

# Defiance College Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy

## **INTRODUCTION**

Defiance College is a community of learners dedicated to nurturing the whole person in each of its members and affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. Members of the Defiance College community, guests and visitors have the right to be free from all forms of harassment, discrimination and sexual misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This policy is intended to establish a mechanism for determining when those expectations have been violated. All policies below are subject to resolution using the College's Equity Resolution Process (ERP).

The college's equal opportunity, harassment, discrimination and sexual misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom.

## **TITLE IX COORDINATOR AND TEAM**

The Title IX Coordinator is the designated college official with primary responsibility for coordinating the College's equity and Title IX compliance. The Title IX Coordinator oversees the policy on equal opportunity, harassment and nondiscrimination as well as the implementation of grievance procedures, which includes notification, investigation and disposition of complaints of discrimination. The Title IX Coordinator will coordinate the provision of educational materials and training for the campus community. Finally, the Title IX Coordinator will ensure a fair and neutral process for all parties and monitor all other aspects of the College's Equity and Title IX compliance. The Coordinator reports directly to the President of the College and is housed in the office of the Dean of Students. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the college Title IX Coordinator:

### **Lisa Marsalek, Vice President for Enrollment Management & Student Success and Dean of Students**

128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2587 or [lmarsalek@defiance.edu](mailto:lmarsalek@defiance.edu)

Trained Deputy Title IX Coordinators who can also offer assistance are available in the following offices:

### **Mary Burkholder, Director of Human Resources**

106 F Defiance Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2360 or [mburkholder@defiance.edu](mailto:mburkholder@defiance.edu)

### **Mercedes Clay, Assistant Dean of Student Engagement and Director of Intercultural Relations**

132 McCann Center, 701 N. Clinton, Defiance, OH 43512

(419) 783-2362 or [mclay@defiance.edu](mailto:mclay@defiance.edu)

**Jennifer Walton, Director of Residence Life**

126 McCann Center, 701 N. Clinton St, Defiance, OH 43512  
(419) 783-2563 or [jwalton@defiance.edu](mailto:jwalton@defiance.edu)

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

Office for Civil Rights (OCR)  
Cleveland Office  
600 Superior Avenue East, Suite 750  
Cleveland, OH 44114  
(216) 522-4970  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)

Contact: <http://www.eeoc.gov/contact/>

Reports of discrimination, harassment, sexual misconduct, and/or retaliation may be made using any of the above options. There is no time limitation on the filing of allegations. However, if the responding party is no longer subject to the College's jurisdiction, the ability to investigate, respond and provide remedies may be more limited.

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the Director of Human Resources, (419) 783-2360.

**JURISDICTION**

This policy applies to behaviors that take place on the campus, at College-sponsored events and may also apply off-campus and to actions online when the Title IX Coordinator determines that the off-campus conduct affects a substantial College interest. A substantial College interest is defined to include:

- a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b) Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the College.

## **1. Notice of Nondiscrimination**

Defiance College adheres to all federal and state civil rights laws prohibiting discrimination in private institutions of higher education. Defiance College will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, ethnicity, religion, national origin, sex, gender, gender identity/expression, sexual orientation, age, disability, genetic information, marital status, veteran status or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community, guest or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of the College policy on nondiscrimination. When brought to the attention of the College, any such discrimination will be appropriately addressed and remedied by the College according to the Equity Resolution Process described below. Non-members of the campus community who engage in discriminatory actions within College programs or on College property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with College programs as the result of their misconduct. All vendors serving the College through third-party contracts are subject by those contracts to the policies and procedures of their employers.

Defiance College will promptly and equitably respond to all reports of sexual or other discrimination in order to eliminate the misconduct and/or harassment, prevent its recurrence, and address its effects on any individual or the community.

## **2. College Policy on Accommodation of Disabilities**

Defiance College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Title IX Coordinator has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegation of noncompliance.

### **a. Students with Disabilities**

Defiance College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the College.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Accessibility Services Coordinator who coordinates services for students with disabilities. The Accessibility Services Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

#### **b. Employees with Disabilities**

Pursuant to the ADA, Defiance College will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to the Director of Human Resources and providing appropriate documentation. The Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

### **3. College Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. The College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under College policy.

#### **a. Discriminatory and Bias-Related Harassment**

Harassment constitutes a form of discrimination that is prohibited by College policy as well as the law. Defiance College condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by policy or law. College will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, College may also impose sanctions on the harasser through application of the Equity Resolution Process. The college's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is severe or persistent/pervasive, and objectively such that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.

