



# STUDENT CODE OF CONDUCT

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## **Article I. Introduction**

Dawson Community College (DCC) strengthens our community by providing quality education and empowering diverse learning to achieve their goals. As part of this mission, DCC recognizes that college students deserve to be educated in an atmosphere that is conducive to learning without impediment. This Student Code of Conduct outlines the policies and procedures utilized to foster a productive educational atmosphere.

## **Article II. Definition of Student**

For purposes of this Code, a student means any person who has been accepted and is pursuing studies at DCC, whether full-time or part-time, living in College housing (and is not a full-time employee), or engaged in college activities. This definition includes students who may be away from campus during Summer or Winter but demonstrate an intent to continue pursuing their studies in the following semester.

## **Article III. Jurisdiction of Dawson Community College**

College jurisdiction includes on and off-campus conduct. DCC reserves the right to investigate any student's behavior, and if the student is found responsible for a behavior that violates the Student Code of Conduct or any institutional policy, apply educational sanctioning. Educational sanctioning is not related to, nor is it dependent on pending or resolved criminal litigation.

### **Section 3.01 Searches**

College authorities reserve the right to search students' belongings in accordance with state and federal laws and in accordance with College policies and procedures. DCC may pursue enforcement of its rules whether or not criminal proceedings are in process and may use information from third party sources, such as law enforcement agencies and the courts, to determine whether DCC community standards have been compromised.

## **Article IV. Student Rights**

DCC recognizes that its students retain the rights provided by the United States and Montana Constitutions, federal and state statutes, and applicable College policies. The provisions of this Student Code of Conduct are intended to be consistent with these rights. The following rights are specifically recognized and implemented in this Student Conduct Code:

### **Section 4.01 Right to Confidentiality**

- (a) All disciplinary proceedings are closed to the public.
- (b) The fact that there is a disciplinary proceeding concerning the incident may be disclosed; however, identifying information of individual students will not be disclosed.
- (c) The College, including individuals involved in a disciplinary proceeding, will disclose the results of the proceedings, including sanctions imposed, only to those who need to know the results for purposes of record-keeping, enforcement of the sanctions, further proceedings, or to comply with Federal and/or State law.

## **Section 4.02 Right to Due Process**

The student accused of violating the Student Code of Conduct (the “Respondent”) and a student who brings a report against another student under the Student Code of Conduct (the “Reporter”) will be treated with equal care, concern, honor, fairness and dignity.

- (a) A student accused of violating the Student Code of Conduct (the “Respondent”) has certain rights including the right to:
  - 1) Be advised that a report is being investigated and the nature of the report.
  - 2) Respond to the report including the right to submit a written account relating to the report.
  - 3) Have a person of choice, including legal counsel, selected as an Adviser that may be present throughout any and all proceedings provided for in this Code.
  - 4) To review any evidence to be used in the proceedings.
  - 5) Be advised of the charges under the Student Code of Conduct that are being filed.
  - 6) Respond to the charges filed including the right to submit a written account relating to the charges.
  - 7) Present relevant evidence and witnesses.
  - 8) Timely resolution of charges as provided in this Code.
- (b) A student who files a report against another student under the Student Code of Conduct (the “Complainant”) also is entitled to certain rights which include the right to:
  - 1) Meet with the designated administrative officer to discuss the various aspects of the disciplinary process.
  - 2) Submit a written account of the incident and a statement discussing the effect of the alleged misconduct on himself or herself.
  - 3) Have an Adviser, including legal counsel, present throughout any and all the proceedings provided for in this Code.
  - 4) Be informed of the date, time, and location of any meetings related to the disciplinary proceedings
  - 5) Be informed immediately of the outcome of each step of the disciplinary proceeding
  - 6) Have past conduct that is irrelevant to the case not discussed during the proceedings. In the case of rape and sexual assault, this is specifically provided for in Montana Law.

