



Sex and Gender-Based Misconduct Policy

Resources available to survivors of sexual & gender-based misconduct (both immediately following an incident and on an ongoing basis) are set forth in Appendix A to this policy. Dakota Wesleyan University's Title IX Coordinator is located in the Rollins Campus Center, Office R104, 605-995-2160. In an emergency call 911, or the Mitchell Police Department at 605-995-8400.

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DAKOTA WESLEYAN UNIVERSITY'S SEX AND GENDER-BASED MISCONDUCT POLICY

The mission of Dakota Wesleyan University is, as an inclusive educational community, to provide a transformative learning experience that cultivates enduring intellectual growth, ethically grounded leadership, intentional faith exploration and meaningful service. Toward that end, the University is committed to maintaining a healthy and safe learning, living, and working environment that promotes responsibility and respect among all members and guests of the campus community and where no one is unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination in any University program or activity on the basis of gender, sex, sexual orientation, sexual identity, gender identity, or gender expression.

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

Dakota Wesleyan University's Title IX Coordinator is Dr. Diana Goldammer. Dr. Goldammer may be contacted by phone at 605-995-2160 or by email at diana.goldammer@dwu.edu. She may also be visited in person in her office, R104, in the Rollins Campus Center.

Sexual and Gender-Based Misconduct comprises a broad range of behaviors focused on sex and/or gender that include sexual harassment, hostile environment caused by sexual harassment, sexual assault, domestic violence, dating violence, sexual exploitation, and stalking, and discrimination on the basis of sex or gender. (Definitions are provided in Section IV below). Sex and Gender-Based Misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship. Sex and Gender-Based Misconduct can be committed by anyone regardless of gender identity, and it can occur between people of the same or different sexes or genders. The University will not tolerate any form of sexual and/or gender-based misconduct, and all Sex and Gender-Based Misconduct is prohibited by this policy. This conduct, and any retaliation or intimidation associated with the investigation and/or sanctioning of such conduct, is prohibited by the University and may also violate federal and state law.

The University seeks to prevent Sex and Gender-Based Misconduct offenses by providing:

- Education, prevention, and training programs that inform the community about the risks and myths that contribute to Sex and Gender-Based Misconduct;
- Assistance and support, including procedures sensitive to individuals who have been reported to be the victim of a Sex and Gender-Based Misconduct offense and interim measures designed to prevent continuing harm or retaliation; and
- A process for the prompt and equitable investigation and resolution of incidents of Sex and Gender-Based Misconduct that includes appropriate disciplinary sanctions enforced against those who commit Sex and Gender-Based Misconduct offenses, as well as the imposition of remedial actions to address and remedy the effects of such offenses.

The University is committed to stopping incidents of Sex and Gender-Based Misconduct, preventing their recurrence, and addressing and remedying their effects within the DWU campus community. It makes this policy and accompanying information readily available to all students, employees and other

members of the University community. Violations of this policy may result in the imposition of sanctions up to and including termination, dismissal, or expulsion.

This policy uses terms that have special definitions that may differ from their commonly-understood meanings. The first letters of such terms are capitalized to indicate that the special definition, rather than the commonly-understood meaning, is intended. For example, in the sentence “There are five Days in a week” differs from the sentence “There are seven days in a week” because the term “Day” has been assigned the special meaning of “business day.”

SECTION I - SCOPE & JURISDICTION

A. SCOPE OF POLICY

This policy applies to all Dakota Wesleyan University students, faculty, staff, volunteers, visitors, and other members of the Dakota Wesleyan University community regardless of their sexual orientation or gender identity, as well as to contractors, consultants, and vendors doing business or providing services to the University (i.e. “third parties”).

The University’s prohibition against Sex and Gender-Based Misconduct applies not only in the educational, student residential and working environment, but also to all other work-related, student residential and educational life settings, such as business trips and business-related social functions, as well as educational field trips, athletic trips, and internship placements. Further, the prohibition applies whether or not the incident(s) occurs on the Dakota Wesleyan University campus and whether or not the incident(s) occurs during working/educational hours. This means that students, staff, faculty and third parties are protected under this policy in connection with all the University’s programs and activities, regardless of where the reported conduct alleged occurred. . In responding to off-campus events, the University will consider the effects of the off-campus conduct on an individual’s working, residential life or educational experience, including the impact on the individual’s ability to participate in University activities or programs. Finally, the University’s prohibition against Sex and Gender-Based Misconduct applies to not only physical contact, but also to oral, written, electronic, and other technology-assisted communications, such as email, voice mail, Internet communications (i.e., social media) and searches. In addition, this policy specifically prohibits associated incidents of retaliation and intimidation as defined below.

B. PERIOD OF LIMITATIONS

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

If the alleged perpetrator is no longer a student or employee, the University may not be able to take disciplinary action against the individual, but it will still seek to support for the Subject of the Report, taking steps to end the harassment, preventing its recurrence, and addressing its effects.

C. COORDINATION WITH THE UNIVERSITY’S NON-DISCRIMINATION AND ANTI-HARASSMENT POLICY

The University recognizes that harassment related to an individual’s sex or gender (including gender identity and gender expression) can occur in conjunction with misconduct related to an individual’s race, color, gender, sex, sexual orientation, sexual identity, gender identity, gender expression, religion, ancestry, national origin, age, disability, veteran status, genetic information or any other characteristic protected by federal, state or local law (“Protected Characteristics”). Targeting individuals on the basis of these Protected Characteristics is also a violation of Dakota Wesleyan University policy. When

misconduct relates to both a person's gender related status and other protected characteristics, the University will coordinate the investigation and resolution efforts by following the process set forth in this policy to address all harassment and discrimination.

SECTION II – NON-DISCRIMINATION STATEMENT

Dakota Wesleyan University (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 laws of the state of South Dakota) is an equal opportunity institution that does not discriminate on the basis of race, color, sex, religion, ancestry, national origin, age, sexual orientation, disability, veteran status, gender (including gender identity and gender expression), genetic information, or any other characteristic protected by federal, state or local law. This policy applies to all terms and conditions of employment, admission to and enrollment in the University (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 University administered programs and activities). Any questions regarding Dakota Wesleyan's commitment to principles of non-discrimination, or any other aspect of its Sex and Gender-Based Misconduct policy, should be directed to the University's Title IX Coordinator, Dr. Diana Goldammer. Dr. Goldammer may be reached at R104 within the Rollins Campus Center, by phone at 605-995-2160, or by email at diana.goldammer@dwu.edu.

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

A. TITLE IX

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

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

Title IX prohibits all forms of discrimination on the basis of sex and gender (including gender identity and gender expression), including pregnancy and related conditions, all forms of sexual violence, sexual assault and sexual harassment. This prohibition applies to all Dakota Wesleyan University faculty, staff, students and third parties in both the educational and employment settings. If inappropriate gender-based or sexual misconduct occurred, the University will take prompt and effective steps to end the behavior, prevent its reoccurrence and address its effects.

B. TITLE IX COORDINATOR

The Title IX Coordinator is responsible for monitoring the overall Title IX implementation for Dakota Wesleyan University and coordinating compliance with all areas and departments covered under Title IX regulations. If a complaint is filed, the Title IX Coordinator will meet (or attempt to meet) with, or will assign a deputy coordinator to meet (or attempt to meet) with the Subject of the Report to explain the available options, the process used to investigate the complaint, and any available support, resources, and protective measures. The contact information for Dakota Wesleyan University's Title IX Coordinator is as follows:

DWU Title IX Coordinator
Dr. Diana Goldammer
Rollins Campus Center, R104
605-995-2160; diana.goldammer@dwu.edu

Title IX Coordinator Responsibilities: The Title IX Coordinator is a neutral administrator in investigations and other resolutions of reports of Sex and Gender-Based Misconduct. The Title IX Coordinator is responsible for:

- A. Overseeing all Title IX complaints and investigations so as to provide prompt, fair, and equitable resolutions and working with all parties (the Title IX Coordinator does not, however, make unilateral decisions regarding whether or not a sexual or gender-based misconduct policy violation has occurred);
- B. Identifying and addressing any patterns or systemic problems that may arise;
- C. Being available to meet with students and employees, provide support and answer questions;
- D. Working with other University officials;
- E. Coordinating training, education, and communication pertaining to Title IX, as well as periodic reviews of the University's climate and culture with regard to sexual and gender-based misconduct;
- F. Determining appropriate interim measures upon learning of a report or complaint of sexual or gender-based misconduct;
- G. Being available to assist the local law enforcement if necessary;
- H. Ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers;
- I. Ensuring that the University carries out its Title IX responsibilities.
- J. The Title IX Coordinator also:
 - a. Assists, or assigns a deputy coordinator to assist, the parties (both the with accessing medical and mental health treatment; and
 - b. Meeting with members of the campus community as requested.

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

C. DEPUTY TITLE IX COORDINATORS

The Deputy Title IX Coordinators work under the oversight of the Title IX Coordinator to assist in the processing of reports of Sex and Gender-Based Misconduct. The Title IX Coordinator may, at his or her discretion, designate a Deputy Title IX Coordinator to serve as the Assigned Title IX Coordinator in connection with a given report or to serve as the primary Title IX liaison with the Subject of the Report and Responding Party.

The Title IX Deputy Coordinators at Dakota Wesleyan University are:

Janet Hayen
Director of Human Resources
605-995-2648

Janet.hayen@dwu.edu
Rollins Campus Center, lower level
1200 W University, Mitchell, SD 57301

Thomas Hoek
Head Golf Coach
605-995-2179
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Kevin Kenkel
Director of Learning Resources
605-995-2617
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SECTION IV - PROHIBITED CONDUCT

A. PROHIBITED CONDUCT

1. Prohibition Against Sex and Gender-Based Misconduct

Dakota Wesleyan University prohibits all forms of Sex and Gender-Based Misconduct, as defined in Paragraph B below. Sex and Gender-Based Misconduct is a broad term that includes discrimination on the basis of sex or gender (including gender identity and gender expression), sexual harassment, sexual assault, domestic violence, dating violence, sexual exploitation, and stalking.

