



# **Sexual Misconduct Policy 2025**

(2020 Final Rule Regulations)

# Sexual Misconduct Policy

## I. Introduction

Dominican University New York (“the University”) is committed to providing a safe and inclusive environment for all members of the University community that is free from sexual misconduct. The University is committed to providing options, support, and assistance to victims/survivors of sexual misconduct to ensure that each member of the University community can freely participate in all University programs, activities, and employment.

In furtherance of those goals, the University has developed this Policy to define prohibited sexual misconduct, establish a mechanism for determining when sexual misconduct has taken place, and provide recourse for members of the University community whose rights have been violated.

This Policy is intended to be consistent with the University’s obligations under Title IX of the Education Amendments Act of 1972 (“Title IX”) and 34 CFR Part 106<sup>1</sup>; the Clery Act, as amended; the Violence Against Women Reauthorization Act of 2013 (“VAWA”); New York State Education Law Article 129-B; and New York State Labor Law 201-G.

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the University’s policy or process may contact the Department of Education’s Office for Civil Rights using contact information available at <https://ocras.ed.gov/contact-ocr>.

## II. Prohibited Conduct and Relevant Definitions

The University prohibits sexual misconduct, an umbrella term that is used to encompass sexual harassment/gender-based harassment, which includes sexual assault, stalking, dating violence, and domestic violence, as defined below. Sexual misconduct and all acts of sexual misconduct, as set forth below, are strictly prohibited by the University. This policy applies to members of the University community.

Sexual harassment is considered a form of employee misconduct. Sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue.

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<sup>1</sup> On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 (“Final Rule”) that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>.

Pursuant to Title IX, *Sexual Harassment* means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Student Code of Conduct, the Discrimination and Harassment Policy, or other University faculty and staff disciplinary policies as may be applicable.

The following are examples of sexual harassment that may not constitute "sexual harassment" as defined under Title IX depending on the circumstances but may otherwise be subject to investigation and are strictly prohibited by the University:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:

- Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
- Sabotaging an individual's work;
- Bullying, yelling, name-calling.

*Sexual Assault* - an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

*Domestic Violence* - felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

*Dating Violence* - violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

*Note: The above definitions will be utilized in determining whether an incident of Sexual Assault, Dating Violence, Domestic Violence or Stalking in violation of University policy by the preponderance of the evidence standard has occurred (and not to determine whether a crime has been committed). The above definition will also be utilized by the University for Clery Act Reporting purposes.*

*Retaliation* - No member of the University community or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy, Title IX, or 34 CFR Part 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by this policy, Title IX, or 34 CFR Part 106, will also be considered retaliation by the University.

Special Circumstances:

1. The exercise of rights protected under the First Amendment does not constitute retaliation.
2. The University's charging an individual with an alleged conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility,

alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **Other Definitions**

*Actual Knowledge* - means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

*Business Days* - Official working days when the University is open for business; does not include weekends and University recognized holidays.

*Clery Act* - A federal law, codified at 20 U.S.C. § 1092(f), that requires all colleges and universities who receive federal funding to share information about crime in or around campus and efforts to improve campus safety.

*Clery Act Crimes of Violence* - Clery Act Crimes are codified at 20 U.S.C. § 1092(f)(1)(F)(i)(I)-(VIII), and include murder; sex offenses, forcible or nonforcible; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter; and, arson.

*Complainant* - means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in an Education Program or Activity.

*Consent* - Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent to any sexual act or prior consensual sexual activity between or with any party does not constitute consent to any other sexual act. Consent may be initially given but withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop. Consent cannot be given when a person is incapacitated. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if any of the parties are under the age of 17, or if an individual otherwise cannot consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm

*Education Program or Activity* - includes locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

*Force* - the use of physical violence and/or imposing on someone physically to gain sexual access, including threats, intimidation, and/or coercion that overcome resistance or produce consent. Consent is not effective when forced

*Formal Complaint* - means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University

investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in this policy. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party. The complaint form that may be used as a Formal Complaint is contained in Appendix A of this policy.

*Gender* - the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women, i.e. masculine, feminine.

*Gender Expression* - the way in which a person acts to communicate gender within a given culture.

*Gender Identity* - the way in which a person identifies

*Impact Statement* - statement drafted by a member of the University community explaining to the University how the underlying incident(s) has impacted his or her life.

*Incapacitation*: A state where an individual cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent; may be caused by lack of consciousness, being asleep, being involuntarily restrained. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

*Investigator(s)* - the person(s) tasked with investigating a Formal Complaint or report of sexual misconduct. All Investigators shall receive annual training regarding such issues as the laws governing Discrimination, Harassment and Retaliation; Title IX and 34 CFR Part 106, VAWA/Campus SaVE Act (as defined below), and Enough is Enough; as well as other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender or Sex, including Sex Discrimination, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and Stalking; Student and witness privacy rights; and the Family Educational Rights and Privacy Act of 1974 (FERPA). The Investigator shall not be within the administrative control or authority of any Responding Individual who is a University Employee, or otherwise has (or creates the appearance of having) a conflict of interest.

*Law Enforcement* - the police or Dominican University New York Campus Safety and Security. To contact the police in the event of an emergency or ongoing threat, dial 911. To report an emergency, ongoing threat, or potential criminal conduct, you may also contact the Orangetown Police Department at telephone number (845) 359-3700 or Campus Safety and Security at telephone number (914) 403-7531.

*Member of the University Community* - students, faculty, and staff of Dominican University New York.

*Preponderance of Evidence* - the required standard for determining a violation under this Policy. Those individuals charged with rendering a decision of a policy violation must be convinced, based

on the information provided, that a policy violation was more likely to have occurred than to not have occurred in order to find a Responding Party responsible for violating this Policy.

*Relevant Evidence and Questions* - refers to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. “Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

1. Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:
  - a. They are offered to prove that someone other than the Respondent committed the conduct alleged by the complainant, or
  - b. They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
2. Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
3. Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

*Report*—information about an alleged incident of sexual harassment provided by a Reporting Individual to the Title IX Coordinator or a non-confidential University official.

*Respondent*—means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

*Sexual Activity*— shall mean a “Sexual Act” and “Sexual Contact” as provided in 18 U.S.C. 2246(2) AND 18 U.S.C. 2246(3):

*Sex* - the biological and physiological characteristics that define men and women, i.e. male, female, intersex.

*Sexual Contact*—means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

*Sexual Orientation* - an individual’s sexual identity in relation to the gender and/or sex to which the individual is sexually and romantically attracted.

*Supportive Measures*—means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, increased security and monitoring of certain areas of the campus, and other similar measures. The University will maintain as confidential any supportive measures provided to the complainant or respondent,

to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

*Title IX* - federal law, codified at 20 U.S.C. § 1681 et seq., that prohibits discrimination on the basis of sex in educational programs and activities. Specifically, the law provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under an educational program or activity receiving federal financial assistance.”