## **Article V. ACADEMIC MISCONDUCT**

### **Section 5.01** Standards of Academic Conduct

Students at Dawson Community College are expected to practice academic honesty at all times. Academic misconduct is subject to Academic Penalty (or penalties) and/or Student Conduct Sanction(s). Academic misconduct is defined as all forms of academic dishonesty, including but not limited to:

- (a) **Plagiarism:** Representing another person's words, ideas, data, or materials as one's own.
- (b) **Misconduct during an examination or academic exercise:** Copying from another student's paper, consulting unauthorized material (this includes but is not limited to electronic devices or notes), giving information to another student, collaborating with one or more students without authorization, or otherwise failing to abide by the College or instructor's rules governing the examination or academic exercise without the instructor's permission.
- (c) **Unauthorized possession of examination or other course materials:** Acquiring or possessing an examination or other course materials without authorization by the instructor.
- (d) **Tampering with course materials:** Destroying, hiding, or otherwise tampering with source materials, library materials, laboratory materials, computer equipment or programs, or other course materials.
- (e) **Submitting false information:** Knowingly submitting false, altered, or invented information, data, quotations, citations, or documentation in connection with an academic exercise.
- (f) **Submitting work previously presented in another course:** Knowingly making such submission in violation of stated course requirements.
- (g) **Improperly influencing conduct:** Acting calculatedly to influence an instructor to assign a grade other than the grade actually earned.
- (h) **Substituting, or arranging substitution, for another student during an examination or other academic exercise:** Knowingly allowing others to offer one's work as their own.
- (i) **Facilitating academic dishonesty:** Knowingly helping or attempting to help another person commit an act of academic dishonesty, including assistance in an arrangement whereby any work, classroom performance, examination activity, or other academic exercise is submitted or performed by a person other than the student under whose name the work is submitted or performed.
- (j) **Altering transcripts, grades, examinations, or other academically related documents:** Falsifying, tampering with, or misrepresenting a transcript, other academic records, or any material relevant to academic performance, enrollment, or admission, or causing falsification or misrepresentation of any of the above.

## **Section 5.02** Penalties for Academic Misconduct

Depending on the severity of the academic misconduct, a student may incur one or more of the following penalties:

- (a) **Academic Penalty(ies) by the Course Instructor:** The student may receive a failing or reduced grade in an academic exercise, examination, or course, and/or be assigned additional work which may include re-examination.
- (b) **Student Conduct Sanction(s):** The Dean of Academics and/or Dean of People & Culture may also impose a sanction(s) in addition to, or in place of, the academic penalty. Sanctions (iii) through (vi) require administrative review and approval by the Dean of Academics and Dean of People & Culture:
  - (i) **Disciplinary Warning:** The student is warned that further misconduct may result in more severe disciplinary sanctions.
  - (ii) **Disciplinary Probation:** The student is warned that further misconduct may result in suspension or expulsion. Conditions may be placed on continued enrollment for a specified period of time.
  - (iii) **Suspension:** The student is separated from the College for a specified period of time and may also be excluded from participation in any College-sponsored activity. Suspension may only be assigned as a sanction by the Dean of Academics, the Dean of People & Culture, or their respective designee(s).
  - (iv) **Expulsion:** *The student is permanently separated from the College and may also be excluded from any College-owned and/or -controlled property or events.*
  - (v) **Denial of a Degree:** A degree is not awarded.
  - (vi) **Revocation of a Degree:** A previously awarded degree is rescinded.

### **Section 5.03** Disciplinary Procedures for Academic Misconduct

The focus of inquiry in disciplinary proceedings related to academic misconduct is to determine if a violation of the Standards of Academic Conduct has occurred and, if so, to determine an appropriate academic penalty and/or College sanction. Proceedings are administrative proceedings and do not follow formal rules of evidence applicable in legal and criminal proceedings. However, the accused student must receive due process and the College has the burden of proof to establish a violation of academic misconduct by preponderance of the evidence.

