges and universities across the United States to disclose information about crimes on and around their campuses. The Violence Against Women Reauthorization Action, or VAWA (2014), has amended the Clery Act to require institutions compile statistics, policies, procedures and programs for incidents of domestic violence, dating violence, sexual assault and stalking.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statics Act requires colleges and universities to:

1. Publish an annual report by October 1 that contains three years of campus crime and fire statistics and certain campus security policy statements.
2. Disclose crime statistics for the campus, public areas immediately adjacent to or running through the campus, and certain non-campus facilities and remote classrooms. The statistics must be gathered from campus security, local law enforcement, resident assistants (RA), resident directors (RD) and other Davis & Elkins faculty/staff that have “significant responsibility for student and campus activities.”
3. Provide TIMELY WARNING NOTICES of crimes that have occurred on campus or in the local community and pose an ongoing “threat to students and employees.”
4. Disclose in a public crime log “any crime that occurred on campus or within the jurisdiction of campus security department and is reported to the security department.”
5. Disclose in a fire log “that records by date reported all fires in on-campus student housing facilities.”

The Davis & Elkins College Annual Security Report specifically follows the required Policy Statements and elements listed below:

This Davis & Elkins College Annual Security and Fire Safety Report is published in compliance with the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (“Clery Act”), and *Violence Against Women Act (VAWA)*. This report includes statistics for the previous three years concerning reported crimes that occurred on campus; in certain off-campus buildings or property owned or controlled by Davis & Elkins College; and on public property within, or immediately adjacent to and accessible from, university property. The report also includes institutional policies on campus security policies concerning alcohol and drug use, crime prevention, the reporting of crimes and other matters.

The Davis & Elkins Office of Public Safety is responsible for the annual security and fire safety report, timely warnings, and the crime and fire logs. The Annual Campus Security and Fire Safety Report is prepared in cooperation with local law enforcement agencies in Randolph County and the Office of Student Life. Campus crime, arrest and referral statistics include those reported to the Davis & Elkins Office of Public Safety, campus officials, RAs, RDs and local law enforcement agencies. The Annual Security and Safety Report is compiled and submitted by the Director of Public Safety. For more information, contact the Office of Public Safety at 304-704-9111 or visit the Gatehouse Monday-Friday 8-430 PM. A paper copy can also be requested from this office.

# Davis & Elkins College Mission, Vision, Values, Identity and History

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## **The D&E Mission Statement**

To prepare and inspire students for success and for thoughtful engagement in the world.

## **The D&E Vision Statement:**

In a nurturing environment, students are challenged to:

- Communicate effectively.
- Think critically, creatively and independently.
- Prepare to live lives of perspective and meaning.
- Act responsibly as citizens of multiple communities.

## **The D&E Values Statement**

We value the richness of place, the beauty of the natural world, and the importance of other countries, cultures and regions. D&E challenges students to participate in a vibrant and diverse campus while cultivating the intellectual, creative, ethical, physical and leadership skills the real world requires. As an affiliate of the Presbyterian Church (U.S.A.) and covenant partner with the Presbytery of West Virginia, the College affirms as special values: human dignity, social responsibility, participatory governance, and the unity of the intellectual, social and spiritual dimension of life.

## **The D&E Identity Statement**

A private college of liberal arts and professional students, Davis & Elkins values curiosity and thoughtfulness while fostering social, emotional, spiritual and physical well-being. Toward those ends, the College provides a friendly and supportive environment for curious, engaged and freethinking students of diverse backgrounds. We emphasize “hands-on,” experiential learning through internships, practicums, service projects, field research, travel and study abroad programs, and Winter Term classes that explore experimental subjects in unexpected locales. Some of our finest students arrive without direction only to find their path at D&E, thanks to the opportunities for intellectual growth that abound on our campus. These opportunities extend beyond the classroom. As one of the East’s premier mountain colleges, D&E offers unparalleled access to winter sport centers and other forms of extracurricular recreation including camping, biking, canoeing, hiking, skiing and snowboarding. Safe and supportive, stimulating and friendly, Davis & Elkins College encourages students to approach their adventure in education as a journey of self-discovery.

## **D&E History:**

Founded in 1904, Davis & Elkins College was established through the influence and efforts of Henry Gassaway Davis and Stephen Benton Elkins, two United States Senators who were responsible for building the first railroad into the area. In 1901, the Senators donated land and money to establish a college and academy associated with the Presbyterian Church. Their gift was matched by donations from the citizens of Randolph County and the Presbyteries of Lexington and Winchester, Va. In 1902, the College’s Board of Trustees met for the first time. The first classes were held on September 21, 1904.

The original campus was located in south Elkins on a plot donated by Senator Elkins. Later, a gift of property from Mrs. Hallie Davis Elkins, the daughter of Senator Davis and the widow of Senator Elkins,

promoted the move of the College to its present location in 1926. This property included her home, Halliehurst, and the surrounding estate. In 1941, Senator Davis' original estate, which included Graceland and the lands adjacent to Halliehurst, was acquired for the College.

Since its move to the old "Halliehurst Farm," the physical plant of Davis & Elkins College has expanded to include 23 major buildings on a 172-acre campus that contains six landmarks on the National Register of Historic Places. From the beginning, Davis & Elkins College has sought to be of service to its students, and through them, to the state, the nation and the world — meeting the needs of each generation to the best of its ability.

## Office of Public Safety

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The mission of the Davis & Elkins Office of Public Safety is to provide a safe and secure learning, working and residential environment for students, staff and faculty. This office is dedicated to enhancing the quality of life for our community through policy enforcement, education and a team approach to creative problem solving. The office is also committed to honesty, integrity and professionalism. They value and treat every person with respect and compassion. They work in tandem with the members of our community to make Davis & Elkins College a safe and secure place for all of us to work, learn and live.

### **Law Enforcement Relationships and Jurisdiction**

Davis & Elkins College Office of Public Safety personnel are trained to receive, document and investigate all crimes reported. An officer will work with individuals reporting a crime to obtain information and evidence, identify potential witnesses and conduct a thorough investigation in an effort to identify the responsible party. When appropriate, crime suspects may be adjudicated through the student conduct system or criminal justice system. The daily crime log is available to be viewed by the public at the Office of Public Safety, Gatehouse, 100 Campus Drive. The crime log contains information concerning reported crimes, case numbers, classification of the crime, date reported, date and time occurred, general location and disposition of the crime.

The Davis & Elkins College Office Public Safety maintains a working relationship with local, state and county police. Davis & Elkins College has entered into a memorandum of understanding with the City of Elkins Police Department. The Davis & Elkins College Office of Public Safety staff are non-sworn private safety officers. They do not have arrest powers pursuant to the laws of the State of West Virginia. However, they are authorized to detain individuals suspected of crimes on campus pursuant to arrival of local law enforcement agencies.

The College's safety operations are designed to provide leadership to the community on safety issues. All Public Safety officers work closely with all members of the campus community, especially the Office of Student Life. All officers have a good working relationship with the College counselors who they interact with frequently. Furthermore, Public Safety office staff has a good working relationship with local law enforcement, which can be helpful in many situations. The staff must be informed of emergency situations in order to assist local emergency service providers (police, fire, medical personnel) with a quick response.

Davis & Elkins College is equipped with five Blue Light Emergency phones at various locations on campus. These phones, upon activation, contact the Randolph County E-911 Center automatically. Once activated, the user can communicate with the operator and the proper authorities can be sent to that location.

An escort service is provided by Davis & Elkins Public Safety members for the safety of anyone walking or needing a ride. By calling 304-704-9111, an escort can be summoned to the location and transportation furnished anywhere on campus. This service can also be utilized for medical reasons.

The Office of Public Safety is located in the Gatehouse. Officers are available seven days a week, 24 hours a day. Please call 304-704-9111 for assistance.



**Security Officer Responsibilities:**

- Monitoring and securing all campus-owned buildings, parking areas and walkways
- Compiling information from daily incident logs, residence hall reports and police data for annual fall reporting of crime statistics
- Working with local police in crime prevention efforts, referral for crime investigation and general safety escort service when requested
- Education
- Campus crime deterrence through regular patrols of College property
- Enforcement of College policies
- Investigation and documentation of policy violation
- Cooperation with Residence Life staff in promoting a safe and secure environment
- Traffic regulation

Officers are required to physically and diligently patrol the campus 365 days per year. During patrols of the campus grounds, officers are required to secure all buildings, gates and other structures to prevent theft, loss and vandalism. Officers also enforce Davis & Elkins College violations outlined in the Davis & Elkins College Policy Manual. Although the above listed policies and procedures include offenses that also violate local, state and federal laws, Davis & Elkins Office of Public Safety officers have no authority to enforce such laws and have no powers of arrest. Members of the Office of Public Safety team have an excellent working relationship with the local, county and state law enforcement offices. Whenever needed on campus, local law enforcement officers have been quick to respond and have handled situations in a professional and understanding manner.

Officers document all their activities and patrols in a Daily Patrol Log. Officers are also required to report any incidents on an Incident Report to be submitted to the Director of Public Safety. These incidents range from injury to vandalism, weather, traffic, lost and found items, criminal violations and other matters. Incident Reports are to be submitted before the end of the officer's shift, unless there are extenuating circumstances.

## **Access to Campus and Buildings**

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Access to campus buildings and grounds is a privilege extended to students, faculty, staff and authorized guests. D&E encourages an open environment with limited constraints to ensure a reasonable flow with the local community. Except for residence halls, most campus facilities are open during weekday business hours during the school year. Access to some areas within the campus facilities and after-hours access to many of the academic and administrative facilities is by key and/or a fob access control system. Individuals who wish to access buildings during non-business hours or for special events should contact the appropriate department head, D&E Office of Student Life or Office of Public Safety.

Davis & Elkins College residence halls are designed to promote a safe and secure living environment for all residents. Residence halls are secured on a full-time basis and all exterior doors are kept in a locked position. Resident students are issued an exterior door key and/or another access control device. These are issued individually and are all uniquely numbered. Each resident is also issued an individual door key to their specific dorm room. There are Resident Assistants on every floor of all the residence halls. Resident Assistants are a valuable and energetic part of our residence hall supervision and security. Resident Assistants patrol the halls and at least one RA is on duty every night. Cameras are also utilized as part of the overall security system. Cameras in campus buildings are located in strategic areas. These are monitored by members of the Davis & Elkins Public Safety team.