*Title IX Coordinator* - the Title IX Coordinator is the Dominican University New York employee responsible for ensuring that the University is complying with all Title IX regulations and is charged with the primary responsibility for coordinating the University’s Title IX compliance efforts, including determining whether to go forward with an investigation, coordinating the investigation of a complaint, and implementing additional Title IX regulations.

### **III. How does the Sexual Misconduct Policy impact other campus disciplinary policies?**

Under the Final Title IX Rule, the geographic scope of the University’s authority to act under Title IX and the types of sexual harassment that it must subject to its Title IX investigation and adjudication process is limited. **Only** incidents falling within the Final Rule’s definition of “Sexual Harassment” (see Prohibited Conduct above) will be investigated and, if appropriate, brought to a live hearing through the grievance process defined below.

Dominican University New York remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. Specifically, the University also maintains a corresponding Discrimination and Harassment policy to address reports of unlawful discrimination or harassment that fall outside of the Title IX Final Rule. Moreover, the University reserves the right to proceed under the Student Code of Conduct or applicable faculty and staff disciplinary policies.

The elements established in this Policy under the Final Rule have no effect and are not transferable to any other policy of the University for any violation of the Community Standards, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the University and may not be cited for or against any right or aspect of any other policy or process.

### **IV. General Rules of Application**

#### *Effective Date*

This Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to formal complaints of sexual harassment as defined in this Policy brought on or after August 14, 2020.

#### *Revocation by Operation of Law*

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this Policy, this Policy, or the invalidated elements of this Policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that



date of opinion or order publication. Should this Policy be revoked in this manner, any conduct covered under this Policy shall be investigated and adjudicated under the existing Student Code of Conduct, the Discrimination and Harassment Policy, or other University disciplinary policies as may be applicable.

## **V. Bill of Rights**

All members of the University Community have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any employee, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the investigative and grievance process including during all meetings and hearings related to such process (see Advisor section below for additional information);
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution; and
12. Make a report to an employee with the authority to address complaints, including the Title IX Coordinator, Director of Human Resources, Campus Security, Local Law Enforcement, and/or Family Court or Civil Court.

## **VI. Amnesty Provision**

The health and safety of every student at the Institution is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of

potential consequences for their own conduct. The University strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to University officials or law enforcement will not be subject to Institution's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## **VII. The Importance of Preserving Evidence and Forensic Examinations**

Whether or not you choose to report an act of sexual misconduct, it is important to preserve evidence of the assault in case you later wish to report the sexual misconduct to law enforcement or University officials. If you have cleaned up after an assault or no longer have evidence, you may still report the incident and an investigation will follow, but it will help police and investigators to have all available evidence.

To preserve evidence of a sexual assault do not wash your hands or face; do not shower or bathe; do not brush your teeth; and, do not change clothes or straighten up the area where the assault took place. If you remove clothing, try to preserve the clothing in a paper bag.

To preserve evidence of physical violence take photographs of any bruising or other visible injuries.

Email, social media posts, text messages, and/or voicemails may also provide evidence of sexual misconduct.

The Center for Safety and Change, Nyack Hospital, and Good Samaritan Hospital provide Sexual Assault Forensic Examiner (“SAFE”) services. SAFE Examiners offer prompt, compassionate, non-judgmental care and forensic examination for injury identification and evidence collection.

Contact information for these organizations is provided in Section XV (Off-Campus Resources).

### **Forensic Examination**

Within 96 hours\* of a sexual assault, the assault victim has the option to undergo a Sexual Assault Forensic Exam at a local hospital for purposes of evidence collection. This option is available even if the assault victim has not decided whether she or he wishes to pursue any action against the alleged perpetrator. The exam is performed by a skilled clinician and includes assessment for and treatment of injury, addressing concerns of pregnancy and sexually transmitted infections, and collection of evidence.

- Choosing to undergo a Sexual Assault Forensic Exam (commonly referred to as a “Rape Kit”) does not require the individual to report the incident to an external law enforcement agency or to the University. Undergoing the exam, however, will help to ensure that the victim receives proper care and preserves her or his opportunity to support a disciplinary or criminal action if she or he decides later to prosecute, seek a protective order or report the incident to the University.
- While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. Individuals are encouraged to let hospital personnel know if they do not want their insurance policyholder to be notified about access to these services.

- The New York State Office of Victim Services may be able to assist in compensating individuals for health care and counseling services, including emergency funds. More information may be found at <https://ovs.ny.gov/sites/default/files/brochure/rights-crime-victims-booklet-final-8-24-20.pdf> or by calling 1-800-247-8035. Options are explained at <https://ovs.ny.gov/help-crime-victims>.

\*Even if 96 hours have elapsed, the exam is still recommended, although its utility may be diminished. Therefore, persons believing that they have been the subject of a sexual assault are advised to seek and secure a Sexual Assault Forensic Exam at the earliest possible opportunity.

### VIII. Reporting a Potential Policy Violation

The University takes all allegations of sexual misconduct seriously and encourages any member of the University community who has been a victim of sexual misconduct or a witness to sexual misconduct to report the incident to University officials. The reporting party may elect to make a confidential or non-confidential disclosure using the avenues set forth below.

In addition to reporting the incident to the University, please note that you may always dial 911 or contact the Orangetown Police Department (Telephone: 845/359-3700) to report an emergency, ongoing threat, or potential criminal conduct to law enforcement. It is your choice whether to report an act of sexual misconduct to law enforcement.

#### A. Confidential Disclosures

If a member of the University community wishes to discuss a potential violation of this policy, but wishes to maintain complete confidence, then the individual may speak with professional counselors and/or pastoral counselors at the following offices, who are not required to report potential violations of this Policy to the Title IX Coordinator:

Dominican University Counseling Services	<b>Alise Cohen, LCSW, BCD</b> Location: Deporres Hall Hours: Monday-Friday 9am-5pm	Telephone: (845) 848-4036
	<b>Eileen A. Piccininni, MA, LPC</b> Location: Casey Hall Hours: Monday-Friday 9am-5pm	Telephone:(845) 848-4030
Dominican University Health Center	<b>Director: Lynda Chesterman</b>	Telephone: (845) 848-7918
	<b>Assistant Director: Julie Albrecht</b> Location: Granito Center, 2 <sup>nd</sup> Floor Hours: Monday-Friday 9am-5pm	Telephone: (845) 848-7923

If an employee wishes to discuss a potential violation of this policy, but wishes to maintain complete confidence, then the individual may utilize the Employee Assistance Program (EAP) which is available 24 hours a day, 7 days a week and is completely confidential.

