



Name: Policy on Sexual Misconduct  
Category: Administrative  
Subject: Title IX  
Owner: Legal Affairs  
Related Procedures: Procedures for the Resolution of Discrimination and Sexual Harassment Complaints  
Related Forms: N/A

### **I. SCOPE**

This policy applies to anyone who is participating in, or attempting to participate in, a College educational program or activity within the United States.

### **II. POLICY STATEMENT**

The purpose of this policy is to comply with Title IX regulations promulgated by the USDOE and to ensure that no person is denied educational opportunities at the College due to sexual harassment.

### **III. POLICY**

Attached

### **IV. EFFECTIVE DATE(S)**

This policy is effective August 14, 2020

### **V. FREQUENCY OF REVIEW AND UPDATE**

This policy will be reviewed and updated as mandated by state and federal law, or every two years, whichever occurs first.

### **VI. SIGNATURE AND DATE OF APPROVAL**

A handwritten signature in blue ink that reads "Mark T. Brainard".

Mark T. Brainard, President

8/14/2020  
Date

## 1.02 Policy on Sexual Misconduct

The College is committed to maintaining and strengthening a learning environment founded on civility and respect, and to providing programs, activities and an educational environment free from all forms of violence. Any act of sexual misconduct is also a form of sex discrimination prohibited by Title IX. The College has a zero tolerance policy for violence and discrimination and is committed to eliminating all forms of sexual misconduct and discrimination from its campuses. Therefore, it is the policy of the College that students and employees of the College are prohibited from committing any and all acts of sexual misconduct.

The College is also committed to fostering a community that promotes prompt reporting of any allegations of sexual misconduct and the timely investigation and fair resolution of any report of sexual misconduct. A respondent is presumed innocent until misconduct has been established by a preponderance of the evidence. Supportive measures are immediately available to both the complainant and respondent, as well as any individual involved in a complaint of sexual misconduct, which may include, but are not limited to, referrals for counseling, course-related adjustments, modifications of work or class schedules, campus escort services, increased security and monitoring of certain areas of campus and mutual restrictions to contact between the parties.

In accordance with its procedures under Section 13.04, the College encourages anyone who has been the victim of sexual misconduct to file a formal complaint. The College will respect the right to privacy and confidentiality of both parties to the extent permitted under the law, and will balance those rights against disclosure necessary to protect the safety and welfare of the College community.

Any person who violates this Policy will be subject to disciplinary action including, but not limited to, dismissal from the College or termination from employment as set forth in Section 13.04.

### **Reporting Acts of Sexual Misconduct**

The College encourages any person who believes that he or she has been a victim of sexual misconduct to report the alleged misconduct to the Title IX Coordinator or an employee who has been designated a "Responsible Employee."

### **Duties of a Responsible Employee**

All College employees are Responsible Employees under this policy and have a duty to report accusations of sexual harassment or other misconduct of which the employee is aware to the Title IX Coordinator. Accusations of sexual misconduct can be made verbally or in writing to the Responsible Employee and may come from either the victim, a third party or the accused.

In addition, the Responsible Employee shall also:

1. Advise the reporting person of his or her obligation to report the allegations of sexual misconduct to the Title IX Coordinator. The employee must also advise the complainant that, depending on the nature and seriousness of the allegations, the College reserves the right to notify law enforcement authorities of the alleged misconduct.
2. Advise the reporting person that Delaware Tech will respect the privacy of the reporting person or victim and will maintain confidentiality on behalf of the reporting person or victim to the extent permitted by law and College policy.
3. Advise the victim that they may contact law enforcement or Delaware Tech Public Safety and that the employee will contact law enforcement or Delaware Tech Public Safety on the victim's behalf if requested.
4. Notify law enforcement or Public Safety within 24 hours after the victim requests such notification.
5. Advise the victim that he or she is entitled to certain rights in criminal proceedings and direct him or her to: The Victim's Bill of Rights, Chapter 94, Title 11 of the Delaware Code.
6. Provide information to the victim regarding confidential medical, counseling, and advocacy services, or direct him or her to College Reporting and Preventing Sexual Violence webpage.
7. Contact the Child Abuse and Neglect Report Line for the Department of Services for Children, Youth and Their Families if the victim is a minor at the time of the report.