The Physical Plant office maintains the College's academic, administrative and residential buildings and the grounds with a concern for safety and security.

### **Roof Access**

Students and non-authorized employees are strictly prohibited from going onto the roofs of residence halls or any other College building; objects (bikes, chairs, etc.) may not be put on roofs. Students who allow others to access the roof from their room will also be held accountable. The College assumes no financial or legal responsibility for injury due to this prohibited act.

## **Criminal Activity Off Campus**

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When a Davis & Elkins College student is involved in an off-campus offense, Public Safety officers may assist with the investigation in cooperation with local, state or federal law enforcement. Local law enforcement routinely work and communicate with Public Safety on any serious incidents occurring on campus or in the immediate neighborhood and business areas surrounding campus. While the College does not operate off-campus housing or off-campus student organization facilities, some students live in the neighborhoods surrounding the campus. While law enforcement agencies have primary jurisdiction in all areas off campus, Public Safety officers may respond to student-related incidents that occur in close proximity to campus. As noted earlier, the Office of Public Safety enjoy a close working relationship with local law enforcement when violations of federal, state or local laws surface. This cooperative team approach addresses criminal situations as they arise, as well as future concerns.

## **Emergency Response and Evacuation**

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### **Reporting Emergencies**

Any individual on the Davis & Elkins College campus who feels unsafe, threatened, afraid or stalked should immediately call 911, which will link them directly to the Randolph County E-911 Center. If the situation allows, and danger is not imminent, individuals should call the Office of Public Safety at 304-704-9111. Please note the location of the blue, freestanding tower units around campus. Pushing the emergency button on one of these towers will activate the integrated telephone, which will immediately connect an individual with the Randolph County E-911 Center.

### **Emergency Notifications**

Davis & Elkins College has always recognized the need to be prepared for critical incidents and emergency situations. These situations can come in many forms ranging from weather emergencies to epidemics and acts of violence. The College works continuously to strengthen its capacity to prevent, prepare for, respond to and recover from emergency type situations.

Notifications are made through a variety of different means including, but not limited to, phone, email, text, word of mouth, mass notification system, the College website, social media and regional media outlets. The College's mass notification system is through Nixle and all students and employees are automatically enrolled in this service.

The President (or his designee), along with members of the Cabinet will determine how, when and whether an emergency notification needs to be made. A determination will also be made as to whom the notification will be sent. Once a determination has been made, a notification will be sent without delay.

Any major evacuation plan that would involve moving large groups of the campus community around on campus (or, if necessary, off campus) would be a decision made by the President (or his designee) and members of the Cabinet in accordance with the College's Emergency Response and Safety Plan.

### **Nixle Mass Notification System**

For the safety of the campus community, the College has a state-of-the-art system that is capable of sending notifications instantly and simultaneously to all registered mobile devices and email address.

Notifications are also posted on the College website and social media accounts. Messages will be urgent and of emergency nature only. For this notification system, the College has adopted an opt-out policy, which means that twice a year all current faculty, staff and student information necessary to receive emergency notifications will be uploaded to the system. Family members may register for Nixle by visiting <https://www.dewv.edu/student-life/campus-services/public-safety/> and complete the registration form.

## **Emergency Response and Safety Plan**

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The Clery Act requires the College to have and disclose emergency response and evacuation procedures in place in case of significant emergencies or dangerous situations involving an immediate threat to the health or safety of students, employees or visitors occurring on its campus. The College's Emergency Response Plan provides important information in the event of an emergency or the occurrence of a natural disaster within the general area of the College's campus that impacts academic or other operations. The basic emergency procedures contained in the Emergency Response and Safety Plan are designed to protect lives and property through effective use of College and community resources.

At the beginning of each academic year, the Office of Public Safety sends students, faculty and staff an email reminding them to review the Emergency and Safety Plan and how the Nixle mass notification system works and alerting them that the system will be tested unannounced within two weeks of their receipt of the email. In addition, the College conducts numerous emergency response exercises each year, such as tabletop exercises and field exercises. These tests are designed to assess and evaluate the emergency plans and capabilities of the institution. Analysis of these drills and exercises may be used to modify the Emergency Response and Safety Plan and Procedures as needed.

## **Environmental Security Inspections**

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Davis & Elkins College strives to maintain a safe and secure working and learning environment. Ongoing checks are made by Public Safety officers, as well as select employees from Student Life and the Physical Plant, and other concerned areas to routinely examine select campus areas for safety and security issues.

## **Evacuations**

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Before an emergency, determine the nearest exit at your location, the safest route to follow, and alternate exits. Evacuation routes are posted in campus buildings. Leave the immediate area, but remain available to emergency or security personnel. If time permits during an evacuation, secure your workplace and take personal items such as your keys, purse, medication and glasses. In case of a fire or other dangerous conditions, evacuate immediately leaving personal items behind.

When evacuating a building, remember the following general guidelines: walk, do not run; do not use elevators; when safety allows, seek out people with special needs and provide assistance; gather outside at designated building assembly areas; and wait for instructions from the Office of Public Safety, other campus officials or emergency personnel.

In the event of an immediate, life-threatening emergency during which the campus must be evacuated, the Office of Public Safety, in collaboration with local emergency personnel, will discuss information about the location and route with civil authorities. Once determined, emergency personnel will discuss information about the evacuation location and route. Campus and community communication systems will be used to provide information about this type of evacuation. Information about food, water, first aid and shelter and other needed information will be discussed in accordance with the Emergency Response Plan and additional information will be provided at evacuation sites.

## Missing Students

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Any student residing in a Davis & Elkins College residence hall who is determined to be missing for more than 24 hours must be reported immediately to one of the following:

1. Residence Life staff
2. Office of Student Life (304-637-1211)
3. Davis & Elkins Office of Public Safety (304-704-9111)
4. Any other designated Campus Security Authority

Reports made to Residence Life staff or the Office of Student Life will be forwarded to the Office of Public Safety. A determination will be made at that time by Public Safety if the student is indeed missing and, if so, an investigation will immediately begin to attempt to ascertain the whereabouts of the individual. Moreover, the appropriate law enforcement agency will be contacted and a cooperative effort will be made to find the student.

In addition to registering a general emergency contact, missing person contact information is collected by the Office of Student Life on an annual basis at the time the resident students move into the residence halls. The contact information will be kept confidential and will be disclosed only to authorized campus officials and law enforcement in furtherance of a missing person investigation or other appropriate purpose. The confidential contact person will also be notified within 24 hours if the student is determined to be missing. If a student is under the age of 18, Davis & Elkins College is required to notify a custodial parent or guardian within 24 hours of when the student is determined to be missing.

In situations in which the student has failed to designate a contact for missing student notification, Public Safety will continue to investigate utilizing established police investigative procedures, to include College resources and records. Family members, including those not formally identified by the student, may be contacted during the course of the investigation to resolve a report of a missing student.

### **Issuance of Amber Alert**

Suzanne's Law requires law enforcement to notify the National Crime Information Center (NCIC) when someone between the ages of 18 and 21 is reported missing, as part of the national "Amber Alert" bill.

### **Resolution of Missing Student Status**

Missing student contacts will be advised of the resolution of a student's missing status. These contacts will further be advised of law enforcement options in cases where the student is not contacted by the College.

## Registered Sex Offenders

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The State of West Virginia requires all persons convicted of a sexual offense to register with the West Virginia State Police. This information is made available to the public through the state police website. Interested persons can access this information through the West Virginia State Police website at [www.wvsp.gov](http://www.wvsp.gov) and click the Sex Offender tab. Several national databases can also be searched using any internet search engine.

## Reporting a Crime

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By reporting alleged crimes and other suspicious circumstances, the alleged crime or suspicious circumstances will be included in the Office of Public Safety's daily logs, the daily report of crimes or suspicious incidents and, if appropriate, in the Annual Security and Fire Safety Report. Additionally, if necessary, the College will be able to issue timely and appropriate warnings alerting the campus community to dangerous situations.

### **Accurate and Timely Reporting of Criminal Offenses**

All students, employees and guests should immediately report any criminal incident/activity and any other emergency to the Randolph County E-911 Center. This office will dispatch the proper authorities to the scene whether it be the police, medical personnel or fire department. After contacting 911, the Davis & Elkins Office of Public Safety should also be notified, at 304-704-9111. When a potentially dangerous threat to the College community arises involving a serious crime as defined by the Clery Act, a timely warning may be issued by the College to the community.

### **Assistance in Notifying Law Enforcement**

If a student, employee or guest should need help in reporting a criminal incident/activity to the appropriate authorities, they may seek the assistance of the Office of Public Safety. A member of the Office of Public safety will relay the information provided to the Randolph county E-911 Center to dispatch the proper authorities to respond to the incident.

Individuals on campus may also report crimes to a designated Campus Security Authority (CSA). At Davis & Elkins College, the following individuals are designated as Campus Security Authorities:

- Vice Presidents, Department/Division Chairs, Directors and Coaches
- Any employee in a supervisory or management role
- Any faculty member responsible for supervising activities or programs that include direct contact with students outside of the classroom (including faculty advisers to recognized student organizations)
- Public Safety personnel
- Any staff member whose primary job description includes providing academic advice to students
- Residence Hall staff
- Student Life Office staff

These designated individuals have significant responsibility for student and campus activities, and as such are trained by Davis & Elkins College to report crimes to the Office of Public Safety.

Exceptions to reporting crimes exist for licensed psychologists, members of the clergy who serve the College in that capacity.

For non-emergencies and incidents that are not criminal in nature, students, employees and guests should contact the Davis & Elkins Office of Public Safety at the above listed number. These non-emergency issues may also be reported in person to the Office of Public Safety located in the Gatehouse, and to the Office of Student Life on the first floor of Liberal Arts Hall.

Davis & Elkins College is equipped with five blue light emergency phones at various locations on campus. These phones, upon activation, contact the Randolph County E-911 automatically. Once activated, the user can communicate with the operator and the proper authorities can be sent to that location.

In cases where reports concern allegations that also constitute violation of College policy, such reports will be forwarded to the Davis & Elkins College's Compliance Officer or the Director of Human Resources for appropriate action. Moreover, all reports involving sexual misconduct will be forwarded to the College Title IX/Section 504 Coordinator or Deputy Coordinators.