Sex and Gender-Based Misconduct also refers to harassment (includes acts of verbal, non-verbal, or physical aggression, intimidation, or hostility) based on sex or gender (including gender identity and gender expression), even if those acts do not involve conduct of a sexual nature.

Sex and Gender-Based Misconduct can occur between people of different sex or gender or of the same sex or gender. All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others.

This policy also prohibits promoting, aiding, facilitating, or otherwise encouraging or enabling the commission of Sex and Gender-Based Misconduct.

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

2. Anti-Retaliation and Intimidation

In addition, the University strictly prohibits retaliation against anyone who files a complaint, serves as a witness, or otherwise participates in the enforcement of this policy. The University does not allow threats or other forms of retaliation or intimidation against any students, employees, or third parties who file a

complaint or participates in the enforcement of any University policy. Any form of retaliation should be reported promptly to the Title IX Coordinator or Deputy Title IX Coordinator or, in instances where safety is an issue, the Mitchell Police Department. Instances of retaliation or intimidation in violation of this policy may result in disciplinary action independent of the sanctions or interim measures imposed in response to the underlying allegations.

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

B. DEFINITION OF SEX AND GENDER-BASED MISCONDUCT

For purposes of this policy, Sex and Gender-Based Misconduct is defined as any of the following types of conduct:

Sexual Harassment: Sexual harassment is unwelcome sexual advances, requests for sexual favors, other verbal, visual or physical conduct of a sexual nature, when either:

- Submission to, rejection, or toleration of such conduct is made the basis for decisions related to an individual's employment, education, living environment, or participation in a Dakota Wesleyan University program or activity;
- Submission to, rejection, or toleration of such conduct is used as a basis for or a factor in decisions affecting that individual's employment, education, living environment or participation in a Dakota Wesleyan University program or activity; or
- Such conduct creates a hostile environment (see Hostile Environment Harassment).

Hostile Environment Harassment: Hostile Environment Harassment is defined as harassment against an individual on the basis of gender (including gender identity and gender expression), sex, sexual orientation, sexual identity, gender identity, or gender expression when the conduct is either:

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

The determination of whether an environment is "hostile" must be based on all of the circumstances, giving consideration to whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

- The degree to which the conduct affected one or more students' education or individual's employment;
- The nature, scope, frequency, duration, severity, and location of incident or incidents; and
- The identity, number, and relationships of persons involved.

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

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

- It may be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.

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

Examples of behavior that might be considered Hostile Environment Harassment include:

- Threats, either directly or by implication, of adverse employment or academic action if sexual favors are not granted or punishing, either directly or by implication, for refusing to tolerate harassment, or for refusing to submit to sexual activity;
- Promising favorable treatment or continued employment in return for sexual favors;
- Change of academic or employment responsibilities (increase in difficulty or decrease of responsibility) based on sex or gender (including gender identity and gender expression);
- Unwanted, unnecessary and objectively inappropriate physical contact or suggestive body language, such as touching, patting, pinching, hugging, kissing, or brushing against an individual's body;
- Sexual assault;
- Physical coercion or pressure on an individual to engage in sexual activity or punishment for a refusal to respond or comply with sexual advances;
- Display or distribution of pornographic material or sexual explicit drawings, pictures, or written materials;
- Sexual rumors or ratings of sexual activity/performance or the circulation, display, or creation of emails or websites of a sexual nature;
- Offensive remarks, including unwelcome graphic or suggestive comments about an individual's body, appearance or dress;
- Jokes and humor about sex or gender-specific traits;
- Use of sexually explicit or offensive language or derogatory language directed at another person's sexuality, gender (including gender identity and gender expression), or sexual orientation;

- Insults and threats based on sex, gender, gender identity, sexual orientation or gender expression;
- The display in the workplace of sexually suggestive objects or pictures which create an intimidating or hostile work environment;
- The display or circulation of written materials or pictures degrading to an individual(s) or gender group where such display is not directly related to an educational/pedagogical, artistic, or work goal; and
- Other unwelcome and unwanted conduct of a sexual nature, such as leering, name-calling, suggestive comments and sexual propositions or innuendos and other oral, written or electronic communications of a sexual nature that an individual communicates.

Sexual Assault: Sexual Assault is defined as either:

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

Non-Consensual Sexual Intercourse: Any penetration or copulation, however slight and with any object or body part, of the vagina, anus, or mouth by a penis or the vagina or anus by any body part or object that is without consent and/or by force or coercion. Intercourse includes anal or vaginal penetration by a penis, object, tongue, or finger, and oral copulation (mouth and genital/anal contact), no matter how slight the penetration or contact.

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

Discrimination: Discrimination means excluding a person from participation in, or experiencing the benefits of, any University education program or activity on the basis of the person's sex or gender (including gender identity and gender expression).

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

Sexual Exploitation: Sexual Exploitation is an act or omission that involves taking non-consensual, unjust, humiliating, or abusive sexual advantage of another, either for the individual's own advantage or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to the following:

1. Creating pictures, movies, web cam, tape recording, graphic written narrative or other means of memorializing sexual behavior or a state of undress of another person without the other's knowledge and consent;
2. Sharing items described in paragraph (1) above, beyond the boundaries of consent where consent was given. For example, showing a picture to friends where consent to view it was given for oneself only;
3. Observing or facilitating observation by others of sexual behavior or a state of undress of another person without the knowledge and/or consent of that person;
4. Without a person's consent, watching or enabling others to watch another person's nudity or

- sexual acts in a place where that person has a reasonable expectation of privacy;
5. Engaging in sexual behavior while knowing that one has a sexually transmitted infection (STI) that is capable of being transmitted by the behavior without first obtaining the Informed Consent (for purposes of this policy, Informed Consent is voluntary permission to engage in sexual activity given after being informed of the sexually transmitted infection) of all other participants in the sexual behavior;
 6. Engaging in or attempting to engage others in “escort services” or “dating services” which include or encourage, in any way, exchanging sexual behavior for money;
 7. Surreptitiously providing drugs or alcohol to a person for the purpose of Sexual Exploitation; and
 8. Causing another person to be exposed to pornographic material without the person’s advance knowledge or consent.

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

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

Examples of Stalking include:

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

In compliance with the Violence Against Women Act, the applicable criminal definition for stalking in the state of South Dakota is set forth in Appendix B.

Retaliation: Retaliation is defined as taking adverse action against an individual making a complaint under this policy or against any person cooperating or participating in the investigation of a complaint or the enforcement of any interim measures or sanctions under this policy. Retaliation includes intimidation, threats, harassment, and other adverse action, including adverse job action and adverse academic action against any Reporting Party, Subject of the Report, or Respondent.

Intimidation: Intimidation is defined as threats or acts, whether implied or explicit, that are intended to cause someone to reasonably believe that he, she, or they is about to be touched in a harmful or offensive manner or to coerce someone to commit or omit an act.

SECTION V – REPORTING INCIDENTS OF SEX AND GENDER-BASED MISCONDUCT, RETALIATION OR INTIMIDATION INCIDENTS

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

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

A report may be made by anyone who believes that there has been a violation of this policy. A Reporting Party need not be the Subject of the Report and need not be acting on behalf of the Subject of the Report.

Persons who have experienced violations of this policy have the option to not report those violations to the University and / or to law enforcement authorities, and the University respects the decision of individuals not to file a report. If a the Subject of the Report chooses not to participate in the University review of the report, the University may, subject to the confidentiality provisions outlined in this policy, pursue the report without the Subject's participation. Moreover, if information about Sex and / or Gender-Based Misconduct or associated incidents of retaliation or intimidation comes to the attention of the University, DWU (1) may start an investigation even in the absence of a filed complaint and/or (2) may notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

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

A. REPORTING OPTIONS WITH THE UNIVERSITY

Those who experience incidents of Sex and Gender-Based Misconduct, whether because the conduct is directed at them or because they witness such conduct, are encouraged to talk to somebody about what happened – so individuals can get the support they need, and so the University can respond appropriately. The various confidential and non-confidential disclosure options available to members of the Dakota Wesleyan University community are set forth below:

1. Confidential Communications to University Resources

Anyone may report incidents of Sex and Gender-Based Misconduct to the confidential sources on campus listed below. This option is available to those who want to report the incident but do not want the University to take any immediate, formal action. Confidential sources can provide individuals with both immediate and long-term help. They will listen and help access additional assistance and explain options for obtaining additional protections and support from the University and others. Such protection and support may include, for example, victim advocacy services, academic support or accommodations, health or mental health services, and changes to living, working or course schedules. These confidential sources will also explain that Title IX includes protections against retaliation and intimidation, and that the Title IX Coordinator and Deputy Title IX Coordinator will not only take steps to prevent retaliation and intimidation, but also take strong responsive action should it occur. This includes retaliatory actions taken by the University and University administrators.

The University's confidential sources will preserve an individual's privacy to the extent possible by the law. This means that personally identifiable information shared with these individuals is not part of students' or employees' University records and will not be reported to other University personnel (including the Title IX Coordinator and Deputy Title IX Coordinators), to the Respondent, or to others (unless the party discussing the incident gives consent to the disclosure of personally identifiable information or the law requires it (as may be the case with alleged sexual or gender-based misconduct involving a minor or under conditions involving imminent harm to one or more members of the University community, for example)). It also means that disclosures to these individuals generally will not trigger a University investigation into the incident. See Section VI, "Requesting Confidentiality from Dakota

Wesleyan University.” Reporting Parties choosing this option can decide to make a formal complaint and/or criminal report at a future date, and thus have the incident fully investigated. These confidential sources will provide assistance in making such a report if the individual wishes them to do so. Persons wishing to discuss incidents of Sex and Gender-Based Misconduct at Dakota Wesleyan University confidentially may do so with two categories of University Employees: professional and pastoral counselors and the campus nurse.

a. Professional and Pastoral Counselors

The licensed counselor and pastors who provide mental health counseling to members of the University community (including those who act in that role under the supervision of a licensed counselor) free of charge are not required to report any information about an incident of Sex and Gender-Based Misconduct to the Title IX Coordinator or Deputy Title IX Coordinator.