Employee Assistance  
Program (EAP)

Hours: 24 hours, 7 days a  
week

Telephone: (800) 252-4555  
(800) 225-2527

## **B. Non-Confidential Disclosures**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator:

### **Jonathan Delgado**

Assistant Dean for Student Development & Title IX Coordinator

(845) 848-5012

[Jonathan.Delgado@duny.edu](mailto:Jonathan.Delgado@duny.edu)

In the event that the Title IX Coordinator is unable to serve in this capacity for any reason, an administrator will be designated to fulfill this responsibility. The 'acting' Title IX Coordinator is listed on the Dominican University website, and if it should be necessary to appoint someone other than the above-listed individual, official notice will be sent via University email to the entire community.

In addition, members of the University community may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), to non-confidential Dominican University faculty and staff members. All non-confidential Dominican University faculty and staff members are considered mandatory reporters and must report potential violations of this Policy to the Title IX Coordinator.

University offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible.

## **C. Additional Reporting Information**

**Statistical Reporting:** The Clery Act is a federal law requiring institutions of higher education to collect and report statistics on certain crimes in an Annual Security Report. Campus Security Authorities at the University have a duty to provide Public Safety and Security with information regarding certain crimes when they are reported. All personally identifiable information is kept confidential, but statistical information regarding Clery reportable crimes must be shared, including the date and location of the incident (but not the specific address) and information about the reported crime, to allow for proper classification. This report provides the University community with information about the extent and nature of crime on the University's campus and helps ensure greater community safety.

**Timely Warning Notifications:** If a report of Sexual Misconduct reveals that there is an immediate threat to the health or safety of students or employees on campus, or that an ongoing serious or continuing threat to the campus community exists, an emergency Timely Warning

notification will be issued by the University. The purpose of the Timely Warning notification is to enable individuals to protect themselves and to increase safety awareness, as well as seek information that will lead to eradication of the threat. The Complainant's name and other personally identifiable information will not be included in any Timely Warning notification or public safety advisory.

## **IX. Dominican University's Response to Sexual Misconduct Reports**

Upon obtaining Actual Knowledge of an incident of Sexual Misconduct, the Title IX Coordinator will respond promptly, in a manner that is not deliberately indifferent. The University will treat both Complainants and Respondents equitably by offering supportive measures to the Complainant (if known) and Respondent, and, if a Formal Complaint is filed, by following the formal investigation and grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

### **A. Initial Meetings**

Upon obtaining actual knowledge of an incident of Sexual Misconduct, the Title IX Coordinator will promptly meet independently with both the Complainant (if known) and Respondent.

#### *1. Meeting with the Complainant*

Upon receiving a report of an incident of sexual harassment, the Title IX Coordinator will promptly contact the Complainant (if known) to:

1. Discuss the availability of supportive measures;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint and, if applicable, the filing of a crime to local law enforcement;
4. Explain the process for filing a Formal Complaint;
5. Explain what the University's Grievance Process entails; and
6. Discuss protection from, and reporting of, incidents of retaliation.

In addition, when a student or employee reports an incident of sexual assault, dating violence, domestic violence, or stalking, whether the offense occurred on or off campus, the Title IX Coordinator will also:

1. Provide the Complainant a copy of the Bill of Rights (if applicable), including a review of his or her rights and options;
2. Provide written notification of the counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services available for complainant both within the University and in the community;
3. Discuss the importance of preserving relevant evidence or documentation in the case (e.g., texts, emails, notes, photographs (etc.)).

The Title IX Coordinator will consider the Complainant's wishes with regard to supportive measures. If supportive measures are not provided to a Complainant, the Title IX Coordinator will document why they were not provided and why not providing such measures is not deliberately indifferent.

## *2. Meeting with the Respondent*

The Title IX Coordinator will also promptly contact the Respondent, who will also be offered supportive measures and be provided with a copy of the Student Bill of Rights (if applicable).

### **B. Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures may include, but are not limited to, the following:

1. Counseling;
2. Extensions of deadlines or other course-related adjustments;
3. Modifications of work or class schedules;
4. Campus escort services;
5. Mutual restrictions on contact between the parties;
  - a. When a No Contact order is in effect, continued contact between the Parties is a violation of University policy and may result in additional conduct charges.
  - b. If the Respondent and Complainant observe each other in a public place, it is the responsibility of the Respondent to leave the area immediately and without directly contacting the Complainant.
  - c. The Complainant also should take reasonable steps to avoid or minimize contact with the Respondent.
  - d. Both Parties may request a prompt review by the Title IX Coordinator of the need for and terms of a No Contact Order. Parties may submit evidence in support of their request.
6. Changes in work or housing locations;
7. Assistance with course withdrawals;
8. Transportation accommodations, such as shuttle service, cab voucher, or parking arrangements to ensure safety and access to other services;
9. Increased security and monitoring of certain areas of the campus; and
10. Other similar measures.

For international students, supportive measures may also include assistance with immigration and visa issues.

The University will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality will not impair the ability of the University to provide the supportive measures.

## **X. Initiating a Formal Complaint with the University**

The filing of a Formal Complaint with the Title IX Coordinator triggers the University's investigation and grievance process under this policy. The timeframe for the Title IX grievance process begins with the filing of a Formal Complaint. The grievance process will be concluded within a reasonably prompt manner, and no longer than 90 days after the filing of the Formal Complaint, provided that the process may be extended for a good reason, including but not limited to the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

A Formal Complaint of Sexual and Gender-Based Misconduct is a document or electronic submission filed by the Complainant or signed by the Title IX Coordinator alleging Sexual and Gender-Based Misconduct against a Respondent and requesting that the University investigate the allegation of sexual harassment. The Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in this Policy.

At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the University, including as an employee. For Complainants who do not meet these criteria, the University reserves the right to utilize existing policy (i.e., Student Code of Conduct, the Discrimination and Harassment Policy or other applicable disciplinary policy) to resolve the complaint.

In the case of conduct which seriously threatens the health or safety of a party or of the community at-large, the Title IX Coordinator may determine that a Formal Complaint is necessary in order to initiate an investigation according to this policy, despite objection by the complainant. When the Title IX Coordinator does sign a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this Policy. In deciding whether to sign a Formal Complaint, the Title IX Coordinator will consider the facts of the specific case and will consider the following factors:

1. A pattern of alleged conduct by the Respondent;
2. The involvement of violence or weapons;
3. The seriousness of the alleged sexual harassment;
4. The age of the individual harassed;
5. Whether there have been other complaints or reports of harassment against the Respondent; and
6. Similar factors in a Complainant's allegations.

If the Title IX Coordinator does commence a Formal Complaint and the Complainant is known, the Coordinator will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further. The Title IX Coordinator will provide the Complainant all

notices and opportunities to respond to evidence under this Policy, even if the Complainant is not actively involved.

