

# Davis & Elkins College Policy and Procedures on Discrimination, Harassment, and Title IX Sexual Harassment

## I. PURPOSE & SCOPE

Davis & Elkins College is committed to fostering a diverse and inclusive culture by creating and maintaining living, learning, and working environments that are free from discrimination and harassment which is consistent with the stated mission to prepare and inspire students for success and for thoughtful engagement in the world.

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

This Policy sets forth how discrimination, harassment, sexual harassment, sexual misconduct, domestic misconduct, stalking, and retaliation will be addressed by Davis & Elkins College. The Policy is intended to meet Davis & Elkins College's obligations under Title IX of the Education Amendments of 1972 ("Title IX"); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2013 ("VAWA"), with respect to its application to sex-based misconduct; and other applicable law and regulations.

This policy applies to all Davis & Elkins College students, faculty, staff, volunteers, visitors, contractors, consultants, vendors providing services to Davis & Elkins College, and individuals who are participating in a Davis & Elkins College Education Program or Activity.

## II. JURISDICTION, COORDINATION, & ENFORCEMENT

### **Jurisdiction**

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

#### **Title IX Jurisdiction**

Formal Complaints of "Sexual Harassment (Quid Pro Quo)", "Sexual Harassment (Hostile Environment)", "Sexual Assault", "Domestic Misconduct", and "Stalking" that occur in a Davis & Elkins College Education Program or Activity on the basis of sex and within the United States will

be covered by Title IX jurisdiction and subject to the grievance procedures discussed below in Section XVI. Those instances are referred to as "Title IX Sexual Harassment."

### **General Jurisdiction**

For conduct that does not meet the Title IX jurisdiction, Davis & Elkins College retains the discretion to determine that Prohibited Conduct, as defined in this policy, that occurs outside of the United States or outside of a College Education Program or Activity, including online conduct that is not part of a College Education Program or Activity, may fall within the scope of this Policy. In making this determination of whether to exercise jurisdiction, the Title IX Coordinator will consider the severity of the alleged conduct, the risk of ongoing harm, whether both parties are members of the Davis & Elkins College community, the impact on Davis & Elkins College programs or activities, and whether off-campus conduct is part of a series of actions that occurred both on and off campus. This includes Prohibited Conduct like discrimination and harassment that do not meet the criteria for Title IX Sexual Harassment as defined in this Policy.

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

[Davis & Elkins College Policy Manual Volume I: Governance and Administration](#)

[Davis & Elkins College Policy Manual Volume II: Community Policies](#)

[Davis & Elkins College Policy Manual Volume III: Personnel Policies](#)

[Davis & Elkins College Policy Manual Volume IV: Faculty Handbook](#)

[Davis & Elkins College Policy Manual Volume V: Academic Policies](#)

[Davis & Elkins College Policy Manual Volume VI: Student Life Policies](#)

[Davis & Elkins College Policy Manual Volume VII: Business and Financial Affairs Policies](#)

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

### **Coordination**

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

#### **Davis & Elkins College Title IX Coordinator**

**Amy Kittle**

Liberal Arts Hall, Room 209

304-621-1316

detitleix@dewv.edu

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

### **Enforcement**

In addition to the authority of the Title IX Coordinator, those in supervisory positions at Davis & Elkins College have a special responsibility to discourage Prohibited Conduct, implement and enforce this Policy, and, as required by Section V, are Responsible Employees mandated to also report such behavior.

## **III. PROHIBITED CONDUCT**

Davis & Elkins College prohibits Discrimination; Harassment; Title IX Sexual Harassment, which includes Sexual Assault and Sexual Exploitation; Domestic Misconduct, which includes Dating and Domestic Violence; Stalking; and, Retaliation as defined below (collectively referred to as “Prohibited Conduct”) by or against any student, employee, alum, independent contractors, trustees, or volunteers occurring within the Davis & Elkins College Community and occurring or attempted in the Title IX or General Jurisdiction as defined in this Policy.

**Discrimination:** Discrimination is conduct that is based on an individual’s race, color, national origin ancestry, age, physical or mental disability, marital or family status, pregnancy, veteran status, service in the uniformed services (as defined in state and federal law), religion, creed, sex, sexual orientation, genetic information, gender identity, or gender expression and excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual’s employment, education, living environment or participation in a Davis & Elkins College program or activities. This includes failure and refusal to provide reasonable accommodations, consistent with state and federal law, to persons with disabilities or who are pregnant.

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

Sex and gender-based harassment can include Sexual Harassment as specifically defined by this Policy and non-sexual harassment based on stereotypical notions of what is female/feminine versus male/masculine or failure to conform to those gender stereotypes.

Sexual Harassment may occur between people of the same sex or people of different sexes. Examples of Sexual Harassment may include, but are not limited to, unsolicited, deliberate, or repeated touching, sexual flirtation, advances or propositions which are not welcomed and/or desired; unwelcome jokes,

stories, comments, innuendos, or other sexually oriented statements which are specifically designed to embarrass or humiliate through their sexual subject matter content; unwelcome sexual communication such as graphic or degrading comments about one's gender related to personal appearance; unwelcome display of sexually explicit materials, objects, or pictures in an individual's place of work or study, such as viewing material on computers or other electronic devices where others can see. All conduct must meet the applicable definitions and create a Hostile Environment before rising to the level of prohibited conduct under this Policy.