### **Voluntary, Anonymous Reporting**

Davis & Elkins College encourages anyone who is the victim of a crime or witnesses any crime to promptly report the incident to the police, Public Safety or a Campus Security Authority (CSA) (*see Mandatory Crime Reports Policy*).

Individuals, however, may anonymously report crimes and/or violations of the College's administrative policies, procedures or rules. Students are often encouraged to anonymously report when reporting minor violations by other students. Confidentiality will be maintained. Anonymous reports may be filed pursuant to one of the following methods:

- Leave a private anonymous voice message for the Director of Public Safety or a CSA
- Mail an anonymous letter to the Director of Public Safety or a CSA
- File an incident report online at <https://www.dewv.edu/consumer-information/incident-report-form/>

This encouragement is done to maintain and enhance the safety and security of the entire Davis & Elkins College campus and the surrounding community. With such information, the College can keep an accurate record of the number of incidents involving students, determine where there is a pattern of crime with regard to a particular location, method or assailant, and alert the campus community to potential danger. With the exception of reports made to College counselors and pastors, reports filed in this manner are counted and disclosed in the annual crime statistics for the institution.

***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. In addition, 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.

### **Mandatory Crime Reporters**

There are two federal laws that establish responsibilities for employees of colleges and universities to report certain types of crimes and incidents: the Clery Act and Title IX. Pursuant to these laws, certain employees at Davis & Elkins College are required to report applicable criminal incidents to the Office of Public Safety and/or the College Title IX Coordinator or Deputy Coordinator. In addition, College policy mandates that all employees, College volunteers and third-party vendors report incidents of child abuse and neglect to the Office of Public Safety. Moreover, West Virginia law requires certain employees to report incidents of child abuse and neglect to Child Protective Services. The guidelines below identify which employees are obligated to make a mandatory report to the appropriate College authority (and law enforcement, if applicable) and what types of crimes or incidents must be reported.

### **Clery Crime Reporting**

The Clery Act requires colleges and universities receiving federal funds to report statistics concerning the occurrence of certain criminal offenses reported to the Office of Public Safety or any official of the institution who is defined as a Campus Security Authority (CSA). At Davis & Elkins College, the following individuals have been designated as CSAs:

- Vice Presidents, Department Chairs, Directors and Coaches
- Assistant Vice Presidents
- Any employee in a supervisory or management role
- Any faculty member responsible for supervising any activities or programs that include direct contact with students outside of classroom (including faculty advisers to recognized student organizations)
- Public Safety personnel
- Any staff member whose primary job description includes providing academic advice to students
- Residence Hall staff
- Student Life staff

Each of these individuals are required to report incidents of a Clery crime occurring on campus or at a College sanctioned event to the Davis & Elkins College Office of Public Safety for inclusion in the College's Annual Security and Fire Report prepared for the U.S. Department of Education. A detailed listing of the Clery Crimes that must be reported is set forth in the College's Crime and Fire Statistics Policy. Due to the law's complex reporting requirements, all positions at Davis & Elkins College determined to be a CSA are required to participate in a mandatory training session that explain their role and expectations so that the College can be in compliance with the Clery Act. These mandatory training sessions occur annually and are conducted by the Title IX Coordinator in conjunction with the Director of Public Safety. These trainings consist of the duties, responsibilities and reporting requirements of campus CSAs.

**Unfounded Crimes:** An institution may withhold, or subsequently remove, a reported crime from its crime statistics in the rare situations where sworn or commissioned law enforcement personnel have fully investigated the reported crime and, based on the results of this full investigation and evidence, have made a formal determination that the crime report is false or baseless and therefore "unfounded." Only sworn or commissioned law enforcement personnel may "unfound" a crime report for purposes of reporting under this section. Therefore, as a private agency, Davis & Elkins college does not does not



disclose or report offenses that are unfounded, unless instructed to do so by a sworn agency. The recovery of stolen property, the low value of stolen property, the refusal of the victim to cooperate with the prosecution, and the failure to make an arrest do not “unfound” a crime report. During the current reporting year, none of the previously reported crimes were unfounded.

### **Sexual Misconduct Reporting**

Under Title IX, the College is required to take immediate and corrective action if a responsible employee knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment that creates a hostile environment.

College employees with supervisory and leadership responsibilities on campus are considered “responsible employees.” This includes, but is not limited to, faculty, supervisors, academic staff, advisers, coaches, administrators, Resident Assistants and other employees with a responsibility for student welfare. The College requires that all responsible employees share a report of alleged sexual misconduct violations with the Title IX Coordinator so the College can respond appropriately to end the conduct, prevent its recurrence and remedy its affects. See the Davis & Elkins College Gender-Based Discrimination, Harassment and Sexual Misconduct Policy for additional information. See link for reporting: <https://www.dewv.edu/consumer-information/title-ix-reporting-form/>

### **Child Abuse and Neglect**

As set forth in the College’s Child Abuse and Neglect Policy, all employees at the College, as well as key students,<sup>1</sup> student employees over the age of 18, camp counselors and program leaders,<sup>2</sup> and College volunteers and third-party vendors who witness or suspect an incident of child abuse are obligated to make a report utilizing the following procedures:

1. Under West Virginia Law (WV Code 49-6A-2), certain persons are required to directly report incidents or suspicions of child abuse or neglect to Child Protective Services (see contact information below) immediately and not more than 48 hours after suspecting the abuse or neglect. These persons include: any medical, dental or mental health professional, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law enforcement official, youth camp administrator or counselor, employee, coach or volunteer, or commercial film or photographic print processor.
2. In any case where an employee, key students, student employees over the age of 18, camp counselors and program leaders, College volunteers or third-party vendors believes that a child has suffered serious physical abuse, sexual abuse or sexual assault, the individual must also immediately report (no more than 48 hours after suspecting the abuse or neglect) the incident to the State Police and City Police (Elkins).
3. In addition to the above, individuals covered by this policy are also expected to immediately report an incident of child abuse or neglect to the Office of Public Safety immediately at 304-704-9111.

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<sup>1</sup> *Key Students*: those students who are in practicum involving protected persons or the medical field, student teachers, students working with protected persons and resident assistants.

<sup>2</sup> *Camp Counselors and Program Leaders*: those students, faculty, staff and volunteers who in the course and scope of their employment or service to Davis & Elkins College conduct activities at or on behalf of Davis & Elkins College and come in contact with protected persons.

### **Randolph County DHHR Office Contact Information**

1027 N. Randolph Avenue

Elkins, West Virginia 26241

Phone: 304-637-5560

Fax: 304-637-0391

Hours: 8:30 a.m. to 5:00 p.m. - Monday through Friday

## **Timely Warning**

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When Davis & Elkins College becomes aware of a phenomenon that in the judgment of the College constitutes an ongoing or possible criminal threat to the College community, a Timely Warning Notice will be issued. Depending on the particular circumstances, the warning will be disseminated by using one, or a combination of, the following: email, the Davis & Elkins College website, phone calls (phone tree), text messaging, campus bulletin boards and/or the Nixle mass notification system.

The President (or his designee), Vice President for Student Affairs and Director of Public Safety will analyze and evaluate relevant information and make a determination as to the issuance of a Timely Warning Notice. A two-prong test will be applied to determine on a case-by-case basis if a Timely Warning will be issued – Was the incident reported to the College or local law enforcement:

1. Identified as a Clery Act crime. (*see Clery Crime Definitions in the Reportable Crimes section on page 25*).
2. Does the crime pose a serious or continuing threat to students, faculty, staff or visitors?

Timely Warning Notices typically contain in the subject line the phrase “timely notification” or “crime alert” depending on the nature and severity of the threat. The body of each Timely Notice will include information regarding the Clery Act requirement; a short description of the crime or incident giving the time and date, location, reported offense, suspect description, weapon used (if any), suspect vehicle (if any) and method of operation used to facilitate the crime. The notice will also include personal safety information to aid members of the College community in protecting themselves from becoming victims of a similar crime and to promote overall safety for the College community.

## **Alcohol Policy**

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Pursuant to the Federal Drug-Free Schools and Communities Act Amendments of 1989, the College has a drug and alcohol prevention program for its students and employees. The program includes an annual disclosure to each student and to all employees outlining the standard of conduct expected of students and employees in relationship to the possession, use or distribution of illicit drugs and alcohol on campus or as part of any College activity; a description of the applicable legal sanctions under local, state and federal law which may arise from the unlawful possession or distribution of illicit drugs; a description of the health risks associated with the use of illicit drugs; a description of the College’s Drug and Alcohol Abuse Prevention Program and a clear statement of the disciplinary sanctions which may be imposed upon students and employees for violations of the standard of conduct. The College’s program is reviewed biennially by the Office of Student Life in collaboration with Human Resources to determine effectiveness and to implement changes (if needed) to ensure that the College’s disciplinary sanctions (below) are consistently enforced. The College is subject to the laws of the State of

West Virginia, those of Randolph County and the City of Elkins.

Consumption, purchasing, possession, or transportation of any alcoholic beverages by people under the age of 21 on College property or at any College sponsored activity is illegal and a violation of College policy. It is also unlawful and a violation of College policy for any person to knowingly provide alcoholic beverages to anyone under the legal drinking age of 21. Students Davis & Elkins College Policy Manual: Volume VI Page – 46 and employees are expected to obey the law and to take responsibility for their own conduct.

In addition, the College maintains the following student regulations regarding alcohol on College property or at any College sponsored activity:

1. The possession and/or use of hard liquor in any form is prohibited;
2. Students (and/or guests) of legal age (21 or over) may possess and consume alcoholic beverages (beer and wine) in the privacy of their own residence unit with the door closed, but only if they reside in a private room, or unit with roommates of legal age;
3. Students (and/or guests) under the legal age of drinking shall not buy, drink, or possess (hold) alcoholic beverages;
4. Students (and/or guests) shall not act belligerently, or be visibly intoxicated;
5. The possession and consumption of alcohol shall not infringe upon the privacy or peace of other individuals;
6. Items used for the mass consumption of alcohol (beer bongs, kegs, pony kegs, punch bowls, beer balls, trash cans, or other common containers of alcoholic beverages of similar nature) are strictly prohibited;
7. Possession of an open container or consumption of alcoholic beverages in any area other than individual rooms is prohibited except in specified areas or at special events sponsored by, and posted accordingly by the College;
8. Drinking games in any form are prohibited (beer pong, flip cup, etc.); and
9. Empty alcohol bottles are prohibited from being displayed in the residence halls.