The College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a protected status. Addressing such behaviors may not result in the imposition of discipline under College policy, but will be addressed through respectful confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Director of Human Resources and students should contact the Dean of Students.

## **b. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Ohio regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Defiance College has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
  - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the college's educational, employment, social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational or employment progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational or employment program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall

door.

- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

### **c. Sexual Misconduct**

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, College has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, College considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved.

Violations include but are not limited to:

1. Sexual Harassment ( as defined in section b above)
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation
5. Force and Consent
6. Intimate Partner Violence
7. Stalking

Use of alcohol or other drugs will never function to excuse any behavior that violates this policy. For reference to the pertinent State of Ohio statutes on sex offenses, please see <http://codes.ohio.gov/orc/2907>

## NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

## NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

## SEXUAL EXPLOITATION

Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. 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; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

## FORCE AND CONSENT

**Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent ("Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Consent:** At Defiance College "Effective Consent" is defined as mutually understandable words or actions that indicate all parties involved agree on what sexual activity will occur, with whom, in what way, and at what time. There are many factors that influence effective consent:

Consent is

- clear, and knowing, and voluntary, words or actions, that give permission for specific sexual activity.
- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

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

- Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.

- 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.
- 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).
- This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. 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. More information on these drugs can be found at <http://www.911rape.org/>.
- In Ohio, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

### Examples

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never had done it but for Bill’s incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn’t want it, she could have left. **Bill is responsible for violating the college Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
2. Jiang is a junior at the college. Beth is a sophomore. Jiang comes to Beth’s residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one’s partner may not**

**be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the college expects.**

#### INTIMATE PARTNER VIOLENCE

Defined as violence or abuse between those in an intimate relationship to each other<sup>1</sup>;

Examples:

- A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
- An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
- A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
- Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

#### STALKING

Stalking 1:

- A course of conduct
- Directed at a specific person
- On the basis of actual or perceived membership in a protected class
- That is unwelcome, AND
- Would cause a reasonable person to feel fear

Stalking 2:

- Repetitive and Menacing
- Pursuit, following, harassing and/or interfering with the peace and/or safety of another

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<sup>1</sup> The definition provided here is model policy language from ATIXA. The state legal definitions can be found here <http://codes.ohio.gov/orc/2907>.

#### Examples of Stalking:

- A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together. Stalking 1.
- A graduate student working as a on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together." Stalking 2.

#### 4. Other Civil Rights Offenses

In addition to the forms of sexual misconduct described above, the following behaviors are also prohibited as forms of discrimination when the act is based upon the reporting party's actual or perceived membership in a protected class.

1. **Harm to Persons**, intentional or recklessly causing physical harm or endangering the health or safety of any person;
2. **Threat**, defined as written or verbal conduct that causes a reasonable expectation of injury to the health or safety of any person or damage to any property;
3. **Discrimination**, defined as any act or failure to act that is based upon an individual or group's actual or perceived status (sex, gender, gender identify/expression, race, age, national or ethnic origin, disability, genetic information, veteran status, marital status, religion, sexual orientation, or other protected status) that is sufficiently severe that it limits or denies the ability to participate in or benefit from the College's educational program or activities.
4. **Harassment**. Any unwelcome conduct based on actual or perceived status including: sex, gender, gender identify/expression, race, age, national or ethnic origin, disability, genetic information, veteran status, marital status, religion, sexual orientation, or other protected status;
5. **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another;
6. **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
7. **Bullying and Cyberbullying** defined as are repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally, and are not protected by freedom of expression.

Any other College 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.

## **BYSTANDER INTERVENTION**

The College expects all community members to take reasonable and prudent actions to prevent or stop an act of sex discrimination or misconduct. Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. The College will support its members who choose to intervene in this fashion.

## **5. Retaliation**

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment is a serious violation of College policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of Retaliation:

- Student-athlete A files an allegation against a coach for sexual harassment; the coach subsequently cuts the student-athlete's playing time in half without a legitimate justification
- A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct hearing against the responding individual – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the hearing.

## **6. Remedial Action**

Upon notice of alleged discrimination, Defiance College will implement initial remedial, responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counseling and/or medial services, academic support, living arrangement adjustments, transportation accommodations, visa and immigration assistance, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

The College will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

The College will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the College's ability to provide the accommodations or protective measures.

Procedures for handling reported incidents are fully described below.