Nothing in this Policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

### **A. Determining Jurisdiction**

The Title IX Coordinator will determine if this Policy and its corresponding investigation and grievance hearing process should apply to a Formal Complaint. This Policy will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in one of the University's Education Program or Activities; and
4. The alleged conduct, if true, would constitute "sexual harassment" as defined in this Policy.

If all of the elements are met, the University will investigate the allegations in accordance with Section XI.

Note: If the alleged conduct, if true, includes conduct that would constitute covered Sexual and Gender-based Misconduct prohibited by this Policy AND conduct that would not constitute covered Sexual and Gender-based Misconduct, the Title IX investigation and grievance hearing process will be applied in the investigation and adjudication of all of the allegations.

### **B. Dismissal of a Formal Complaint**

The Title IX Coordinator will review the allegations in the Formal Complaint. If the conduct alleged 1) does not constitute Sexual Misconduct as defined in this Policy even if proved, 2) did not occur in a University Education Program or Activity, 3) or did not occur against a person in the United States, then the Title IX Coordinator will dismiss the Formal Complaint with regard to that conduct for purposes of sexual harassment under Title IX. *Such a dismissal, however, does not preclude action pursuant to the Student Code of Conduct, the Discrimination and Harassment Policy or other applicable disciplinary policy.*

The Title IX Coordinator will also dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or grievance hearing:

1. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the Formal Complaint or any allegations therein;
2. The Respondent is no longer enrolled or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon a dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the Parties, as well as notice of the right to appeal the dismissal.



### **C. Notice of Allegation(s) to the Parties**

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the following written notice to the Parties who are known:

1. Notice of the University's applicable grievance process, including information regarding the informal resolution process (see the Informal Resolution section below).
2. Notice of the allegations potentially constituting Sexual Misconduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
  - a. The identities of the parties involved in the incident, if known;
  - b. The conduct allegedly constituting sexual harassment; and
  - c. The date and location of the alleged incident, if known.
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the applicable grievance process.
4. A statement informing the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, during the grievance hearing, and may inspect and review evidence during the University's investigation process.
5. A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited and subject to disciplinary action.

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide notice of the additional allegations to the Parties whose identities are known.

### **D. Consolidation of Formal Complaints**

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual and Gender-Based Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sexual and Gender-Based Misconduct arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this policy to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

### **E. Emergency Removal**

The Title IX Coordinator may remove a Respondent student from a University's Education Program or Activity on an emergency basis, provided that the Title IX Coordinator (or designee):

1. Undertakes an individualized safety and risk analysis;
2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual and Gender-Based Misconduct justifies removal; and

3. Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

An emergency removal does not replace the regular grievance hearing process, which shall proceed on the normal schedule, up to and through a hearing, if required.

#### How to Challenge an Emergency Removal Decision

Challenges are resolved by the Vice President for Enrollment Management, or designee. The challenge must be submitted in writing by the Respondent within five (5) business days after the receipt of the Title IX Coordinator's emergency removal decision.

The challenge statement must specify the grounds for the challenge and include any evidence in support of the grounds. The grounds for an appeal are limited to:

1. Information that a procedural error affected the decision;
2. Information that a factual error affected the decision; or
3. Additional information relevant to the assessment that was not available at the time of the initial safety and risk analysis.

During the challenge, the emergency removal decision will remain in place. A written response to the appeal will be provided by the Vice President for Enrollment Management, or designee, to the Respondent by mail and email (if both addresses are known) within five (5) business days of receiving the written challenge. The outcome of the challenge is final.

#### **F. Administrative Leave**

The University may place a non-student employee Respondent on administrative leave during the pendency of a formal grievance process. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

#### **G. False Complaint**

It is a violation of this Policy for anyone knowingly to make false accusations of discrimination or harassment. A determination that a Formal Complaint is not meritorious, however, is not necessarily equivalent to a false allegation and a finding for the responding party does not necessarily constitute a finding that the Formal Complaint was made in bad faith.

#### **H. Advisor of Choice and Participation of Advisor of Choice**

The University will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the University.

The University will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other University policies apply to matters governed under this Policy, and the University cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The University will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the University.

## **XI. Optional Informal Resolution**

Informal Resolution such as mediation, restorative justice, or other methods may be an alternative to the Formal Investigation and grievance phases. The Title IX Coordinator will determine if Informal Resolution is appropriate, based on the willingness of the parties and the nature of the conduct at issue. *Informal Resolution may not be used as the primary resolution mechanism to address allegations that a Dominican University New York employee sexually harassed a student or a minor.*

Before starting the informal resolution process, the Title IX Coordinator will notify the Parties in writing that participation is strictly voluntary and is not offered as a condition of enrollment/continuing enrollment, employment/continuing employment, or a waiver of the right to a formal investigation. Moreover, the written notification will state that the Parties have the right to withdraw from the informal resolution process at any time and resume the grievance process with respect to the formal complaint. The notice will also state that the parties have the right to be accompanied by an advisor and that any information provided by the parties in the course of the informal resolution process may be considered in a subsequent investigation and grievance hearing process.

If, after receiving written notification of the above rights, the Parties both voluntarily consent in writing to pursue informal resolution, the Title IX Coordinator will assign a trained administrator or third-party external to the University to facilitate the informal resolution process.

If both Parties are satisfied with a proposed resolution after participating in the informal resolution process and the Title IX Coordinator believes the resolution satisfies the University's obligation to provide a safe and non-discriminatory environment, the resolution will be implemented, the investigation and grievance hearing process will be concluded, the matter will be closed, and both parties will be provided with written notice of the resolution.

If, however, informal resolution efforts are unsuccessful, the investigation and/or grievance hearing phase will continue.

Informal resolution will typically be completed within thirty (30) days, or such other time as is reasonable and practicable. In circumstances when it is not reasonable and practicable to complete the informal process in a 30-day time frame, both the Complainant and the Respondent will be notified in writing regarding the delay and anticipated completion date.

The Title IX Coordinator will maintain records of all reports and conduct resolved through informal resolution for a period of seven (7) years.

## **XII. Formal Investigation and Grievance Hearing Phases**

### **A. Investigation Phase**

For all Formal Complaints that proceed to investigation, the Title IX Coordinator will designate a specially trained impartial investigator (or team of investigators) either internal or external to the University to interview and gather relevant evidence from the Parties and any witnesses. The investigator(s) will also work with the Public Safety and Security, as well as other campus offices to gather pertinent documentary materials (if any) and other relevant information. The University may, at any time, elect to engage a third party to conduct the investigation process, in whole or in part.