**Title IX Sexual Harassment:** Title IX Sexual Harassment means Sexual Harassment (Quid Pro Quo), Sexual Harassment (Hostile Environment), Sexual Assault, Dating Violence, Domestic Violence, and Stalking, and Retaliation as defined by this Policy that occurs in the Title IX Jurisdiction.

**Sexual Harassment:** Harassment that creates a Hostile Environment (as defined in this Policy) based on sex, which includes, but is not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

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

**Hostile Environment:** A hostile environment is created when a person is subjected to Harassment, Sexual Harassment, and Title IX Sexual Harassment and that conduct determined by a reasonable person, is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a Davis & Elkins College program or activity.

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

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

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

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

**Fondling:** the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity;

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

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

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

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

- is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; shares a child in common with the victim; or
- commits acts against a minor or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

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

**Stalking:** Stalking means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to: fear for their safety or the safety of others; or suffer Substantial Emotional Distress.

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

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

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

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

Individuals who feel they are experiencing retaliation should report to the Title IX Coordinator immediately. This may be done online, in person, or by email to the Title IX Coordinator.

Charging an individual with a Policy violation for making a materially false statement in bad faith in the course of the resolution of a Title IX Sexual Harassment or other Prohibited Conduct complaint does not constitute Retaliation. The exercise of rights protected under the First Amendment also does not constitute Retaliation.

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

## IV. ADDITIONAL DEFINITIONS

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

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

**Advisor:** An individual that a Complainant or Respondent chooses to accompany them to meetings and/hearings that occur as part of the Resolution Process for Reports of Prohibited Conduct. Advisors can be a friend, parent, family member, or attorney, or any other person. In the Formal Resolution of Title IX Sexual Harassment Reports, advisors will be required to conduct cross examination during a hearing.

**Preponderance of the Evidence:** A standard of proof used to determine whether or not the evidence provided indicates 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.

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

**Complainant:** An individual who was reported to have experienced conduct that could constitute Title IX Sexual Harassment or other forms of Prohibited Conduct as defined in this Policy.

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

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

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

**Report:** Information received by Title IX Coordinator provided by a Responsible Employee, Official with Authority, Third Party Reporter, or a Complainant that alleges Title IX Sexual Harassment or other forms of Prohibited Conduct has occurred within the Title IX Jurisdiction or General Jurisdiction as defined in this Policy.

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

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

**Formal Complaint:** A document, including an electronic submission, filed by a Complainant or the Title IX Coordinator that alleges Title IX Sexual Harassment or other Prohibited Conduct and requests an investigation of initiation of the resolution of the complaint as described in this Policy.

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

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

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

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

A student ceases to be a student when they graduate; in the event that they are expelled for academic or conduct reasons; or in the event that the student formally withdraws from Davis & Elkins College. For purposes of this definition, the term “employee of the College” does not include students who are employed by the College through a work-study or similar program.



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

## V. REPORTING

Anyone who has witnessed or is aware of any of Prohibited Conduct occurring in Davis and Elkins College's program or activities is strongly encouraged to report any concern or Prohibited Conduct to the Coordinator. Reports may be made to the Title IX Coordinator in person, by mail, electronic mail, by phone, or online at: <https://www.dewv.edu/consumer-information/title-ix-reporting-form/>.

All Responsible Employees and Officials with Authority must report incidents of Prohibited Conduct to the Coordinator.

**Amy Kittle**

Title IX Coordinator  
Liberal Arts Hall, Room 209  
304-621-1316

[detitleix@dewv.edu](mailto:detitleix@dewv.edu)

[www.dewv.edu/consumer-information/title-ix-reporting-form/](https://www.dewv.edu/consumer-information/title-ix-reporting-form/)

**Kate Garlick**

Deputy Title IX Coordinator  
Dean of Students  
Liberal Arts Hall, 1st Floor  
(304) 637-1241 | [garlickk@dewv.edu](mailto:garlickk@dewv.edu)

**Jane Corey**

Deputy Title IX Coordinator  
Director of Human Resources  
Liberal Arts Hall, Room 203  
(304) 637-1344 | [coreym@dewv.edu](mailto:coreym@dewv.edu)

**Robert Phillips**

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

**Nicole Rose**

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

Only a report to the Title IX Coordinator or an Official with Authority will trigger the College's obligation to respond to an allegation of Title IX Sexual Harassment.

Any report involving a minor will be shared with law enforcement agencies and child protective services in accordance with West Virginia state law.

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

Office for Civil Rights (OCR), Headquarters  
400 Maryland Avenue, SW Washington, DC 20202-1100  
Customer Service Hotline: 800-421-3481 TDD: 877-521-2172 Facsimile: (202) 453-6012  
Email: [OCR@ed.gov](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 Davis & Elkins College.

### **Confidential reporting**

Confidential Resources are employees or offices who are available to provide individuals with assistance, support, and additional information without reporting to the Title IX Coordinator. Confidential Resources are prohibited from disclosing confidential information unless (1) given permission by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order.