The following offices and individuals provide confidential mental health and/or pastoral counseling to members of the Dakota Wesleyan University community:

Linda Cimpl
Campus Counselor
Rollins Campus Center
605-995-2896; linda.cimpl@dwu.edu

Rev. Eric Van Meter and Rev. Denise Van Meter
Campus Pastors
Rollins Campus Center
605-995-2919; eric.vanmeter@dwu.edu; denise.vanmeter@dwu.edu

b. Campus Nurse

The campus nurse can provide options for injuries and for potential exposure to sexually transmitted diseases. The campus nurse also provide information about emergency contraception and other health services. The campus nurse 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 in cases involving sexual assault. Taking these steps promptly after an incident can be very helpful in later criminal proceedings and/or in seeking a protective order.

While the campus nurse is obligated to maintain confidentiality and not report an individual’s identity to the University, under South Dakota law, a medical provider may be required to notify law enforcement of a reported sexual assault involving minors and/or weapons. The individual, however, may decline to speak with a law enforcement officer or participate in a criminal prosecution. In addition, the nurse is obligated to report Sex and Gender-Based Misconduct incidents without any of the Subject of the Report’s identifying information to the Title IX Coordinator to enable the University to understand the existence of, and potential extent of, the problem (Title IX). If the incident is a crime, these providers will report it without any identifying information for inclusion in the annual statistical report and for issuance of any required timely warning (Clery Act).

The Dakota Wesleyan University campus health offices are located in the lower level of Rollins Campus Center and can be contacted at 605-995-2656. The offices may be visited in person during normal business hours (9 a.m. to 4 p.m.) or an appointment may be made.

2. Reporting to Appropriate University Officials

Individuals who believe that they have been the subject of, or have witnessed or otherwise know of an incident of Sex and Gender-Based Misconduct are encouraged to report the conduct to University

officials so that they can take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions), and, if it is determined that Sex and Gender-Based Misconduct has occurred, take appropriate steps to address the situation.

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

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

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

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

Dakota Wesleyan University Title IX Coordinator

Dr. Diana Goldammer
Title IX and Section 504 Coordinator
605-995-2160; diana.goldammer@dwu.edu
Office R104 in Rollins Campus Center
1200 W University Ave, Mitchell, SD 57301

Dakota Wesleyan University Title IX Deputy Coordinators

Janet Hayen
Director of Human Resources
605-995-2648; janet.hayen@dwu.edu
Rollins Campus Center, lower level
1200 W University, Mitchell, SD 57301

Thomas Hoek
Head Golf Coach
605-995-2179
Thomas.Hoek@dwu.edu
Christen Family Athletic Center, Main Office
1200 W University, Mitchell, SD 57301

Kevin Kenkel
Director of Learning Resources
605-995-2617
Kevin.Kenkel@dwu.edu
Director's Office, McGovern Library
1200 W University, Mitchell, SD 57301

Joseph Roidt
Provost
605-995-2625
Joseph.Roidt@dwu.edu
201 Smith Hall
1200 W University, Mitchell, SD 57301

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

- File a complaint or report on the gender-based discrimination, harassment and sexual misconduct incident form, which is available on the Dakota Wesleyan University website.
- Leave a private voice message for the Title IX Coordinator or a Title IX Deputy Coordinator;
- Send an email to the Title IX Coordinator or a Title IX Deputy Coordinator;
- Mail a letter to the Title IX Coordinator or a Title IX Deputy Coordinator; or
- Visit in person the Title IX Coordinator or a Title IX Deputy Coordinator.

b. Reporting to a Responsible Employee

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

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

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

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

Before a person reveals any information to a Responsible Employee, a Responsible Employee should make reasonable efforts in light of the circumstances to ensure that the Reporting Party understands the employee’s reporting obligations – and, if the Reporting Party wants to maintain confidentiality, direct the Reporting Party to confidential resources.

If the Reporting Party wants to tell the Responsible Employee what happened but also maintain confidentiality, the Responsible Employee should tell the Reporting Party that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the Responsible Employee will also inform the Title IX Coordinator of the Reporting Party’s request for confidentiality.

Responsible employees will not pressure a Reporting Party to request confidentiality, but will honor and support the Reporting Party’s wishes, including for the University to fully investigate an incident. For the same reason, Responsible Employees will not pressure a Reporting Party to make a report or formal complaint if the Reporting Party does not wish to.

3. Anonymous Reporting to the University

Although the University encourages a Reporting Party to talk to someone, the University will provide an online webpage (linked to the Title IX page) for anonymous reporting. The system notifies the user (before s/he enters information) that entering personally identifying information may serve as notice to the University for the purpose of triggering a Title IX investigation. In addition, the **Campus Conduct Hotline** at (866) 943-5787 may be utilized.

4. Timeframe for Filing a Report

Dakota Wesleyan University does not limit the timeframe for filing a report. Reports can be submitted at any time following an incident, although the University's ability to take any action may be limited by the enrollment or employment status of the Respondent.

B. REPORTING OPTIONS OUTSIDE THE UNIVERSITY

1. Off-Campus Privileged and Confidential Communications

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

Mitchell Area Safehouse
24-hour hotline: 605-996-4440
Toll free 24-hour hotline within SD: 1-888-996-8909
Shelter: 605-996-2765
Executive Director: 605-996-6622
1809 North Wisconsin, Mitchell, SD 57301
coleen@mitchellareasafehouse.org

Dakota Counseling Institute
910 W. Havens
Mitchell, SD 57301
605-996-9686

Women's Health Services
1420 N. Main
Mitchell, SD 57301
605-995-8040

National Sexual Assault Hotline (RAINN)
(800) 656-4673

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

2. Filing a Report with Law Enforcement

Any member of the University community who has experienced an incident of sexual misconduct and gender-based misconduct involving potential criminal conduct has the option to report the conduct to the law enforcement agency that has jurisdiction over the location where the incident occurred by calling 911. In Mitchell, the Police Department may be contacted at 605-995-8400 or by calling 911. If the conduct is reported to the University, the individual will be informed of his or her option to also report any potential criminal activity to law enforcement. The University, however, may be obligated to report the matter to local law enforcement as required by law.

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

Victim support and resources are available even if a student, employee or third party elects not to pursue criminal charges or file a report or complaint with the University. Because sexual misconduct and gender-based misconduct may, in some instances, constitute both a violation of University policy and a criminal activity, and because the University resolution process is not a substitute for instituting legal action, the University provides guidance and, if requested, assistance regarding how to report an incident to law enforcement authorities who have jurisdiction over the location where the incident occurred.

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

NON-CONFIDENTIAL RESOURCES
Dakota Wesleyan University Residence Life Office
605-995-2952; 605-770-1593

Dakota Wesleyan University Title IX Coordinator
Dr. Diana Goldammer
Title IX and Section 504 Coordinator
605-995-2160; diana.goldammer@dwu.edu
Office R104 in Rollins Campus Center
1200 W University Ave, Mitchell, SD 57301

Dakota Wesleyan University Title IX Deputy Coordinators

Janet Hayen
Director of Human Resources
605-995-2648; janet.hayen@dwu.edu
Rollins Campus Center, lower level
1200 W University, Mitchell, SD 57301

Thomas Hoek
Head Golf Coach
605-995-2179
Thomas.Hoek@dwu.edu
Christen Family Athletic Center, Main Office
1200 W University, Mitchell, SD 57301

Kevin Kenkel
Director of Learning Resources
605-995-2617
Kevin.Kenkel@dwu.edu
Director's Office, McGovern Library
1200 W University, Mitchell, SD 57301

Joseph Roidt
Provost
605-995-2625
Joseph.Roidt@dwu.edu
201 Smith Hall
1200 W University, Mitchell, SD 57301

CONFIDENTIAL RESOURCES

Campus Health Services

Rollins Campus Center, lower level
Nurse – 605-995-2957
Counselor – 605-995-2896

Campus Pastors

Rollins Campus Center, main level
605-995-2919

Avera Queen of Peace Hospital

525 Foster Street, Mitchell SD 57301
605-995-2000

A criminal investigation into a matter does not preclude the University from conducting its own investigation. If a report is filed with both the University and law enforcement, the University will proceed with its normal investigatory process. The University may, however, need to temporarily delay its fact-finding portion of the investigatory process while law enforcement is gathering initial evidence. This delay typically takes three to 10 calendar days, although it may take longer in certain instances. If a delay in the University's Title IX investigatory process occurs, it will take interim measures to protect the Reporting Party in the educational or work setting as appropriate. Moreover, the Title IX Coordinator will continue to update the parties on the status of the investigation and inform them when the University's Title IX investigatory process resumes, which will occur promptly after law enforcement notifies the University that it no longer needs the University to delay its investigation. The University will not, however, delay its investigatory process until the ultimate outcome of the criminal investigation or the filing of any charges.

Anonymous Reporting to Law Enforcement: Any member of the Dakota Wesleyan University community who has experienced, witnessed, or knows of an incident of sexual misconduct and gender-based misconduct may report the alleged incident anonymously to law enforcement. Law enforcement will record the date and time of the alleged conduct, the mode of operation of the alleged assailant, and any description of the alleged assailant given. If the alleged assailant's name is reported, it will be recorded. Also, law enforcement stores the information in the event a pattern of crimes by the alleged assailant is detected. The purpose of an anonymous confidential report is to comply with the Reporting Party's wish to keep the matter confidential, while taking steps to ensure the future safety of the Subject of the Report and others.