It is assumed, unless shown otherwise, that the faculty and Deans (or designees) make impartial judgments concerning academic misconduct and fairly impose an appropriate academic penalty and/or Student Conduct sanction. Minor deviations from prescribed procedures will not invalidate a decision or proceeding, provided they do not significantly prejudice the student or the College.

The adjudication of any alleged academic misconduct must be initiated within two years of discovery of the incident.

### **Section 5.04** Procedures for Academic Misconduct

- (a) Investigation

- (i) When an incident of alleged academic misconduct is discovered by or brought to the attention of the course instructor, the instructor will consult with the Academic Dean (or designee), prior to notifying the student of a pending investigation, in order to determine whether any record of prior academic misconduct is on file, and/or if the alleged misconduct is so severe that college sanctioning may be assigned. If the Academic Dean believes the student's academic misconduct record warrants college sanctioning, the Academic Dean will take over investigation and adjudication from the instructor.
- (ii) The investigator will then follow these steps to investigate and resolve the academic misconduct:
  - 1) Coordinate the collection of all available evidence then personally contact the accused student within ten (10) working days from the date the investigator was made aware of the alleged misconduct, to arrange a meeting. The contact from the investigator will include:
    - a) A brief description of the allegation(s);
    - b) The list of specific academic misconduct violations being investigated;
    - c) A copy of the Student Code of Conduct; and
    - d) A request to meet with the student.
  - 2) The investigator will then schedule a conduct meeting to take place in person or over the phone. During the conduct meeting, the investigator and the student may each have a person of choice present, as outlined within the Student Code of Conduct. The investigator will:
    - a) Present the student with the alleged academic misconduct;
    - b) Present the evidence supporting the allegation;
    - c) Discuss the possible academic penalty and any Student Conduct sanctions; and
    - d) Allow the student an opportunity to respond to the charge(s) and evidence.
  - 3) The investigator will then make a determination of Responsible or Not Responsible, using the Preponderance of Evidence standard, and assign Academic Penalties and any College Sanctions for instances in which a student is found "Responsible."
  - 4) Within 10 working days of the conduct meeting, the investigator will provide to the student a brief written description of the rationale used to make the determination, the findings of the investigator (Responsible or Not Responsible), the sanctions imposed, and information about the appeal process.
- (iii) *A student's absence from the conduct meeting, or lack of participation, does not negate this conduct procedure. Students who refuse to participate in a conduct procedure are still subject to adjudication and sanctioning.*
- (iv) **Misconduct alleged at or after the conclusion of course:** Alleged Academic Misconduct may be investigated and adjudicated through this Code up to 4 consecutive full-term semesters following the Respondent's last active semester. When an incident of alleged academic misconduct is discovered or brought to the attention of the course instructor at or after the conclusion of the course, the course instructor notifies the student in writing and take the steps outlined in the above section.

(b) Student Appeal of Academic Penalties and/or College Sanctions

If the student does not accept a finding of Responsibility, believes there to be bias on behalf of the investigator, or finds the sanctions imposed as unreasonable, the student may submit a written

appeal. A request for an appeal with supporting evidence must be presented by the student in writing within (10) working days after the investigator sends notice of the conduct determination.

*(i)* Academic Conduct Appeal:

- 1) Students who wish to appeal academic penalties from their instructor's finding of responsibility must submit their appeal in writing to the Academic Dean. The student should include the reason for the appeal and any new evidence in their written request for appeal.
- 2) Upon receipt of the appeal, the Academic Dean will review the report provided, all evidence collected by the instructor, and the written appeal document provided by the student.
- 3) The Academic Dean may choose, at their discretion, to meet with the instructor, the student, and any relevant witnesses.
- 4) After review of all relevant and available evidence, the Academic Dean will then make a determination using a Preponderance of Evidence standard.
- 5) The Academic Dean may make one of the following decisions to resolve an appeal:
  - a) Denied Appeal: The Dean may decide to uphold the original academic penalties submitted by the instructor.
  - b) Altered Penalty: The Dean may decide to alter the academic penalties originally submitted by the instructor. Altered penalties may include any academic penalties and college sanctions deemed appropriate and reasonable by the Dean.
  - c) Approved Appeal: The Dean may decide to approve the appeal submitted by the student. Approved appeals indicate the student is not held responsible for the alleged academic misconduct violation, and receives no penalties or sanctions.
- 6) Once the Academic Dean has made a determination regarding the appeal, the Dean will provide the student and investigator with the determination and provide the student with a list of all penalties and sanctions assigned.