#### *General Rules of Investigations*

When investigating a Formal Complaint and throughout the grievance process, the University, under the supervision of the Title IX Coordinator, will:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties, provided that the University cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written consent to do so for the grievance process;
2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence (e.g., no "gag orders");
4. Provide the Parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, the University may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both Parties;
5. Provide, to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
6. Provide both Parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source, so that each may meaningfully respond to the evidence prior to conclusion of the investigation.

The Title IX Coordinator will communicate with the investigator(s) regularly throughout the investigation to ensure that the investigation is thorough, impartial, and fair and that the above guidelines are adhered to.

### *The Investigation*

The University's formal investigation may include, but is not limited to:

1. Conducting interviews of the Complainant, the Respondent(s), and any witnesses (witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character):
  - a. The investigator(s) will provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the Party to prepare to participate;
  - b. The investigator(s) will take handwritten or typed notes of all interviews and based on those notes will prepare written statements for each interviewee. The Parties and witnesses will have the opportunity to review their own statement and provide the investigator(s) with corrections or revisions prior to the conclusion of the investigation;
2. Reviewing law enforcement investigation documents, if applicable;
3. Reviewing relevant materials from student and personnel files; and
4. Gathering, examining, and preserving other relevant documents and physical, written (including medical records), and electronic evidence (including social media, security camera footage, etc.).

Both Parties may have an advisor accompany and advise them, but not actively participate, throughout the investigation process.

### *Inspection and Review of Evidence*

Prior to completion of the investigative report, the investigator(s) will send to each Party and the Party's advisor, if any, in an electronic format or a hard copy any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint (including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source) so that each Party may meaningfully respond to the evidence prior to conclusion of the investigation.

The Parties will have 10 business days to submit a written response, which the investigator will consider prior to completion of the investigative report. The investigator(s) will make all such evidence subject to the Parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

### *The Investigative Report*

At the conclusion of the investigation and after the expiration of the 10 day written response period, the investigator(s) will issue an investigative report to the parties that fairly summarizes relevant

evidence and, at least 10 business days prior to a formal grievance hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, send to each Party and the Party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the Investigator(s), but only to provide a fair summary of that evidence. Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report. Moreover, the Investigator(s) may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

## **B. Grievance Hearing Phase**

Following the opportunity for review and comment of the investigator's report, the Title IX Coordinator will forward the case to a specially trained impartial Administrative Reviewer(s) (a staff member or team of staff members trained on Title IX and this policy and procedure) to conduct the hearing. The Administrative Reviewer(s) may not have a conflict of interest and cannot have participated in the investigative process.

### *1. Notice of Grievance Hearing*

The Title IX Coordinator will send a written notice of the hearing to the parties at least ten business days prior to the hearing date. The written notice will include the following information:

1. The date, time, location and factual allegations concerning the alleged policy violation;
2. The specific policy allegedly violated;
3. Possible sanctions;
4. The time, date, and location of the hearing and the contact information of the Administrative Reviewer(s) assigned to hear the matter;
5. Information about requesting reasonable accommodations for the hearing;
6. A copy of the University's hearing rules and procedures;
7. Notice of the requirement that an advisor must conduct cross examinations directly, orally, and in real time at the hearing and that if a party does not have an advisor, the University will provide one free of charge;
8. The process for requesting witnesses;
9. Notice of the right to request that the parties be separated with the utility of technology to enable the parties to see and hear one another as needed from different rooms; and
10. Notice of the right to file a protest to the appointment of an Administrative Reviewer or Reviewers by identifying a possible conflict of interest in writing to the Title IX Coordinator (see Conflicts of Interest clause below).

In addition to the above, the Respondent's written notice will further contain the option to acknowledge full, partial, or no responsibility for the alleged violations prior to the hearing. At any time prior to the date of the hearing, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged misconduct. In such a situation, the assigned

Administrative Reviewer(s) may propose sanction(s) for the Respondent and, if the Complainant and the Respondent agree to such proposed sanction(s), then the Formal Complaint may be resolved without a hearing and without any further rights of appeal by any party. If either the Complainant or the Respondent objects to such proposed sanction(s), then the Administrative Reviewer(s) will convene a hearing for the exclusive purpose of determining a sanction.

## *2. Hearing Rules*

The grievance hearing is conducted in a fair and equitable manner for the purpose of determining whether it is more likely than not that the respondent committed an act of sexual harassment in violation of this policy (i.e. “the preponderance of the evidence” standard).

The following rules apply to all grievance hearings:

1. Both Parties will be treated fairly and equitably throughout the live hearing process;
2. Hearings will be private and closed to everyone except the involved persons;
3. The live hearing may be conducted in person or virtually at the discretion of the Administrative Reviewer(s);
4. At the request of either party, the parties will be separated with the utility of technology to enable the parties to see and hear one another as needed from different rooms.
  - a. The use of such technology must enable the Administrative Reviewer(s) and parties to see and hear the witnesses testify;
  - b. Training in the usage of such technology will occur before the hearing to ensure proper execution;
5. Both parties will be provided an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
6. The Respondent is presumed not responsible until determined responsible for the alleged violation(s) at the end of the grievance process based upon a preponderance of the evidence, or more likely than not, standard;
7. During the hearing, the Parties’ respective advisors will be required to conduct cross-examination directly, orally, and in real time:
  - a. Cross-examination may not be conducted directly by a Party;
  - b. If a Party does not have an advisor, the University will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the Party;
  - c. The advisor is not prohibited from being a witness in the matter;
  - d. If a Party does not attend the live hearing, the Party’s advisor may appear and conduct cross- examination on their behalf;
  - e. If neither a Party nor their advisor appear at the hearing, the University will provide an advisor to appear on behalf of the non-appearing Party.

8. During the hearing, the Administrative Reviewer(s) will have the right to determine the relevancy of any questions asked on cross-examination and may exclude any irrelevant questioning.
  - a. The Administrative Reviewer(s) must provide an explanation to the parties for excluding a question on the basis of irrelevancy.
  - b. Questions about the predisposition or prior sexual behavior of the Complainant are deemed not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove someone other than the Respondent committed the alleged conduct, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent;
  - c. Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation;
  - d. If a Party or witness does not attend or does not submit to cross-examination at the hearing, the Decision Makers may nevertheless rely on any relevant statement of that Party or witness in reaching a Determination Regarding Responsibility<sup>2</sup>;
  - e. The Administrative Reviewer(s) will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege;
9. An audio recording of the hearing will be created by the University, which shall remain the property of the University, but made available to the Parties;
10. Cell phones and recording devices may not be used in the hearing room(s) (unless approved by the Administrative Reviewer(s) in advance) and must be turned off before the hearing convenes;
11. Formal rules of evidence shall not be applicable;
12. The Administrative Reviewer(s) may call any relevant witness to participate in a proceeding. Admission of any person to the hearing will be at the discretion of the Administrative Reviewer(s);
13. Pertinent records, video-surveillance images, relevant exhibits, and written statements may be accepted as information for consideration by the Administrative Reviewer(s). The applicability and weight of such evidence is determined at the sole discretion of the Administrative Reviewer(s);

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<sup>2</sup> This provision is effective as to any Determination Regarding Responsibility rendered by Decision Makers on or after August 24, 2021. It replaces a provision in prior versions of these procedures that prohibited reliance on such statements. That provision was based on a regulatory requirement of the U.S. Department of Education that has since been vacated by a federal court and that is no longer enforced by the Office for Civil Rights. See Suzanne B. Goldberg, Acting Assistant Secretary for Civil Rights, U.S. Department of Education, "Letter to Students, Educators, and other Stakeholders re *Victim Rights Law Center et al. v. Cardona*," p.1 (August 24, 2021).