3. Filing a Report with External Agencies

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

Office for Civil Rights (OCR), Headquarters

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

Office for Civil Rights, Kansas City Office

U.S. Department of Education
One Petticoat Lane
1010 Walnut Street, Suite 320
Kansas City, MO 64106
Telephone: (816) 268-0550
Facsimile: (816) 268-0559
Email: OCR.KansasCity@ed.gov

Complaints with the Office for Civil Rights must be filed within one hundred eighty (180) days of the last act that the Reporting Party believes was discriminatory. There is no time limit for making a report to the University.

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

U. S. Equal Employment Opportunity Commission

Minneapolis Area Office
Towle Building
330 South Second Avenue, Suite 720
Minneapolis, MN 55401-2224
Phone: 1-800-669-4000
Fax: 612-335-4044
TTY: 1-800-669-6820
ASL Video Phone: 844-234-5122

**SECTION VI - REQUESTING CONFIDENTIALITY &
REQUESTS NOT TO PURSUE RESOLUTION**

Either the Reporting Party or Subject of the Report may (i) request that the University not investigate the information or allegation(s) reported, (ii) request confidentiality, (iii) refuse to file a report, and/or (iv) refuse to cooperate in the investigation and/or resolution of allegation(s).

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

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

1. The increased risk that the alleged perpetrator will commit additional acts of Sex and Gender-Based Misconduct, such as:
 - a. Whether there have been other sexual or gender-based misconduct complaints about the same alleged perpetrator;
 - b. Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
 - c. Whether the alleged perpetrator threatened further sexual or gender-based misconduct or other violence against the Subject of the Report or others;
 - d. Whether the sexual or gender-based misconduct was committed by multiple perpetrators.

2. The seriousness of the alleged sexual or gender-based misconduct, including but not limited to:
 - a. Whether the sexual or gender-based misconduct was perpetrated with a weapon;
 - b. Whether the Subject of the Report is a minor;
 - c. The Respondent's right to receive information about the allegations if the information is maintained by the University as an "Education Record" under FERPA;
 - d. Whether the University possesses other means to obtain relevant evidence of the sexual or gender-based misconduct (e.g., security cameras or security personnel, physical evidence);
 - e. Whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group or person.

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

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

The University will remain ever mindful of the Reporting Party's well-being, and will take ongoing steps to protect the Reporting Party from retaliation or harm. Retaliation against the Reporting Party, whether by students, University employees or third parties, will not be tolerated. The University will also:

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

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

SECTION VII - GENERAL PROVISIONS APPLICABLE TO ALL REPORTS & COMPLAINTS OF SEX AND GENDER-BASED MISCONDUCT

A. TIME FRAME FOR RESOLUTION

The investigation and resolution of all reports or complaints of gender-based discrimination, harassment

and sexual misconduct will generally be completed within 60 to 90 days. Extenuating circumstances, including, but not limited to, the complexity and severity of a complaint may arise that require the process to extend beyond 60 to 90 days. In general, the Subject of the Report and Respondent can expect to receive periodic updates from the Title IX Coordinator and/or Investigator as to the status of the review or investigatory process.

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

B. PRIVACY

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

C. PUBLIC AWARENESS EVENTS

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

D. FALSE INFORMATION AND MALICIOUS ACCUSATIONS

Any individual who knowingly files false and malicious accusations of gender-based harassment, discrimination and/or sexual misconduct, retaliation or intimidation, who knowingly provides false information to University officials, or who intentionally misleads University officials who are involved in the investigation or resolution of a report of gender-based harassment, discrimination and/or sexual misconduct, retaliation or intimidation may be subject to disciplinary action or other sanctions up to and including termination or dismissal. Reports or complaints of Sex and Gender-Based Misconduct made in good faith will never result in discipline for the Reporting Party, even if the University is ultimately unable to substantiate the report.

E. AMNESTY POLICY

Individuals may be hesitant to report conduct which they have experienced or witnessed, to participate in an investigation and/or grievance proceeding, or to speak truthfully because they fear University disciplinary action due to their own consumption of alcohol or other drugs at or near the time of the incident. While the University does not condone underage drinking or drug use, the University may

extend limited immunity from University sanctioning in the case of illegal drug and alcohol use to the Subject of the Report, witnesses, Reporting Parties, and/or those assisting the victims of sexual offenses, provided that they are acting in good faith in such capacity.

F. DOCUMENTATION

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

G. INDIVIDUALS WITH DISABILITIES AND INTERNATIONAL STUDENTS

The procedures and resources identified in this policy are equally available to students, employees and third parties with disabilities. The University will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations as needed to participate in the steps and procedures outlined in this policy, as well as to access the support and other resources identified in the policy.

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

H. SHARING RECORDS WITH LAW ENFORCEMENT

The University will share with law enforcement, as necessary and appropriate, information or records permitted to be released under any exception to the privacy protections of the Family Educational Rights and Privacy Act (FERPA), including the Health and Safety Emergency exception and/or records/information otherwise protected by any other state laws or local ordinances. It should be noted that FERPA applies only to records created by the University and to information derived from tangible records. FERPA does not protect the confidentiality of information in general and, therefore, does not apply to the disclosure of information derived from a source other than an education record, even if education records exist which contain that information. As a general rule, information that is obtained through personal knowledge or observation and not from an education record is not protected from disclosure under FERPA. Thus, a non-confidential verbal report of an incident of Sex and Gender-Based Misconduct can be reported to the appropriate law enforcement agency.

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

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

I. BYSTANDER INTERVENTION

The University encourages all community members to take reasonable and prudent actions to prevent or stop an act of gender-based discrimination, harassment and/or sexual misconduct or associated incidents of retaliation or intimidation. Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. While the University encourages safe, appropriate bystander intervention, it does not want members of the University community to do anything that is reasonably likely to escalate a situation or to put themselves in imminent danger of physical harm. More information regarding safe, effective bystander intervention is available in Appendix E of this policy.

J. ADVISORS

The Subject of the Report and the Respondent have the right to have one advisor of their choice present during any meeting or interview regarding a report or complaint alleging a violation of this policy. This may include, but is not limited to, any part of an investigatory process, informal or formal resolution, appeal and/or sanction proceeding conducted under this policy. The advisor may not have personal involvement regarding any facts or circumstances of the alleged misconduct and may not serve as a witness at any point during the same or a related investigation. The advisor's only functions shall be to accompany the Subject of the Report or Respondent to the meeting, interview and/or proceeding and assist and/or consult with the Subject of the Report or Respondent. The advisor may not act as a spokesperson for the Subject of the Report or Respondent or answer questions on their behalf. The advisor may be an attorney but participation shall be limited, as stated above.

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

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

A. INTERIM MEASURES

Once the University receives a report of or is put on notice of an incident of sexual or gender-based misconduct or associated incidents of retaliation or intimidation, the assigned Title IX Coordinator, in consultation with other appropriate administrators, will determine whether any interim and protective measures and/or interim disciplinary sanctions are warranted and appropriate.

While consideration of interim measures is generally the first step in the University's response to a reported violation of this policy, the University may also implement such measures in the absence of a report. While an individual may request interim measures without filing a report, the request itself may trigger the University's obligation to respond to an alleged violation of this policy, even if the request for interim measures was made through one of the confidential resources identified in Section V.

Where appropriate, the Assigned Title IX Coordinator may implement one or more interim measures including, but not limited to, one or more of the following:

- a. Issuing of mutual no-contact orders to prevent any contact between the Subject of the Report, the Respondent, witnesses and/or other community members to ensure the safety of all parties and the integrity of the process;
- b. Providing an escort to ensure that individuals connected to or involved in a report or investigation can move safely between classes, work and/or activities;
- c. Changing on-campus housing, if any, to a different on-campus location and providing assistance from University support staff in completing the relocation;
- d. Rescheduling class work, assignments and examinations;
- e. Changing work arrangements or schedules;
- f. Providing academic support services such as providing alternative course completion options, dropping a course without penalty or transferring to a different class section (with the agreement of the appropriate faculty);
- g. Limiting an individual's or organization's access to certain University facilities or activities pending resolution of the matter;

- h. Transportation accommodations, such as shuttle service, cab voucher or parking arrangements, to ensure safety and access to other services; and
- i. Preserving eligibility for academic, athletic or other scholarships, financial aid, internships, study abroad, or foreign student visas.

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

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

Throughout the University's investigation and resolution process, the assigned Title IX Coordinator will periodically reconsider previously implemented interim measures to determine whether they are still appropriate. The Assigned Title IX Coordinator may leave previously implemented interim measures in place, alter them, remove them, or supplement them with other interim measures.

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

B. INITIAL MEETINGS WITH THE ASSIGNED TITLE IX COORDINATOR

1. Meeting with the Subject of the Report

Within five Days following the filing of a report or being put on notice of a possible incident of Sex or Gender-Based Misconduct or associated incidents of Retaliation or Intimidation (or as soon as is reasonably practicable), the assigned Title IX Coordinator will contact the Subject of the Report to schedule an initial meeting to discuss the report and avenues for its resolution. If the report was made by a Reporting Party who is not the Subject of the Report, the assigned Title IX Coordinator will attempt to meet with the Reporting Party and gather information from him or her before speaking with the Subject of the Report.