The Academic Dean's appeal decision is final.

*(i)* College Sanctions Appeal:

- 1) Students who wish to appeal college sanctions from their investigator's finding of responsibility must submit their appeal in writing to the Dean of People & Culture for review within 10 working days after the student is informed of the imposed sanction. The student should include the reason for the appeal and any new evidence in their written request for appeal.
- 2) Upon receipt of the appeal, the Dean of People & Culture will review the report provided by the investigator, all evidence of the case, and the written appeal document provided by the student.
- 3) The Dean of People & Culture may choose, at their discretion, to meet with the instructor, the student, and any relevant witnesses.
- 4) After review of all relevant and available evidence, the Dean of People & Culture will then make a determination using a Preponderance of Evidence standard.
- 5) The Dean of Students may make one of the following decisions to resolve an appeal:
  - a) Denied Appeal: The Dean may decide to uphold the original academic penalties submitted by the instructor.
  - b) Altered Penalty: The Dean may decide to alter the academic penalties originally submitted by the instructor. Altered penalties may include any academic penalties and college sanctions deemed appropriate and reasonable by the Dean.
  - c) Approved Appeal: The Dean may decide to approve the appeal submitted by the student. Approved appeals indicate the student is not held responsible for the alleged academic misconduct violation, and receives no penalties or sanctions.
  - d) Once the Dean of People & Culture has made a determination regarding the appeal, the Dean will provide the student and investigator with the determination and provide the student with a list of all penalties and sanctions assigned.

The appeal decision is final.

## **Article VI. Rules of Student Conduct**

### **Section 6.01 General Student Conduct**

Students have the responsibility to conduct themselves in a manner that does not impair the welfare nor the educational opportunities of others in the DCC community and that does not compromise the DCC community standards. Students should act as responsible members of the academic community; respect the personal and property rights, privileges, and dignity of others; and refrain from actions which interfere with normal College functions. Each member of the DCC campus community who is a bystander is expected to take on the role of a Defender by, for example, comforting the victim and/or trying to the best of their ability and considering their own safety and that of others actively stopping the incident. This can be accomplished in a multitude of ways such as: telling the individuals involved to stop, immediately reporting the incident to someone at the college with authority, and/or by calling 911). Bystanders are expected to report an incident as soon as possible after one has taken place if they are unable to report it immediately. This expectation is for the safety and protection of all members of the DCC Community.

## **Section 6.02 Non-Academic Misconduct**

Violations are imposed in accordance with the Student Code of Conduct. The following conduct is prohibited by DCC, this list is not all inclusive, and will be sanctioned in accordance with this code.