All activities at which alcoholic beverages will be present must be approved in advance as follows:

- *Student Sponsored Events:* Any student or student organization seeking to have an event with alcohol secure written approval from the Office of Student Life. Prior to approval, the student or student organization must designate a staff or faculty sponsor for the event. The staff or faculty sponsors will attend and assume the responsibility for adhering to College policies and state law, and ensuring that appropriate behavior is maintained at all times.
- *College Sponsored Events:* Any non-student College organization, department, or division seeking to serve alcohol at an event must secure written approval from the President's office.
- *Third Party Events:* Third party events must be coordinated via the College's Hospitality Services.

With the exception of approved events, the consumption of alcoholic beverages is prohibited in all "public areas" of the College, including athletic facilities and outside grounds. Alcoholic beverages may not be included in organized membership recruitment activities. The advertising, promotion, and sale of alcohol are prohibited (outside of licensed spaces or events). Individual students and student organizations are responsible for their conduct, and the conduct of their guests and for promoting

compliance with West Virginia laws and College policy. College Davis & Elkins College Policy Manual: Volume VI Page – 47 faculty and staff are expected to promote compliance with West Virginia laws and College policies regarding alcohol. 6.4.1.2 Consequences for Alcohol Policy Violations

**Consequences for Alcohol Policy Violations**

**Student Sanctions:**

<b>College Sanctions**</b>	<b>1st offense</b>	<b>2nd offense</b>	<b>3rd offense</b>
<b>Fine</b>	\$150	\$300	\$500
<b>Education</b>	Mandatory Alcohol Education Class	Refresher Course	Deferred
<b>Counseling/Assessment/Treatment Plan</b>	At Counselor’s recommendation	Mandatory	Mandatory
<b>Community Service</b>	5 Hours	10 Hours	20 Hours
<b>Parent Notification of Dependent Students</b>	Optional	Yes	Yes
<b>Probation</b>		90 days	120 days

\*\*Please note that these are the minimum sanctions for alcohol violations.

Third offenses are independently evaluated based on the circumstance of the incident and may include suspension from the College. Community service will be completed in one calendar month from which the offense took place unless the time remaining in the semester prohibits it. In that case the community service will be completed by the end of the first month in the following semester. Students who do not participate in the mandatory alcohol education, attend recommended counseling or complete the community service requirements will have a hold placed on their account and will not be permitted to register for classes until the requirements have been met. Students have the option to receive evaluation and services off campus at their own expense. Documentation of completed education, evaluation and treatment will be required from the community-based counselor. The counselor shall be a certified alcohol and drug counselor in the state of West Virginia or the equivalent if the counseling is completed out of state.

**Legal Sanctions:**

Students and employees found responsible for violating the College Alcohol Policy are subject to the jurisdiction of the city of Elkins, Randolph County and the state of West Virginia. Possible penalties: Underage purchase of alcohol or misrepresentation of age is subject to a fine of up to \$500 and three days in jail or probation. Purchase of alcohol for those underage is subject to a fine of up to \$500 and up to 10 days in jail. Public intoxication is subject to a fine of up to \$100 and up to 60 days in jail or completion of an alcohol education program or counseling. Driving under the influence of alcohol, or other drugs (includes DUI), depending on circumstances, is subject to incarceration of from 24 hours to 10 years, a fine of \$100 to \$5,000, and license suspension of from six months to life.

**Alcohol: Health Risks**

As students and employees make choices concerning the use of alcohol, it is important to consider the health risks associated with consumption. Alcohol is a depressant, although it may initially stimulate emotions. It slows heart rate and respiration and may cause intoxication, sedation, unconsciousness and death. Alcohol is generally metabolized at the rate of one drink per hour. Mixing alcohol with other

drugs can be lethal. Food slows down the absorption of alcohol. Long term alcohol misuse can lead to liver disorders, heart disease, brain damage, sterility, and dependency.

Approximately 1 in 10 drinkers becomes an alcoholic; children of alcoholics are 3 to 4 times more likely to become alcoholics themselves. BAC (Blood Alcohol Concentration) is affected by the amount consumed, rate of drinking, size and gender of drinker, and tolerance. Alcohol impairs judgment, performance, memory, and motor skills. An impaired person is usually unable to recognize his/her own impairment. Tolerance, the need to use more of a substance to maintain the effectiveness of that substance, occurs with use over an extended period of time. Tolerance increases the risk of alcohol-related problems, including alcoholism and social problems.

### **Educational Resources and Treatment Options**

It is recommended that any organization planning an event at which alcohol will be available to those of legal age, formulate and implement a program to increase alcohol awareness and prevent alcohol misuse for those who will attend. There are a number of resources available on and off campus to provide alcohol education or assistance with alcohol concerns:

1. The Office of Residence Life, including the Coordinator of Campus Life, Resident Directors and Resident Assistants, are a valuable resource and provide much of the alcohol education programming on campus.
2. Counseling services are available to address individual concerns, provide assessments and referrals for treatment on and off campus, and provide information and education about alcohol use.
3. Student Health Services is available to assist individuals with situations involving alcohol that affect the physical well-being of a student.

### **Serving Alcohol on Campus**

All activities at which alcoholic beverages will be present must be approved in advance as follows:

- Student Sponsored Events: Any student or student organization seeking to serve alcohol at an event must secure written approval from the Student Life Office. Prior to approval, the student or student organization must designate a staff or faculty sponsor for the event. The staff or faculty sponsors will attend and assume the responsibility for adhering to College policies and state law, and ensure that appropriate behavior is maintained at all times.
- College Sponsored Events: Any non-student College organization, department or division seeking to serve alcohol at an event must secure written approval from the President's Office.
- Third Party Events: Third party events must be coordinated with and approved by Conference and Catering Services.

Prior to the event, the sponsoring individual or entity must secure and present any necessary permits and/or insurance to the approving authority listed above. The College will cancel the event if such licensure and/or insurance are not obtained. Any third party events in which alcohol will be served must be approved via the College's Reservation of Facilities Policy.

At any approved event on campus where alcohol will be served, all policies and procedures set forth in the College's Alcohol Policy must be strictly observed, including the following:

- No College event can charge for alcohol without proper licensing, whether or not the event is held at the College.
- All events must terminate by 12:00 a.m. midnight Sunday through Thursday and by 2:00 a.m. Friday and Saturday.

- Alcoholic beverages are to be consumed only in the designated room(s) or areas approved for the event.
- Proof of legal drinking age will be required prior to service.
- Only those beverages provided by the sponsoring organization of an event are to be consumed. Individuals are not permitted to bring their own beverages to an event.
- The College encourages low risk use of alcohol. No person will be served alcohol if they are already visibly intoxicated. No alcohol will be given away as a prize.
- Drinking games will not be allowed.
- No person may obtain alcohol for another person unless the person is present at the time of service, regardless of whether they are of legal drinking age.
- Soft drinks and food must be made available for the duration of any activity where alcoholic beverages are served.
- The sponsoring organization is responsible for establishing procedures to provide impaired guests or participants a ride home. Such procedures can include assigning one or more members of each group of guests or participants the responsibility of being a designated driver who will refrain from drinking. Another alternative is to provide a shuttle service.
- Davis & Elkins College will discourage the inappropriate use of alcohol by any member of its community.

## Drug Policy

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### Drug-Free Schools and Community Act Compliance

In accordance with state and federal laws, it is illegal for students and employees to possess, use or sell illegal drugs, as well as to abuse or distribute prescription drugs. Prescription drugs are only legal if the individual possessing them is the patient to whom the medication is prescribed. Included in these categories are opiates, barbiturates, amphetamines, marijuana, hallucinogens, illegal steroids, date-rape drugs, and other illegal or prescription drugs. Not only is it unlawful, but the presence, use, and abuse of these drugs within the College is contrary to the intellectual and educational purposes of the College. Possession of these substances may well be an indication that the student or employee is not constructively engaged in academic or work related endeavors, respectively.

**Students:** Students arrested for selling drugs or found to be in possession of significant quantities shall be subject to immediate suspension pending final disposition of the case in the Davis & Elkins College Policy Manual: Volume VI Page – 49 College judicial process. If the student is subsequently found responsible by the College, she or he will be expelled from the College.

Use or abuse of illegal and controlled substances is a violation of College regulations. Students violating this policy should expect disciplinary action, which may include suspension from the College. Subsequent violations may result in suspension or expulsion.

The possession of paraphernalia, making no distinction between whether it has or has not been used for its intended purpose, is prohibited. Therefore, students should not possess hookahs, water pipes or bong, pipes designed to smoke tobacco alternatives, or any other paraphernalia suspected or

associated with drug use. Any items found will be confiscated and destroyed by the Office of Public Safety.

Student Life staff members are available to provide referrals to students with concerns about alcohol or drug use. Referrals to free, on campus counseling services are available and a list of off campus providers is also available. Students assume full financial responsibility for any off-campus services.

## Drug Use Consequences

### Student Consequences:

College Sanctions**	1st offense	2nd offense	3rd offense
Fine	\$150	\$300	\$500
Education	Mandatory Drug Education Class	Refresher Course	Deferred
Counseling/Assessment/Treatment Plan	At Counselor's recommendation	Mandatory	Mandatory
Community Service	5 Hours	10 Hours	20 Hours
Parent Notification of Dependent Students	Yes	Yes	Yes
Probation		30 days	60 days

*\*\* Please note that these are the minimum sanctions for drug violations*

Third offenses are independently evaluated based on the circumstance of the incident and may include suspension from the College.

Community service will be completed in one calendar month from which the offense took place unless the time remaining in the semester prohibits it. In that case the community service will be completed by the end of the first month in the following semester.

Students who do not participate in the mandatory alcohol education, attend recommended counseling or complete the community service requirements will have a hold placed on their account and will not be permitted to register for classes until the requirements have been met.

Students have the option to receive evaluation and services off campus at their own expense. Documentation of completed evaluation and treatment will be required from the community-based counselor. The counselor shall be a certified alcohol and drug counselor in the state of West Virginia or the equivalent if the counseling is completed out of state.