Confidential Resources may be required to report non-identifying information to the Director of Public Safety for Clery Act crime reporting purposes. The following Davis & Elkins College resources can provide counseling, information, and support in a confidential setting:

**Pastoral Counselor, Kimberly Morgan**  
Campus Location: Albert Hall (304) 637-1372  
Email: [morgank3@dewv.edu](mailto:morgank3@dewv.edu)

**Student Ombudsperson, Chanda Collette**  
Campus Location: Halliehurst (304) 637-1429  
Email: [collettec@dewv.edu](mailto:collettec@dewv.edu)

**Community Care of West Virginia  
School Based Health Center**

Campus Location: Robert C. Byrd Center  
(304) 473-5626

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

### **Anonymous Reporting**

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

### **Off-campus Reporting**

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

#### **Centers Against Violence**

([www.centersagainstviolence.org](http://www.centersagainstviolence.org))  
P.O. Box 2062 Elkins, WV 26241  
Phone: (304) 636-8433 Fax: (304) 636-5564  
Hotline: (800)-339-1185  
Texting Line: (304) 840-SAFE (7233)

#### **RAINN: Rape, Abuse & Incest National Network**

(<https://www.rainn.org/resources>)  
Hotline: (800) 656-4673

#### **National Domestic Violence Hotline**

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

#### **Employee Assistance Program (For Employees)**

[www.MagellanHealth.com/member](http://www.MagellanHealth.com/member)

International access: 1-800-662-4504 Toll-Free: 1-800-588-8412 For TTY Users: 1-800-456-4006

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

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

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

### **Reporting to Law Enforcement**

Emergency medical assistance and law enforcement assistance are available 24 hours a day seven day a week. Members of the College community who believe their safety or the safety of others is threatened should call the Office of Public Safety at 304-704-9111 or call 911 to reach local law enforcement. Any member of the Davis & Elkins College's community who has experienced Title IX Sexual Harassment or behaviors that are potentially criminal in nature has the option to report the conduct to law enforcement agency that has jurisdiction over the location where the incident occurred. If requested, Davis & Elkins College will provide assistance in reporting to the law enforcement agency with appropriate jurisdiction.

**Elkins City Police: 304-636-0678**

**Randolph County Sherriff's Office: 304-636-2100**

**West Virginia State Police: 304-637-0200**

Davis & Elkins College and the police/legal system work independently from one another. Individuals can file reports with the College, with law enforcement, with both systems, or with neither. Because the standards for finding a violation of criminal law are different from the standards in this Policy, neither the results of a criminal investigation nor the decision of law enforcement to investigate, or decline to investigate a matter, is determinative of whether a violation of this Policy has occurred.

Supportive Measures are available even if a student, employee or third party elects not to pursue criminal charges or file a report or formal complaint with Davis & Elkins College. Because Prohibited Conduct, in some instances, constitute both a violation of College policy and a criminal activity, and because the College resolution process is not a substitute for instituting legal action, Davis & Elkins College will provide guidance and, if requested, assistance regarding how to report an incident to law enforcement authorities who have jurisdiction over the location where the incident occurred. See Section X of this Policy for more information.

## **VI. TIMEFRAME FOR REPORTING**

Davis & Elkins College does not limit the timeframe for filing a report of conduct prohibited by this policy. Reports can be submitted at any time following an incident. In order to maintain and support a

community that is respectful and free from Prohibited Conduct and to maximize the College's ability to respond promptly and effectively, the College urges individuals to come forward with reports of Prohibited Conduct as soon as possible. The longer the period of time from the incident until the time when it is reported may make it more difficult for Davis & Elkins College to take action as memory fades, people graduate, leave the campus community, or physical evidence, such as text messages or video camera footage, may no longer be available.

## VII. PARTICIPANT PRIVACY AND CONFIDENTIALITY

Davis & Elkins College recognizes that privacy is important. Davis & Elkins College will attempt to protect parties' privacy to the extent reasonably possible. The Title IX Coordinator, investigators, advisors, facilitators of informal resolution, hearing officers, and any others participating in the process on behalf of Davis & Elkins College shall keep the information obtained through the process private and, to the extent possible, confidential. All other participants in the process (including the Complainant, Respondent, and witnesses) are encouraged to respect the privacy of the parties and the confidentiality of the proceedings and circumstances giving rise to the dispute and to discuss the matter only with those persons who have a genuine need to know.

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

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

Advisors, whether Davis & Elkins College appointed or not, are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Davis and Elkins College. Advisors will be asked to sign Non-Disclosure Agreements (NDAs). Davis & Elkins College may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by privacy expectations.

### **Recordings**

No unauthorized audio or video recording of any kind is permitted during any meeting or hearing that occurs in respect to this Policy and Procedures. Participants will be notified if a meeting or hearing is to be recorded by Davis and Elkins College, which is at the sole discretion of Davis and Elkins College.

