



The Administrative Policies

TAP No. 61: Interim Policy on Title IX Sexual Harassment

Scope

This Policy applies to all students, faculty, and staff of the University and anyone participating in or attempting to participate in the University's Education Program or Activities, including volunteers and third parties doing business with the University. This Policy applies regardless of whether or not the Complainant and the Respondent are members of the same sex, and it applies regardless of national origin, immigration status, or citizenship status. In some circumstances, a Respondent may be a non-affiliate of the University. Non-affiliates are prohibited from violating this Policy but are not entitled to the procedural rights this Policy affords.

Purpose

This Policy establishes the University's prohibition against Title IX Sexual Harassment and the University's response to allegations of Title IX Sexual Harassment over which the University has jurisdiction. Included in this Policy is information on how to report Title IX Sexual Harassment, information about filing Formal Complaints of Title IX Sexual Harassment, the Formal Grievance Process for addressing Formal Complaints of Title IX Sexual Harassment, and other options and obligations of the University and the parties involved in a report of Title IX Sexual Harassment (collectively, the "Grievance Procedures").

Policy:

I. Statement of Nondiscrimination

In accordance with the University's mission, and as required by Title IX and its implementing regulations, the University does not discriminate on the basis of sex in any of its programs or activities, including admission and employment. Moreover, Duquesne University is committed to fostering an atmosphere free from Title IX Sexual Harassment and creating an inclusive campus environment for all members of the University community. Title IX Sexual Harassment is destructive to such a climate and is not tolerated.

Inquiries about the application of Title IX may be referred to the Title IX Coordinator or Assistant Secretary of the United States Department of Education's Office for Civil Rights, or both.

II. Title IX Sexual Harassment

Title IX Sexual Harassment is defined for the purposes of this Policy in accordance with Title IX's implementing regulations and refers to conduct which falls into one of the categories below. All Title IX Sexual Harassment is considered to be alleged, meaning unproven, until a determination of Respondent's responsibility, if any, is made.

a. A University employee conditioning the provision of an aid, benefit, or service of the University on a person's participation in unwelcome sexual conduct.

b. Unwelcome conduct of a sexual nature that is so severe, pervasive, and objectively offensive, as determined by a reasonable person, that it effectively denies a person equal access to the University's Education Program or Activity.

c. Sexual assault, meaning any of the following acts:

i. Sexual bodily connection with a person, which means penetration, including the slightest penetration, without consent, including instances where consent cannot be given because of age or because of temporary or permanent mental or physical incapacity, where one or more of the Respondents is the opposite sex as the Complainant.

ii. Oral or anal sexual intercourse with another person, without consent, including instances where consent cannot be given because of age or because of temporary or permanent mental or physical incapacity.

iii. Use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without consent, including instances where consent cannot be given because of age or because of temporary or permanent mental or physical incapacity.

iv. The touching of the private body parts of another person for the purpose of sexual gratification without consent, including instances where consent cannot be given because of age or because of temporary or permanent mental or physical incapacity.

v. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

vi. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

d. Dating violence, meaning violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant, where the existence of such relationship is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

e. Domestic violence, meaning felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner; by a person with whom the Complainant shares a child in common; by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the Complainant under applicable domestic or family violence laws; or by any other person against Complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

f. Stalking, meaning engaging in a course of conduct directed at a specific person on the basis of sex that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. This can be proven through a course of conduct, which is two or more acts, including but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

III. Jurisdiction

a. The University has jurisdiction to respond to Title IX Sexual Harassment that occurs in the University's Education Program or Activity against a person in the United States.

i. "Education Program or Activity" means all of the operations of the University, and includes locations, events, or circumstances over which the University exercises/exercised substantial control over both the Respondent and the context in which the Title IX Sexual Harassment occurs. It also includes any building owned or controlled by an officially recognized student organization.

ii. The University has jurisdiction over off campus conduct if it occurs as part of the University's operations, if the University exercised substantial control over the Respondent and the context of the Title IX Sexual Harassment, or if the Title IX Sexual Harassment occurs at an off campus building owned or controlled by an officially recognized student organization.

iii. The University does not have jurisdiction to address Title IX Sexual Harassment that occurs against a person outside of the United States.

IV. Relationship with Other University Policies

a. Federal regulations require that "Title IX Sexual Harassment" be defined more narrowly than "harassment" is defined under other University Policies and civil rights laws. The University, and in some circumstances state and federal law, also prohibits discrimination and harassment beyond that encompassed by the Title IX Sexual Harassment definition, where based on race, color, gender, sex, sexual orientation, pregnancy, age, religion, national origin, marital status, genetic history, Veteran status, disability, and/or any other category or characteristic otherwise protected by state or federal law. See the Student Handbook; TAP No. 30: Affirmative Action, Equal Educational and Employment Opportunity, and Human Relations in the Workplace and Classroom; and TAP No. 31: Sexual Misconduct. As determined by the University, reports or Formal Complaints of conduct that do not meet the definition of Title IX Sexual Harassment and/or that are not under the University's jurisdiction under this Policy may still violate and be addressed in accordance with other University Policies, including TAP 30, TAP 31, and the Student Code of Conduct.