During the initial meeting with the Subject of the Report, the assigned Title IX Coordinator will, as applicable:

- Review and provide a written copy of this policy, including a review of applicable rights under the policy and how to access the policy (see Appendix C);
- Provide written notification of the counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services available for victims both within the University and in the community and the availability of changes to academic, living, transportation, and working situations or protective measures regardless of whether the Subject of the Report reports to law enforcement;
- Explain the avenues for formal and, if applicable, informal resolution of the complaint;
- Explain the steps involved in a formal Title IX investigation;
- Advise the Subject of the Report that he, she, or they may have an advisor of their choice present

throughout the Title IX investigation and resolution process. The advisor may be anyone of the Subject of the Report's choosing, including an attorney retained at the individual's initiative. Any advisor may participate as a silent observer in any meeting or proceeding related to the investigation or resolution process;

- Discuss confidentiality standards and concerns;
- Discuss the importance of preserving relevant evidence or documentation of relevance to the investigatory process (e.g., texts, emails, notes, photographs, etc.); and
- Discuss whether any interim measures are appropriate.

2. Meeting with the Responding Party

If the Reporting Party or Subject of the Report wishes to pursue resolution through the University or if the University otherwise deems that further investigation is warranted, as soon as is practicable after the assigned Title IX Coordinator's initial assessment, the assigned Title IX Coordinator may schedule an initial meeting with the Respondent. If the Assigned Title IX Coordinator decides to meet with the Respondent prior to making an initial assessment of the report, the Assigned Title IX Coordinator will provide the Respondent with written notice of the allegations constituting a potential violation of this policy in sufficient detail and sufficiently in advance of the initial investigation to allow the Respondent to prepare for the interview. At a minimum, the written notice will contain the names of the parties involved, the nature of the alleged violation, and the date and location of the alleged incident, if that information is available.¹ During the initial meeting with the Respondent, the assigned Title IX Coordinator will, as applicable:

- Review with and provide the Respondent a written copy of this policy and how to access it, including a review of rights provided under this policy (see Appendix C);
- Provide written notification of the counseling, health, mental health, legal assistance, visa and immigration assistance, student financial aid and other services available to Respondents both within the University and in the community, and the availability of changes to academic, living, transportation, and working situations or protective measures;
- Explain the University's procedures for resolution of the complaint, including informal resolution;
- Explain the steps involved in a formal Title IX investigation;
- Advise the Respondent that he, she, or they may have an advisor of his or her choice present throughout the Title IX inquiry, investigation, and resolution process. The advisor may be anyone of the Respondent's choosing, including an attorney retained at the individual's initiative. Any advisor may participate as a silent observer in any meeting or proceeding related to the investigation or resolution process.
- Discuss confidentiality standards and concerns with the Respondent;
- Discuss non-retaliation and intimidation requirements with the Respondent;
- Inform the Respondent of any interim measures already determined that directly affect the Respondent (e.g., changing the Respondent's class schedule or moving the Respondent to an alternate residence hall);
- Discuss the importance of preserving evidence or documentation relevant to the investigation (e.g., texts, emails, notes, photographs, etc.);
- Refer the Respondent to a counselor or other resources, as appropriate; and
- Discuss possible interim measures.

¹ If the Title IX Coordinator does not meet with the Respondent prior to making an initial assessment of the report, the assigned Investigator will provide the written notice described in this section in advance of the Investigator's initial interview of the Respondent. The Investigator will provide the notice sufficiently in advance of initial interview to enable the Respondent to prepare a response to the report prior to the interview.

C. TITLE IX COORDINATOR'S INITIAL ASSESSMENT

The Title IX Coordinator will make an assessment as to whether or not there are reasonable grounds for believing that the conduct at issue constitutes Sex and Gender-Based Misconduct.

In the event that the assigned Title IX Coordinator determines there are no reasonable grounds for believing that the conduct at issue constitutes gender-based discrimination, harassment and/or sexual misconduct as defined by this policy, the Title IX Coordinator will refer the matter to the appropriate University office (e.g., Human Resources, Student Life, Provost) so that the relevant office may determine whether some other University policy may have been violated and pursue appropriate measures. The Title IX Coordinator will communicate his or her decision in writing to the Subject of the Report, the Respondent and relevant University administrators. Where he or she deems appropriate, the Title IX coordinator may pursue appropriate measures notwithstanding finding that the matter was not appropriate for resolution under this policy, which may include broader remedial actions – such as increased monitoring, supervision or security at locations where the reported Sex and Gender-Based Misconduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting University policies, procedures and practices.

If the Title IX Coordinator determines that reasonable grounds exist for believing that the alleged conduct constitute Sex and Gender-Based Misconduct, the Title IX Coordinator will next determine whether (a) the case may appropriately be resolved through the informal resolution procedures outlines in this policy; or (b) must be resolved using the formal resolution procedures outlined in this policy.

D. INFORMAL RESOLUTION

Informal resolution may be used for less serious violations of this policy as an alternative to the formal resolution process. In order to resolve a reported violation of this policy using these informal resolution procedures, both parties must agree to use the informal resolution procedures. Both parties must agree to pursue informal resolution freely, and the University does not encourage or discourage the use of informal resolution. Either party may rescind their agreement to resolve a report through these informal resolution procedures, and initiate formal resolution procedures, at any time prior to reaching a final resolution. Informal resolution will never be used to resolve a report of Sexual Assault. Informal resolution will not be the primary resolution mechanism used to address a report of dating violence, domestic violence, sexual exploitation of any kind or in other cases of serious violations of the gender-based discrimination, harassment and sexual misconduct policy as determined by the Title IX Coordinator or in other cases of serious violations of this policy, though it may be made available should the parties and the assigned Title IX Coordinator believe that it could be beneficial.

Either party (the Subject of the Report or the Respondent) participating in informal resolution can stop that process at any time Title IX Coordinator that they are rescinding their agreement to participate in the informal resolution process and are requesting a formal resolution. Additionally, the Title IX Coordinator may determine, in his or her sole discretion that the matter is no longer appropriate for informal resolution and commence formal resolution procedures. In such cases, information provided by the parties in the course of the investigation and conflict resolution may be considered in the subsequent formal resolution. Moreover, the Subject of the Report and Respondent may be accompanied by an advisor at any meetings related to the informal resolution process. If a satisfactory resolution is reached, the matter will be considered resolved. If informal resolution efforts are unsuccessful, the formal resolution process will commence.

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

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

E. FORMAL RESOLUTION PROCEDURES

It is the goal of DWU to provide for an adequate, reliable and impartial investigation of each report, including the opportunity for both the Subject of the Report and Respondent to present witnesses and evidence.

1. Assignment of Investigator and Review Panel

If the Title IX Coordinator (or Assigned Coordinator) determines that a formal Title IX Investigation is warranted or if informal resolution efforts were not successful, the assigned Title IX Coordinator will appoint an Investigator who has specific training and experience investigating allegations of gender-based discrimination, harassment and sexual misconduct. The Title IX Coordinator will notify both the Subject of the Report and the Respondent in writing of the formal Title IX investigation and the name of the Investigator. The Title IX Coordinator will also provide both the Subject of the Report and Respondent with the names of the three Title IX Coordinators who will serve on the Review Panel to determine whether a conduct violation has occurred. The Title IX Coordinator will provide both parties with written notice of the allegations constituting a potential violation of this policy in sufficient detail and sufficiently in advance of their initial interviews to allow the Respondent to prepare for the interview. At a minimum, the written notice will contain the names of the parties involved, the nature of the alleged violation, and the date and location of the alleged incident, if that information is available.

Either the Respondent or the Subject of the Report may protest the appointment of the Investigator and/or the composition of the Review Panel by identifying a possible conflict of interest in writing to the assigned Title IX Coordinator within 4 Days of receipt of the written notice. The assigned Title IX Coordinator will carefully consider such statements and will assign a different Investigator and /or modify the composition of the Review Panel if it is determined that a material conflict of interest exists. The Title IX Coordinator shall retain the power to replace members of the Review Panel as the Title IX Coordinator deems appropriate. The Subject of the Report and the Respondent may challenge such replacements in the same manner as the original Review Panel members.

2. Investigator's Activities

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

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

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

Additionally, the Investigator will refrain from posing questions about or considering the Subject of the

Report's sexual history with anyone other than the Respondent. The Investigator will strive to conduct the investigation in a manner that does not inflict additional trauma on the parties and will take reasonable care to protect the parties' privacy.

Note: The Investigator should obtain, when applicable and when possible, the written consent of any third-party witnesses to the disclosure of any personally identifiable information (as that term is defined by FERPA) contained in the complaint, the investigative report, and/or any other documents the disclosure of which is contemplated by this policy in order to further the resolution of the complaint. If the Investigator is unable to obtain the consent of such third-party witnesses, the Investigator must redact the investigative report to the extent necessary to avoid disclosure of such witness's personally identifiable information, while ensuring that such redaction does not prevent resolution of the complaint.

3. Investigatory Process; Report; Review Panel Decision; Outcome Notification

The investigatory process will typically be completed within 30 Days after the investigation begins. The process will result in a written report detailing the investigation and including a synthesized presentation of the facts and key points that will lead to the determination of whether there is reasonable cause to believe that the Respondent(s) engaged in a Sex and Gender-Based Misconduct policy violation. The written report will include an overview of each interview, a summary of key points, and an assessment of each individual's credibility. The written report will be simultaneously provided to the parties, who may respond in writing to the report. Any such response must be submitted to the Assigned Title IX Coordinator within 10 Days of the party's receipt of the written report.

Once the 10-Day period for party responses has passed, the written report, along with any party responses, will be provided to the three-person Review Panel identified at the outset of the investigation (and comprised of Deputy Coordinators and/or the Title IX Coordinator). In determining whether this policy has been violated, the Review Panel will apply the Preponderance of the Evidence standard.

If, in applying the Preponderance of the Evidence standard, the Review Panel determines that the evidence does not support finding that the Sex and Gender-Based Misconduct policy has been violated, the matter will be closed subject to a final appeal.