## VIII. AMNESTY

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

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

## IX. INTAKE OF REPORTS OF PROHIBITED CONDUCT

Once a report of Prohibited Conduct, including Title IX Sexual Harassment, is received by the Title IX Coordinator, the Title IX Coordinator shall review the report to determine the appropriate next steps. After receiving a report of conduct that, if true, would constitute a violation of this policy, the Title IX Coordinator will contact the Complainant, request to meet with Complainant to discuss the resources, rights, and options available and provide a copy of this policy which:

- Explains the availability of Supportive Measures;
- Explains that Supportive Measures are available with or without filing a Formal Complaint with Davis & Elkins College or law enforcement;
- Informs the Complainant that even if they decide not to file a Formal Complaint, the Title IX Coordinator may do so by signing a Formal Complaint;
- Explains that they have the option to seek Supportive Measures regardless of whether they choose to participate in a Davis & Elkins College related proceeding or investigation;
- Explains the option to seek medical treatment and information on preserving potentially key forensic and other evidence;
- Explains the process for filing a Formal Complaint of Prohibited Conduct, including Title IX Sexual Harassment;
- Includes Davis & Elkins College's procedural options for Formal and Informal Resolutions;
- Explains the Complainant's right to and advisor of their choosing; and,
- Includes Davis & Elkins College's prohibition of Retaliation against the Complainant, Respondent, the witnesses, reporting parties, and that Davis & Elkins College will take prompt action when Retaliation is reported.

If the allegations reported, if true, would **not** constitute Prohibited Conduct as defined in this Policy, the Title IX Coordinator will not proceed under this Policy and its Procedures. Instead, if the allegations reported, if true, would **not** constitute Prohibited Conduct as defined in this Policy, the Title IX Coordinator may take one of the following actions: implement a remedy or an agreed resolution, refer the matter to the appropriate office for discussion, education, or resolution under a different policy or process, or if the reported conduct would not constitute a violation of any Davis & Elkins College Policy, take no further action. The Title IX Coordinator will notify the Complainant of any referral.

## X. SUPPORTIVE MEASURES

Supportive Measures are non-disciplinary, nonpunitive individualized services, accommodations, and other assistance that Davis & Elkins College offers and may put in place, without fee or charge, after

receiving notice of Prohibited Conduct via a report to the Title IX Coordinator or an Official with Authority. Supportive Measures are designed to restore or preserve access to Davis & Elkins College's Education Program and Activity, environment, or to protect the safety of all parties and Davis & Elkins College's environment, or deter Prohibited Conduct, while not being punitive in nature or unreasonably burdening any party.

Supportive Measures are available regardless of whether the matter was reported to Davis & Elkins College for the purpose of initiating any formal resolution process and before, after, and regardless of whether a Formal Complaint is filed. A Complainant who requests Supportive Measures retains the right to file a Formal Complaint, either at the time the Supportive Measure is requested or at a later date. Any Complainant that requests Supportive Measures will be informed in writing of their right to simultaneously or subsequently file a Formal Complaint pursuant to this Policy.

The Title IX Coordinator will contact a Complainant after receiving a report of possible Prohibited Conduct (1) to discuss the availability of Supportive Measures and (2) to explain that Supportive Measures are available with or without the filing of a Formal Complaint of Title IX Sexual Harassment. The Title IX Coordinator will consider the Complainant's wishes with respect to implementation of Supportive Measures. Supportive Measures may also be requested by and made available to Respondents, witnesses, and other impacted members of the Davis & Elkins College community.

The Title IX Coordinator will ultimately serve as the point of contact for any individual requesting Supportive Measures. To determine the appropriate Supportive Measure(s) to be implemented, Davis & Elkins College will conduct an individualized assessment based on the unique facts and circumstances of a situation. The Title IX Coordinator may work with other administrators and offices when necessary to determine reasonable measures and accommodations. Whether a possible Supportive Measure would unreasonably burden the other party is a fact determination made by the Davis & Elkins College in its discretion that takes into account the specific nature of the education programs, activities, opportunities and benefits in which an individual is participating.

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

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

- Leaves of absence;
- Increased monitoring and security of certain areas of the campus; or
- A combination of any of these measures.

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

## XI. ADVISORS

Throughout the resolution process for Title IX Sexual Harassment or other forms of Prohibited Conduct as defined in this policy, the Complainant and a Respondent may each have an advisor of their choice to provide support and guidance. An advisor may accompany the Complainant/Respondent to any meeting with the Title IX Coordinator, the investigator, or to a hearing.

Prior to the hearing as described in section XVI., a party's advisor has an exclusively non-speaking role, and may not otherwise present evidence, argue, or assert any right on behalf of the party.

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

Davis & Elkins College (including any official acting on behalf of Davis & Elkins College, such as the Hearing Officer) has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. For example, Davis & Elkins College will not tolerate an advisor questioning a witness in an abusive, intimidating, or disrespectful manner. Advisors who are disruptive, disrespectful, or refuse to follow this Policy will be removed. The Davis & Elkins College has the right to take appropriate steps to ensure compliance with the Policy and Procedures, including by placing limitations on the advisor's ability to participate in future meetings and proceedings.

## XII. BIAS AND CONFLICT OF INTEREST

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

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

At their discretion, the Title IX Coordinator will determine whether such a conflict of interest exists and whether that Title IX Administrator should be replaced. Postponement of an investigation or hearing may



occur if it determined that Title IX Administrator has bias or a conflict of interest and a replacement cannot be immediately identified.

### XIII. TIMELINES

Throughout these Procedures, Davis & Elkins College designates timelines for different steps of the process. The Title IX Coordinator has authority to extend such timelines for good cause. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disability. In the case of such an extension, the Title IX Coordinator will notify the affected parties of the extension, including the reason(s) for the extension.