## **7. Confidentiality and Reporting of Offenses Under This Policy**

Defiance College strongly supports and encourages prompt reporting of suspected discrimination, harassment and misconduct. Reporting provides resources to victims and contributes to keeping the campus safe. All Defiance College community members (students, staff, and faculty) should help ensure that violations are promptly reported. All college employees (faculty, staff, and administrators) are mandated to immediately report actual or suspected discrimination, harassment or misconduct to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate college officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at Defiance College:

### **a. Confidential Reporting**

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- Director of Counseling & Accessibility Services, Lynn Braun: 419-783-2548
- Accessibility Services Coordinator and Staff Clinician, Kris Knight 419-783-2445
- To access a SANE ( Sexual Assault Nurse Examiner) after normal business hours, contact Lynn Braun, confidential Victim’s Advocate: 419-290-9839
- Four County SART Program: 1-800-782-8555
- Ohio Sexual Violence Helpline 1-888-OHIO-HELP
- Off-campus:
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources,
  - Local or state assistance agencies,
  - Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors (or the Employee Assistance Program for employees) are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit semesterly anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client or patient.

### **b. Formal Reporting Options**

All Defiance College employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported

to the Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made. Remedial actions may result without formal college action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures. Note that the College's ability to remedy and respond to a reported incident may be limited if the reporting party does not want the institution to proceed with an investigation and/or the Equity Resolution Process

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Dean of Students, Residence Life, CARE team and Counseling Center. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at <https://www.defiance.edu/communication-information.html>. Note that these anonymous reports may prompt a need for the institution to investigate.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

**Lisa Marsalek, Vice President for Enrollment Management & Student Success and Dean of Students**

128 Hubbard Hall, 701 N. Clinton St., Defiance, OH 43512

(419) 783-2587 or [lmarsalek@defiance.edu](mailto:lmarsalek@defiance.edu)

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of college policy and can be subject to disciplinary action for failure to comply with college policies.

The College encourages reporting parties to pursue their complaints through both the Defiance College resolution process and through the criminal justice system. The College will provide Reporting Persons with information concerning their options and rights and will assist them in making reports to law enforcement if they wish to do so. The Defiance Police Department, which can be reached at (419) 784-5050, can explain the procedures for pursuing a criminal investigation. The Defiance Police Department will investigate every incident reported to police to determine if a crime has been committed. The decision to file a complaint with the Defiance Police is entirely the victim's choice. Reporting to the police is not necessary for a victim to receive counseling or other supportive services.

College proceedings will be instituted against a person charged with conduct that potentially violates both the criminal law and this policy without regard to pending civil or criminal litigation in court or criminal arrest and prosecution. However, the College may delay its proceedings for a reasonable period of time at the request of law enforcement. Proceedings may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Determinations made or sanctions imposed shall not

be subject to change because criminal charges arising out of the same facts giving rise to violation of College rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

The College has the authority to institute an administrative complaint against any student, faculty, administrator, or staff if a violation occurs of the sex discrimination policy.

**Timeliness** – To promote timely and effective review, the College strongly encourages the Reporting Person and other persons with knowledge of possible violations of this policy to make reports as soon as possible following the occurrence of a sexual assault. A delay in reporting may impact the College’s ability to gather relevant and reliable information. It may also impact the College’s ability to take disciplinary action against a student for has graduate or permanently terminated enrollment.

**Preservation of Information and Tangible Material** – Preservation of information and tangible material relating to Sexual Assault is essential for both law enforcement and campus disciplinary investigations. Reporting Persons, Responding Persons, witnesses or others reporting possible violations of this policy, are encouraged to preserve all information and tangible material relating to the incident, such as electronic communications (e.g. emails and text messages), photographs, clothing, bedding, and medical information. In the case of medical information, prompt examinations can be crucial.

#### **Reporting of Instances Involving Minors**

Employees who witness or otherwise have reasonable cause to believe that an incident of sexual or physical abuse involving a minor has occurred at the College or in a College-sponsored program or activity, must immediately report that knowledge or belief. This reporting obligation exists regardless of whether or not the alleged perpetrator is an employee of the College. For the purposes of this policy, a minor is any person under the age of 18.