The Review Panel will arrive at a decision by majority vote and deliver its decision in writing to the Assigned Title IX Coordinator. If the Review Panel finds that a policy violation occurred, it will determine an appropriate sanction consistent with the sanctioning guidelines listed in Appendix E.

4. Sanctions

If a Respondent admits responsibility for a policy violation or if the Respondent is found to have violated this policy, the Review Panel will determine appropriate sanctions. In determining appropriate sanction(s), the Review Panel may consider the nature of, and circumstances surrounding, the violation, prior disciplinary violations, precedential cases, the University's safety concerns, and any other information deemed relevant. The severity of the offense will determine the severity of the sanction. See Appendix E for the University's Sanctioning Matrix.

If a sanction is to be implemented, this will be communicated in writing to both the Subject of the Report and the Respondent as well as to the University Administrator responsible for implementing the sanction.

- If the Respondent is a student: The sanction will be administered by the Provost or his or her designee.
- If the Respondent is an employee: The sanction will be administered by the Director of Human Resources or his or her designee.
- If the Respondent is a member of Faculty: The sanction will be administered by the Provost or his or her designee.
- If the Respondent is a third party: The sanction will be administered by the Title IX Coordinator or his or her designee.

Whenever possible, the sanction will be implemented by the appropriate administrator within a maximum of three (3) Days following the receipt of the written decision or the Respondent's admission of responsibility.

In cases involving only allegations of conduct not covered by the Clery Act (generally, allegations of Harassment, Discrimination, or Retaliation), a copy of the decision and sanctions will be provided to the Respondent only. In such circumstances, the University will notify the Reporting Party (a) whether it found that the alleged conduct occurred, (b) of any individual remedies offered to the Reporting Party or any sanctions imposed on the Respondent that directly related to the Reporting Party, and (c) of any other steps the school has taken to eliminate the hostile environment, if the University found one to exist.

In all other cases, copies of the decision and sanction, which will include an explanation of the rationale for the decision and sanction imposed, will be provided to the Reporting Party and Respondent, via the assigned Title IX Coordinator.

All notices provided pursuant to this section will be provided to the parties simultaneously by hand delivery or via certified mail, will be in writing, and will include notice of the appeal procedures outlined in this policy.

5. Appeals

Both parties have the right to appeal the finding within five (5) business days upon receipt of the written notice of final decision. Disagreement with the finding and/or with the sanctions is not, by itself, grounds for appeal. There are only two grounds for appeal: material procedural error and / or the discovery of new evidence that could not have been known at the time the original decision was made. As used in this policy, a procedural error is material if there is a substantial likelihood that a reasonable factfinder would have reached a different conclusion but for the error. Appeals must be submitted in writing and must identify and explain the basis for the appeal. Appeals should be submitted to the Title IX Coordinator.

All appeals are considered by an Appeal Office. The Appeal Officer shall be a Title IX Coordinator or Deputy Coordinator who did not serve on the Review Panel and who did not serve as the primary Title IX office liaison with the Subject of the Report and the Respondent.

The Appeal Officer will review the appeal to determine whether the appeal has merit (i.e. the party making the appeal has identified a material procedural error and/or called attention to new evidence that could not have been known at the time the original decision was made). If the Appeal Officer determines that appeal does not have merit, the Appeal Officer will inform the party making the appeal, in writing, that the appeal does not meet the necessary criteria for a review of the Review Panel's decision to be undertaken.

If the Appeal Officer determines that the appeal has merit (i.e. the party making the appeal has identified a material procedural error and/or called attention to new evidence that could not have been known at the time the original decision was made), the Appeal Officer will open a new factual finding on the material procedural error and/or the new evidence. When this process is complete, the Appeal Officer will review the Review Panel's decision and the Investigator's report and evidence in light of the material procedural error and/or the new evidence.

The Appeal Officer will then make a decision to uphold the Review Panel's decision; modify the Review Panel's decision; or overturn the Review Panel's decision. The Appeal Officer may also elect to modify or overturn the sanction levied by the Review Panel. The decision of the Appeal Officer is final.

At the conclusion of the appeal process, the Appeal Officer shall submit a report to the Title IX Coordinator outlining his or her decision based on a material procedural error and/or new evidence along with his or her rationale for modifying or overturning sanctions (if applicable). Within 30 days of the appeal being undertaken, the Appeal Officer will communicate his or her decision in writing to both the

Subject of the Report and the Respondent. In compliance with applicable law, this communication will articulate the rationale for the Review Panel's original decision being upheld, modified, or overturned and the rationale for the modification or overturning of sanctions (if applicable). The communication will also state that this decision is final.

6. Remedial Action

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

Examples of remedial action for the Subject of the Report as determined by the Title IX Coordinator may include, but are not limited to:

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

Examples of Remedial Action for the broader University community

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

- Training or retraining employees on the University's responsibilities to address allegations of Sex and Gender-Based Misconduct and how to conduct Title IX investigations;
- Developing materials on Sex and Gender-Based Misconduct;
- Conducting bystander intervention and Sex and Gender-Based Misconduct prevention programs with students;
- Issuing policy statements or taking other steps that clearly communicate that the University does not tolerate Sex and Gender-Based Misconduct and will respond to any incidents and to any student who reports such incidents;
- Conducting a campus climate check to assess the effectiveness of efforts to ensure that the University is free from Sex and Gender-Based Misconduct, and using that information to inform future proactive steps that the school will take;
- Targeted training for a group of students if, for example, the Sex and Gender-Based Misconduct created a hostile environment in a residence hall or on an athletic team; and
- Developing a protocol for working with local law enforcement.

When the University is unable to conduct a full investigation into a particular incident (i.e., when the Reporting Party insists on confidentiality, when it received a general report of Sex and Gender-Based Misconduct without any personally identifying information, etc.), the Title IX Coordinator will pursue remedies for the broader University community in an effort to limit the effects of the conduct at issue and prevent its recurrence.

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

SECTION IX – PREVENTION AND AWARENESS PROGRAMS

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

A. PREVENTION AND EDUCATIONAL RESOURCES

Dakota Wesleyan University provides resources for education about and prevention of Sex and Gender-Based Misconduct. On-campus prevention and awareness resources regarding sex and gender-based misconduct are available online, across campus, and at the following offices:

Title IX Coordinator	Dr. Diana Goldammer, Director of Student Life	Rollins Campus Center
Deputy Title IX Coordinator	Janet Hayen, Director of Human Resources	Rollins Campus Center, lower level
Office of Residence Life	Director of Residence Life	Rollins Campus Center, lower level
Campus Health	Campus Nurse and Counselor	Rollins Campus Center, lower level
Campus Ministry	Campus Pastors	Rollins Campus Center

B. TRAINING

Primary and ongoing sex and gender-based misconduct prevention and awareness training, which includes training with respect to sexual assault offenses, is provided for members of the Dakota Wesleyan University community according to the following schedule:

- All students – annually;
- New full-time faculty and staff – within six months of hire;
- All Responsible Employees – annually;
- All campus safety authorities – annually;
- All Investigators – annually;
- Title IX Coordinator and Deputy Coordinators – annually;
- All Public Safety and Security officers – annually.

1. Employee Awareness and Prevention Programs

Training for employees includes practical information about how to prevent and identify sex and gender-based misconduct, including same-sex sex and gender-based misconduct; the behaviors that may lead to and result in sex and gender-based misconduct; the attitudes of bystanders that may allow conduct to continue; the potential for re-victimization by responders and its effect on the Subject of the Report;

appropriate methods for responding to the Subject of the Report who may have experienced an incident of Sex and Gender-Based Misconduct, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The University's training also specifically reviews the University's policy and prohibition of the crimes of sexual assault, dating violence, domestic violence and stalking; the definitions of these terms in South Dakota; the state of South Dakota's definition of 'consent' in relation to sexual activity; and a review of safe and positive options for bystander intervention and information on risk reduction (see Appendix E). It further explains Responsible Employees' reporting obligations, including what should be included in a report, consequences for failing to report, procedures for responding to a Reporting Party's request for confidentiality, and the contact information for the University's Title IX Coordinator. The University also trains Responsible Employees to inform a potential Reporting Party of the reporting obligations of Responsible Employees; the potential Reporting Party's option to request confidentiality and available confidential advocacy, counseling or other support services; and the potential Reporting Party's right to file a Title IX complaint with the University and to report a crime to campus or local law enforcement.

2. Student Awareness and Prevention Programs

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

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

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

SECTION X - ANNUAL REPORT

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

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

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

A. IMMEDIATE ASSISTANCE AND RESOURCES

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

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

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

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

The confidential counselors and healthcare members listed in this policy can provide individuals with both immediate and long-term help. They will listen and help access additional assistance, and explain options for obtaining additional support from the University and others. They can also arrange for medical care and accompany victims, or arrange for someone to accompany individuals, to seek such care. In addition, they can provide assistance in filing a complaint with local law enforcement. These resources may be used regardless of whether the victim wants to file an official report or participate in University investigation and resolution proceedings or the criminal process. They are familiar with the University's investigation and resolution process, can explain what to expect, and provide support while University or legal processes are pending, all on a confidential basis.

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

immediate assistance.

Upon the receipt of the initial report, immediate health and safety needs will be assessed by the first responder (usually a resident assistant or resident director). The first responder will outline all of the options for the Reporting Party and/or the Subject of the Report, including but not limited to medical treatment, access to an on-campus safe room, the importance of preserving relevant evidence or documentation, and filing a report with the appropriate law enforcement authority. Additionally, the first responder will advise the Reporting Party that the University has a duty to investigate the report in order to remedy the effects of any hostile environment created for the Subject of the Report and the campus community.

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

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

Avera Queen of Peace Hospital has rape kits and Sexual Assault Nurse Examiners (SANE), which will assist law enforcement should criminal charges ultimately be pursued by the victim.

Getting to the Hospital: For victims with injuries that require emergency medical care, it is imperative that Emergency Medical Services be contacted at 911 to request emergency transport.