The phrase "business days" shall refer to those days ordinarily recognized by the College administrative calendar as workdays. All days referenced in this Policy are business days.

### XIV. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

Where there is an immediate threat to the physical health or safety of any students or other individuals arising from reported Prohibited Conduct, Davis & Elkins College can remove a Student Respondent from the Davis & Elkins College's education Program or Activity and issue any necessary related no-trespass and no-contact orders. Davis & Elkins College will make the decision to remove a Student-Respondent from the Davis & Elkins College Education Program or Activity based on an individualized assessment and risk analysis completed by the appropriate members from the Care Team. If the Davis & Elkins College makes such a decision, the Student Respondent will be provided with written notice and an opportunity to appeal the decision immediately following the removal as specified in Section XX below.

Davis & Elkins College may place an Employee/Faculty-Respondent on administrative leave during the pendency of a Formal Complaint. The College, in its discretion and based on the circumstances, will determine whether any administrative leave imposed is to be imposed with or without pay or benefits.

### XV. WITHDRAWAL OR RESIGNATION PRIOR TO RESOLUTION

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

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

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

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

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

## XVI. FORMAL RESOLUTION OF REPORTS OF TITLE IX SEXUAL HARASSMENT

### **Formal Complaints of Title IX Sexual Harassment**

After a report has been received by the Title IX Coordinator, a Complainant has the option to file a Formal Complaint against a Respondent alleging Title IX Sexual Harassment and requesting that Davis & Elkins College investigate those allegations. In order to file a Formal Complaint, the Complainant should contact the Title IX Coordinator and sign Davis & Elkins College's Complaint form. This may be done online, in person, or by email to the Title IX Coordinator.

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

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

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

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

### **Mandatory Dismissal of Formal Complaints of Title IX Sexual Harassment**

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

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

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

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

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

#### **Discretionary Dismissals of Formal Complaints of Title IX Sexual Harassment**

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

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

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

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

### **Consolidation of Formal Complaints of Title IX Sexual Harassment**

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

### **Counterclaims**

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

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

### **Notice of Allegations**

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

- Notice that the Informal and Formal Resolution processes comply with the requirements of Title IX;
- Notice of the allegations potentially constituting Title IX Sexual Harassment, providing sufficient detail for a response to be prepared before any initial interview, including (1) identities of the parties, if known; (2) the conduct allegedly constituting Title IX Sexual Harassment; and (3) the date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged Title IX Sexual Harassment and a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that each party may have an advisor of their choice who may be, but is not required to be, an attorney and who may inspect and review evidence;
- Information regarding the availability of support and assistance through College resources and the opportunity to meet with the Title IX Coordinator in person to discuss resources, rights, and options;
- Notice of the College's prohibition of Retaliation of the Complainant, the Respondent, and witnesses; that the College will take prompt action when Retaliation is reported; and how to report acts of Retaliation; and
- Notice that the Davis & Elkins College Policy Manual Volume VI: Student Life Policies 6.4.6 Code of Conduct prohibits knowingly making false statements and knowingly submitting false information during the grievance process.

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

### **Investigation of Formal Complaints of Title IX Sexual Harassment**

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

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

### **A Notice of a Title IX Sexual Harassment Investigation**

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

- An overview of the Investigation/Formal Resolution process;
- A reminder that Informal Resolution process is available until which time a finding of responsibility is rendered;
- Information about Complainants and Respondents Rights, which includes a right to an Advisor;
- A reminder that the burden of proof and burden of evidence gathering sufficient to reach a determination regarding responsibility rests on Davis & Elkins College and not on the parties;
- That Davis & Elkins College cannot access, consider, disclose, or otherwise use a Complainant's or Respondent's records that are made or maintained under legal privilege without voluntary written consent from the person who is protected by that privilege;
- That Complainants and Respondents will have equal opportunity to present witnesses, including fact and expert witnesses, and other evidence;
- Notice that while parties are expected to respect the private and serious nature of the Resolution Process and to refrain from engaging in behavior that could be seen as Retaliation, neither Complainants or Respondents are restricted from discussing the allegations or gathering or presenting evidence; and,
- The Investigator (s) name and contact information.

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

### **Investigation Timeframe for Formal Complaints of Title IX Sexual Harassment**

The investigation of a Formal Complaint will be usually concluded within 90 days of the filing of the Formal Complaint. The parties will be provided with updates on the progress of the investigation, as needed, and will be alerted if the process will go beyond the 90-day timeframe.

## **Interviews and Gathering Evidence in a Title IX Sexual Harassment Investigation**

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

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

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

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

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

Both parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which Davis and Elkins College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained through a party or another source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

After all the evidence is gathered, and the Investigator has completed witness interviews, the Investigator will prepare a draft investigative report. The Investigator(s) will send each party, and the party's advisor, if any, the draft investigative report.

The Investigator(s) will also provide the parties, and their advisors, if any, with copies of all evidence directly related to the allegations of the Formal Complaint that was gathered during the investigation. Before doing so, the Investigator(s) may redact information in the evidence that is not directly related to the allegations of the Formal Complaint; information prohibited from disclosure pursuant to a

recognized legal privilege; and/or a party's medical or mental health information/records unless the party consents in writing to the disclosure. The evidence may be provided in either an electronic format or a hard copy. Parties and their advisors may not disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. Disseminating evidence in such a way could be considered Retaliation under this policy.