V. Timeframes

a. The Grievance Procedures in this Policy will be completed in a reasonably prompt manner. Where a timeframe is given in a number of days, the length of the timeframe is calculated in business days. Days where the University is closed for breaks and/or Holidays do not count as business days for the purposes of the timeframes contained in this Policy.

b. Following the filing of a Formal Complaint, a Hearing will usually occur within 60 days. However, the University will not compromise a thorough and fair process to meet the 60-day completion goal. This timeframe may be extended if the Parties elect to participate in Informal Resolution, which will typically extend the process by an additional 30 days. Additionally, these timeframes for completion may be subject to limited extension or temporary delay for good cause, by the Title IX Coordinator in consultation with appropriate University administrators. Good cause may include but is not limited to considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The 60-day timeframe may also be

impacted if the Complainant and Respondent agree to participate in Informal Resolution. Parties will receive ongoing written communication regarding the progress of the Grievance Process, including written notice of any delay or extension and the reason for the action.

VI. Party and Advisor Definitions

- a. A Complainant is the party who is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment.
- b. A Respondent is the party who is alleged to have engaged in conduct that could constitute Title IX Sexual Harassment.
- c. An Advisor is an individual who provides advice and counsel to a party. Parties are permitted to be accompanied by an Advisor at all times in the process. Advisors must abide by the University's Rules for Advisors found on the University's Title IX website.

VII. Important Concepts

a. Amnesty for Student Drug or Alcohol Violations

i. The health and safety of every University student is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time the Title IX Sexual Harassment occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. To encourage reporting, a witness to or individual who experiences Title IX Sexual Harassment will be granted amnesty from Code of Conduct charges for alcohol and/or drug violations. Students may, however, be required attend an approved alcohol or drug education program. This amnesty provision also applies to student groups. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

b. Confidentiality:

i. Except as otherwise discussed in this Policy and as required under law, including the Family Educational Rights and Privacy Act (FERPA), the University will keep confidential the identity of any individual who has made a report or filed a Formal Complaint of Title IX Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of Title IX Sexual Harassment, any Respondent, and any witness. Following the filing of a Formal Complaint, during the Formal Process explained in Section III in Appendix A, non-privileged evidence will be shared with the parties and their Advisors.

c. Consent:

i. Consent means a knowing, voluntary, active, present, and ongoing agreement. In order for there to be consent, both parties who have the capacity to act freely must receive verbal agreement and positive cooperation. A verbal "no," even if it may sound indecisive or insincere, constitutes a lack of consent. The absence of a verbal "no" does not mean "yes." Lack of protest does not imply consent. Past consent does not imply ongoing and/or future consent or consent to other acts.

ii. There is not capacity to consent under the following circumstances: unconsciousness; incapacitation due to drugs, alcohol, or sleep; physical force, threats, intimidation, or coercion; and/or otherwise without capacity to provide consent due to intellectual or other disability or condition reasonably knowable to the

other party. Regarding incapacitation due to drugs or alcohol, the University will consider whether a reasonable person, who was sober, should have known that the other party was incapacitated. Alcohol and other drugs impact individuals differently, and determining whether an individual is incapacitated due to the effects of drugs or alcohol requires an individualized and fact-specific determination.

d. Equitable Treatment:

i. The University will treat parties involved in a report of Title IX Sexual Harassment equitably by offering Supportive Measures to a Complainant, providing remedies to a Complainant where a determination of responsibility for Title IX Sexual Harassment has been made against the Respondent, and by following the Formal Grievance Process described in Appendix A before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent, except that 1) any student Respondent may be removed from the University's Education Program or Activity on an emergency basis, whether or not a Formal Grievance Process is pending; 2) that a non-student employee respondent may be placed on administrative leave during the pendency of an investigation during the Formal Grievance Process; and 3) that the Parties may choose to resolve the matter through Informal Resolution.

e. Evidence, Credibility, Policy Presumptions, and Conflicts of Interest or Bias:

i. Throughout the Grievance Procedures, including during the Formal Grievance Process, all relevant evidence will be reviewed objectively.

ii. The Title IX Coordinator, Investigators, Decision-Makers, and anyone who facilitates Informal Resolution (the "Title IX Response Team"), will not have a conflict of interest or bias for or against Complainants or Respondents generally, or for or against a specific Complainant or Respondent.

iii. Credibility determinations will not be made based on a party's status as a Complainant or Respondent and the University will not prejudge any facts at issue.