### **8. Federal Timely Warning Obligation**

Parties reporting sexual misconduct should be aware that Defiance College must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will undertake reasonable efforts to ensure that a victim’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **9. False Allegations**

Defiance College will not tolerate intentional false reporting of incidents. It is a violation of the Code of Conduct (see Student Handbook) to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

### **10. Amnesty for Reporting Parties and Witnesses**

The College encourages reporting and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. The College recognizes that an individual who has been drinking alcohol or using drugs at the time of an act of sex discrimination may be hesitant to make a report because of potential consequences for his/her/their own conduct. An individual who reports sex discrimination, either as a Reporting Party or a third party witness, will not be subject to disciplinary action by the College for his/her/their own personal consumption of alcohol or drugs at or near the time of the

incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

## **11. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to the Dean of Students regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual 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. Mandated federal reporters include: student affairs/student conduct, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

### **DEFIANCE COLLEGE RESPONSE AND RESOLUTION PROCEDURE**

Upon receipt of a report, the College will generally proceed as follows. The process involves a prompt initial assessment to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the college will initiate an investigation that is thorough, reliable, impartial, prompt and fair. This investigation determines whether the college's equal opportunity, harassment, discrimination and sexual misconduct policy has been violated. If so, the college will promptly implement an effective remedy designed to end the discrimination, prevent its recurrence and address its effects.

The college aims to bring all allegations to a resolution within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties. In overview, the timeline for resolution begins with notice to a mandated reporter. The Coordinator or designee then engages in a preliminary inquiry/initial assessment that is typically 1-3 days in duration. From there, the allegation can lead to a formal investigation, which usually starts within days of the preliminary inquiry's conclusion. Investigations range from days to weeks, depending on the nature and complexity of allegations, with the college commonly aiming for a 10-14 window to completion. The parties are regularly apprised of the status of the investigation as it unfolds. The process may then end or continue. If it continues, barring necessary extensions, the investigation leads to formal and informal resolution options, which the college aims to complete in 10-14 days from the end of the investigation. A failed informal resolution which triggers a formal resolution may require the college to extend this timeline accordingly. From there, an appeal of the decision and sanctions may be requested, with a three-day window to file an appeal request once a formal determination is reached, a three-day window to grant or deny the appeal request, and another 7-10 days for a final resolution to be reached.

## 1. Support and Initial Assessment

The Reporting Person and the Responding Person will be offered appropriate support and other resources and notified of applicable policies. The College will also take appropriate steps to prevent and/or address retaliatory conduct following a report.

The College will also promptly conduct an Initial Assessment. At a minimum, the Initial Assessment will include taking the steps necessary to assure a safe and nondiscriminatory environment for the Reporting Person and other members of the community. The staff members conducting the Initial Assessment will:

- Assess the nature and circumstances of the report.
- Address immediate physical safety and emotional well-being needs of the Reporting Person or any other individual
- Notify the Reporting Person of the right to notify (or decline to notify) law enforcement if the conduct is potentially criminal in nature. .
- Notify the Reporting Person of the right to see medical treatment to address physical health and, as appropriate, preserve physical or forensic evidence.
- Assess the reported conduct to determine whether the circumstances pose a threat to the health or safety of the College community that warrant issuance of a “timely warning” under the Clery Act or a temporary administrative suspension.
- Provide the Reporting and Responding Person with information about on-campus and off-campus resources, the range of interim measures, and explanation of procedural options for resolution under the policy and the College’s prohibition against retaliation.

## 2. Interim Remedies/Actions

The Title IX Coordinator (or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. The college will keep interim remedies and actions as private as possible.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program ([800-316-2796](tel:800-316-2796) available 24/7)
- Education to the community
- Altering the housing situation of the responding party (resident student or resident employee (or the reporting party, if desired))
- Altering work arrangements for employees
- Providing campus escorts,
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

The college may take interim action to suspend a student, employee or organization pending the completion of the investigation and resolution, particularly when in the judgment of the Title IX Coordinator or Director of Human Resources, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party or the ongoing activity of a student organization whose behavior is in question. In all cases in which an interim suspension

is imposed, the student, employee or student organization will be given the opportunity to meet with the Title IX Coordinator or Director of Human Resources prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator or designee has sole discretion to implement or stay an interim suspension or administrative leave under the policy on Sex/Gender Harassment, Discrimination and Misconduct, and to determine its conditions and duration. Violation of an interim suspension under this policy is grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to college housing and/or the college campus/facilities/events. As determined by the Dean of Students or Director of Human Resources this restriction can include classes and/or all other college activities or privileges for which the student might otherwise be eligible. At the discretion of the Dean of Students or Director of Human Resources alternative coursework or remote work arrangement options may be pursued to ensure as minimal an impact as possible on the responding party.

The institution will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures.