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

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

The Investigator(s) will review the feedback to the report, interview additional relevant witnesses (as deemed appropriate).

### **Final Investigation Report**

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

The Investigator(s) and/or Title IX Coordinator, as appropriate, may exclude and/or redact information or evidence from the final investigative report as follows:

- Information that is not relevant to the allegations raised in the Formal Complaint;
- Information about a Complainant's prior or subsequent sexual activity, unless such information about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the

- Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent; and
- Medical or mental health information, treatment and/or diagnosis, unless the party voluntarily consents.

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

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

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

### **Hearing on Title IX Sexual Harassment**

Hearings that occur for the purpose of formally resolving Formal Complaints of Title IX Sexual Harassment will be live and occur in real time. Complainants, Respondents, and Witnesses will answer questions posed by the Hearing Officer and Advisors in front of the Hearing Panel. Questions regarding Prohibited Conduct that does not constitute Title IX Sexual Harassment but is also being heard by the Hearing during the same hearing will be handled at the discretion of the Hearing Officer.

#### **Hearing Panel**

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

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

**Kate Garlick**  
Deputy Title IX Coordinator  
Dean of Students  
Liberal Arts Hall, 1st Floor  
(304) 637-1241 | [garlickk@dewv.edu](mailto:garlickk@dewv.edu)

**Jane Corey**  
Deputy Title IX Coordinator  
Director of Human Resources



Liberal Arts Hall, Room 203  
(304) 637-1344 | [coreym@dewv.edu](mailto:coreym@dewv.edu)

**Robert Phillips**

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

**Nicole Rose**

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

The Chair will be determined by the following:

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

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

**Notice of Title IX Sexual Harassment Hearing**

Both the Complainant and the Respondent will be notified in writing of the date and time of the hearing and the name of the Hearing Officer at least five business days in advance of the hearing, with the hearing to occur no fewer than ten days after the parties are provided with the final investigative report.

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

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

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

**Participation of Advisors in a Title IX Sexual Harassment Hearing**

Both parties must be accompanied by an advisor to the hearing. If a party does not have an advisor for the hearing, the Davis & Elkins College will provide an advisor of Davis & Elkins College's choice for that party. Each party's advisor must conduct any cross-examination of the other party and any witnesses. Apart from conducting cross-examination, the parties' advisors

do not have a speaking role at the hearing; an advisors' participation is limited to conferring with the party at intervals set by the Hearing Officer.

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

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

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

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

The Hearing Officer may, at their discretion, exclude witnesses or witness testimony the Hearing Officer considers irrelevant or duplicative. The Hearing Officer will explain any decision to exclude a witness or testimony as not relevant.

### **Recording the Title IX Sexual Harassment Hearing**

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

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

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

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

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

### **Title IX Sexual Harassment Hearing Structure**

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

- Introductions;
- Respondent's statement accepting or denying responsibility;
- Opening Statement from the Complainant (optional);
- Opening Statement from the Respondent (optional);
- Questioning of the Complainant by the Hearing Officer;
- Cross-examination of the Complainant by the Respondent's advisor;
- Questioning of the Respondent by the Hearing Officer;
- Cross-examination of the Respondent by the Complainant's advisor;
- Hearing Officer questioning of other witnesses (if applicable);
- Cross-examination of other witnesses by the parties' advisors;
- Additional question of the Complainant and Respondent by the Hearing Officer at their discretion;
- Closing comments from the Complainant (optional); and,
- Closing comments from the Respondent (optional).

A Complainant or Respondent may not question each other or other witnesses directly; they must conduct the cross-examination through their advisors. Before a party or witness answers a cross-examination or other question, the Hearing Officer will first determine whether the question is relevant. The Hearing Officer may exclude irrelevant information and/or questions. The Hearing Officer will explain any decision to exclude a question or information as not relevant.

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

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

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

### **Determination Following a Title IX Sexual Harassment Hearing**

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

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

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

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

## **XVII. FORMAL RESOLUTION OF REPORTS OF PROHIBITED CONDUCT THAT IS NOT TITLE IX SEXUAL HARASSMENT**

### **Formal Complaints of Prohibited Conduct**

Once a report of Prohibited Conduct has been received by the Title IX Coordinator, a Complainant has the option to file a Formal Complaint against a Respondent alleging Prohibited Conduct and requesting that Davis & Elkins College resolve those allegations through an investigation. To file a Formal Complaint, the Complainant may do so online, in person, or by email to the Title IX Coordinator.

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

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

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

hearing, and the notice of outcome. At no time, will Davis & Elkins College retaliate against a Complainant to participate in the grievance process.

