

Title IX: Sexual Misconduct Policy

1. The University of Dubuque is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex; which includes all forms of sexual misconduct. Sexual misconduct violates an individual's fundamental rights and personal dignity. The University of Dubuque considers sexual misconduct in all its forms to be a serious offense. This policy refers to all forms of sexual misconduct, including but not limited to: sexual discrimination, sexual harassment, sexual assault, and sexual violence by employees, students, or third parties.
 - 1.1. The University of Dubuque does not discriminate on the basis of race, color, creed, age, gender, sexual orientation, religion, national origin, veteran status, physical or mental disability, genetic information, or any other basis of prohibited discrimination in its programs and activities. This policy extends to employment with and admission to the University.
2. Title IX of the Education Amendments of 1972: 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. To ensure compliance with Title IX and other federal and state civil rights laws, the University has developed policies and procedures that prohibit sexual misconduct in all of its forms.
3. Guidance on reporting
 - 3.1. The University of Dubuque encourages those who have actual knowledge of any form of sexual misconduct to report the incident promptly, to seek all available assistance, and to pursue University conduct charges and/or criminal prosecution of the offender. The University takes allegations very seriously and will work with involved parties to ensure their safety and to remedy the situation in an unbiased manner.
 - 3.2. All incidents of sex misconduct, including sexual discriminations or retaliation, should be reported. The Title IX Coordinator will provide an impartial investigation of all allegations.
 - 3.3. The University has developed both an informal and formal complaint and resolution procedure to respond to sexual misconduct.
 - 3.4. The University shall take reasonable steps to prevent the occurrence of sexual misconduct of any form. If such an occurrence takes place, those responsible for such behavior may be subject to actions under the Student Code of Conduct (Student Handbook) if they are a student. Employees or third parties may be subject to actions under the Employee Handbook. For examples of the range of potential actions and sanctions, see the Student Handbook, the Faculty Handbook, or the Employee Handbook.
4. Whom to file a report or make a complaint to:
 - 4.1. The University encourages those who have actual knowledge of sexual misconduct to report these offenses to either a Title IX Coordinator or the Campus Safety & Security; those who want to report an allegation have the right, however, not to provide a statement to Campus Safety & Security.

4.2. Campus Safety & Security (563.589.3333)

Persons who wish to make a report may contact Campus Security

Phone: 563.589.3333

Office: 112 Smith Hall

Address: 2000 University Avenue, Dubuque, IA 52001

4.3. Title IX Coordinator(s)

Persons who wish to report any form of sexual misconduct may contact the University's Title IX Coordinator(s). The Title IX Coordinator(s) can assist with all aspects of the reporting procedure. Employees of the University can also make an initial report to their immediate supervisor who must report it to the Director for Human Resources.

4.4. Employees who believe they have either witnessed or been subjected to unlawful sexual misconduct should notify one of the following: The Director of Human Resources or the Dean of Student Formation if a student is involved.

The following person(s) have been designated to handle reports regarding the non-discrimination policies:

4.4.1. Director of Human Resources/Title IX Coordinator

(Julie MacTaggart, 563.589.3619)

Address: 2000 University Avenue, Dubuque, IA 52001

Office Location: 205 Smith Hall

Phone: 563.589.3619

Email: JMacTaggart@dbq.edu

4.4.2. Dean of Student Formation/Deputy Title IX Coordinator

(Michael Durnin, 563.589.3270)

Address: 2000 University Avenue, Dubuque, Iowa 52001

Office Location: 201 Peters Commons

Phone: 563.589.3270

Email: MDurnin@dbq.edu

4.4.3. Dean of Student Engagement/Deputy Title IX Coordinator

(Nelson Edmonds, 563.589.3867)

Address: 2000 University Avenue, Dubuque, Iowa 52001

Office Location: #306F Heritage Center

Phone: 563.589.3867

Email: NEdmonds@dbq.edu

4.4.4. Interim Director of Student Conduct/Deputy Title IX Coordinator

(Brigette Kyei Nimakoh, 563.589.3136)

Address: 2000 University Avenue, Dubuque, Iowa 52001

Office Location: 203 Peters Commons

Phone: 563.589.3136

Email: Bkyeinimakoh@dbq.edu

4.4.5. Additionally, anonymous reports can be made by the parties involved and/or third parties using the online reporting system posted at www.dbq.edu/AboutUD/AnonymousHotline8332900001/, or the reporting hotline at 833.290.0001. Note that these anonymous reports may prompt a need for the institution to investigate.