Those who are found to have violations related to the manufacture, delivery, possession with intent to manufacture or deliver a controlled substance or other violations that would be considered a felony offense will receive a minimum of parental notification and immediate suspension and or dismissal.

### Criminal Penalties for Psychoactive Drug Possession

Students found responsible for violating the Davis & Elkins College Drug Use and Abuse Policy are also subject to the jurisdiction of the state of West Virginia and U.S. federal law enforcement. See below for possible penalties.

Penalties for the use and possession of illicit drugs, along with illegal use of prescription drugs, vary greatly. Possession of a larger amount of a drug will typically result in charges of distribution, leading to much stiffer penalties.

Some examples of penalties:

- A federal or state drug conviction can disqualify a student for federal student aid.
- A criminal record for drug possession may prevent professional licensing and/or certification.
- Possession of up to 30 grams of marijuana: up to 30 days in prison, \$500 in fines.
- Possession of any controlled substance, such as heroin: up to 1 year in prison, \$5,000 in fines.
- Possession of 5+ grams of cocaine: 5-20 years in prison, \$1,000 in fines.
- Manufacture, distribution, importation of any designer drug, such as ecstasy: up to 20 years in prison and \$250,000 in fines.
- Those convicted of illegal possession of a controlled substance are also subject to disqualification for a commercial driver's license for up to one year for the first offense and for life for the second offense.

Under West Virginia state law, conviction for possession of a controlled substance is subject to incarceration of up to six months and a fine of up to \$1,000. Sentences can be doubled for second or subsequent offenses. Manufacturing, possession or delivery with the intent to manufacture or delivery of a controlled substance is subject to, depending on the substance classification, up to 15 years imprisonment and/or a \$25,000 fine upon conviction. Sentences can be doubled for subsequent offenses and mandatory prison terms result for convictions involving distribution of controlled substances to minors or within 1,000 feet of the College or other school.

Federal sanctions for illegal possession of a controlled substance vary with the conviction, substance possessed, and the quantity of the substance.

In situations where drugs and/or drug paraphernalia, weapons or other dangerous or potentially dangerous items are found in plain view, Public Safety officers may perform a room or workplace search within legal limits.

If the College receives a report of a potential policy violation, particularly a violation of the College's drug, health and safety, and/or weapons and explosive materials policies, the Vice President for Student Affairs, Director of Human Resources or Vice President for Academic Affairs or his/her designee may authorize a search in writing. The Vice President for Student Affairs and/or Student Life staff must be present at any such residence hall room search. Only Public Safety officers can perform residence hall room searches.

### **Drug Use and Abuse: Health Risks**

As students make choices concerning the use and misuse of drugs and controlled substances, it is important to consider the health risks associated with consumption.

#### *Cocaine and Crack*

Powerful central nervous system stimulants that constrict blood vessels, dilate pupils, increase blood pressure and elevate heart rate. Cocaine use may induce restlessness, irritability, anxiety, paranoia, seizures, cardiac arrest, respiratory failure and death. Cocaine is extremely addictive, both psychologically and physically. Great risks exist whether cocaine is ingested through inhalation



(snorting), injection or smoking. Compulsive cocaine use may develop even more rapidly if the substance is smoked, and smoking crack cocaine can produce particularly aggressive paranoid behavior in users.

#### *Date Rape Drugs*

Rohypnol, rophies, roofies, GHB, Ketamine, etc. may incapacitate a person, particularly when used with alcohol. Rohypnol and GHB (gammahydroxybutyrate) are characterized as “date rape” drugs because they incapacitate users, thereby increasing vulnerability to sexual assault and other crime. Sedation, relaxation and amnesia are associated with Rohypnol use. Rohypnol may be psychologically and physically addictive and can cause death if mixed with alcohol or other depressants. GHB usage may result in coma and seizures and, when combined with methamphetamine, appears to cause an increased risk of seizure. Combining use with other drugs such as alcohol can result in nausea and difficulty in breathing. GHB may also produce withdrawal effects, including insomnia, anxiety, tremors and sweating. Ketamine may induce feelings of near-death experiences.

#### *Ecstasy*

AKA X, Adam, MDMA, XTC, etc. Ecstasy has amphetamine-like and hallucinogenic properties. Its chemical structure is similar to other synthetic drugs known to cause brain damage. Ecstasy use may cause psychological difficulties including confusion, depression, sleep problems, drug craving, severe anxiety, paranoia and even psychotic episodes. Similar difficulties may occur weeks after taking MDMA. Physical symptoms such as increases in heart rate and blood pressure may result from use of such substances. Other physical symptoms include muscle tension, blurred vision, nausea, rapid eye movement and involuntary teeth clenching.

#### *Hallucinogens*

Acid, PCP, LSD, psilocybin (mushrooms), dextromethorphan (dxin) are among the most potent mood-changing chemicals and may produce unpredictable effects that may impair coordination, perception and cognition. Some LSD users experience flashbacks, often without warning, without the user having taken the drug again. Violence, paranoia, delusions, hallucinations, convulsions, coma, cardiac arrest and respiratory failure may result from hallucinogen use.

#### *Marijuana*

AKA pot, grass, hash, cannabis sativa, etc. Marijuana may impair memory, attention, coordination and learning. Short-term effects of smoking marijuana may include problems with memory, learning, distorted perception, difficulty in thinking and problem solving, loss of coordination, increased heart rate, anxiety and panic attacks. Persons who smoke marijuana regularly may have many of the same respiratory problems as tobacco smokers, including daily cough and phlegm, chronic bronchitis and more frequent chest colds. Because users of marijuana deeply inhale and hold marijuana smoke in their lungs, they incur a higher risk of getting lung cancer.

#### *Narcotics*

Heroin, opium, morphine, codeine, pain medication (Demerol, Percodan, Lortab, etc.) may produce temporary euphoria followed by depression, drowsiness, cognitive impairment, and vomiting. Narcotic use may cause convulsions, coma and death. Tolerance and dependence tend to develop rapidly. Using contaminated syringes to inject drugs may result in contracting HIV and other infectious diseases such as hepatitis.

#### *Nicotine*

Tobacco, cigarettes, cigars, chewing tobacco, nicotine chewing gum and patches are highly addictive and according to the Surgeon General are a major cause of stroke and is the third leading cause of death in the United States. Over time, higher levels of nicotine must be consumed to achieve the same effect. Nicotine consumption results in central nervous system sedation and after initial activation may cause drowsiness and depression. If women smoke cigarettes and take oral

contraceptives, they are more prone to cardiovascular and cerebrovascular diseases than are other smokers. Pregnant women who smoke cigarettes run an increased risk of having stillborn or premature infants or infants with low birth weight.

#### *Sedative-hypnotics*

Depressants, Quaaludes, Valium, Xanax, etc. depress central nervous, cardiovascular and respiratory functions. Sedative-hypnotic use may lower blood pressure, slow reactions and distort reality. Convulsions, coma and death are outcomes associated with sedative-hypnotic use. Consuming sedative-hypnotics with alcohol is especially dangerous.

#### *Steroids*

Anabolic-androgenic steroids may permanently damage liver, cardiovascular and reproductive systems. Possible side effects include liver tumors, cancer, jaundice, fluid retention and hypertension. In men, steroids may cause shrinking of testicles, reduced sperm count, infertility, baldness, breast development and increased risk for prostate cancer. In women, steroid use may cause growth of facial hair, male-pattern baldness, menstrual changes, enlarged clitoris and deepened voice.

#### *Stimulants*

Amphetamine, methamphetamine, speed, crystal, crank, Ritalin, ephedra, caffeine, various over-the-counter stimulants and diet aids are powerful central nervous system stimulants that may increase agitation, physical activity and anxiety. Stimulants may decrease appetite, dilate pupils and cause sleeplessness. Dizziness, higher blood pressure, paranoia, mood disturbance, hallucination, dependence, convulsions and death due to stroke or heart failure may also result from use.

#### *Synthetic Drugs*

Spice, K2, bath salts, etc. are synthetic substances produced in a laboratory. They are chemical cousins of other drugs. They are often found in retail stores and are marketed as “herbal incense,” “plant food” or “bath salts.” They generally come in small tea bag size packets and are labeled “not for human consumption.” They are marketed as a “legal high.” These substances have been outlawed in West Virginia. These may cause agitation, extreme nervousness, hallucinations, seizures, paranoia and violent behaviors that can be extremely dangerous to the person consuming them and to those around them. Suicide attempts are very common among people who consume these substances. Emergency treatment is critical if you suspect that someone has ingested them. The packaging should be taken to the emergency department if available.

(Source: National Institute on Drug Abuse, National Institutes of Health, [www.nida.nih.gov](http://www.nida.nih.gov))

### **Disciplinary Proceedings**

The following Procedures and rules for disciplinary hearings can be located and accessed on page 101, 6.6, Under student disciplinary proceedings via the link provided:

<https://www.dewv.edu/wp-content/uploads/2020/10/Davis-Elkins-College-Policy-Manual-Volume-VI-Student-Life-Policies.pdf>

# Amnesty Policy

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As partners with the College in promoting health and safety, all students have a responsibility and obligation to seek immediate assistance for any student known to be experiencing a serious health crisis, including one resulting from high risk drinking or the abuse of other drugs.

As such, students who seek assistance on behalf of a peer and are themselves under the influence of alcohol or drugs in violation of this Policy will not receive a Code of Conduct sanction for this action. Additionally, the student who is the subject of the report will not receive a Code of Conduct sanction for this action.

Additionally, 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 illegal 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.

The College will provide students with the assistance needed to respond to high risk drinking and other drug abuse. Students may seek such assistance by contacting the Office of Student Life or the Office of Public Safety.

After the crisis is resolved, the student who experienced the health crisis, as a result of alcohol intoxication or other drug consumption, will be referred to the substance abuse prevention and treatment specialist. The substance abuse prevention and treatment specialist will provide further assessment, substance abuse education, counseling, recommendations and/or referral as applicable to the individual student's need.