iv. Until a determination of responsibility has been made at the conclusion of the Formal Grievance Process, a Respondent is presumed not to be responsible for Title IX Sexual Harassment. However, this presumption of non-responsibility is not a presumption about the Respondent's credibility, believability, or truthfulness. Additionally, this presumption of non-responsibility does not assume that a Complainant is untruthful.

f. Privileged Information

i. The Grievance Procedures do not require, allow, rely upon, or otherwise use questions or evidence that constitutes or seeks disclosure of, information protected under legally recognized privilege, unless the person holding privilege has voluntarily waived it in writing. Accordingly, during the Formal Grievance Process described in Appendix A, the Investigators will not access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the Investigators obtain that Party's voluntary written consent.

g. Supportive Measures

- i. Supportive Measures are non-disciplinary and non-punitive individualized services that are designed to restore or preserve equal access to the University's Education Programs and/or Activities, protect the safety of the educational environment, and deter Title IX Sexual Harassment.
- ii. Supportive measures are available to Complainants and Respondents.
- iii. Supportive Measures that unreasonably burden the other Party will not be offered.
- iv. Supportive Measures are offered as appropriate, as reasonably available, and without fee or charge, and can include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, and leaves of absence.
- v. Supportive Measures may be offered at any time following a report and throughout the Grievance Procedures.
- vi. Supportive Measures are offered and may be implemented regardless of whether a Complainant has filed a Formal Complaint.
- vii. Supportive Measures will be maintained as confidential except to the extent that maintaining confidentiality would impair the University's ability to provide the Supportive Measures.
- viii. The Title IX Coordinator is the point of contact for coordinating the effective implementation of Supportive Measures, and has the discretion to impose and/or modify any supportive measures based on all available information and a meaningful dialogue with the party for whom the Supportive Measures will be provided. The determination of appropriate Supportive Measures in a given situation will be based on the facts and circumstances of that situation.

h. Standard of Evidence

- i. The standard of evidence to be used to determine responsibility under this policy is the preponderance of evidence standard, meaning more likely than not.

i. Retaliation

- i. No one, including the University, may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, including, among other things, by making a report or Formal Complaint of Title IX Sexual Harassment.
- ii. No one, including the University, may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
- iii. Charges against an individual for code of conduct violations for the purpose of interfering with any right or privilege secured by Title IX or this Policy constitutes retaliation.
- iv. The exercise of rights protected under the First Amendment, as may be applicable at a private university, does not constitute retaliation.
- v. Charging an individual with a code of conduct violation for making a materially false statement in bad faith during the Grievance Procedures does not constitute retaliation.

1. A Decision-Maker's determination of responsibility alone is not sufficient to conclude that a party made a materially false statement in bad faith.

vi. Reports and Formal Complaints of retaliation will be addressed following the Grievance Procedures outlined in this Policy for addressing reports and Formal Complaints of Title IX Sexual Harassment.

VIII. Reporting Title IX Sexual Harassment

a. Who can make a report?

i. Anyone can file a report of conduct that could constitute Title IX Sexual Harassment.

ii. A report is different than a Formal Complaint. See Section IX: Formal Complaints.

b. Who can receive a report?

i. A report can be made to the Title IX Coordinator (at any time, including non-business hours); to a Deputy Title IX Coordinator; to any University employee; to Public Safety; anonymously by using the Anonymous Reporting Form on the Title IX website; or confidentially by contacting one of the confidential resources listed in this section.

1. The University's Title IX Coordinator is Alicia Simpson, 412-396-2560, simpsona8@duq.edu;

Office: Union #339. Address: Duquesne University, Union #339, 600 Forbes Ave., Pittsburgh, PA 15282.

It is the responsibility of the Title IX Coordinator to oversee the University's efforts to comply with its responsibilities under Title IX and this Policy.

2. The University's Deputy Title IX Coordinators are:

a. Sherene Brantley, 412-396-5243, lemoniass@duq.edu;

b. Jefferson Dedrick, 412-396-5103, dedrickj@duq.edu;

c. Kate Deluca, 412-396-6551, deluca899@duq.edu;

d. Quincy Stephenson, 412-396-1117; stephensonq@duq.edu;

e. Tiana Brophy, 412-396-6658; brophyt@duq.edu;

f. Anne Mullarkey Sawa, 412-396-6642, mullarke@duq.edu (<mailto:mullarke@duq.edu>).

3. A report may be made to any Responsible Employee. A Responsible Employee is defined as an employee who is required to share a report of Title IX Sexual Harassment with the Title IX Coordinator. All Duquesne employees, including Deputy Title IX Coordinators and Public Safety Officers, are Responsible Employees.

4. A report that is made to the Title IX Coordinator by anyone, including by a Responsible Employee, will trigger outreach to the Complainant.