4.4.6. Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)
Chicago Office
U.S. Department of Education
Citigroup Center
500 W. Madison St., Suite 1475
Chicago, IL 60661-7204
Telephone: 312.730.1560
Fax: 312.730.1576;
Email: OCR.Chicago@ed.gov

4.4.7. In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the Andi Parrett, Associate Vice President of Finance at AParrett@dbq.edu or 563.589.3361.

5. Guidance on Self Care

5.1. It is essential that the involved parties first ensure their safety. The following are resources to contact for assistance and support:

- University of Dubuque's Title IX Coordinator (See above)
- University of Dubuque's 24/7 Counseling – 563.589.3911
- Riverview Center's toll free Crisis Line (available 24/7) – 888.557.0310
- University of Dubuque's Student Life Incident Reporting System (Maxient) at https://cm.maxient.com/reportingform.php?UnivofDubuque&layout_id=1
- Campus Safety & Security and the Title IX Coordinator can provide immediate referral information, access to the University counselor on-call, and/or investigation assistance. If the incident occurred outside of the City of Dubuque, nationally or internationally, Dubuque Law Enforcement and/or University personnel can assist you in contacting appropriate resources for reporting purposes and support.
- City of Dubuque Police Department – 911
- University of Dubuque's Campus Safety & Security – 563.589.3333
- Dubuque Hospital Emergency Rooms
 - UnityPoint Health Finley Hospital – 563.582.1881
350 North Grandview Ave, Dubuque, IA 52001
 - Mercy Medical Center – 563.589.9666
250 Mercy Drive, Dubuque, IA 52001

5.2. When necessary, seek immediate medical attention at an area hospital. All medical treatment following a reported sexual assault is **free**. Sexual assault medical care is paid for by the Iowa Crime Victim Assistance Division. Medical care following a sexual assault may include the following services: sexual assault examination kit, pregnancy prevention, STD treatment, antibiotics, and any further necessary treatment of injuries.

5.3. The following preservation procedures will help preserve evidence in the event that a sexual assault occurred and a survivor chooses to move forward with a sexual assault examination kit. The decision to press charges does not have to be made at this time. However, following these procedures will help preserve this option for the future. First and most importantly, ensure that your safety and basic needs are met. Preservation

procedures include avoiding bathing, urinating, douching, brushing teeth, or drinking liquids. If possible, clothes should not be changed but if they are bringing all the original clothing to the hospital in a bag. Any other evidentiary materials that may be useful for an investigative process may also be collected.

- 5.4. A Riverview Center advocate will offer support at the hospital and law enforcement centers to provide free and confidential options for legal, medical, and personal advocacy. Advocates will ensure that survivor's rights are protected. Advocates are available for emergency assistance 24/7.
- 5.5. Involved parties may choose whether or not to speak with the police at the hospital to make a formal report. The reporting party may choose to make a report for evidentiary purposes but not go forth with an investigation at that time. The option to investigate could remain for up to 10 years after the reporting party attains eighteen years of age or older following an incident or three years from the date the offender is identified through DNA. Additional information can be found in Iowa Code 802.2 Statute of Limitations; Iowa Code 709.2-709.4 Citations for Crime.
- 5.6. Involved parties may choose to see a private physician. Private physicians are not required to notify the police, however, they are required to notify police if a sexual assault examination kit is performed for purposes of maintaining evidentiary chain of custody.

6. Support Services

- 6.1. There are various supportive measures available for those who have experienced sex misconduct and/or harassment. These support sources include but are not limited to:
 - Title IX Coordinators serve as the central reference persons for information about reporting and the investigative procedure, as well as references for counseling options.
 - University's 24/7 Counseling (563.589.3911) is available for students who have experienced any form of sexual misconduct may receive free and confidential counseling.
 - Riverview Center (1.888.557.0310) is available 24/7 for free and confidential crisis intervention, counseling, and advocacy.
 - University of Dubuque employees may contact the Human Resources office or reference the Employee Handbook for information regarding counseling options.
 - Reassignments: When the involved parties participate in the same courses, reside in the same University residence or in proximity to one another, or participate in the same activities (i.e., sports teams) involved parties may request that a fair and immediate way to reassign and/or move one of the persons be decided upon by the Dean of Student Formation or an investigative designee.
 - The Dean of Student Formation will consult with the appropriate academic dean in making a determination regarding an alternative classroom assignment(s) for the involved parties who have experienced a sexual misconduct and with the Director of Residence Life in making a determination regarding an alternative housing assignment.
 - If involved parties are also student employees that work in the same department or area, alternative work assignments may be made by the appropriate administrator upon request by the student employee filing the allegation.