## **Educational Resources and Treatment Options**

There are a number of resources available on and off campus to provide drug education or assistance with drug use concerns:

1. The Office of Student Life, the campus nurse and counselors are valuable resources and provide much of the drug education programming on campus.
2. Counseling services are available to address individual concerns, provide assessments and referrals for treatment on and off campus, and to provide information and education about drug use.
3. Student Health Services is available to assist individuals with situations involving drugs.

## **Reporting of Crime Statistics**

Each year the Davis & Elkins College Office of Public Safety collects crime reports for the crimes listed below from campus security authorities within the institution, as well as from local law enforcement. The College then discloses these crime statistics annually to the United States Department of Education. In addition, the College publishes an Annual Security and Fire Safety report containing campus security policy disclosures and crime statistics for the previous three years. It is important to note that all crimes

reported and documented include crimes that occur on campus including crimes that occur in residence halls.

Davis & Elkins College will report to the Department of Education in its Annual Security and Fire Safety Report the statistics for the total number of crime reports that were “unfounded” and subsequently withheld from the crime statistics reported in the Annual Security and Fire Safety Report. Unfounded reports are those that have been fully investigated by sworn law enforcement personnel and, based on the results of this full investigation and evidence, have made formal determination that the crime report is false or baseless. Recovery of stolen property, stolen property that is of low value, the refusal of a victim to cooperate with law enforcement or the failure to make an arrest do not justify classifying a report as “unfounded.”

### **Clery Crimes Definitions**

#### *Arson*

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

#### *Criminal Homicide-Manslaughter by Negligence*

The killing of another person through gross negligence.

#### *Criminal Homicide-Murder and Non-negligent Manslaughter*

The willful (non-negligent) killing of one human being by another.

#### *Robbery*

The taking or attempt to take anything of value from the care, custody or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

#### *Aggravated Assault*

An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

#### *Burglary*

The unlawful entry of a structure to commit a felony or a theft. For reporting purposes, this definition includes unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

#### *Dating Violence*

Violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type and frequency of interaction.

#### *Domestic Violence*

Asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

#### *Stalking*

A course of conduct directed at a specific person that would cause a reasonable person to fear for her, his or others' safety, or to suffer substantial emotional distress.

#### *Motor Vehicle Theft*

The theft or attempted theft of a motor vehicle. (Motor vehicle theft is classified as all cases where automobiles are taken by persons not having lawful access including joyriding even though the vehicles are later abandoned.)

### *Weapon Law Violations*

The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as manufacture, sale or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned.

### *Drug Abuse Violations*

Violations of state and local laws relating to the unlawful possession, sale, use, growing, manufacturing and making of narcotic drugs. The relevant substances include opium or cocaine and their derivatives (morphine, heroin, codeine), marijuana, synthetic narcotics (Demerol, methadones) and dangerous nonnarcotic drugs (barbiturates, Benzedrine).

### *Liquor Law Violations*

The violation of laws or ordinances prohibiting the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all attempts to commit any of the aforementioned. (Drunkenness and driving under the influence are not included in this definition.)

### *Hate Crimes*

Hate crimes include offenses and crimes involving bodily injury reported to local police agencies or to a campus security authority that manifest evidence that the victim was intentionally selected because of the perpetrator's bias or because the perpetrator perceived the person to be in one of the protected group categories. The protected group categories include race, gender, religion, sexual orientation, ethnicity, disability, national origin and gender identity. For Clery purposes, hate crime offenses and crimes also include any of the following offenses that are motivated by bias: murder and non-negligent manslaughter; forcible sex offenses; non-forcible sex offenses; robbery; aggravated assault; burglary; motor vehicle theft; arson; larceny-theft; simple assault; intimidation; destruction/damage/vandalism of property; domestic violence, dating violence and stalking.

### *Sex Offenses-Forcible<sup>3</sup>*

Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

1. Forcible Rape - The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity or because of his/her youth.
2. Forcible Sodomy - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
3. Sexual Assault With An Object - The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
4. Forcible Fondling - The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

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<sup>3</sup> Sex Offenses Definitions From the National Incident Based Reporting System Edition of the Uniform Crime Reporting Program.

*Sex Offenses-Non-forcible*

Unlawful, non-forcible sexual intercourse.

1. Incest - Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
2. Statutory Rape - Non-forcible sexual intercourse with a person who is under the statutory age of consent.

## Disclosures to Alleged Victims of Crimes of Violence or Non-forcible Sex Offenses

Davis & Elkins College will, upon written request, disclose to the alleged victim of a crime of violence or a non-forcible sex offense the results of any due process hearing conducted by the College against a student or employee who is the alleged perpetrator of the crime or offense. If the alleged victim is deceased as a result of a crime of violence or non-forcible sex offense, Davis & Elkins College will provide the results of the disciplinary hearing to the victim’s next of kin, if so requested.

## Crime Statistics

The statistics in this report are published in accordance with the standards and guidelines used by the FBI Uniform Crime Reporting Handbook and relevant federal law. Davis & Elkins College submits the annual crime statistics published in this report to the Department of Education. The statistical information gathered by the Department of Education is available to the public through the Department of Education website.

In reading the crime statistics table, it is important to note the following:

- Crimes occurring on campus include crimes occurring in the residence halls.
- The College reports the number of persons who are charged with a violation of policy or law, not the number of persons who are found responsible for a violation of policy or law.

	ON-CAMPUS PROPERTY	STUDENT HOUSING FACILITIES	PUBLIC PROPERTY	NON-CAMPUS PROPERTY	TOTAL
<b>MURDER/NON-NEGLIGENT MANSLAUGHTER</b>					
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
<b>NEGLIGENT MANSLAUGHTER</b>					
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
<b>FORCIBLE SEXUAL OFFENSES: RAPE</b>					
2017	3	2	0	0	3
2018	1	1	0	0	1
2019	3	3	0	0	3

	<b>SEXUAL OFFENSE: FONDLING</b>				
2017	1	1	0	0	1
2018	2	0	0	0	2
2019	1	1	0	0	1
	<b>SEXUAL OFFENSES, NON FORCIBLE: INCEST</b>				
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
	<b>SEXUAL OFFENSES, NON FORCIBLE: STATUTORY RAPE</b>				
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
	<b>ROBBERY</b>				
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
	<b>AGGRAVATED ASSAULT</b>				
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
	<b>BURGLARY</b>				
2017	0	0	0	0	0
2018	2	0	0	0	2
2019	1	1	0	0	1
	<b>MOTOR VEHICLE THEFT</b>				
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
	<b>ARSON</b>				
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
	<b>ARRESTS (WEAPONS)</b>				
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
	<b>DISCIPLINARY REFERRALS: WEAPONS</b>				
2017	0	0	0	0	0
2018	1	1	0	0	1
2019	0	0	0	0	0
	<b>ARRESTS: DRUG LAW VIOLATIONS</b>				
2017	0	0	0	0	0
2018	0	0	0	0	0
2019	0	0	0	0	0
	<b>DISCIPLINARY REFERRALS: DRUG LAW VIOLATIONS</b>				
2017	24	23	0	0	24

2018	23	21	0	0	23
2019	15	15	0	0	15
<b>ARRESTS: LIQUOR LAW VIOLATIONS</b>					
2016	0	0	0	0	0
2017	0	0	0	0	0
2018	0	0	0	0	0
<b>DISCIPLINARY REFERRALS: LIQUOR LAW VIOLATIONS</b>					
2017	32	26	0	0	32
2018	24	18	0	0	24
2019	52	52	0	0	52
<b>DOMESTIC VIOLENCE</b>					
2017	1	1	0	0	1
2018	0	0	0	0	0
2019	1	0	0	1	1
<b>DATING VIOLENCE</b>					
2017	1	1	0	0	1
2018	0	0	0	0	0
2019	0	0	0	0	0
<b>STALKING</b>					
2017	2	1	0	0	2
2018	0	0	0	0	0
2019	1	0	0	1	1

### Hate Crimes

There were no reported hate crimes for the years 2017, 2018 and 2019.



# Crime Prevention

## Crime Prevention Programs

Davis & Elkins College is dedicated to eliminating and/or minimizing criminal activities through the eyes and ears of the faculty, staff, students, friends and neighbors of the campus community. Crime Prevention brochures and other printed materials are available at the Office of Public Safety, various locations on campus, and in every residence hall. Crime Prevention items are discussed with parents and students during orientation sessions. Resident Assistants and Resident Directors are given training by the Office of Student Life and Office of Public Safety on numerous security and crime prevention topics. These topics include, but are not limited to, sexual assault, date rape, drugs, alcohol, personal protection, fire safety and theft. In addition, all employees receive annual training on issues pertaining to sexual misconduct, including sexual criminal assaults.

The Davis & Elkins College Office of Public Safety assigns one of its officers to be in charge of its Crime Prevention program. This officer stays in tune with growing trends on college campuses nationwide and criminal trends in the community. Updates are passed onto students, faculty and staff via email, text, the student newspaper and other means in the Office's continual effort to help keep the College community safe.

## Safety Tips

- Report all suspicious information to the Office of Public Safety immediately.
- Program the Office of Public Safety's number into your cell phone: 304-704-9111.
- Try to avoid walking alone at night, travel with friends, or use the escort services provided by the Office of Public Safety.
- Be aware of your surroundings. Watch the cars and people around you.
- Carry your keys and ID card on you at all times. Do not lend them to anyone.
- Keep your residence hall room door closed and locked when you are not there.
- Do not prop open doors to residence halls or other protected locations.
- Lock up bicycles and motorcycles. Lock car doors and close windows when leaving your car.
- Never leave valuables unattended or in your car.

# Gender-based Discrimination, Harassment and Sexual Misconduct Policy Statement

Davis & 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.

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. 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 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.

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

Davis & Elkins College's full policy and procedures regarding gender-based discrimination, harassment and sexual misconduct is available in the Title IX Office (Liberal Arts Hall, Room 209) or online at [www.dewv.edu/title-ix](http://www.dewv.edu/title-ix). This policy provides, in part, that the reported victim and the accused will each be allowed to choose one person to accompany them throughout the reporting and investigatory process. Both parties will be informed of their rights and the outcome of any institutional proceedings.

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.

## **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.

**Get to a Safe Place:** First and foremost, an individual who is the victim of Sexual Assault (non-consensual sexual contact or 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 who are not in a safe place should contact Public Safety at 304-704-9111, 24 hours a day or Local Law Enforcement at 911 immediately (24 hours). Individuals off campus should contact Local Law Enforcement at 911 immediately (24 hours).