5. An anonymous report to the University's Title IX Coordinator may be filed by using the Anonymous Reporting Form located on the University's Title IX website. An anonymous report to the Title IX Coordinator of Title IX Sexual Harassment obligates the University to respond in accordance with Section XII: Initial Outreach. The University's ability to respond, however, will be affected by whether the report discloses the identity of the Complainant and/or Respondent. Additionally, in order to provide Supportive Measures to a Complainant, it is not possible for the Complainant to remain anonymous because at least one school official (the Title IX Coordinator) will need to know the Complainant's identity, but as further discussed in Section XIII: Supportive Measures, Supportive Measures will be kept confidential to the

extent possible, and a Complainant may obtain Supportive Measures without identifying himself/herself to the Respondent (to the extent possible while implementing the Supportive Measure) or to anyone other than the Title IX Coordinator and anyone else who has a need to know in order to implement Supportive Measures.

6. A confidential report may be made by contacting one or more of the following on-campus or off-campus resources.

a. On-campus confidential resources:

- i. Spiritan Campus Ministry (412-396-6020);
- ii. University Counseling (412-396-6204);
- iii. University Psychology Clinic (412-396-6562); and
- iv. Health Services (412-396-6562).

b. Off-campus confidential resources:

- i. Pittsburgh Action Against Rape 24-hour helpline (1-866-END-RAPE);
- ii. Center for Victims of Violence and Crime 24-hour helpline (1-866-644-2882); and
- iii. Resolve Crisis Network 24-hour helpline (1.888.7.YOU.CAN).

c. Confidential Resources may have reporting requirements and/or other obligations under state or federal law, including reporting requirements under the Clery Act, which mandates reporting of certain crimes but does not require the report to include any personally identifiable information.

d. Making a report to a confidential resource does not give the University actual knowledge of alleged Title IX Sexual Harassment and therefore does not trigger outreach by the Title IX Coordinator.

7. In situations involving danger to persons or property, individuals are encouraged to report the incident to the applicable local police department or Duquesne's Public Safety department at 412-396-2677.

c. What Happens Next?

i. Upon receipt of a report, the Title IX Coordinator will conduct a preliminary inquiry to determine, based on the allegations shared at the time, the appropriate University Policy and process under which to handle the matter.

ii. When the Title IX Coordinator receives a report containing allegations of Title IX Sexual Harassment, the Title IX Coordinator will promptly and confidentially contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

iii. The Title IX Coordinator will follow the Formal Grievance Process in Appendix A before imposing any disciplinary actions on a Respondent or any other actions that are not Supportive Measures.

IX. Formal Complaints

a. A Formal Complaint is a paper or electronic submission that is filed by the Complainant or signed by the Title IX Coordinator, alleging Title IX Sexual Harassment against a Respondent, and requesting that the University investigate the Title IX Sexual Harassment. When filed by the Complainant, a Formal Complaint must contain the Complainant's physical or digital signature, or otherwise indicates that it is the Complainant who is filing the Formal Complaint.

- b. In response to a Formal Complaint, the University will follow the Formal Grievance Process set forth in Appendix A.
- c. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in Section VIII: Reporting Title IX Sexual Harassment.
- d. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University's Education Programs and/or Activities.
- e. A Respondent is not required to be enrolled or employed by the University or otherwise affiliated or connected with the University.
- f. There is no time limit on a Complainant's decision to file a Formal Complaint. However, Complainants and reporters are encouraged to report soon after the Title IX Sexual Harassment to maximize the University's ability to investigate and respond.
- g. Other than a Title IX Coordinator, third parties cannot file Formal Complaints, except to the extent a parent or guardian with the legal right to act on a Complainant's behalf may file a Formal Complaint. In these cases, the parent or guardian is not considered to be the Complainant, but rather acting on behalf of the Complainant. If a parent or guardian of a student has a legal right to act on behalf of a student, the parent or guardian may do so throughout the Grievance Procedures.
- h. The University will investigate a Formal Complaint even where the Complainant doesn't know the Respondent's identity. If the investigation reveals the Respondent's identity, the University will send both parties the written notice discussed in Section II of Appendix A.
- i. In certain situations, where multiple Formal Complaints arise out of the same facts or circumstances and involve more than one Complainant, more than one Respondent, or what amount to counter-complaints by one party against the other, the University has discretion to consolidate Formal Complaints. Where there are multiple Complainants and one Respondent, the University may consolidate the Formal Complaints where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances such that the allegations directly relate to all parties.
- j. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party, and retains the responsibilities otherwise associated with the Title IX Coordinator under this Policy. In deciding whether to sign a Formal Complaint, the Title IX Coordinator will evaluate whether an investigation is required even where a Complainant does not wish to file a Formal Complaint, and will consider such factors as whether there is a pattern of alleged misconduct by a Respondent and/or whether a Complainant's allegations involve violence, use of a weapon(s), or similar factors. The Title IX Coordinator will also consider the Complainant's wishes regarding how the University should respond. If the Complainant's identity is unknown, the Formal Grievance Process will proceed where the Title IX Coordinator has determined it is necessary to sign a Formal Complaint, even though written notice of the allegations will not include the Complainant's identity.