Additional resources can be found at: StudentHealthCenter@dbq.edu

7. Informal Procedure

7. 1. Informal resolution procedures are optional and may be used when the University determines that it is appropriate. Informal procedures are never applied in cases involving violence or non-consensual sexual intercourse. Some allegations of sexual misconduct can be resolved through informal mediation between the parties as long both parties give voluntary, informed, written consent to attempt informal resolution.
7. 2. Once a report of sexual misconduct has been made and if agreed upon by both parties, informal resolution procedures will be pursued by a Title IX Coordinator and will be resolved in a prompt, equitable, and unbiased manner. The reporting party and the respondent will be advised of any delays that occur during the process. For reports involving allegations against University employees, a Title IX Coordinator and Director of Human Resources shall jointly conduct an investigation.
7. 3. Once the informal resolution procedure is complete, written notification to all parties shall be given by a Title IX Coordinator within one day of the determinations of findings.
7. 4. The University will take all necessary steps to accommodate the needs of the involved parties. Examples of accommodations may include but not limited to: order of no contact directive, residence hall relocation, and adjustment of schedule, etc. These accommodations may be applied to one, both, or multiple parties involved.
7. 5. The University shall take reasonable steps to prevent the reoccurrence of sexual misconduct of any form. If such reoccurrence takes place, those responsible for such behavior may be subject to actions under the Student Code of Conduct (Student Handbook) if they are a student. Employees or third parties may be subject to actions under the Employee Handbook policies. For examples of the range of potential actions and sanctions see the Student Handbook, Faculty Handbook, or Employee Handbook.
7. 6. The use of the informal complaint and resolution procedure is optional. The University may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. At any time, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to a formal complaint. A presumption of innocence throughout the grievance process, with the burden of proof on the institution.

8. Formal Procedure

8. 1. Time Limitations

8. 1.1. In order to pursue action through the University of Dubuque's grievance procedure, an aggrieved student or employee should meet with a Title IX Coordinator, or the Director of Human Resources, as the case may be, as soon as possible after the alleged act of sexual misconduct, harassment, or retaliation occurs, to discuss the allegation. The formal complaint as a document filed by the reporting party or signed by the Title IX coordinator alleging sexual misconduct against a respondent and requesting that the school investigates the allegation, the complainant must be participating in or attempting to participate in the education program or activity of the University in order to make a report to UD. If a report is made to the local police department in the State of Iowa, see

Iowa Code 802.2 Statute of Limitations; Iowa Code 709.2-709.4 Citations for Crime.

- 8.2. Once an allegation of sexual misconduct is made, an investigation of the report shall be pursued promptly within a reasonable amount of time required to complete the investigation. The investigation will be conducted in a prompt, equitable, and unbiased manner. There is a presumption of innocence throughout the grievance process, with the burden of proof on the institution.
- 8.3. To ensure a prompt and thorough investigation, as much of the following information should be provided:
 - 8.3.1. The name, department, and position of the person or persons allegedly causing the sexual misconduct, which can include sexual or gender discrimination, sexual violence, harassment, or retaliation.
 - 8.3.2. A description of the incident, including the date, location, and the presence of any witnesses.
 - 8.3.4. The names of other students or employees who might have been subject to the same or similar sexual misconduct, sexual or gender discrimination, or retaliation.
 - 8.3.5. Any other information the involved parties believe to be relevant to the sexual misconduct, sexual or gender discrimination, harassment, or retaliation.
- 8.4. Investigation
 - 8.4.1. An investigation into the report shall be conducted by a Title IX Coordinator. For reports involving University employees and/or third parties, a Title IX Coordinator and Director of Human Resources shall jointly conduct the investigation. The investigation shall be concluded in a prompt, equitable, and unbiased manner. The reporting party and the respondent will be advised of any delays that occur during the process.
 - 8.4.2. The University will investigate the allegations in any formal complaint and send written notice to both parties of the allegations upon receipt of a formal complaint.
 - 8.4.3. The university may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts.
 - 8.4.4. At any time during the investigation, the university will take all necessary steps to accommodate the needs of the involved parties. Examples of accommodations may include but not limited to: order of no contact directive, residence hall relocation, and adjustment of schedule, etc. These accommodations may be applied to one, both, or multiple parties involved.
 - 8.4.5. The university will be responsible for the burden of gathering evidence and burden of proof. This is not the responsibility of the parties.
 - 8.4.6. Both parties have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney.
 - 8.4.7. The university will send written notice of any investigative interviews, meetings, or hearings.