### **Responsibilities of a Campus Security Authority**

A "Campus Security Authority" is a Responsible Employee who is also a campus administrator, a member of the College's Public Safety Department, a dean of student affairs (including professional staff), a dean of instruction (including professional staff), a director of human resources (including professional staff), an athletic director or coach, a faculty advisor to a student group, a disabilities support counselor, a members of a campus CARE Threat Assessment Team, a community resource contact, and the Title IX Coordinator.

When a report of sexual misconduct is received by an employee who is also a Campus Security Authority, the Campus Security Authority shall notify the Public Safety Department in addition to providing the notifications required of a Responsible Employee set forth above. If the reporting person requests that the misconduct not be reported to Public Safety, the employee shall advise the reporting person that the employee must report the allegations of sexual misconduct, but will report only non-identifying information regarding the person making the report.

### **Sexual Misconduct Defined**

Sexual misconduct is comprised of sexual assault, dating violence, domestic violence, sexual harassment, stalking and hate crimes, which are defined in Section 13.04.

## **Other Definitions**

Other definitions relating to this Policy are contained in Section 13.04.

## **Confidentiality**

Information disclosed in any complaint and/or obtained in connection with a subsequent investigation will be kept confidential to the maximum extent allowable by federal and state law, including, but not limited to, the Family Educational Rights and Privacy Act (“FERPA”). The use of these procedures does not preclude a complainant from seeking recourse through the appropriate state or federal criminal law enforcement agencies at any time. College personnel will assist the Complainant in notifying these authorities if the Complainant requests such assistance.

## **Requests not to Investigate or Refusal to Prosecute**

A victim always has the option to forgo criminal prosecution of the accused after an act of sexual misconduct is reported. A victim may also request that the College not investigate the allegations reported, may refuse to file a complaint, and/or refuse to cooperate in the investigation and/or resolution of allegations. However, the College is committed to balancing the rights of the victim and providing a reasonably safe and non-discriminatory environment for its students and employees. Therefore, the College cannot guarantee that it will not conduct an investigation or pursue resolution of the alleged sexual misconduct under Title IX or under different processes available within the College.

The College has the discretion to proceed with an investigation and disciplinary action outside of Title IX even if the victim does not want to move forward with a formal complaint to the Title IX Coordinator. The College will evaluate such reports in the context of its commitment to providing a reasonably safe and non-discriminatory environment

## **Retaliation**

No individual shall be subject to retaliation at any time for making a claim of sexual misconduct or for participating in the procedures for the resolution of sexual complaints. It is a violation of College policy for any member of the College community to retaliate against any individual, including the complainant and respondent, who participates in the investigation or proceedings. Anyone who believes that he/she has been subject to retaliation arising from sexual misconduct complaints is encouraged to report such behavior to College officials. Students or employees who have engaged in retaliatory conduct shall be subject to the College’s disciplinary process and to disciplinary action up to and including dismissal or termination from the College.

## **Supportive Measures**

Upon receipt of a report of sexual harassment, the Title IX Coordinator shall promptly contact the complainant and respondent to request if either party is in need of supportive measures. Such measures

may include, but are not limited to, referrals for counseling, course-related adjustments, modifications of work or class schedules, campus escort services, increased security and monitoring of certain areas of the campus and mutual restrictions of contact between the parties. If, at any point during the complaint, investigative, or disciplinary process, the Coordinator deems it necessary for the protection of any member of the College community, the Coordinator may institute such measures on behalf of the complainant, the respondent, or any witness involved in the complaint. The occurrence or non-occurrence of any supportive measure is neither an indicia of guilt nor innocence under these procedures and no punitive measures may be instituted against a complainant or respondent pending the final resolution of the report.