#### **Dismissal**

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

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

#### **Consolidation of Formal Complaints of Prohibited Conduct**

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

#### **Counterclaims of Prohibited Conduct**

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

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

#### **Notice of Allegations of Prohibited Conduct**

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

- Notice of the allegations potentially constituting Prohibited Conduct providing sufficient detail for a response to be prepared before any initial interview, including (1) identities of the parties, if known; (2) the conduct allegedly constituting Prohibited Conduct; and (3) the date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged Prohibited Conduct and a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that each party may have an advisor of their choice who may be, but is not required to be, an attorney and who may review and inspect evidence;

- Information regarding the availability of support and assistance through Davis & Elkins College resources and the opportunity to meet with the Title IX Coordinator in person to discuss resources, rights, and options; and,
- Notice of Davis & Elkins College’s prohibition of Retaliation of the Complainant, the Respondent, and witnesses; that Davis & Elkins College will take prompt action when Retaliation is reported; and how to report acts of Retaliation.

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

### **Investigation of Prohibited Conduct**

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

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

### **Investigation Timeframe**

The investigation of a Formal Complaint will be usually concluded within 90 days of the filing of the Formal Complaint. The parties will be provided with updates on the progress of the investigation, as needed, and will be alerted if the process will go beyond the 90-day timeframe.

### **Interviews and Gathering Evidence**

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

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

parties are expected to share any relevant information and/or any information that is requested by the Investigator(s). Such information shared by the parties with the Investigator(s) may include both inculpatory and exculpatory evidence.

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

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

### **Draft Investigation Report and Opportunity to Inspect and Review Evidence**

After all the evidence is gathered, and the investigator has completed witness interviews, the investigator will prepare a draft investigative report. The Investigator(s) will send each party, and the party's advisor, if any, the draft investigative report.

The Investigator(s) will also provide the parties, and their advisors, if any, with copies or descriptions of all evidence directly related to the allegations of the Formal Complaint that was gathered during the investigation. Before doing so, the Investigator(s) may redact information in the evidence that is not directly related to the allegations of the Formal Complaint; information prohibited from disclosure pursuant to a recognized legal privilege; and/or a party's medical or mental health information/records unless the party consents in writing to the disclosure. The evidence may be provided in either an electronic format or a hard copy. Complainants, Respondents, and their advisors may not disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the formal resolution process as described in this policy. Disseminating evidence in such a way could be considered Retaliation under this policy.

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

After the ten (10) day window has closed and all feedback is received, the investigator will prepare a final investigation report.

Generally, only information that is provided to, or otherwise obtained by, the Investigator(s) during the course of the investigation will be considered in the determination of whether a Policy violation occurred. Any and all information for consideration by the Hearing Panel must be provided to the Investigator(s) prior to the final investigation report and will not be allowed during the hearing unless it can be clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation or that the evidence has significant relevance to a material fact at issue in the investigation.

At the Title IX Coordinator's discretion, new evidence submitted after the Draft Investigation Report is issued, may result in additional investigation.

### **Administrative Hearing of Prohibited Conduct**

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

After the Title IX Coordinator reviews the report and any further investigation, if necessary, is completed, the final report will be provided to the Administrative Hearing Panel which is comprised of the Deputy Coordinators (minus the Deputy Coordinator who will serve as the Appeal Officer). The lead investigator will present the report to the Title IX Coordinator and Hearing Panel. While Complainants and Respondents will be notified in advance of the Administrative Hearing, they will not be present.

The Hearing Panel, by way of a majority vote will consider all relevant evidence and make a determination, by preponderance of evidence standard, whether the Respondent has violated the Policy. The Title IX Coordinator is not a decision-maker in the Administrative Hearing.

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

### **Written Notice Regarding an Outcome of Prohibited Conduct**

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

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



## XVIII. INFORMAL RESOLUTIONS

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

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

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

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

Informal Resolution may be available, under appropriate circumstances, at any time prior to reaching a determination regarding responsibility through a Formal Resolution process.

The Title IX Coordinator reserves the right to determine whether Informal Resolution is appropriate in a specific case. Before the Title IX Coordinator begins the Informal Resolution process, both parties must provide informed consent in writing. In addition, where both parties and the College determine that Informal Resolution is worth exploring, the College will provide the parties with a written notice disclosing:

- the allegations,
- the requirements of the Informal Resolution process, and
- any consequences resulting from participating or withdrawing from the process, including the records that may be maintained by the College.

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

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

## XIX. REMEDIES AND SANCTIONS FOR POLICY VIOLATIONS

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

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 Title IX Coordinator will determine an appropriate sanction in conjunction with the Deputy Title IX Coordinator as indicated below.

- If the Respondent is a student: The sanction will be administered by the Dean of Students.
- If the Respondent is and 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 Provost & Vice President for Academic Affairs.

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

Sanctions for a finding of responsibility for Student Respondents include, but are not limited to, any of the sanctions outlined in the Davis and Elkins College Policy Manual Volume VI: Student Life Policies, education, growth plans, community service, referral to counseling, warnings, probation, suspension, suspension from participation in activities or privileges, suspension from the College or the residence halls, or expulsion. In determining (a) sanction(s), the designated Deputy Coordinator will consider whether the nature of the conduct at issue warrants removal from the College, either permanent (expulsion) or temporary (suspension).

Sanctions for findings of responsibility for Employee and Faculty Respondents include, but are not limited to, education, referral to counseling, and disciplinary actions such as warnings, reprimands, withholding of a promotion or pay increase, reassignment, restriction in activities or privileges, temporary suspension without pay, compensation adjustments, or termination.