- 8.4.8. The university provides rape shield protections for complainants deeming irrelevant questions and evidence about the complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
- 8.4.9. The university will protect the privacy of party's medical, psychological, and similar treatment records by stating that the university cannot access or use such records unless the institution obtains the party's voluntary, written consent to do so.
- 8.4.10. Involved parties are provided equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence and will not restrict the ability of the parties to discuss the allegations or gather evidence.
- 8.4.11. The university must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review and respond to the evidence.
- 8.4.12. The university must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
- 8.4.13. The university must dismiss allegations of conduct that do not meet the definition of sexual harassment or did not occur in a school's education program or activity against a person in the United States. Such dismissal is only for Title IX purposes and does not preclude the university from addressing the conduct in any manner the institution deems appropriate.
- 8.4.14. The university may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the reporting party desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school or if specific circumstances prevent the institution from gathering sufficient evidence to reach a determination.
- 8.4.15. The university must give the parties written notice of dismissal (mandatory or discretionary) and the reason for the dismissal.
- 8.4.16. Failure to comply with the terms of interim protections may be considered a separate violation of the Student Code of Conduct.
- 8.5. A resolution shall be determined at the conclusion of the investigation. Parties involved will be given notice of the outcome in writing typically within one day of the determination.
- 8.6. The involved parties may appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases:
 - Procedural irregularity that affected the outcome of the matter,
 - Newly discovered evidence that could affect the outcome of the matter, and/or

- Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.

All appeals will be conducted in an impartial manner by one of the persons who did not conduct the initial investigation. The university may offer an appeal equally to both parties on additional bases.

8.7. The University shall take reasonable steps to prevent the reoccurrence of sexual misconduct of any form. If such reoccurrence takes place, those responsible for such behavior may be subject to actions under the Student Code of Conduct in the Student Handbook if they are a student. Employees or third parties may be subject to actions under the Employee Handbook policies. For examples of the range of potential actions and sanctions see the Student Handbook, Faculty Handbook, or the Employee Handbook.

9. Student Conduct Hearing/Live Hearings & Cross-Examination

9.1. For reports of violations of this policy in which the involved parties involve students, the complainant/reporting party may also initiate charges through the Student Conduct Process found in the Student Handbook. As stated in that policy, any member of the University community may initiate charges against a student. In instances when a student conduct allegation is made, a conduct hearing shall be scheduled typically within 10 calendar days or within a reasonable amount of time. The investigation will be conducted in a prompt, equitable, and unbiased manner. The reporting party and the respondent will be advised of any delays that occur during the process. The purpose of the student conduct hearing is to determine responsibility for any alleged policy violations. This policy will be followed in accordance with the Student Conduct Process as it relates to the Title IX policy.

9.2. Determining Responsibility in Student Conduct Process:

9.2.1. The standard used to determine accountability will be Preponderance of Evidence, whether it is more likely than not that the accused has violated the Student Code of Conduct policy. All members of the University community found to have violated this policy will be sanctioned, up to dismissal from the University.

9.2.2. The Involved Parties rights in Student Conduct Process:

- An explanation of available options for redress;
- A written explanation of the charge(s);
- Freedom from harassment by involved parties (or the supporters);
- An explanation of the University discipline system;
- Use of all available internal and external support services in dealing with the aftermath of the offense;
- Freedom from having irrelevant sexual history discussed during the disciplinary hearing;
- Written information about the outcome of the disciplinary hearing;
- The decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

- At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
- If a party does not have an advisor present at the live hearing, the university must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- Live hearing may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
- The university must create an audio or audiovisual recording, or transcript of any live hearing.
- Opportunity to appeal the outcome of the hearing;
- Rape shield protections for complainants deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

9.2.3. At the conclusion of the Student Conduct process, the University will provide written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant. The reporting party and the respondent will be advised of any delays that occur during the process. The written determination to be sent simultaneously to the parties along with information about how to file an appeal.