**Seek Medical Care:** 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.

**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, or wash clothes, sheets, blankets or other items. Anything of evidentiary value should be placed in a paper bag (plastic bags are discouraged). In addition, victims are urged to photograph visible injuries. Pictures of injuries should be taken in both close-up and wide-angle. A credit card, coin or dollar bill should be used in the pictures for reference of size.

## **Confidential Resources**

### **Confidential Reporting Procedures**

We encourage anyone who has witnessed or has been a victim of a crime to immediately report the incident by dialing 911 or for a non-emergency, 304-637-9111. Crimes can be reported on a voluntary, confidential basis for inclusion in the Annual Security Report. The Davis & Elkins College Office of Public Safety can file a report on the details of an incident without revealing your identity. The purpose of a confidential report is to maintain anonymity, yet it allows the Office of Public Safety to take steps to ensure your future safety and that of others. With such information, the College can keep an accurate record of the number of incidents involving students, employees and visitors and alert the campus community to potential danger if necessary. Reports filed on a confidential basis are counted and disclosed in the annual crime statistics for the College. The Davis & Elkins College Office of Public Safety encourages all licensed mental health professionals and pastoral counselors to refer persons they are counseling to report crimes on a voluntary, confidential basis by contacting the Office of Public Safety, if and when they deem appropriate. Each year, all Campus Security Authorities report Clery reportable crimes, if any were received. Each of these reports is reviewed by the NIU Department of Police and Public Safety and the Clery Compliance Committee to confirm it meets the requirements under the Clery Act.

### **Records Available to the Public**

Davis & Elkins College will complete publicly available record keeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the victim and maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.

### **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:

**College Counselor**

Margaret Falletta  
Jennings Randolph Hall  
304-637-1363  
Email: fallettam@dewv.edu

**College Chaplain**

Rev. Laura Brekke  
Liberal Arts Hall 209  
Office: 304-637-1267  
Email: brekkel@dewv.edu

**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 helping find a Sexual Assault Nurse Examiner, who is specially 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.

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:

Monday – Friday  
11:00 a.m. to 3:00 p.m.

**Women's Aid in Crisis**

Women's Aid in Crisis (WAIC) offers confidential counseling, advocacy, health, mental health and sexual assault resources regardless of the gender of the victim. WAIC can provide and advocate who can accompany a victim to the hospital or any other provider. WAIC will not report to the College or Law Enforcement without the victim's consent.

## **Non-Confidential Reporting**

### **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  
Assistant Dean of Students and Title IX & Section 504 Coordinator  
Office: 304-637-1241 | Cell: 304-276-2033  
Email: garlickk@dewv.edu  
Liberal Arts Hall 108  
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

**Amanda Larkin**

Athletics Compliance Coordinator  
Office: 304-637-1222  
larkina@dewv.edu  
Hermanson Center, Room C  
100 Campus Drive, Elkins, WV 26241

**Robert Phillips**

Provost  
Office: 304-637-1292  
phillipsr@dewv.edu  
Liberal Arts Hall, Room 106  
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://www.dewv.edu/consumer-information/title-ix-reporting-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.

### **Reporting to the Office of Public Safety**

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 is located in the Gatehouse. Public Safety personnel can be accessed at 304-704-9111, 24 hours a day.

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 that the College will need to determine in the incident, – including the names of the victim and alleged accused, any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

### **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. By the same token, Responsible Employees will not pressure a Reported Victim to make a report or formal Complaint if the Reported Victim is not ready to do so.

### **Make a Report to Local Law Enforcement (Non-Confidential)**

Any member of the College community who has experienced an incident of Sexual Misconduct 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 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.

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.

### **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](mailto:OCR@ed.gov)  
Web: [www.ed.gov/ocr](http://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](mailto: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

## **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 or 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.

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 dorms, 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 and changing the Respondent's residential life housing assignment or course schedule.

The College reserves the right to take whatever interim measures deemed necessary to protect the rights and personal safety of the reporting victim and responding party, and/or community members. Such measures include, but are not limited to, changes to academic, living, dining, transportation and working situations, obtaining and enforcing campus no contact orders, honoring an order of protection or no contact order entered by State civil or criminal court, providing a public safety escort between classes, and interim suspension/administrative paid leave from campus pending an investigation. The remedies provided in the *Remedies* section herein are also available as interim measures.

## **2. Interim Measures for Respondents:**

### **For Student Respondents:**

- Request that the Office of Student Life temporarily suspend the Student Respondent from the College; or
- Request that the Office of Student Life 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 accused 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 accused share the same class or residence hall, the College will typically not remove the victim from the class or housing while allowing the accused 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 an accused 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.

## **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 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 Campus Safety and Security department. 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. In addition, 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 e-mails 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 means 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.

**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.

**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.

## **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.

## **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.

## **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.

## **Sanctions for Gender-based Discrimination, Harassment and Sexual Misconduct Policy Violation**

<b>Prohibited Behavior/Conduct</b>	<b>Range of Sanctions</b>
Sexual/Gender Misconduct Constituting Sexual Assault	Dismissal/Termination
Sexual/Gender Misconduct Not Constituting Sexual Assault	Dismissal/Termination Suspension Probation
Unwanted Sexual Touching	Dismissal/Termination Suspension Probation Community Service Educational/Counseling Consultation
Non-physical Sexual Harassment/Stalking	Dismissal/Termination Suspension Probation Community Service Educational/Counseling Consultation
Discrimination	Dismissal/Termination Suspension Probation Community Service Educational/Counseling Consultation

Retaliation/Intimidation False Allegations	Dismissal/Termination Suspension Probation Community Service Educational/Counseling Consultation
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**INVESTIGATIVE PROCESS**

**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).

## **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.

### **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.

## **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.

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 and Gender-Based 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 employees as necessary and applicable.

## **FINDINGS AND 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.

## **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.

#### **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.

## **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.

### **Title IX Investigation Process and 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.

### **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.

For additional information on sanction and appeals, see the attached link:

<https://www.dewv.edu/wp-content/uploads/2020/10/POLICY-PROHIBITING-TITLE-IX-SEXUAL-HARASSMENT.pdf>

## **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:

Office of Public Safety

304-704-9111

Gatehouse

Title IX Coordinator, Kate Garlick

Liberal Arts Hall, Suite 108

Deputy Title IX Coordinator, Scott Goddard

Liberal Arts Hall, Suite 102

Deputy Title IX Coordinator, Jane Corey

Liberal Arts Hall, Room 203

Deputy Title IX Coordinator, Mandi Larkin

Hermanson Center, Room C

Deputy Title IX Coordinator, Robert Phillips

Liberal Arts Hall, Room 106

Office of Student Life

Liberal Arts Hall, Suite 102

Student Health Services

Gribble Hall, Ground Floor

College Counselor, Margaret Falletta

304-637-1363

Jennings Randolph Hall

College Chaplain, Rev. Laura Brekke

Liberal Arts Hall 209

## **TRAINING**

All employees must complete annual Title IX/Sexual Misconduct training. Such training includes, but is not limited to, the Title IX Policy, effects of trauma on a survivor, consent, retaliation, reporting options, available support services and strategies for bystander intervention and risk reductions. Additional training is provided to those involved in the receipt and resolution of Title IX Complaints, including, but not limited to, Coordinators, Investigators, and confidential resources/advisors.

Primary and ongoing Sexual and Gender-Based Misconduct prevention and awareness training, which includes training with respect to sexual assault offenses, is required for members of the Davis & Elkins College community according to the following schedule:

- All students - annually;

- New full-time faculty and staff – within three months of hire;
- All Responsible Employees - annually;
- All investigators – annually;
- Title IX Coordinator and Deputy Coordinators – annually;
- All Public Safety Officers - annually.

### **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. 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.

### **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 assaults, 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 definitions for the crimes of Sexual Assault, Dating Violence, Domestic Violence, and Stalking;
- 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; 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.

#### **Sexual Assault, Dating Violence, Domestic Violence and Stalking Risk Reduction Tips**

- Program the Office of Public Safety 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 the 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](http://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 do not know where you are going, act like you do.

- Trust your instincts. If a situation or location feels unsafe or uncomfortable, it probably is not 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. Also, ensure you take cab money.
- Do not allow yourself to be isolated with someone you do not trust or someone you do not 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 the Office of Public Safety.
- Do not leave your drink unattended even while talking, dancing, using the restroom, or making a phone call. If you have left your drink alone, get a new one.
- Do not accept drinks from people you do not 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 have 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:
  1. 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 that is to blame.
  2. Be true to yourself. Do not feel obligated to do anything you do not 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.
  3. Have a code word with your friends or family so that if you do not 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.
  4. Lie. If you do not 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.
  5. 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?
  6. 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 the Office of Public Safety or local law enforcement.

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 the Office of Public Safety or the police?”);
- Confronting people who seclude, hit on, 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;
- Referring 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;
- 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).