X. Dismissal of Formal Complaints

- a. **Mandatory Dismissal:** The University must dismiss some or all of the conduct alleged in the Formal Complaint if it does not meet this Policy's definition of Title IX Sexual Harassment, even if proved, and/or it is not conduct over which the University has jurisdiction under this Policy, such as conduct which occurred against a person outside of the United States.

b. Permissive Dismissal: The University may dismiss some or all of the conduct alleged in a Formal Complaint if at any time during the investigation or Hearing: 1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein, 2) the Respondent is no longer enrolled or employed by the University, and/ or 3) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

c. When a Formal Complaint is dismissed in whole or in part, the University will promptly and simultaneously notify both parties in writing and will include the reason(s) for the dismissal. Either party may appeal the dismissal on one or more of the grounds identified in the Appeals section on Appendix A. Appeals regarding dismissals of Formal Complaints or allegations therein will follow the Appeal process in Appendix A.

d. Dismissal of some or all of the conduct alleged in a Formal Complaint does not prohibit the University from addressing the alleged conduct through any other University policy under which such conduct is prohibited and the University has jurisdiction to address the conduct.

XI. Removals and Leaves

a. Emergency Removal: A student Respondent may be removed from the University's Education Program or Activity on an emergency basis prior to conclusion of a Formal Grievance Process or where no Formal Grievance Process is pending. Respondents will be removed following a determination that the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Sexual Harassment. The University will undertake an individualized safety and risk analysis following the Involuntary Leave Procedures administered by the University's Campus Community Risk Team, before removing a Respondent on an emergency basis. This Involuntary Leave Procedures provide Respondents with an immediate post-removal opportunity to challenge the removal.

b. Administrative Leave: A non-student employee Respondent may be placed on an administrative leave, with or without pay, during the pendency of the Formal Grievance Process, in compliance with other University obligations under applicable laws, Handbooks, contracts, or similar.

XII. Informal Resolution

a. After a Formal Complaint is filed, Parties may choose to participate in Informal Resolution before a determination is made regarding Respondent's responsibility. The University will facilitate Informal Resolution only where the Parties have voluntarily agreed to it in writing, following receipt of the information contained in the written notice received by both Parties in response to a Formal Complaint (Appendix A, Section II) about Informal Resolution. Informal Resolution will not be offered to resolve allegations that an employee sexually harassed a student.

XIII. Requests for Accommodations and/or Interpretive Services under this Policy

a. Nothing in this Policy may be construed to modify any rights that may be available to parties under the Americans with Disabilities Act and/or TAP No. 56: Americans with Disabilities (ADA) and Requests for Accommodations). Additionally, parties wishing to receive accommodations and/or interpretive services under the policy should notify the Title IX office as soon as such a need is identified, and the Title IX Office will coordinate such requests with the Office of Disability Services.

XIV. Appendices

Appendix A: Formal Grievance Process (https://www.duq.edu:443/assets/Documents/hr/_pdf/Tap 61 Final Appendix 8-13-2020.pdf)

XV. Related Information

TAP No. 30, Affirmative Action, Equal Educational and Employment Opportunity, and Human Relations in the Workplace and Classroom ([https://duq.edu/work-at-du/human-resources-home/the-administrative-policies-\(taps\)/30-affirmative-action-equal-educational-and-employment-opportunity-and-human-relations-in-the-workplace-and-classroom](https://duq.edu/work-at-du/human-resources-home/the-administrative-policies-(taps)/30-affirmative-action-equal-educational-and-employment-opportunity-and-human-relations-in-the-workplace-and-classroom))

TAP No. 31, Sexual Misconduct ([https://duq.edu/work-at-du/human-resources-home/the-administrative-policies-\(taps\)/31-sexual-misconduct-and-gender-discrimination](https://duq.edu/work-at-du/human-resources-home/the-administrative-policies-(taps)/31-sexual-misconduct-and-gender-discrimination))

Student Handbook

XVI. Violations

a. Sanctions and Remedies for violations of this Policy may be assigned as appropriate in accordance with this Policy's Grievance Procedures. Sanctions and Remedies are further discussed in Appendix A.

XVII. History

Adopted: August 2020.