14. The Administrative Reviewer(s) will objectively review all relevant evidence—including both inculpatory and exculpatory evidence—and ensure that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness;
15. The Administrative Reviewer(s) may temporarily delay the grievance hearing or extend time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as:
  - a. The absence of a Party, a Party’s advisor, or a witness;
  - b. Concurrent law enforcement activity; or
  - c. The need for language assistance or accommodation of disabilities.

### *3. Hearing Procedures*

The following is a general description of procedures for the live grievance hearing. These procedures may vary as appropriate for specific hearings at the discretion of the assigned Administrative Reviewer(s).

1. The Administrative Reviewer(s) will open and establish rules and expectations for the hearing;
2. Presentation of the investigation report by the investigator, followed by questions to the investigator by the Administrative Reviewer(s) and then cross examination by the Parties’ advisors;
3. Complainant statement, followed by questions to the complainant by the Administrative Reviewer(s) and then cross examination by the respondent’s advisor;
4. Respondent statement, followed by questions to the respondent by the Administrative Reviewer(s) and then cross examination by the Complainant’s advisor;
5. Fact and expert witness questioning by the Administrative Reviewer(s), followed by cross examination by the Parties’ advisors;
6. Closing statement by Complainant;
7. Closing statement by Respondent.

#### *Additional Cross-Examination Rules:*

1. Before any cross-examination question is answered, the Administrative Reviewer(s) will determine if the question is relevant;
2. Cross-examination questions that are duplicative of those already asked, including by the Administrative Reviewer(s), may be deemed irrelevant if they have been asked and answered;
3. During the Parties’ cross-examination, the Administrative Reviewer(s) will have the authority to pause cross-examination at any time for the purposes of asking its own follow up questions; and any time necessary in order to enforce rules of decorum.
4. Should a Party or the Party’s Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to

the Administrative Reviewer(s). A Party's waiver of cross-examination does not eliminate the ability of the Administrative Reviewer(s) to use statements made by the Party.

#### *4. Written Determination and Notification*

Following the hearing, the Administrative Reviewer(s) will review all information presented through the investigation and live hearing processes and then issue a written determination regarding responsibility, which includes:

1. The allegations of Sexual Misconduct;
2. A description of the procedural steps taken;
3. Findings of fact;
4. Conclusions regarding applying the policy to the facts;
5. A statement with rationale detailing the result of each allegation;
6. A listing of any imposed sanctions and any remedies provided; and
7. An explanation of the University's appeal process.

The written determination will be delivered simultaneously to both parties within ten business days after the hearing, unless the Administrative Reviewer(s) determines additional time is needed to make a decision.

#### **C. Time Frame for Resolution**

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than 90 calendar days after the filing of the Formal Complaint, provided that the process may be extended for reasons, including but not limited to the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

#### **D. Use of the Preponderance of the Evidence Standard**

The Preponderance of Evidence standard is the required standard for determining whether a Policy violation has occurred. The Administrative Reviewer(s) charged with rendering a decision of Policy violations must be convinced, based on the information provided, that a Policy violation was more likely to have occurred than to not have occurred in order to find a Responding Party responsible for any violation of this Policy.

#### **E. Available Disciplinary Sanctions**

The Administrative Reviewer(s) will determine the appropriate sanction in the event that the Respondent is found responsible by the preponderance of the evidence standard for violating this Policy. The Administrative Reviewer(s) determination will be in writing and shared simultaneously with the Parties as detailed in the Written Determination and Notification clause above.

Any one or more sanctions listed below may be imposed by the Panel as applicable:

**Student Respondents:** Sanctions and/or responsive action for students may include warnings, fines, restitution, discretionary sanctions, assignment to complete an educational program or

project, loss of privileges, residence hall probation, administrative relocation, residence hall suspension, suspension or removal from a University team, club or activity, termination of recognized status of a University team, club or activity, residence hall expulsion, University probation, University suspension, University expulsion, revocation of admission, and/or withholding or revocation of a degree (whether or not that degree has been conferred). This list is not exclusive, but is intended to be illustrative of the common forms of sanction that may be issued upon a finding of student responsibility.

**Employee Respondents:** Sanctions and/or responsive action for employees or volunteers may include work restrictions, requirement to attend training or other education, requirement to obtain counseling, salary reduction or limitation, loss or reduction of an employment-related benefit or privilege, an oral warning, a written reprimand, suspension from employment, and/or dismissal from or termination of employment. This list is not exclusive, but is intended to be illustrative of the common forms of sanction that may be issued upon a finding of employee responsibility.

#### **F. Impact Statement**

If it has been determined that this Policy was violated, then both the Complainant and Respondent have the right to present an impact statement to the Administrative Reviewer(s) to be considered during the sanction process. The impact statement(s) must be provided to the Administrative Reviewer(s) within five (5) business days of notification of whether this Policy has been violated.

#### **G. Remedial Action**

In addition to the imposition of disciplinary sanctions, the Title IX Coordinator may take remedial action(s) to protect the Complainant and the University community. Remedial actions are considered separate from, and in addition to, any disciplinary sanction or supportive measure that may have been provided.

When the University is unable to conduct a full investigation into a particular incident (i.e., when a Formal Complaint is not filed.), the Title IX Coordinator will consider and, where warranted, pursue remedial action remedies for the broader University community in an effort to limit the effects of the conduct at issue and prevent its recurrence.

#### **H. Appeals**

Within ten business days of the delivery of the notice of the decision of responsibility and/or sanction, either Party may appeal the decision by submitting to the Title IX Coordinator a letter stating why the Party requesting the appeal believes the determination of responsibility and/or sanctions were inappropriate. A Party appealing under this section may only appeal on the following grounds:

1. Procedural error by the Investigator(s) or Hearing Officer/Hearing Panel that materially prejudiced the Party requesting review; and/or
2. Newly discovered material information that was not known to the Party requesting review and not available to the Investigator(s) and Hearing Officer/Hearing Panel which likely would have changed the finding of responsibility or the sanction imposed, had it been available; and/or
3. The Title IX Coordinator, Investigator(s), or Hearing Officer/Hearing Panel had a conflict of interest or bias that affected the outcome.