Transportation Assistance: If there are no pressing medical needs, the individual may make arrangements for travel to the hospital for assistance in seeking medical attention off campus.

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

The University offers victims of sex and gender-based misconduct two options for reporting the misconduct and requesting interim measures required by Title IX. The first option allows the victim to report the misconduct to the Title IX Coordinator(s) or a Responsible Employee. The second option allows a victim who has not reported the misconduct to a Title IX Coordinator(s) or a Responsible Employee to disclose the misconduct to a professional counselor, nurse, pastor, or off-campus victim advocate, who in turn can request interim measures on the victim's behalf from the University. Under the

second option, victims should be aware that when a counselor or advocate requests interim measures on their behalf from the Title IX Coordinator and discloses that the reason for the request is sexual or gender-based misconduct, the request may trigger the University's Title IX obligation to investigate. To the extent the counselor or advocate makes such a disclosure, but, consistent with the victim's wishes, asks that the University not investigate or otherwise notify the alleged perpetrator of the report, the Title IX Coordinator will consider whether it can honor the request while still providing a safe and nondiscriminatory environment for all students, as set forth in the University's Confidentiality Policy and take interim measures to protect the victim as necessary.

B. ONGOING ASSISTANCE

1. Counseling, Advocacy and Support

The counseling and support programs listed in this policy document are available for victims of sexual or gender-based misconduct at any time, whether or not the victim chooses to make an official report or participate in a University disciplinary or criminal process.

2. Interim Measures

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

3. No Contact Orders Issued By a Court of Law

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

APPENDIX B - DEFINITIONS

Appeal Officer: The Appeal Officer is the Title IX coordinator or deputy coordinator who reviews the appeal of a decision of the Review Panel to determine whether or not the appeal has merit (i.e. whether the party making the appeal has identified a material procedural error and/or called attention to new evidence that could not have been known at the time the original decision was made) and, if so, whether the appeal and accompanying sanction (if any) should stand, be modified, or be overturned in light of the material procedural error and/or new evidence. The appeal officer may not be a member of the review panel which rendered the original decision.

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

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

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

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

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

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

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

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

The above definitions will be used in the compilation and evaluation of reports or complaints alleging that the Dakota Wesleyan University Sex and Gender-Based Misconduct has been violated.

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

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

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

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

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

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

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

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

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

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

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

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

Preponderance of the Evidence: Preponderance of the Evidence means the greater weight of the evidence. Preponderance of the Evidence is the burden of proof used to evaluate alleged violations of this policy. The Preponderance of the Evidence standard is met where the evidence, when considered as a whole, makes it more likely than not that the alleged violation of this policy actually happened.

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

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

Reporting Party: An individual who reports to the University a concern regarding possible violation of this policy. A Reporting Party need not be the Subject of the Report.

Respondent: An individual who has been accused of violating this policy.

Responsible Employee: A Responsible Employee is any employee who has the authority to take action to redress violations of this policy or is someone a student could reasonably believe has this authority or responsibility.

Review Panel: A review panel is a panel of three individuals comprised of deputy Title IX coordinators and/or the Title IX coordinator. The coordinator or deputy coordinator who is serving as the primary liaison with a Reporting Party and a respondent will not serve on the review panel for that case.

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

Student: Any individual who is not an employee of the University and who, at the time of the alleged sexual or gender-based misconduct and the filing of a report or complaint to the University, is either:

- (1) admitted as a student to the University and has been moved to deposited status (note: at the conclusion of every drop-add period, students who have been admitted and who have deposited but who have not enrolled, or deferred their enrollment, forfeit their student status);
- (2) an enrolled student; (3) a DWU student between academic terms or on a leave of absence (regarding

whom the University has a reasonable expectation of their return); (4) a graduate awaiting a degree (note: students are classified as such until they receive their degree; students who petition the University 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 University); or (5) a DWU student who withdraws from the University while a disciplinary matter (including an investigation) is pending. A student ceases to be a student upon graduation or expulsion or in the event that the student formally withdraws from the University and there is no pending disciplinary investigation. Solely for purposes of this definition, the term Employee does not include students who are employed by the University through a work-study or similar program.

Subject of the Report: The Subject of the Report is the individual or individuals reported by the Reporting Party to have experienced an incident of Sex and Gender-Based Misconduct. The Subject of the Report may or may not be the Reporting Party.

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

- **Suspension from Residence Halls:** Suspension from Residence Halls refers to the suspension of a student's privilege of living in University owned housing and visiting the residential areas of campus for a defined period of time.

Third Party: A "Third Party" is any person who is not a Dakota Wesleyan University student, faculty member, staff, or other Employee. A Third Party may or may not be a member of the Dakota Wesleyan University community.

Title IX: Title IX means Title IX of the Education Amendments of 1972, which is a federal law that prohibits discrimination on the basis of sex in federally funded education programs and activities.

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

University: University refers to Dakota Wesleyan University.

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

APPENDIX C - VIOLENCE AGAINST WOMEN ACT DISCLOSURES

In compliance with Violence Against Women Reauthorization Act of 2013, the local definitions of the crimes of sexual assault, dating violence, domestic violence and stalking are set forth below. In the state of South Dakota, any assault crime may be classified as dating violence charge insofar as the relationship in which the crime is perpetrated falls within the definition of dating or other romantic relationship. The rape and sexual contact statutes outline what constitutes, and does not constitute consent depending on the circumstances of the crime. Information about protection orders is also provided. This is the website for South Dakota's Codified Laws: http://sdlegislature.gov/statutes/Codified_Laws/Default.aspx

Sexual Assault

Chapter 22-22, Sex Offenses

http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=22-22

22-22-1. Rape--Degrees--Felony--Statute of limitations.

Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

- (1) If the victim is less than thirteen years of age; or
- (2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or
- (3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
- (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
- (5) If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

A violation of subdivision (1) of this section is rape in the first degree, which is a Class C felony. A violation of subdivision (2) of this section is rape in the second degree which is a Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree, which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth degree, which is a Class 3 felony. Notwithstanding the provisions of § 23A-42-2, no statute of limitations applies to any charge brought pursuant to subdivisions (1) or (2) of this section. Otherwise a charge brought pursuant to this section may be commenced at any time prior to the time the victim becomes of age twenty-five or within seven years of the commission of the crime, whichever is longer.

22-22-7.2. Sexual contact with person incapable of consenting--Felony.

Any person, fifteen years of age or older, who knowingly engages in sexual contact with another person if the other person is sixteen years of age or older and the other person is incapable, because of physical or mental incapacity, of consenting to sexual contact, is guilty of a Class 4 felony.

22-22-7.4. Sexual contact without consent with person capable of consenting as misdemeanor.

No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his or her spouse who, although capable of consenting, has not consented to such contact. A violation of this section is a Class 1 misdemeanor.

Domestic Violence

Chapter 22-18 Assaults and Personal Injuries

http://sdlegislature.gov/statutes/Codified_laws/DisplayStatute.aspx?Statute=22-18&Type=Statute

22-18-1. (Definition) Simple assault--Misdemeanor--Felony for subsequent offenses.

Any person who:

- (1) Attempts to cause bodily injury to another and has the actual ability to cause the injury;
- (2) Recklessly causes bodily injury to another;
- (3) Negligently causes bodily injury to another with a dangerous weapon;
- (4) Attempts by physical menace or credible threat to put another in fear of imminent bodily harm, with or without the actual ability to harm the other person; or
- (5) Intentionally causes bodily injury to another which does not result in serious bodily injury;

is guilty of simple assault. Simple assault is a Class 1 misdemeanor. However, if the defendant has been convicted of, or entered a plea of guilty to, two or more violations of § 22-18-1, 22-18-1.1, 22-18-26, or 22-18-29 within ten years of committing the current offense, the defendant is guilty of a Class 6 felony for any third or subsequent offense.

22-18-1.1. Aggravated assault--Felony.

Any person who:

- (1) Attempts to cause serious bodily injury to another, or causes such injury, under circumstances manifesting extreme indifference to the value of human life;
- (2) Attempts to cause, or knowingly causes, bodily injury to another with a dangerous weapon;
- (3) Deleted by SL 2005, ch 120, § 2;
- (4) Assaults another with intent to commit bodily injury which results in serious bodily injury;
- (5) Attempts by physical menace with a deadly weapon to put another in fear of imminent serious bodily harm; or
- (6) Deleted by SL 2005, ch 120, § 2;
- (7) Deleted by SL 2012, ch 123, § 4;

(8) Attempts to induce a fear of death or imminent serious bodily harm by impeding the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck, or by blocking the nose and mouth;

is guilty of aggravated assault. Aggravated assault is a Class 3 felony.

Chapter 25-10 Protection From Domestic Abuse

http://sdlegislature.gov/statutes/Codified_laws/DisplayStatute.aspx?Statute=25-10&Type=Statute

25-10-1. Definitions. Terms used in this chapter (domestic violence) mean:

(1) "Domestic abuse," physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury when occurring between persons in a relationship described in § 25-10-3.1. Any violation of § 25-10-13 or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between persons in such a relationship;

(2) "Protection order," an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship

described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A protection order has a duration of five years or less; and

(3) "Temporary protection order," an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A temporary protection order has a duration of thirty days except as provided in § 25-10-7.1.

25-10-3.1. Persons entitled to apply for protection order.

Any person who is involved in one of the following relationships with another party:

(1) Spouse or former spouse;

(2) Is in a significant romantic relationship or has been in one during the past twelve months with the abusing party;

(3) Has a child or is expecting a child with the abusing party;

(4) Parent and child, including a relationship by adoption, guardianship, or marriage; or

(5) Siblings, whether of the whole or half blood, including a relationship through adoption or marriage; is entitled to apply for a protection order or a temporary protection order pursuant to the provisions of this chapter.