XVIII. Ownership of Policy

Title IX Coordinator and Director of Sexual Misconduct Prevention and Response

Tap No. 61 Appendix A – Formal Grievance Process

I. Formal Grievance Process Overview and Principles

- a. A Formal Complaint initiates the Formal Grievance Process. The Formal Grievance Process provides for the investigation and adjudication of Title IX Sexual Harassment. This Appendix A sets forth the Formal Grievance Process the University will follow in response to receipt of a Formal Complaint of alleged Title IX Sexual Harassment.
- b. During the Formal Grievance Process, the parties have an equal opportunity to present relevant evidence.
- c. The parties' ability to discuss the allegations under investigation or to gather and present relevant evidence related to the alleged Title IX Sexual Harassment is not restricted under this Policy. Party discussions of allegations and the gathering and presentation of relevant evidence, however, does not permit parties to engage in witness tampering, nor does it allow for retaliation under the policy. Additionally, except as otherwise permitted under Title IX or other applicable law, parties and Advisors are not permitted to disclose or disseminate the evidence they review and inspect, or the Investigative Report, outside the Formal Grievance Process.
- d. A Complainant may have the option to pursue legal action through civil litigation or by pressing criminal charges. The pendency of a civil or criminal matter does not relieve the University of its obligation to respond to alleged Title IX Sexual Harassment. Concurrent law enforcement activity may result in a temporary delay of the Formal Grievance Process, and, if so, the parties will be notified of the delay.
- e. Under the Formal Grievance Process, the University's email account of a party or University-affiliated witness or Advisor is the official method of communication. Parties and University-affiliated witnesses and Advisors should regularly check their account for time critical notices or administrative notices requiring a timely response.

II. University's Response to a Formal Complaint

- a. When the University receives a Formal Complaint of alleged Title IX Sexual Harassment, the University will provide the following written notice and information to both the Complainant and the Respondent, if their identities are known:
 - i. Notice of the University's Formal Grievance Process.
 - ii. Notice of the allegations of Title IX Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, if known; the conduct allegedly constituting Title IX Sexual Harassment; and the date and location of the alleged Title IX Sexual Harassment, if known. To the extent the University investigates additional allegations of Title IX Sexual Harassment not included in the initial notice to the

parties, the University will provide written notice of the additional allegations to the parties whose identities are known.

- iii. Information about the Informal Resolution process.
- iv. Information about Policy Presumptions (Policy Section VII).
- v. Notice that parties may have an Advisor of their choice who may be an attorney.
- vi. Notice that parties may inspect and review evidence as set forth in Section III of this Appendix.
- vii. Notice that parties are prohibited from knowingly making materially false statements in bad faith and that such action is prohibited by the Student Code of Conduct and TAP No. 55: Ethical, Respectful, and Professional Conduct.

III. Investigations

a. General Information:

- i. A Formal Complaint, that has not been dismissed, will be investigated by the Title IX Coordinator and one or more Deputy Title IX Coordinator (for the purposes of Appendix A: an “Investigator” or collectively, the “Investigators”). The Investigators are responsible for gathering evidence sufficient to reach a determination regarding responsibility; the burden is not on the parties.
- ii. During the Investigation:
 - 1. The Investigators will request to meet with the Complainant, the Respondent, and witnesses discovered during the investigation or suggested by the parties.
 - 2. The Investigators may request follow up meetings with the parties and/or any witnesses.
 - 3. Both parties have equal opportunity to present witnesses and evidence as part of the process.
 - 4. The parties, and the Investigators, do not have the right to depose other parties or witnesses or to compel parties or witnesses to participate in the Formal Grievance Process.
 - 5. The Investigators will take meeting notes, and will gather evidence directly related to the allegations raised in the Formal Complaint from the Complainant, Respondent, and any witnesses, including, but not limited to, texts, phone call logs, taxi/Uber/Lyft receipts, and social media posts.

6. Any party whose participation is invited or expected as part of the investigation shall be provided with written notice of the date, time, location, participants, and purpose of all meetings or investigative interviews, with sufficient time given to prepare to participate.
7. The Investigators will create an Investigative Report at the conclusion of the Investigation.

b. Evidence Subject to Inspection and Review and Written Response:

- i. Prior to the conclusion of the Investigation and the completion of the Investigative Report, both parties have an equal opportunity to inspect, review and respond to all evidence obtained as part of the Investigation that is directly related to the allegation(s) raised in the Formal Complaint prior to the completion of the Investigative Report. Each party and his/her Advisor, if any, will be sent such evidence, and the parties have 10 business days to submit a written response which the Investigator(s) will consider prior to completion of the Investigative Report.
 1. Evidence subject to inspection and review includes evidence whether obtained from a party or from another source. At the inspection and review stage of the Formal Grievance Process, the Investigator(s) will not screen out irrelevant evidence. Determinations regarding relevance will be made when finalizing the Investigative Report.
 2. The University is not obligated to share a copy of any evidence that was illegally or unlawfully obtained or evidence that is protected by a legally recognized privilege.
- ii. In their written response, parties may include corrections or appropriate context, point out any evidence that appears to be missing, and/or submit additional evidence. Any such additional evidence that is summarized in the Investigative Report will not qualify for the purposes of an Appeal as new evidence that was reasonably available at the time the determination regarding responsibility is made.
- iii. Each party's written response will be shared with the other party.
- iv. Parties may use their written response to help them prepare for the Hearing.
- v. All evidence subject to the parties' inspection and review will be available at the Hearing. Participants may refer to such evidence during the Hearing.

c. Investigative Report:

- i. The Investigator(s) will consider the parties' responses following the inspection and review period, determine what evidence is relevant, close the investigation

and fairly (by objective evaluation free of bias) summarize the relevant evidence in an Investigative Report.