### **Orders of Protection by a Court**

Complainants and respondents are required to provide any order of protection, no contact order, restraining order or other similar orders that may be in place at the time an accusation of sexual misconduct, or any such order that may subsequently be entered prior to the final disposition of a complaint of sexual misconduct, to the Coordinator at the time a report is made or as soon as reasonably practical afterward. Additional supportive measures may be instituted by the Coordinator based on the terms of the order of protection, no contact order, restraining order or other similar orders.

### **Receipt of a Report of Sexual Misconduct**

Procedures for resolving reports of sexual misconduct are contained in Section 13.04 of the Personnel Policy Manual.

### **Rights of the Parties**

The complainant and respondent shall have the same opportunity to provide evidence and witness testimony to the investigator, to be heard, and to have an advisor present at the hearing. Each party shall be simultaneously provided with any notices, decisions or other documents related to the investigation or resolution of a formal complaint of sexual harassment.

- A. All College personnel will treat the parties with respect.
- B. The parties are entitled to privacy during every aspect of the reporting process and any ensuing investigation to the extent permitted by law.
- C. All information obtained will remain confidential to the extent permitted by law.
- D. Both parties have the right to receive medical treatment and counseling services. The College will provide the parties with information of appropriate medical and counseling services available through community-based counseling services.

### **Role of the Title IX Coordinator**

The College's Title IX Coordinator is responsible for overseeing the resolution of all sexual harassment and discrimination reports made to the College and for implementation of the College's sexual misconduct and anti-discrimination policies.

### **Role of the Investigator**

If a formal complaint of sexual misconduct has been filed, the Title IX Coordinator shall assign the investigation of the complaint to an investigator. The role of the investigator is to gather information from the complainant, the respondent and witnesses, as well as other evidence relevant to determining whether, by a preponderance of the evidence, such testimony and evidence either supports or does not support the allegations contained in the complaint.

### **Role of the Advisor**

The complainant and the respondent shall have the right to be accompanied by an advisor, including an attorney of his or her own choosing, to any hearing or mediation related to the complaint for which the complainant and respondent are required to attend. Only the advisor may conduct direct and cross examination of both parties, their respective witnesses and the investigator. If a party does not have an advisor to assist him or her at the hearing, the College will provide an advisor to the party free of charge for purposes of conducting direct and cross examination of the parties and their witnesses, and otherwise providing assistance to the party at a hearing or mediation. In no event may an advisor be used for the purpose of intimidating or attempting to intimidate or harass the other party.

### **Bystander Intervention**

Bystander intervention occurs when an individual assumes the responsibility, by exercising safe and positive options, to prevent or interrupt acts of sexual misconduct or the potential for such acts. The College is committed to eliminating sexual misconduct within the College community and believes that actively intervening to prevent or interrupt acts of sexual misconduct or any other act of violence in a safe and positive manner so as not to endanger oneself or others is a way of eliminating such misconduct.

An individual can stop or interrupt such acts by:

- A. Verbally intervening and attempting to de-escalate the situation or instructing the participants to separate;
- B. Indirectly intervening by alerting the parties' friends, other bystanders, a college official, campus public safety, or local law enforcement;
- C. Distracting the attention of one party away from the other party.
- D. Remember:

1. Do NOT use violence
2. Do NOT be antagonistic
3. Be honest and direct whenever possible
4. Stay calm and positive
5. Recruit assistance to keep yourself and others safe
6. Contact public safety or local law enforcement if the situation escalates.

In the event an employee witnesses a person committing an act or acts of sexual misconduct, he or she should:

- A. Contact 911;
- B. Contact the campus Public Safety Department;
- C. Use an emergency phone located on campus and in the parking lots if within proximity;
- D. Contact the Title IX Coordinator; and/or
- E. Complete the Incident/Behavior Report form located on the Public Safety web page.

(Revised, 4/12/16; 4/11/17; 8/14/20)