## RESOURCES GUIDE

Resource	Availability	Confidential Resource?	Reporting Obligations
<p>Title IX Coordinator Kate Garlick <a href="mailto:garlickk@dewv.edu">garlickk@dewv.edu</a> Office: 304- 637-1241 Cell: 304-276-2033 <i>Liberal Arts, Suite 108</i></p>	<p>Normal Business Hours</p>	No	<p>The Title IX Coordinator will supervise the investigation and response to reported Sexual or Gender-Based Misconduct incidents; If the incident is a crime, the Title IX Coordinator 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; The Title IX Coordinator will share information with College personnel who need to know it in order to carry out College policies and procedures.</p>
<p>Deputy Title IX Coordinator Jane Corey, Director of Human Resources <a href="mailto:coreym@dewv.edu">coreym@dewv.edu</a> 304-637-1344 <i>Liberal Arts Hall, Room 203</i></p>	<p>Normal Business Hours</p>	No	See Title IX Coordinator.
<p>Deputy Title IX Coordinator Scott Goddard, Vice President for Student Affairs <a href="mailto:goddards@dewv.edu">goddards@dewv.edu</a> Office: 304-637-1352 Cell: 304-642-1352 <i>Liberal Arts Hall, Suite 102</i></p>	<p>Normal Business Hours</p>	No	See Title IX Coordinator.
<p>Deputy Title IX Coordinator Robert Phillips, Provost/Vice President for Academic Affairs <a href="mailto:phillipsr@dewv.edu">phillipsr@dewv.edu</a> Office: 304-637-1292 <i>Liberal Arts Hall, Room 106</i></p>	<p>Normal Business Hours</p>	No	See Title IX Coordinator.
<p>Deputy Title IX Coordinator Amanda Larkin, Athletics Compliance Coordinator <a href="mailto:larkina@dewv.edu">larkina@dewv.edu</a> Office: 304-704-1635 <i>Hermanson Center, Room C</i></p>	<p>Normal Business Hours</p>	No	See Title IX Coordinator.
<p>Office of Public Safety 304-704-9111 <i>Gatehouse</i></p>	24/7	No	<p>Office of Public Safety will report to the Title IX Coordinator all information received about Sexual and Gender-Based Misconduct incidents so the College can investigate and respond. If the incident is a crime, Office of Public Safety will include it in a crime log and annual crime statistics without identifying the alleged victim. If the incident is a crime and poses a serious or continuing threat, Campus Safety will issue an emergency notification or timely warning. If the incident is a crime under West Virginia or federal law, Office of Public Safety may report it to law enforcement and cooperate in any investigation. If there is reasonable cause to suspect that a minor has been sexually abused, Office of Public Safety will notify Child Protective Services. Office of Public Safety will share information with College personnel who need to know it in order to carry out College policies and procedures.</p>



College Counseling Services for Students 304-637-1363 <i>Jennings Randolph Hall</i>	By Appointment	Yes	If a patient's clinical state poses a substantial risk of harm to the patient or others, as manifested by conduct, Mental Health officials will be contacted.  If there is reasonable cause to suspect that a minor has been sexually abused, Child Protective Services will be contacted.
Referral for Counseling Services for Employees through Human Resources 561-237-7915		Yes*	If an individual's behavior, indicates a possible risk of harm to self or others, Mental Health officials will be contacted.  If there is reasonable cause to suspect that a minor has been sexually abused, Child Protective Services will be contacted.
Student Health Services 304-637-1234 <i>Gribble Hall</i>	Normal Business Hours 11 a.m.- 3 p.m.	Yes**	If the incident is a crime, these resources 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. If a patient's clinical state poses a substantial risk of harm to the patient or others, Mental Health officials will be contacted. If there is reasonable cause to suspect that a minor has been sexually abused, Child Protective Services and the West Virginia State Police will be contacted.
Campus Conduct Hotline 866-943-5787	24/7	No	Not applicable.

*\*if the reason for the referral is not disclosed by the employee to Human Resources*

*\*\* If treated by a nurse or physician*

## OFF-CAMPUS RESOURCES

Resource	Phone	Confidential Resource?
<b>Law Enforcement</b>		
Local Law Enforcement	911	No
<b>Legal Assistance</b>		
Randolph County Prosecutor	304-636-2053	No
<b>Child Protective Services</b>		
	1-800-352-6513	No
<b>Victim Advocacy and Support</b>		
Women's Aid In Crisis, Inc.	304-636-8433	Yes
National Sexual Assault Hotline	800-656-4673 <a href="http://www.rainn.org">www.rainn.org</a>	Yes
Employee Assistance Program ( <i>For Employees</i> )	International access: 1-800-662-4504 Toll-Free: 1-800-588-8412 For TTY Users: 1-800-456-4006 <a href="http://www.MagellanHealth.com/member">www.MagellanHealth.com/member</a>	Yes
<b>Off-Campus Medical Attention</b>		
Davis Medical Center	812 Gorman Avenue Elkins, WV 26241 304-636-8080	Yes

## APPENDIX A – 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, 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 that 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 B – 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.



# Fire Safety Report

## **Fire Safety Policies, Fire Statistics and Fire Log**

The College annually provides a report to each student and current employee that discloses campus fire safety policies, fire prevention activity data, and any fire-related incident that occurs within on-campus housing. Future improvements to fire safety are currently underway and being evaluated. Additional information is available from the Office of Public Safety. Prospective students and prospective employees receive a notice of the report's availability. In addition to the above, the College fire safety policies are published in the Davis & Elkins College Policy Manual.

The Davis & Elkins Office of Public Safety is responsible for this Annual Security and Fire Safety Report, Timely Warnings and the Crime and Fire Logs. The Annual Security and Fire Safety Report is prepared in cooperation with local law enforcement agencies in Randolph County and the Office of Student Life. Campus crime, arrest and referral statistics include those reported to the Davis & Elkins Office of Public Safety, campus officials, RAs, RDs, and local law enforcement agencies. The Annual Security Report is compiled and submitted by the Director of Public Safety. For more information, contact the Office of Student Life at 304-637-1211, or the Director of Public Safety/Davis & Elkins Office of Public Safety at 304-704-9111.

## **Crime and Fire Log**

The Office of Public Safety maintains a combined Crime and Fire Log of all incidents reported to the office, which is available for inspection during normal business hours. This includes all crimes reported to the office, as well as all fires in on-campus student housing facilities.

The Crime and Fire Log includes the incident type, date incident is reported, date and time of occurrence, and general location of each reported incident type, as well as the disposition of the incident, if this information is known. The Office of Public Safety posts specific incidents in the Crime and Fire Log within two business days of receiving the report.

## **Campus-Wide Fire Safety Practices**

Fires result in serious injuries, deaths and property loss; all members of the College community must take precautions at all times to prevent a tragedy due to fire and smoke.

In the event of smoke or fire, calmly exit the building using the nearest exit. If the building's alarm system is not sounding, pull the fire alarm when exiting the building. All College buildings have posted exit diagrams and all building occupants should know the exit routes and be familiar with College fire evacuation procedures set forth in the Emergency Manual. Failure to exit the building at the sound of a fire alarm or warning is a violation of College policy, as well as a violation of state law. In addition, tampering with or falsely activating a fire alarm is a violation of College policy and state law.

## **Campus Fire Safety Policies**

All residence halls are equipped with fire extinguishers, smoke detectors, alarms and pull stations. Smoking is not permitted in any form in the residence halls or College buildings. This includes the use of electronic cigarettes. Also not allowed is anything with an open flame, such as candles, incense, candle warmers, hot plates, space heaters, toasters, toaster ovens, Crock-Pots, electric skillet, rice steamers, woks, deep fryers, grills, flammable liquids (e.g. bottles of propane gas, lighter fluid and dangerous chemicals), and explosives (including fireworks) and/or any other such item that can produce heat. To

meet all fire safety codes, students and employees are required to use only electrical cords that are surge protector types and approved power strips instead of conventional extension cords or grounded in-wall adapters. Flammables, combustibles and/or any toxic materials are not permitted in or around any College building. The College is subject to scheduled and regular inspections by the WV State Fire Marshal's Office. The State Fire Marshal's Office, as well as the local fire department, also performs unannounced spot checks on campus as part of their job duties. Violations discovered will be subject to fines, the cost of which will be passed onto the individual student or employee.

### **Fire Safety Instruction**

In the event of smoke or fire, calmly exit the building using the nearest exit. If the building's alarm system is not sounding, pull the fire alarm when exiting the building. All resident hall rooms have an exit diagram posted on the inside of the door. In addition, each College building has a posted exit diagram. Failure to exit the building at the sound of a fire alarm or warning is a violation of the College's administrative rules, as well as a violation of state law. In addition, tampering with or falsely activating a fire alarm is a violation of College rules and state law.

Fire safety training is given each year to the Resident Assistants, Resident Directors, Security Officers and other members of the Office of Student Life and/or College community. From this training, the RAs and RDs educate all the resident students on the proper fire evacuation procedures. All fire and smoke alarms along with emergency lighting is checked on a monthly basis. Fire extinguishers are also checked on a regular basis and areas in the kitchen are checked in accordance with National Fire Prevention Association guidelines. Fire drills, both announced and unannounced, are performed during each semester.

In case of an actual fire, individuals should call 911. For any type of alarm, or smoke, please contact Davis & Elkins Office of Public Safety at 304-704-9111. It is essential for the corridor separations and stairwell doors to be closed at all times. Fire doors retard the travel of smoke, heat, toxic gases and fire. All stairwell doors must be closed at all times. Do not place any combustible material on these doors, absolutely no paneling, burlap, draperies, parachute netting, Styrofoam, nor any type of wood can be installed in the exit corridors or stairwells. Building fire equipment such as sprinkler heads, smoke detectors, fire hoses, extinguishers, standpipes and alarm boxes must remain in good working condition and must not be obstructed. Unauthorized use or tampering with this equipment will result in disciplinary and/or legal action.

### **Fire Safety Training**

Resident Directors and Resident Assistants, along with Public Safety officers, receive fire safety training from the Elkins Fire Department on an annual basis. In addition, procedures that should be followed in the case of a fire are set forth in the College's Emergency Response Plan, which is available to all students, faculty and staff on the intranet homepage. At the beginning of each academic year, the Office of Public Safety sends students, faculty and staff an email reminding them to review the Emergency Response Plan.

### **Campus Fire Statistics**

The following are fire statistics for each on-campus student housing facility at Davis & Elkins College:

1. The number of fires and the cause of each fire in a Davis & Elkins College student housing facility
2. The number of deaths related to the fire in a Davis & Elkins College student housing facility
3. The number of injuries related to the fire in a Davis & Elkins College student housing facility that resulted in treatment at a medical facility

4. The value of property damage related to the fire at a Davis & Elkins College student housing facility

Residential Facilities	Sprinkler Systems	Smoke Detection	Fire Extinguisher Devices	Evacuation Plans/Placards	Evacuation (Fire) Drills Each Calendar Year
Darby	None	√	√	√	4+
Booth	None	√	√	√	4+
Gribble	None	√	√	√	4+
Moyer	None	√	√	√	4+
Presidential	None	√	√	√	4+

Residential Facilities	Total Fires	Date	Time	Cause of Fire	Number of Injuries	Number of Deaths	Property Damage
Darby	0	N/A	N/A	N/A	0	0	0
Booth	0	N/A	N/A	N/A	0	0	0
Gribble	0	N/A	N/A	N/A	0	0	0
Moyer	1	N/A	N/A	candle	0	0	0
Presidential	0	N/A	N/A	N/A	0	0	0