Other factors pertinent to the determination of what sanction applies include, but are not limited to, the nature of the conduct at issue, prior disciplinary history of the Respondent, previous Davis & Elkins College response to similar conduct, and Davis & Elkins College interests (e.g., in providing a safe environment for all).

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

## XX. APPEALS

### Appeals

A Complainant and Respondent both have the right to appeal (1) The Title IX Coordinator's decision to dismiss a Formal Complaint of Title IX Sexual Harassment; and (2) decisions regarding responsibility for policy violation or outcome.

Appeals may only be made by Complainants and Respondents and not advisors or other third-parties.

A party wishing to appeal the Title IX Coordinator's decision to dismiss a Formal Complaint of Title IX Sexual Harassment must file a written appeal statement within five business days of the date the decision to dismiss is communicated to the parties.

A party wishing to appeal a decision regarding responsibility or outcome must file a written appeal statement within five business days of the date the written decision is sent to the parties.

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

- New information not reasonably available at the time of the decision that could affect the outcome of the matter;
- The Title IX Coordinator or other Title IX Administrator had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent specifically that affected the outcome of the matter; and/or
- Procedural error(s) that affected the outcome of the matter. An appeal is not a re-hearing of the case.

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

### Appellate Officer

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

The Appeal Officer's role is limited to reviewing the underlying record of the investigation and hearing, the appealing party's ("Appellant") written appeal statement, any response to that statement by the other party ("Appellee")

### Response to Appeal

The Appeal Officer will provide written notice to the Appellee that an appeal has been submitted and will give the Appellee an opportunity to review the appeal statement. The Appellee may submit a written response to the appeal ("response"). The response is due two business days from the date Davis

& Elkins College provides written notice of the appeal to the Appellee. Davis and Elkins College will provide the Appellant an opportunity to review non-Appealing Party's the response but no further submissions are permitted.

#### **Written Decision**

The Appeal Officer will provide written notification of the final decision to the Appellant and Appellee simultaneously. The Appeal Officer will typically notify the parties of its decision regarding an appeal in writing within five business days from receipt of the appeal statement. If the decision will take longer, the parties will be informed. The decision of the Appeal Officer will be final, and no subsequent appeals are permitted.

## **XXI. RECORD RETENTION**

Davis & Elkins College shall retain for a period of seven years after the date of case closure: the official file relating to a formal resolution, including any investigation hearing, sanctioning, and/or appeals processes involving allegations of Prohibited Conduct as defined in this Policy. In cases in which a Respondent was found to have violated the Policy and was expelled or terminated, Davis & Elkins College may retain such official case files indefinitely.

## **XXII. TRAINING OF TITLE IX ADMINISTRATORS**

All Title IX Administrators will be trained on definitions of Title IX Sexual Harassment and other forms of Prohibited Conduct, scope of Davis & Elkins College's Education Program and Activities and Title IX Jurisdiction, the investigation process; Hearing process and procedures, Appeals, Informal Resolution; and how to serve impartially to avoid Bias and Conflicts of Interest.

All Hearing Officers receive annual training on the following: how to conduct a hearing; issues of relevance, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant; how to serve impartially by, among other things, avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and other relevant issues.

Hearing Officers will also be trained on any technology that might be used during a hearing.

Investigator(s) will be trained annually on (1) issues of relevance; (2) the definitions in the Policy; (3) the scope of the College's Education Program or Activity; (4) how to conduct an investigation; and (4) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

## Appendix A

### Complainant's Rights

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

## Appendix B

### Respondent's Bill of Rights

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

**Appendix C**  
**A list of Officials with Authority**

President, Chris Wood

Executive Vice President and Vice President for Enrolment Management, Rosemary Thomas

Vice President for Business & Administration, Bob Hardman

Vice President for Academic Affairs & Deputy Coordinator, Rob Phillips

Vice President for Advancement, Scott Goddard

Director for Human Resources & Deputy Coordinator, Jane Corey

Dean of Students & Deputy Coordinator, Kate Garlick

Assistant Dean of Students, Cori Coffman

Director of Athletics, Pat Snively

Senior Women's Administrator & Deputy Coordinator, Nicole Rose

NCAA Compliance Officer,

Director of Public Safety, Jamie Morgan

Assistant Director of Public Safety, Casey Kopp

Director of Student Success, Angie Scott

Director of International Student Services, Lowe Del Aviles

Resident Directors, Josephine Matlick, Chelsey Toms, Jane Corey, Danielle Harris, Kellsie Petterson, and Elle Fracker

Title IX Coordinator, Amy Kittle

Senior Women's Administrator & Deputy Coordinator, Nicole Rose

## Appendix D

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. **The decision to investigate and sanction an incident under the College's Policy does not constitute a determination that the incident is a criminal offense. The decision to criminally charge an incident as a "sexual assault" or "domestic violence" is determined by local law enforcement authorities.**

### **Sexual Assault**

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

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

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

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

(i) Inflicts serious bodily injury upon anyone; or

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Domestic Violence**

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

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

(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(2) Placing another in reasonable apprehension of physical harm;

(3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;

(4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and

(5) Holding, confining, detaining or abducting another person against that person's will. West Virginia law enforcement agencies will utilize the above in determining whether to pursue criminal Domestic Violence charges.