The Party submitting the appeal must set forth, in detail, the grounds for review and must attach all materials that they wish to have considered in the appeal process. If both the Complainant and Respondent appeal, the appeals will be considered concurrently. The Title IX Coordinator may dismiss the appeal for failing to state one of the grounds for appeal listed above. Failure to submit a written appeal within ten business days forfeits the right to appeal under this Policy, regardless of the outcome of the other Party's appeal (if submitted). If either the Complainant or Respondent submits an appeal, the Title IX Coordinator will notify the other that an appeal has been filed and the grounds of the appeal. The non-appealing Party may submit a written response within five (5) days after notice of the appeal.

*The Appellate Officer(s):* A trained, impartial administrator or panel of administrators/faculty will be assigned to be the Appellate body. The Appellate Officer(s) will decide the merits of any appeal and, in doing so, may consult with the Investigator(s), the Title IX Coordinator, the Administrative Reviewer(s) and any other individual the Appellate Officer(s) deem appropriate. Appeals are decided based on the objective evaluation of the record of the original proceeding and any relevant evidence submitted by the Parties.

The Appeals Officer(s) shall not substitute the officer's judgment for the decision of the Administrative Reviewer(s) or attempt to rehear the case. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

Sanctions of all types (including, but not limited to, any form of suspension, dismissal, or separation from the University) may be imposed, in full or in part, while an appeal is pending at the sole discretion of the Title IX Coordinator.

The Appellate Officer(s) may:

1. Deny the appeal and affirm all or part of the determination of responsibility or the determination of sanction; or
2. Refer the matter back to the Administrative Reviewer(s) for further consideration, with specific instruction. In the event of a referral for further consideration, the Title IX Coordinator will be consulted and further proceedings may commence, as appropriate under the circumstances, consistent with this Policy.

Note: Cases should only be recommended for remand for a new hearing if the specified procedural errors or conflict of interest was so substantial, they effectively denied the Respondent or Complainant a fair and impartial hearing, or new evidence merits a new hearing.

The decision of the Appellate Officer(s) regarding the appeal will be in writing, describing the result of the appeal and the rationale for the result, and is final. The Title IX Coordinator will inform the Parties simultaneously and in writing of the outcome of the appeal.

Once the appeals process is completed, it shall be the responsibility of the Title IX Coordinator to oversee the implementation of any imposed sanctions, as applicable.

### **XIII. Transcript Notations**

If a student is found responsible under this Policy for a Clery Act Crime of Violence, as defined below, including a sexual offense, then the University will make a notation to the responsible student's official University transcript of any sanction that was issued to the student "after a finding of responsibility for a code of conduct violation," such as "Suspended after a finding of

responsibility for a code of conduct violation,” or “Expelled after a finding of responsibility for a code of conduct violation.”

If a student withdraws from the University while conduct charges are pending against him or her, then his or her transcript will be marked that he or she “withdrew with conduct charges pending.”

To appeal the transcript notation, a student must petition the Office of the Registrar to remove the transcript notation. A transcript notation for suspension shall not be removed prior to one year after the conclusion of the suspension. A transcript notation for expulsion shall not be removed. If the appeal is granted, then transcript notations shall be removed within thirty (30) days of the granting of the appeal.

If a finding of violation of this Policy is vacated, then the transcript notation shall be removed. The transcript notation will be removed within thirty (30) days after the finding is vacated.

#### **XIV. n-Campus Resources**

The following resources are provided at no cost to student/faculty/administrators/staff.

Dominican University Counseling Services	<b>Alise Cohen, LCSW, BCD</b>	Telephone: (845) 848-4036
	Location: Deporres Hall Hours: Monday-Friday 9am-5pm	
	<b>Eileen A. Piccininni, MA, LPC</b>	Telephone:(845) 848-4030
	Location: Casey Hall Hours: Monday-Friday 9am-5pm	
Dominican University Health Center	<b>Director: Lynda Chesterman</b>	Telephone: (845) 848-7918
	<b>Assistant Director: Julie Albrecht</b>	Telephone: (845) 848-7923
	Location: Granito Center, 2 <sup>nd</sup> Floor Hours: Monday-Friday 9am-5pm	
Dominican University Public Safety and Security	<b>Director: John Lennon, Jr</b>	Telephone: (914) 403-7531
	<b>Assistant Security Manager: James Corrigan</b>	(Available 24 hours a day, 7 days a week)
	Location: Casey Hall	

#### **XV. . Off-Campus Resources**

The following resources are available to the community and may have associated costs, which are the responsibility of the consumer.

*The Center for Safety and Change – Rockland Family Shelter 24-Hour Hotline: (845) 634-3344*

The Center for Safety and Change offers a 24-hour hotline and free comprehensive victim assistance programs, including the Sexual Assault Forensic Examiner (SAFE) Program,

counseling, hospital/police/court accompaniment and advocacy services for survivors of sexual violence. The SAFE Program provides specially trained nurses to people who report sexual assault at Good Samaritan Hospital or Nyack Hospital (contact information below). SAFE Examiners offer prompt, compassionate, non-judgmental care and forensic examination for injury identification and evidence collection. For more information on the SAFE kit, please visit: <https://www.rainn.org/articles/rape-kit>

*Medical Centers:*

Nyack Hospital (SAFE Kit Available)

160 North Midland Avenue, Nyack, New York 10960

Telephone: (845) 348-2000

Good Samaritan Hospital (SAFE Kit Available)

255 Lafayette Avenue (Route 59), Suffern, New York 10901

Telephone: (845) 368-5000

Nanuet Urgent Care (CityMD)

256 East Route 59, Nanuet, New York 10954

Telephone: (845) 624-2273

Hours: Open 365 days a year; Monday – Friday: 7:00 a.m. – 11:00 p.m.; Saturday – Sunday: 9:00 a.m. – 7:00 p.m.

Stat Health Medical Services

2244 Palisades Center Drive, West Nyack, New York 10994

Telephone: (845) 358-7828

Hours: Monday – Saturday: 9:00 a.m. – 6:00 p.m.

*Police Department:*

Orangetown Police Department; 26 Orangeburg Road, Orangeburg, New York 10962

Main Telephone: (845) 359-3700

Detective Telephone: (845) 359-2121; Records Telephone: (845) 359-5782;

IN CASE OF EMERGENCY, DIAL 911

*New York State Office of Victim Services:*

Website: <https://ovs.ny.gov>

*Organizations with Information on Sexually Transmitted Infections:*

Centers for Disease Control and Prevention; Website: [www.cdc.gov](http://www.cdc.gov)

*Confidential and Free Hotlines:*

National Sexual Assault Online Hotline; Telephone: 866-656-HOPE (4673)

Website: <https://ohl.rainn.org/online/>

Live help for sexual assault victims and their friends and families. Free, confidential, and secure.