- ii. Where a Formal Grievance Process involves multiple Complainants, multiple Respondents, or both, the Investigator(s) may issue a single Investigative Report.
- iii. The Investigative Report will be sent to each party and the party's Advisor, if any, no fewer than 15 business days prior to the Hearing.
- iv. Parties shall submit to the Investigator(s) any written response that they have to the Investigative Report no fewer than 10 business days prior to the Hearing.
 - 1. If a party disagrees with an investigator's determination regarding relevance, the party may, in addition to making the argument in his/her response to the Investigative Report, argue his/her disagreement to the Decision-Maker at the Hearing.
- v. Parties are expected to submit any evidence they would like the Investigators to consider prior to finalization of the Investigative Report. However, a party may provide additional evidence as part of his/her response to the Investigative Report. To the extent a party provides additional evidence in response to the Investigative Report, such evidence will not qualify for the purpose of an Appeal as new evidence that was reasonably available at the time the determination regarding responsibility was made.
- vi. Each party's written response, including additional new evidence as applicable, will be shared with the other party.
- vii. A party has the opportunity to respond to any new evidence submitted by the other party no fewer than 5 business days prior to the hearing.
- viii. The Investigator(s) will summarize any relevant new evidence as an addendum to the Investigative Report, and parties and their Advisors will receive copies of this Addendum no fewer than 3 business days prior to the Hearing.

IV. Hearing

- a. Once the Investigative Report is finalized, a Hearing will be scheduled.
 - i. At the request of either party and/or in the University's discretion, the University will provide for the Hearing to occur with the parties located in separate rooms with technology enabling the Decision-Maker and each party to see and hear the other party or the witness who is speaking and/or answering questions.

- b. Not later than 3 business days prior to the Hearing, each party must identify to the Title IX Coordinator who will appear on his/her behalf as a witness, and who will be serving as his/her Advisor.
- c. Hearings will be administered by a Decision-Maker who is a different person than the Title IX Coordinator/Investigator(s).
 - i. Prior to the Hearing, the Decision-Maker will receive the Investigative Report.
 - ii. At the Hearing, the Decision-Maker has the right to ask relevant questions and elicit relevant testimony from parties and witnesses.
 - iii. Following the hearing, the Decision-Maker will objectively evaluate all relevant evidence, and will independently reach a determination regarding responsibility.
- d. The concept of relevance will guide the Decision-Maker in determining what evidence to consider and the Decision-Maker has discretion regarding the weight or credibility to assign to any particular piece relevant evidence.
 - i. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
 - ii. The Decision-Maker may deem a question irrelevant because the question asks about a detail that is not probative of any material fact concerning the allegations. Additionally, where evidence or questions are duplicative, the Decision-Maker may deem the evidence or question to be irrelevant.
 - iii. The Decision-Maker will not consider or permit evidence regarding treatment records and other information covered by a legally recognized privilege. See Section III.a.ii.7 for further information and exceptions.
 - iv. In the event that relevant evidence was destroyed by a party, at the Hearing, the Decision-Maker can take that into account when assessing the credibility of parties, and the weight of evidence in the matter
- e. During the hearing, the Decision-Maker will permit each party's Advisor to ask the other party and any witnesses, but not their own party, all relevant questions and follow-up questions. An Advisor may not otherwise speak for or on behalf of a party, including, but not limited to, by presenting opening or closing statements and/or by objecting to questions asked by the other party's Advisor, and Advisors and all parties will be expected to follow all Hearing rules established by the University.

- f. The following rules and procedures apply to questions asked by a party's Advisor:
- i. A party's Advisor may question the other party or witnesses directly, orally, and in real time, but only relevant questions may be asked. Before a party or witness answers a question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Although a party has the option to appeal on the ground of procedural irregularity following a hearing, neither a party nor his/her Advisor has the right to challenge the Decision-Maker's determination of relevance during the hearing.
 - ii. A party may not personally question the other party or any witness. If, not later than 3 business days prior to the Hearing, a party has indicated that he or she will not have an Advisor present for the Hearing, the University will provide an Advisor chosen by the University, without fee or charge, for the purposes of asking the other party and witnesses questions during the hearing.
 - iii. In making a determination of responsibility, the Decision-Maker will not consider any statement made by a party or witness who has not answered questions during the Hearing. The Decision-Maker, however, will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the Hearing or refusal to answer questions. Where the Title IX Coordinator has signed the Formal Complaint, the Complainant is not required to participate in the Formal Grievance Process. If a Complainant doesn't participate in the Formal Grievance Process, the Decision-Maker cannot rely on a Complainant's statements because the Complainant has not answered questions at the Hearing.