9.2.4. Appeals shall follow the Student Conduct Procedure or the Title IX Procedure. The appellate body may not be a hearing officer from the original hearing.

9.3. Cooperation with Law Enforcement

9.3.1. The University will comply with law enforcement requests for cooperation and such cooperation may require the University to temporarily suspend the fact finding aspect of a Title IX investigation while the law enforcement agency is in the process of gathering evidence. The University will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process although the delay in the University's investigation may be longer in certain instances.

- 9.3.2. The University will implement appropriate interim steps during the law enforcement investigation period to provide for the safety of the involved parties and the campus community and the avoidance of retaliation.

10. Retaliation

- 10.1. Retaliation: any adverse action, taken against a person participating in a protected activity, because of their participation in the protected activity. Subject to limitations imposed by the First Amendment, and/or academic freedom. Retaliation against an individual for an allegation, for supporting a reporting party, or for assisting in providing information relevant to an allegation is a serious violation of university policy.
 - 10.1.1. The University of Dubuque strictly prohibits retaliation against any person for, in good faith, using this reporting procedure or for filing, testifying, assisting or participating in any investigation or proceeding involving allegations of sexual misconduct. Any person who violates this policy will be subject to discipline, up to and including termination if they are an employee and/or dismissal if they are a student.
 - 10.1.2. Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as report or formal complaint of sexual harassment, for the process of interfering with a right or privilege secured by Title IX constitutes retaliation.
 - 10.1.3. The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.
 - 10.1.4. Complaints alleging retaliation may be filed according to the universities prompt and equitable grievance procedures.
 - 10.1.5. The exercise of rights protected under the First Amendment does not constitute retaliation.
 - 10.1.6. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

11. Confidentiality

- 11.1. Those who have experienced sexual misconduct should know that all University employees (Resident Assistants, Campus Safety & Security, staff members, etc.) excluding licensed professionals from the University Counseling Center and the ordained professionals in Campus Ministry, may relay disclosures of sexual assault to the police, either directly or through Campus Safety due to a continued threat to campus and/or to others that have a duty to respond. Because licensed professionals from the University Counseling Center and ordained professionals in Campus Ministry are not required to disclose knowledge of sexual misconduct reported to them, those who wish to discuss a situation in complete confidence should notify only the Counseling Center or Ordained Campus Ministry. Situations where confidentiality may be breached:

- Involved parties choose to allow certain information to be shared with specific individual(s) and sign a release of information allowing counseling services to share that information.
 - There is serious and foreseeable harm to self or others.
 - If involved parties report witnessing or experiencing some form of child abuse firsthand, counselors are mandated by law to report suspected child abuse.
 - Court subpoena of records.
- 11.2. If one would like to report an incident or speak to someone and desire that details of the incident be kept confidential, they should speak with members of the Counseling Center, Ordained Campus Chaplain, or Riverview Center, who will maintain confidentiality to the extent permitted by law. Both Campus counselors and Riverview Center advocates are available to help free of charge, and can be seen on an emergency basis. In addition, involved parties may speak both on and off campus with clergy and chaplains.
- 11.3. All inquiries, allegations, complaints, and investigations are treated with discretion. Information will be shared only as law and policy require. However, the identity of the reporting party/complainant is usually revealed to the person(s) accused of such conduct.
- 11.4. The Title IX Coordinators shall maintain all information in secure files pertaining to an allegation, complaint or investigation.
- 11.4.1. Federal Statistical Reporting Obligations (Jeanne Clery Act): Certain campus officials have a duty to report violations of this policy for federal statistical reporting purposes. All personally identifiable information is kept private, but statistical information must be passed along to campus security regarding the type of incident and its general location (on or off-campus, or in the surrounding area without addresses) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime to ensure greater community safety.
- 11.4.2. Federal Timely Warning Reporting Obligations: Involved parties of sexual misconduct should also be aware that University administrators must issue timely warnings for certain types of incidents reported to them that pose a continued threat of bodily harm or danger to members of the campus community under the Jeanne Clery Act. The University will make every effort to ensure that the involved parties name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

12. Consequences

- 12.1. The University reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students' rights and personal safety.
- 12.1.1. Such measures include, but are not limited to: modification of living arrangements, interim suspension from campus pending a hearing, and reporting to the police, etc.