### **3. Informal Equity Resolution Procedure**

The College encourages informal resolution options when the parties desire to resolve the situation cooperatively and expeditiously. Regardless of whether the informal resolution procedure or formal resolution procedure is chosen, the Responding Party will be advised of the substance of the allegations made against him or her. Where the parties opt to attempt informal resolution, a formal investigation will begin (to be conducted simultaneously with the ongoing informal process), if the parties have failed to achieve resolution within 10 working days.

Please be advised that the informal resolution process is completely voluntary and that a Reporting Party has the right to end the informal resolution process at any time and initiate the Formal Complaint Resolution Procedure. Also note that the informal process is not used when violent behavior is involved, when the Coordinator determines a situation is not eligible, or the parties are reluctant to participate in good faith.

In addition, any party can pursue formal resolution if he or she is dissatisfied with a proposed informal resolution. All informal resolutions will seek to end any hostile environment, prevent its recurrence and address its effect. Finally, the College may elect to pursue a formal resolution procedure even if the Reporting Party does not wish a formal resolution.

### **4. Formal Equity Resolution Procedure**

In response to reports of policy violations in cases where the Reporting Party does not wish to engage in informal resolution, where informal resolution is not appropriate, or in cases where attempts at informal resolution are unsuccessful, the Title IX Coordinator or designee will implement a formal complaint resolution procedure, which will consist of two parts: the investigation and the disposition/resolution. The Office of Student Life/Title IX Coordinator is designated to formally investigate reports of discrimination and/or harassment by students, to address inquiries and to coordinate the college's

compliance efforts regarding reports of misconduct by students, regardless of the college role of the reporting party, who may be another student, faculty, staff, guest or visitor. For reports involving College employees and/or Third parties, Deputy Title IX Coordinator/Director of Human Resources will lead the investigation. Typically investigations will use a team of two investigators.

Notice of a formal report can be made in person, by phone, via email or in writing to the Office of Student Life or Title IX Coordinator. Upon receipt of a report the Title IX Coordinator or designee will determine interim action, accommodations for the reporting party (at no cost to the reporting party where possible), or other necessary remedial short-term actions.

If the reporting party wishes to pursue a formal resolution or if the college, based on the alleged policy violation, wishes to pursue a formal resolution, then the Title IX Coordinator appoints trained investigator(s) to conduct the investigation, usually within two business days of determining that a resolution should proceed. Investigations are completed expeditiously, normally within 10-14 business days of notice to the Title IX Coordinator. Investigations may take longer depending on their nature or complexity.

All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

The investigators will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with campus partners (e.g.: the Title IX Coordinator), initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Assist the Title IX Coordinator with an immediate preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy.
  - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Prepare the notice of alleged policy violations on the basis of the preliminary inquiry;
- Meet with the reporting party to finalize their statement, if necessary;
- Provide reporting party and responding party with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.
- Provide parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;

- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting party throughout the investigation, and to the responding party, as appropriate;
- Once the report is complete, the report is shared with the parties for their review and comment. The investigators may incorporate feedback from the parties as appropriate;
- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
- Present the findings to the responding party, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
- Share the findings and update the reporting party on the status of the investigation and the outcome.

At any point during the investigation, if it is determined there is no reasonable cause to believe that college policy has been violated; the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings. If new information is subsequently provided, this decision may be reevaluated.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the College's investigation and the Equity Resolution Process. Failure of a witness to cooperate with and/or participate in the investigation or Equity Resolution Process constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation do not have the ability to offer evidence later during the appeal if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other Equity Resolution Process proceedings.

## **5. Advisors**

All parties are entitled to an advisor of their choosing to guide and accompany them throughout all parts of the campus resolution process. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is both eligible and available. People who will be called as witnesses may not serve as advisors. The College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide one. All advisors are subject to the same rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting, interview or hearing unless invited to. Advisors may confer quietly with their advisees as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Any advisor who steps out of their role will be asked to leave the meeting and the meeting will typically continue without the advisor. The Title IX Coordinator or Designee will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

The college expects that the parties will wish the college to share documentation related to the allegations with their advisors. The college provides a consent form that authorizes such sharing. The parties must complete this form before the college is able to share records with an advisor. The parties are not otherwise restricted from discussing and sharing information relating to allegations with others who may support them or assist them in preparing and presenting. Advisors are expected to maintain the privacy of the records shared with them by the college. These records may not be shared with 3<sup>rd</sup> parties, disclosed publicly, or used for purposes not explicitly authorized by the college. The college may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the college's privacy expectations.

The college expects an advisor to adjust their schedule to allow them to attend college meetings when scheduled. The college does not typically change scheduled meetings to accommodate an advisor's inability to attend. The college will, however make provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with campus officials.