25-10-34. Domestic abuse charge to be indicated on summons, warrant, or judgment of conviction.

The state's attorney of the county where a crime is believed to have been committed shall indicate on the summons, complaint, information, indictment, arrest warrant, and judgment of conviction whether the charge involves domestic abuse.

25-10-35. Arrest of person for abuse--Considerations.

If the officer has probable cause to believe that persons in a relationship as defined in § 25-10-3.1 have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the predominant physical aggressor. In making this determination, the officer shall make every reasonable effort to consider:

- (1) The intent to protect victims of domestic abuse under this chapter;
- (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
- (3) The history of domestic abuse between the persons involved.

Stalking http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=22-19A

22-19A-1. Stalking as a misdemeanor--Second offense a felony.

No person may:

- (1) Willfully, maliciously, and repeatedly follow or harass another person;
- (2) Make a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury; or
- (3) Willfully, maliciously, and repeatedly harass another person by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication.

A violation of this section constitutes the crime of stalking. Stalking is a Class 1 misdemeanor. However, any second or subsequent conviction occurring within ten years of a prior conviction under this section is a Class 6 felony.

22-19A-4. Harasses defined.

For the purposes of this chapter, harasses means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose.

22-19A-5. Course of conduct defined.

For the purposes of this chapter, course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of course of conduct.

22-19A-6. A credible threat defined.

For the purposes of this chapter, a credible threat means a threat made with the intent and the apparent ability to carry out the threat. A credible threat need not be expressed verbally.

22-19A-8. Petition for protection order--Procedures.

There exists an action known as a petition for a protection order in cases of stalking, in cases of physical injury as a result of an assault, or in cases of a crime of violence as defined in subdivision 22-1-2(9). Procedures for the action are as follows:

- (1) A petition under this section may be made against any person who violates § 22-19A-1 or against any other person against whom stalking or physical injury as a result of an assault or in cases where a crime of violence is alleged;
- (2) A petition shall allege the existence of (a) stalking or (b) physical injury as a result of an assault or (c) a crime of violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the stalking or the physical injury as a result of an assault or crime of violence;
- (3) A petition for relief may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

The clerk of the circuit court shall make available standard petition forms with instructions for completion to be used by a petitioner. The attorney general shall prepare the standard petition form.

22-19A-8.1. Petition for protection order in which allegations support domestic abuse rather than stalking or physical injury.

If a petition for a protection order alleging the existence of stalking or physical injury is filed with the court pursuant to § 22-19A-8 and, if the court, upon an initial review, determines that the allegations do not support the existence of stalking or physical injury, but that the allegations do support the existence of domestic abuse pursuant to § 25-10-3, the court, in its discretion, may hear and act upon the petition as though the petition had been filed under § 25-10-3 and subject to the provisions of chapter 25-10.

22-19A-11. Relief granted by protection order.

Upon notice and a hearing, if the court finds by a preponderance of the evidence that stalking has taken place, the court may provide relief as follows:

- (1) Restrain any party from committing acts of stalking or physical injury as a result of an assault or a crime of violence as defined in subdivision 22-1-2(9);
- (2) Order other relief as the court deems necessary for the protection of the person seeking the protection order, including orders or directives to law enforcement officials.

Any relief granted by the order for protection shall be for a fixed period and may not exceed five years.

22-19A-16. Violation of protection order--Penalties.

If a temporary protection order or a protection order is granted pursuant to §§ 22-19A-8 to 22-19A-16, inclusive, and the Respondent or person to be restrained knows of the order, violation of the order is a

Class 1 misdemeanor. If any violation of this section constitutes an assault pursuant to § 22-18-1.1, the violation is a Class 6 felony. If a Respondent or person to be restrained has been convicted of, or entered a plea of guilty to, two or more violations of this section or § 25-10-13, the factual basis for which occurred after the date of the second conviction, and occurred within ten years of committing the current offense, the Respondent or person to be restrained is guilty of a Class 6 felony for any third or subsequent offense. Any proceeding under §§ 22-19A-8 to 22-19A-16, inclusive, is in addition to other civil or criminal remedies.

22-19A-17. Defendant prohibited from contacting victim prior to court appearance--Misdemeanor.

While in custody after arrest for assault or stalking, no defendant may have or be permitted any contact or communications, either directly or by means of a third party, with the victim or the family or household members of the victim, until the defendant's initial court appearance or until such contact or communication is specifically authorized by the court. Willful violation of this section is a Class 1 misdemeanor.

APPENDIX D - REPORTING PARTY AND RESPONDENT RIGHTS

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

APPENDIX E - SANCTIONING MATRIX

Prohibited Behavior/Conduct	Range of Sanctions
Sexual/Gender-Based Misconduct Constituting Sexual Assault	Expulsion/Termination Suspension Probation
Sexual/Gender-Based Misconduct Not Constituting Sexual Assault	Expulsion/Termination Suspension Probation
Unwanted Sexual Touching	Expulsion/Termination Suspension Probation Community Service Educational/Counseling Consultation
Non-physical Sexual Harassment	Expulsion/Termination Suspension Probation Community Service Educational/Counseling Consultation
Discrimination	Expulsion/Termination Suspension Probation Community Service Educational/Counseling Consultation
Retaliation/Intimidation False Allegations	Expulsion/Termination Suspension Probation Community Service Educational/Counseling Consultation

APPENDIX F - SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, AND STALKING RISK REDUCTION TIPS

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

- Program the Residence Life on-call telephone number, 605-770-1593, into your cell phone.
- Be aware that you are a potential victim of crime. Stay alert and attuned to people and circumstances around you.
- Immediately notify Residence Life on-call telephone number, 605-770-1593, of suspicious activity or people.
- Avoid the use of excessive alcohol and other drugs. Persons under the influence are much more likely to be the victims of a serious crime.
- Do not allow non-residents into residential facilities.
- Lock your room when you are out – even for just a few minutes. Keep your door locked when sleeping.
- Never lend your room or apartment key to anyone.
- Keep your valuables in a safe place. Do not leave valuables in the open and unattended. Utilize GPS or “locate” software for your electronics.
- Do not prop open locked outside doors and stairwell doors; ensure they close and lock behind you. Do not allow anyone other than your personal guests to enter the building behind you.
- Be aware of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
- Try to avoid isolated areas. It is more difficult to get help if no one is around.
- Walk with purpose. Even if you don't know where you are going, act like you do.
- Trust your instincts. If a situation or location feels unsafe or uncomfortable, it probably isn't the best place to be.
- Try not to load yourself down with packages or bags as this can make you appear more vulnerable.
- Make sure you take your cell phone and it is charged.
- Don't allow yourself to be isolated with someone you don't trust or someone you don't know.
- Avoid putting music headphones in both ears so that you can be more aware of your surroundings, especially if you are walking alone.
- When you go to a social gathering, go with a group of friends. Arrive together, check in with each other throughout the event and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
- Trust your instincts. If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately by calling 911 or Office of Public Safety.
- Don't leave your drink unattended even while talking, dancing, using the restroom or making a phone call. If you have left your drink alone, just get a new one.
- Don't accept drinks from people you don't know or trust. If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, do not drink from the punch bowls or other large common open containers.
- Watch out for your friends, and vice versa. If a friend seems out of it, is way too intoxicated for the amount of alcohol they have had, or is acting out of character, get him or her to a safe place immediately.
- If you suspect you or a friend has been drugged, contact law enforcement immediately. Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).
- If you need to get out of an uncomfortable or scary situation here are some things that you can try:
 - Remember that being in this situation is not your fault. You did not do anything wrong;

- it is the person who is making you uncomfortable who is to blame.
- Be true to yourself. Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable doing.
 - Have a code word with your friends or family so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
 - Lie. If you don't want to hurt the person's feelings, it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use are: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.
 - Try to think of an escape route. How would you try to get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?
 - If you and/or the other person have been drinking, you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

Safe and Positive Options for Bystander Intervention

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

The most basic and best action an active bystander can take is to call Residence Life on-call telephone number, 605-770-1593, or local law enforcement at 911.

Additional ways to be an active bystander include:

- Being vigilant by watching out for your friends and fellow students or employees;
- If you see someone who is too intoxicated to consent, enlist their friends to help them leave safely;
- Intervening and asking if a person needs help (e.g., "Do you need a ride?" or "Do you want me to call Security or the police?");
- Confronting people who seclude, hit on, and try to make out with, or have sex with people who may be incapacitated;
- Speaking up when someone discusses plans to take sexual advantage of another person;
- Believing someone who discloses sexual assault, abusive behavior, or experience with stalking;
- Encouraging victims to self-report;
- Refer people to on- or off-campus resources listed in this document for support in health, counseling, or with legal assistance.
- Trust your gut. If something looks like it might be a bad situation, it probably is;
- Avoid using violence when intervening; approach in a friendly, honest and direct manner;
- Keep an eye on someone who has had too much to drink. Do not leave another person alone in a situation in which you feel uncomfortable; develop a buddy system;
- If you see someone who is too intoxicated to consent, enlist their friends to help them leave safely;
- Create and negotiate possible solutions; maintain an open dialogue; communicate clearly;
- Be aware if someone is deliberately trying to intoxicate, isolate or corner someone else;
- Use distraction techniques such as humor, reframing, redirection or personalization to reduce tension between individuals and to stall for time in which to intervene;

- Recruiting help; group interventions can make individuals aware of patterns of behaviors of concern;
- Focusing on your feelings about the behavior rather than criticizing the person;
- Encourage respect; speak up if you find a behavior offensive (e.g., do not laugh at offensive jokes but rather indicate your disapproval); and
- Use body language that indicates disapproval of or concern about a behavior (e.g., silent stare, crossed arms, wrinkling of the nose, raised eyebrows and wide eyes, stepping between two people).