12.2. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the University reserves the right to impose differing sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense.

13. Special Provisions

13.1. Clear and Present Danger: If, in the opinion of the Dean of Student Formation, a student is a clear and present danger to the community, the Dean, in consultation with the President of the University, may suspend a student from the University pending a hearing and an appeal process.

13.2. Attempted violations

13.2.1. In most circumstances, the University will treat attempts to commit any of the violations listed in this policy or in the Student Code of Conduct as if those attempts had been completed.

13.3. The University as complainant

13.3.1. As necessary, the University reserves the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the reporting party/complainant.

13.4. False Reports

13.4.1. The University will not tolerate intentional false reporting of incidents. It is a violation of the Student Code of conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws. Violations will result in sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense.

13.5. Amnesty

13.5.1. The University community encourages the reporting of sexual misconduct and Code of Conduct violations. Involved parties may be hesitant to report to University officials because they fear that they may be charged with policy violations, such as underage drinking at the time of the incident. It is encouraged that involved parties choose to report to University officials to ensure that they receive adequate resources. While violations to policy cannot be completely overlooked, the University will provide educational options rather than punishment, in such cases.

13.6. Parental Notification

13.6.1. The University reserves the right to notify parents/guardians of dependent students regarding any health or safety emergency, change in student status or conduct situation, particularly alcohol and other drug violations. The University may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the University will contact parents/guardians to inform them of situations in which there is a health or safety emergency. The University also reserves the right to designate which University officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act.

13.7. FERPA and Records

- 13.7.1. The outcome of a Title IX investigation involving students is NOT part of the education record of the student parties involved and is protected from release under a federal law (FERPA). Other than University suspension or probation, disciplinary sanctions shall not be made part of a student's permanent academic record, but shall become part of the student's confidential record kept in the Student Life Office. However, the University observes the legal exceptions that allow for notification of the parties involved and others whom the University determines to inform based on the law and this policy.
- 13.7.2. The University may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a University policy that is a "crime of violence," which may include: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. The University may release this information to the reporting party/complainant in any of these offenses regardless of the outcome.

14. Educational Programming

- 14.1. The University of Dubuque recognizes sexual misconduct as an important issue. The University offers educational programming to a variety of groups such as: Campus Safety & Security, Residence Life, faculty, and staff, incoming students participating in orientation activities, resident and off-campus students, and members of student organizations.
- 14.2. Sexual misconduct educational programming may address matters such as: a definition of what constitutes sexual misconduct, the causes of and myths involved with sexual misconduct, the relationship between sexual misconduct and alcohol use, what to do if you are assaulted, the nature of a rape examination, an explanation of the University sexual misconduct policy, how to file charges within the University and/or with the local police department, and campus community resources to assist both the reporting party and the accused.
- 14.3. To learn more about the training, the Title IX team receives, please contact the Title IX coordinator.

15. Definitions and Examples of Sexual Misconduct.

- 15.1. Sexual Misconduct: any sexual behaviors that violates the University of Dubuque's Code of Conduct and/or Title IX Policy. Prohibited conduct under this Sexual Misconduct Policy includes:
 - 15.1.1. Sexual or Gender Discrimination: behaviors and actions that deny or limit a person's ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities because of a person's sex, sexual orientation, or gender.
 - 15.1.1.1 Examples of sexual discrimination under Title IX include, but are not limited to, sexual harassment, failure to provide equal opportunity in education programs and co-curricular programs including athletics, discrimination based on pregnancy, and employment discrimination.
 - 15.1.2. Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