## **6. Standard of Evidence**

All findings and determinations of responsibility will be made using a preponderance of the evidence standard. With respect to any factual issue, this standard requires the determination of whether it is more likely than not that a fact exists or an event or violation of this policy occurred.

## **7. Disposition/Resolution**

Investigators will prepare a written summary report at the conclusion of the investigation and submit the report to the Title IX Coordinator.

The Investigator's final written report with set forth, at a minimum:

1. The Investigator's factual findings;
2. The Investigator's determination as to whether the Responding Person committed the misconduct alleged in the charge;
3. The Investigator's rationale for the findings; and
4. The Investigator's recommendation and rationale for sanctions.

Within 3 days of receiving the written report, the Title IX Coordinator will make the final decision and initiate discipline of the Responding Party. The Title IX Coordinator will promptly notify both the Reporting Person and Responding Person, simultaneously and in writing, of the determination of responsibility, sanctions imposed and the procedures for both parties to appeal the decision.

The college shall take reasonable steps to prevent the recurrence of sex discrimination and will take all necessary steps to remedy the discriminatory effects on the victim(s) and others.

## 8. Sanctions

Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- Protection of the college community
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the Title IX Coordinator
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the reporting party and the community

The following sanctions may be imposed upon any member of the community found to have violated the Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policy. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

### **Student Sanctions (listed below and defined in the Student Handbook)**

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- Warning
- Restitution and Fines
- Community/College Service
- Loss of Privileges
- Confiscation of Prohibited Property
- Behavioral Requirement including seeking substance abuse screening
- Educational Requirement
- Restriction of Visitation Privileges
- College Housing Reassignment, Probation or Suspension
- College Probation, Suspension, or Expulsion
- Eligibility Restriction
- Withholding Diploma
- Revocation of Degree
- Organizational Sanctions
- Other Actions

### **Employee Sanctions**

The following are the usual responsive actions that may be imposed on an employee singly or in combination:

- Warning – Verbal or Written
- Corrective Action
- Required Counseling
- Required Training or Education
- Loss of Annual Pay Increase

- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with Pay
- Suspension without Pay
- Termination
- Other Actions

### **Sanctioning for Sexual Misconduct**

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).\*
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*

\*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

## **9. Withdrawal or Resignation While Charges Pending**

Students: The College does not permit a student to withdraw if that student has an allegation pending for violation of the policy on Equal Opportunity, Harassment and Nondiscrimination. Should a student decide to leave and/or not participate in the resolution process, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to College unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator and Director of Human Resources will reflect that status, and any College responses to future inquiries regarding employment references for that individual will indicate the former employee is ineligible for rehire.

## **10. Appeals**

Sanctions imposed by the Title IX Coordinator post-investigation can be appealed by any party according to the grounds, below. There is no appeal from a Title IX Coordinator's "reasonable cause" decision.

**All sanctions imposed by the Title IX Coordinator will be in effect during the appeal.** A request may be made to the Dean of Students or Director of Human Resources to delay implementation of the

sanctions until the appeal is decided, but the presumptive stance of the institution is that the sanctions will go into effect immediately. Graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the college or resumption of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

Appeals must be filed in writing to the Office of Student Life within three (3) business days of the notice of the outcome to the hearing, barring exigent circumstances. Any exceptions are made at the discretion of the Title IX Coordinator.

The Title IX Coordinator will share the appeal by one party with the other party (parties) when appropriate under procedure or law (e.g., if the responding student appeals, the appeal is shared with the reporting party, who may also wish to file a response, request an appeal on the same grounds or different grounds; this response will be shared with the initial appealing party). The Office of Student Life will refer the request(s) to the College's designated Appeals Panel, which consists of three members of the Campus Judicial Committee pool who did not participate in the original hearing. Based on the written requests/responses or on interviews as necessary, all parties will receive a response memorandum, based on the Appeals Panel's determination that the request(s) will be granted or denied, and why. All request-related documents are shared with all parties prior to submission to the Appeals Panel.

The Appeals Panel will conduct an initial review to determine if the appeal request meets the limited grounds and is timely. The Appeal Panel may dismiss an appeal request as untimely or ineligible, may grant an appeal, may deny an appeal, may modify the sanction, and/or may remand the finding and/or sanction for further investigation or reconsideration at the Title IX Coordinator level. The Appeals Panel may consult with the Dean of Students on any procedural or substantive questions that arise.

The original finding and sanction will stand if the appeal request is not timely or substantively eligible, and that decision is final. The party requesting appeal must show clear error in the original finding and/or a compelling justification to modify a sanction, as both finding and sanction are presumed to have been decided reasonably and appropriately during the original hearing.