1. Exceptions/Clarifications:

- a. Police reports, SANE reports, medical reports, and other documents and records will not be relied on to the extent that they contain the statements of a party or witness who has not answered questions during a Hearing.
- b. A Decision-Maker may consider documentary evidence that contains intertwined statements if one person who has made the statements in the document answers questions about it at the Hearing.
- c. Where a Complainant does not answer questions at a hearing, but video evidence exists showing the underlying incident, a Decision-Maker may consider the video evidence.
- d. Even if a party or witness refuses to respond to a Decision-Maker's questions, the Decision-Maker may still rely on that party or witness's statements and can make no inference from

the party or witness's refusal to answer the Decision-Maker's questions.

- g. The University will create an audio recording of the Hearing. Parties have the right to inspect and review the recording.

V. Determination of Policy Violation

- a. Within a reasonably prompt timeframe following the Hearing, the Decision-Maker will issue a written determination regarding the Respondent's responsibility for the alleged Title IX Sexual Harassment Policy violation applying the preponderance of the evidence standard.
- b. The written determination will include:
 - i. Identification of the allegations potentially constituting Title IX Sexual Harassment;
 - ii. Description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - iii. Findings of fact supporting the determination;
 - iv. Conclusions regarding the application of this Policy to the facts;
 - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the respondent, and whether remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided to the complainant; and
 - vi. The procedures and permissible bases for the Complainant and Respondent to appeal.
- c. The written determination will be provided to both parties simultaneously. The determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

VI. Remedies and Sanctions

- a. Where the determination shows Respondent to be responsible for violating this policy, the Complainant will be provided with remedies as noted in the Decision-Maker's determination of responsibility. Remedies will be designed to restore or preserve equal

access to the University's Education Programming and Activities. Such remedies may include the same individualized services described as Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of any remedies. Thus, where a written determination states that remedies will be provided, the Complainant should contact the Title IX Coordinator to discuss the nature and implementation of such remedies.

- b. Similarly, after a determination of responsibility for a policy violation has been made, the Respondent will be subject to the sanctions set forth in the Decision-Maker's determination of responsibility. Sanctions will be assigned which are adequate to protect the safety of the campus community, which are reflective of the seriousness of the Title IX Sexual Harassment and/or other prohibitions contained within this Policy, and which consider the surrounding circumstances of the Title IX Sexual Harassment. Previous conduct violations by a Respondent may be considered when assigning sanctions.
 - i. Range of Potential Sanctions against Students: Students are subject to the non-exhaustive list of disciplinary sanctions in the Code of Student Rights, Responsibilities, and Conduct for violations of the Code. These may include one or more of the following measures: written reprimand, loss of privileges, disciplinary probation, educational research/projects, restitution, fines, intervention, no contact orders, fees, suspension, and/or expulsion. As set forth in the Code of Student Rights, Responsibilities, and Conduct, the University reserves the right to impose other sanctions in response to the specific circumstances of a violation of this Policy.
 - ii. Range of Potential Sanctions against Employees: Disciplinary sanctions for employee violations of this Policy may range from a disciplinary warning to termination from the University. Disciplinary sanctions may include one or more of the following measures: termination from the University, unpaid suspension, change in working facility, mandated enrollment in an Employee Assistance Program, written reprimand in personnel file, and/or withholding of salary increase. The University reserves the right to impose other sanctions in addition to those listed above in response to the specific circumstances of a violation of this Policy.

VII. Appeals

- a. Within 5 business days of receipt of a determination, both parties have an equal right to submit an appeal to the Title IX Coordinator on the following three bases:
 - i. Procedural irregularity that affected the outcome of the matter;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome; and

- iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- b. When an appeal is filed, the Title IX Coordinator will notify the other party of the appeal. Both parties will be given an equal opportunity to submit a written statement in support of, or challenging, the outcome. Parties will be provided with information regarding the timelines for submission of such statements.
- c. Appeals will be administered by an Appeal Decision-Maker who is not the same person as the Decision-Maker that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator.
- d. Appeals will proceed on the record only; parties and witnesses will not be interviewed by the Appeal Decision-Maker. The record will include the written determination, the Investigative Report, the recording of the underlying hearing, new evidence as applicable, and any written statement submitted by the parties in connection with the Appeal. Following review of the record, the Appeal Decision-Maker will issue a written decision describing the result of the appeal and the rationale for the result. The Appeal Decision-Maker may either deny the appeal, or, if the appeal is granted, determine the appropriate remedy, which may include revising the finding and sanctions, if any, or remanding the matter back to the Title IX Coordinator with directions for resolving the Appeal. The Appeal decision will be provided simultaneously to both parties.