New York State Hotline for Sexual Assault and Domestic Violence; Telephone: 866-331-9474

Love is Respect (Domestic Violence); Telephone: 800-942-6906

*Informational Websites:*

Not Alone Website: <https://youth.gov/federal-links/notalonegov-together-against-sexual-assault>. An official website of the United States Government, providing resources for students and campuses and data related to sexual assault. Website access is provided at no cost.

**XVI. . Education, Awareness, and Training Programs**

**A. Education and Awareness Programs**

The University has developed Sexual Assault, Dating Violence, Domestic Violence and Stalking Primary Prevention and Awareness Programs for new students and employees, as well as On-going Prevention and Awareness Programs for students and faculty that:

- Review the University’s Sexual Misconduct Policy, which prohibits all forms of Sexual and Gender-Based Misconduct, including but not limited to Sexual Assault, Dating Violence, Domestic Violence and Stalking as those terms are defined in the Clery Act, identifies such conduct as illegal, and outlines how to report such incidents to the University and/or local law enforcement should they occur;
- Reviews the Clery Act and the State of New York respective definitions of Sexual Assault, Dating Violence, Domestic Violence and Stalking. New York criminal definitions are set forth below as well as in the University’s Annual Security and Fire Safety Report;
- Describes what behavior and actions constitute Consent to sexual activity in the State of New York, as well as a description of the definition of Consent utilized in the University’s Sexual Misconduct Policy. The State of New York’s definition of Consent is set forth in the Annual Security and Fire Safety Report and in this Policy;
- Provides a description of safe and positive options for Bystander Intervention, as that term is defined in this Policy. Safe and Positive Options for Bystander Intervention also are set forth in the Annual Security and Fire Safety Report; and
- Provides information on Risk Reduction. Risk Reduction means options designed to decrease perpetration and Bystander inaction and to increase empowerment for individuals (i.e., warning signs of abusive behavior and how to avoid potential attacks) in order to promote safety and to help individuals and communities address conditions that facilitate violence. Risk reduction tips are set forth in the Annual Security and Fire Safety Report.

**B. Employee Training**

Specialized training in understanding victim responses, trauma, and the dynamics of sexual harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking are a high priority and are scheduled for professional staff and faculty. All professional employees designated as investigative or grievance officer/panel staff receive regular training on methods and best practices related to sexual harassment, including Domestic Violence, Dating Violence, Sexual Assault and Stalking. These trainings focus on how investigations and the hearing process are to be conducted, in a manner that protects the safety of Complainants or others who believe they have been the subject of acts of Sexual Misconduct.

All mandatory reporters receive training on reporting requirements and how to effectively serve as a first responder in cases of sexual harassment, including Dating Violence, Domestic Violence, Sexual Assault, and Stalking.

### **C. State of New York Sexual Misconduct Laws**

It is important for members of the University community to be aware that there can be serious legal criminal consequences for engaging in certain types of Sexual Misconduct. Acts of Sexual Assault, Domestic Violence, Dating Violence, and Stalking are prosecuted criminally in New York State separately and apart from the resolution procedures set forth in the University Sexual and Gender-Based Misconduct Policy. There are significant differences between the two systems because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. The University disciplinary processes seek to determine whether an individual has violated University policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated the University's Sexual Misconduct Policy may be suspended, expelled, terminated, or otherwise restricted from full participation in the University community. Additional information regarding the differences between the criminal justice system and University disciplinary processes, can be found at <https://system.suny.edu/media/suny/content-assets/documents/sexualviolenceprevention/College-and-Criminal-Process-Resource.pdf>.

### **XVII. . Campus Climate Surveys**

The University will conduct, no less than every other year, a campus climate assessment to ascertain general awareness and knowledge of the provisions of this Policy, including student experience with and knowledge of reporting and University processes, which will be developed using standard and commonly recognized research methods. The assessment will include questions covering, but not be limited to, the following:

- The Title IX Coordinator's role;
- Campus policies and procedures addressing sexual assault;
- How and where to report domestic violence, dating violence, stalking or sexual assault as a victim, survivor or witness;
- The availability of resources on and off campus, such as counseling, health and academic assistance;
- The prevalence of victimization and perpetration of domestic violence, dating violence, stalking, or sexual assault on and off campus during a set time period;
- Bystander attitudes and behavior;
- Whether reporting individuals disclosed to the institution and/or law enforcement, experiences with reporting and institution processes, and reasons why they did or did not report;
- The general awareness of the difference, if any, between the institution's policies and the penal law; and



- General awareness of the definition of affirmative consent.

The University will take steps to ensure that answers to such assessments remain anonymous and that no individual is identified. The University will publish the results of the surveys on the University website. In posting the data, no personally identifiable information or information which can reasonably lead a reader to identify an individual will be shared.

Per New York law, information discovered or produced as a result of the assessment will not be subject to discovery or admitted into evidence in any federal or state court proceeding or considered for other purposes in any action for damages brought by a private party against the University, unless, in the discretion of the court, any such information is deemed to be material to the underlying claim or defense.

### **XVIII. . Record Keeping**

The University will maintain the following records for seven (7) years:

1. Records pertaining to any investigation under this Policy, including the outcome determination, sanction(s), and remedy;
2. Records pertaining to any appeal submitted under this Policy; and
3. Records pertaining to the informal resolution process.

**APPENDIX A**

**Complaint Form for Reporting Sexual Harassment**

Dominican University New York (the “University”) has adopted the Complaint Form for Reporting Sexual Harassment developed by New York State. The Form may be copied and used by employees to report claims of sexual harassment. New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to your immediate supervisor or the Title IX Coordinator. You will not be retaliated against for filing a complaint. If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

**For additional resources, visit: [ny.gov/programs/combating-sexual-harassment-workplace](http://ny.gov/programs/combating-sexual-harassment-workplace)**

**COMPLAINANT INFORMATION**

Name: \_\_\_\_\_

Work Address: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Job Title: \_\_\_\_\_ Email: \_\_\_\_\_

Select Preferred Communication Method:      Email    Phone    In person

**SUPERVISORY INFORMATION**

Immediate Supervisor’s Name: \_

Title: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Work Address: \_\_\_\_\_

**COMPLAINT INFORMATION**

1. Your complaint of Sexual Harassment is made about:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Work Address: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Relationship to you: Supervisor    Subordinate    Co-Worker    Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

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3. Date(s) sexual harassment occurred: \_\_\_\_\_

Is the sexual harassment continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

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I attest that, to the best of my knowledge, the above information is true and accurate.

*Signature:* \_\_\_\_\_

*Date:* \_\_\_\_\_