The ONLY grounds for appeal are as follows:

1. A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.)
2. To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
3. The sanction is grossly disproportionate to the severity of the violation found.

If remanded to re-open the investigation, the results of a revised investigation can be subsequently forwarded for reconsideration at the Title IX Coordinator level. If the appeal remands to the Title IX Coordinator for review, the reconsideration of the Coordinator is not appealable.

The procedures governing the hearing of appeals include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the Title IX Coordinator for reconsideration (remand) should be pursued;

- Appeals are not intended to be full re-hearings of the allegation (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal;
- Appeals decisions are to be deferential to the original decision maker, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- An appeal is not an opportunity for appeals officers to substitute their judgment for that of the original decision maker merely because they disagree with its finding and/or sanctions.
- Sanctions imposed are implemented immediately unless the Title IX Coordinator/Dean of Students stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Appeals Panel will typically render a written decision on the appeal to all parties within five (5) business days from hearing of the appeal. The Appeals Panel's decision to deny an appeal request is final.

### **THE APPEALS PANEL**

Three-member Appeals Panels are drawn from the Campus Judicial Committee panel pool, with the following requirements to serve:

- 1) they were not involved in the investigation in any way
- 2) they have been properly trained in appeals procedures

The Dean of Students will have final authority to approve all those serving on the panel. The parties may challenge a panelist(s) on the basis of potential bias, and any panelist who cannot render an impartial decision must recuse themselves. The Dean of Students will make the determination as to the validity of any challenge or need for recusal. In the event of a recusal from the panel, the Dean of Students will solicit a replacement from the pool of panelists.

The Dean of Students or designee serves as the non-voting advisor to the panel, with responsibility for training the panel, conducting preliminary investigations, and ensuring a fair process for the complainant and responding student.

## **11. Long-Term Remedies/Actions**

Following the conclusion of the Equity Resolution Process and in addition to any sanctions implemented, the Title IX Coordinator may utilize long-term remedies or actions stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently altering the housing situation of an the responding party (resident student or resident employee (or the reporting party, if desired))
- Permanently altering work arrangements for employees
- Providing campus escorts
- Climate surveys
- Policy modification

- Providing transportation accommodations
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

## **12. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Title IX Coordinator. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the College and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## **13. Records**

In implementing these procedures, records of all allegations, investigations, and resolutions will be kept by the Title IX Coordinator indefinitely in the Title IX Coordinator Database.

## **14. Revision**

College students are responsible for knowing the information, policies and procedures outlined in this document.

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. Students are encouraged to check online <http://www.defiance.edu/student-life/info/campus-safety-and-compliance.html> for the updated versions of all policies and procedures. The Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

This policy and procedure was implemented on July 1, 2017.

## **15. Notification of Outcomes**

The outcome of a campus hearing is part of the education record of the responding party, and is protected from release under a federal law, FERPA. However, the college observes the legal exceptions as follows:

- Parties to non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and intimate partner violence incidents have an absolute right to be informed of the outcome, essential findings/rationale, and any sanctions that may result, in writing, without condition or limitation, and without substantial delay between notifications to each party.
- The college may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a college policy that is a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property, intimate partner violence, stalking and kidnapping/abduction. In doing so, the college will not release any information that could lead to the identification of the reporting party.

## **16. Training for those Implementing These Procedures**

Personnel tasked with implementing these procedures, e.g.: Title IX Coordinator, investigators, appellate officers, etc.) will be trained at least annually. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to sexual harassment and discrimination allegations; the college’s Equal Opportunity, Harassment, Discrimination and Sexual Misconduct Policies and Procedures; confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance.

## **17. Conflicts of Interest and Bias**

The college is committed to ensuring that its resolution processes (e.g.: investigation, hearing, appeal, etc.) are free from actual or perceived bias or conflicts of interest that would materially impact the outcome. Any party who feels that there is actual or perceived bias or conflict of interest that would materially impact the outcome may submit a written petition for the person’s removal from the process. The petition should include specifics as to the actual or perceived bias or conflict of interest, as why the petitioner believes the bias or conflict could materially impact the outcome. When the allegation involves a responding party who is an employee, petitions should be submitted promptly to the Title IX Coordinator or Director of Human Resources. When the allegation involves a responding party who is a student, petitions should be submitted promptly to the Dean of Students/Title IX Coordinator. Such petitions may also be made to the college president in the event that the potential conflict or bias involves the Title IX Coordinator.