- 15.1.2.1. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.
- 15.1.2.2. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
- 15.1.2.3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
- 15.1.2.4. Retaliatory Harassment: Any harassing action (as defined above), taken against a person participating in a protected activity, because of their participation in the protected activity. Subject to limitations imposed by the First Amendment and/or academic freedom. Retaliation against an individual for an allegation, for supporting a reporting party, or for assisting in providing information relevant to an allegation is a serious violation of university policy.
- 15.1.3. Sexual Exploitation: when a person takes non-consensual or abusive sexual advantage of another for self-serving advantage or benefit, or to benefit or advantage anyone other than the one being directly exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.
 - 15.1.3.1. Examples of sexual exploitation include, but are not limited to: Invasion of sexual privacy; Prostituting another person; Non-consensual digital, video or audio recording of nudity or sexual activity; Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity; Engaging in voyeurism; Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex); Knowingly exposing someone to or transmitting an STI, STD, or HIV to another person; Intentionally or recklessly exposing one's genitals in non-consensual circumstances, or inducing another to expose their genitals; and Sexually-based stalking and/or bullying may also be forms of sexual exploitation.
- 15.1.4. Sexual Assault: The term "sexual assault" means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - 15.1.4.1. Rape: The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - 15.1.4.2. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

- 15.1.4.3. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 15.1.4.4. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.
- 15.1.5. Stalking: Stalking is a course of conduct, directed at a specific person, on the basis of actual or perceived membership in a protected class, that would cause a reasonable person to feel fear. Repetitive and menacing pursuit, following, harassing, and/or interfering with the peace and/or safety of another or suffer substantial emotional distress. Any other university policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.
- 15.1.6. Dating Violence: Violence committed by a person:
- 15.1.6.1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 15.1.6.2. Where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; the frequency of interaction between the persons involved in the relationship.
- 15.1.7. Domestic Violence: The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner 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 or intimate partner, 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.
- 15.1.8. Consent: an informed, freely, and actively given communication that is mutually understood between all persons involved in the sexual encounter. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. It is the responsibility of the initiator of sexual contact to make sure they understand fully what the person with whom they are involved wants and does not want sexually. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous relationships or consent does not imply consent to future sexual acts.
- 15.1.8.1. Consent cannot be obtained by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another.
- 15.1.8.2. Effective consent is the basis of the analysis applied to unwelcome sexual contact. Lack of consent is the critical factor in any incident of sexual misconduct.

15.1.8.2.1. Effective consent cannot be given by an individual under the legal age of consent in Iowa, mentally disabled individuals in dependent care and/or who are (by diagnosis) unable to process and communicate effective consent, person's incapacitated as a result of drugs, alcohol, or date rape drug [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy], someone who is unconsciousness or someone in a state of blackout. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand parameters of their sexual interaction.

15.1.8.2.2. Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.

15.1.8.2.3. The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.

15.1.8.2.4. Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction).

15.1.8.3. Iowa Age of Consent Law:

15.1.8.3.1. Section 709.4 A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances... 2(c) The other person is fourteen or fifteen years of age and any of the following are true... (4) The person is four or more years older than the other person.

15.1.8.3.2. Section 709.15 forbids sexual intercourse between a school employee and person who is currently enrolled in or attending a public or nonpublic elementary or secondary school, or who was a student enrolled in or who attended a public or nonpublic elementary or secondary school within thirty days of any violation.

15.1.8.3.3. Iowa Age of Consent is 16 years old. In the United States, the age of consent is the minimum age at which an

individual is considered legally old enough to consent to participation in sexual activity. Individuals aged 15 or younger in Iowa are not legally able to consent to sexual activity, and such activity may result in prosecution for statutory rape.

15.1.8.3.4. Iowa statutory rape law is violated when a person has consensual sexual intercourse with an individual under age 16. A close in age exemption allows teens aged 14 and 15 to consent to partners less than 4 years older. Regardless of age, it is also illegal for a school employee to engage in sexual intercourse with a current student or even a student who attended school within 30 days of such a violation.

15.1.8.3.5. Iowa has a close-in-age exemption. A close in age exemption, also known as "Romeo and Juliet law", is designed to prevent the prosecution of underage couples who engage in consensual sex when both participants are significantly close in age to each other, and one or both are below the age of consent. Depending on the situation, the Iowa close-in-age exemption may completely exempt qualifying close-in-age couples from the age of consent law, or merely provide a legal defense that can be used in the event of prosecution.

** Parts of this policy are based on the NCHERM Model Sexual Misconduct Policy has been used with their permission.*

**This policy has been reviewed and edited August 2020.*