## **18. Statement of Rights of Those Involved**

Statement of Reporting Party Rights:

- The right to amnesty for minor student misconduct (such as alcohol or drug violations) that is secondary to the alleged incident.
- The right to investigation and appropriate resolution of all credible allegations of sexual misconduct or discrimination made in good faith to College officials;
- The right to be informed in advance of any public release of information regarding the incident;
- The right to be treated with respect by College officials;

- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- The right not to be discouraged by College officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the reporting party so chooses. This also includes the right not to be pressured to report, as well;
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;
- The right to a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the reporting party or others;
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the reporting party and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available).
- The right to have the College maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures;
- The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
- The right to regular updates on the status of the investigation and/or resolution;
- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to bring a victim advocate or advisor of the reporting party's choosing to all phases of the investigation and resolution proceeding;

Statement of Responding Party Rights:

- The right to investigation and appropriate resolution of all credible reports of sexual misconduct and/or discrimination made in good faith to College administrators;
- The right to be informed in advance, when possible, of any public release of information regarding the report;
- The right to be treated with respect by College officials;
- The right to be informed of and have access to on- and off-campus resources for medical, health, counseling, and advisory services;
- The right to timely written notice of all alleged violations, including the nature of the violation, the applicable policies and procedures and possible sanctions;
- The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;
- The right to have an advisor of their choice to accompany and assist throughout the campus resolution process;
- The right to a fundamentally fair resolution, as defined in these procedures;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;

## **19. Disabilities Accommodation in the Equity Resolution Process**

Defiance College is committed to providing qualified students, employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to the Equity Resolution Process at the College. Anyone needing such accommodations or support should contact the Accessibility Services Coordinator, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation.

## **20. Education and Programs**

The College provides education to members of the community. All new students complete an online training module as well as a small group training session during Welcome Week which addresses the issues of sex discrimination, bystander intervention and behaviors that may be associated with violations of College policy such as alcohol and drug use. Incoming students are required to prove they have completed the online training or a registration hold will be placed on their account. New employees, including student employees, must complete a training session as part of their employment process. Additional programming, including the important of bystander intervention, is offered to students, faculty and staff, including passive and active programs.

The Title IX team and investigators receive yearly training focused on adjudicating cases of sex discrimination. First responders, Residence Life, Student Life and Security Staff receive regular, ongoing training focused on working with reporting parties of sex discrimination.

The Campus Sex Crimes Prevention Act requires colleges to issue a statement advising the campus community on how to find law enforcement agency information, which is provided by a state, concerning registered sex offenders. Members of the Defiance College community are encouraged to access the website of the Ohio Attorney General's Office (website included below) where they can search the sex offender registry for any Ohio county.

<http://www.ohioattorneygeneral.gov/>

### **Victim Support Information**

There are a number of campus resources available for students who have been a victim of sexual misconduct as identified in this policy. The Counseling Center provides free and confidential consultation, assessment, individual, group, couple's and family therapy to Defiance College students. The service that will best fit each student's need will be determined after an initial meeting with a therapist. Counseling Center staff are available "on call" to assist victim's at any hour of the day in crisis response.

In the residence halls, Hall Directors and Resident Assistants (RAs) receive annual training to provide support and referral for victims of sexual misconduct as identified in this policy. Students may contact the Residence Life Duty phone for assistance 24 hours all day at 419-439-0359.

In the community, Defiance County Victim Assistance, under the direction of the Defiance County Prosecuting Attorney, provides support, information, and advocacy for any victim of crime in Defiance County, including victims of sexual misconduct as identified in this policy. All services are free of charge, confidential and provided only at the victim's request. From the moment a crime occurs, Victim Advocates

are available to help in various ways. Two full-time advocates are available 24 hours a day, seven days a week. The Victim Assistance program also coordinates the activities of Sarah's House, a regional support center for victims of crime and their families. The professional staff at Sarah's House provide referrals to other appropriate social service agencies as needed. Defiance County Victim Assistance can be reached by phone at (419) 782-0911. Sarah's House is located at 1114 E. 2<sup>nd</sup> Street in downtown Defiance.

### **Access to Policy**

The Policy is published online on the Defiance College Website <http://www.defiance.edu/information/titleix.html>. It is included in the Student Handbook distributed yearly to students.

This policy was adapted from the NCHERM/ATIXA Model Policy 2015 and 2016.

Revised 07-1-17

## **APPENDIX**

### **SEXUAL VIOLENCE -- RISK REDUCTION TIPS**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.