- 1) Attempts to commit acts prohibited by the Standards of Student Conduct, or knowingly or willfully encouraging or assisting others to commit such acts, are prohibited by this Code and may be punished to the same extent as if one had committed the prohibited act. This includes being one of the following types of Bystanders: 1. Assistants 2. Re-enforcers 3. Outsiders 4. Passive Defenders.
- 2) Forgery, falsification, or fraudulent misuse of DCC documents, records, or identification cards.
- 3) Furnishing false information to DCC or members of the College community who are performing their official duties (this includes but is not limited to: lying, giving false statements, providing misleading statements, or withholding information)
- 4) Causing false information to be presented before any proceeding of the College or intentionally destroying evidence important to such a proceeding.
- 5) Tampering with the election of any recognized student organization.
- 6) Violations of copyright laws or policies.
- 7) Theft of property or auxiliary services including housing, or failure to report possession of stolen property on College premises.
- 8) Unauthorized use, destruction, or damage of College property or the property of others on College premises or at College-sponsored activities.
- 9) Unauthorized or fraudulent use of the College's facilities, telephone system, mail system, or computers, or use of any of the above for any illegal act.
- 10) Unauthorized entry, use, or occupancy of College facilities (this includes entry into an apartment without permission of an occupant when that occupant is not under duress and living in an apartment other than the one checked into by Housing).
- 11) Failure to comply with the reasonable directives of College officials, including Resident and/or Student Life Assistants, acting in the performance of their duties within the scope of their authority.
- 12) Violation of published College regulations or policies. (Among such regulations are those pertaining to student housing, entry and use of College facilities, scientific research, inventions made or developed with College support, use of amplifying equipment, campus demonstrations, etc.) College regulations and policies may be obtained from various offices of the College, e.g., Housing or from the office of the Dean of Student Success.
- 13) Intentional obstruction or disruption of normal College or College-sponsored activities, including but not limited to studying, teaching, research, administration and disciplinary procedures, or fire, police, or emergency services.
- 14) Use, possession, or distribution of alcoholic beverages on College premises or at College sponsored activities except as permitted in College policies (DCC Facility Use Policy and DCC Alcohol/Dangerous Drug Policy) or failure to report when such actions take place. . Note: Use of alcohol does not excuse abusive or destructive behavior. Sanctions for Student Code of Conduct violations will not be reduced on the basis of alcohol use.
- 15) Use, possession, or distribution of any illegal drug on College premises or at College-sponsored activities; or illegal distribution of any drug including prescription medications. [See The DCC Alcohol and Dangerous Drug Policy].

- 16) Use, possession, or distribution of any marijuana product on College premises or at College-sponsored activities or the knowledge of any such action (a violation includes use, or possession of marijuana by a person who is a Montana medical card carrier because marijuana is illegal under Federal Law and DCC is funded by the Federal Government); or illegal distribution of any marijuana.
- 17) Disorderly or indecent conduct on College-owned or -controlled property or at College sponsored activities.
- 18) Interfering with the freedom of expression of others on College premises or at College sponsored activities.
- 19) Stalking, including, but not limited to, purposely or knowingly causing another personal substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly following another person or harassing, threatening, or intimidating another person, in person or by mail, by electronic communication or any other action, device or method.
- 20) Hazing, defined as an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in a group or organization.
- 21) Bullying or other malicious intimidation or harassment of another. When a student, with the intent to terrify, intimidate, threaten, harass, annoy, or offend, (1) causes bodily injury to another, (2) causes reasonable apprehension of bodily injury in another, (3) damages, destroys, or defaces any property of another or any public property, or (4) makes repeated telephone and/or social media communications, including anonymously, or at extremely inconvenient hours or in offensively coarse language or in a way that is not a positive representation as a member of the DCC community.
- 22) Retaliation
  - a) Against a person for filing a report or acts of intimidation directed towards the person to force or attempt to get them to drop or stop pursuing their report.
  - b) Against a person who is a witness to a report or incident.
  - c) Against a person responding to a report or incident.
- 23) Illegal or unauthorized possession or use of firearms, explosives, other weapons, dangerous chemicals, or other noxious substances on College premises.
- 24) Violation of federal, state or local law on DCC premises or at DCC-sponsored activities; violation of published College policies, rules or regulations; acting to impair, interfere with or obstruct the orderly conduct, processes and functions of the College.
- 25) Spreading rumors or false statements about any member or guest of the College community including through electronic means.
- 26) Sexual Misconduct or Sexual Harassment includes any behavior that meets the definition of Dating Violence, Domestic Violence, Sexual Assault, Stalking, Sexual Harassment, and/or Sexual Exploitation.
- 27) Homicide, assault, aggravated or felony assault, or threat of the same, to any person on College-owned or -controlled property or at College-sponsored functions.
- 28) Conduct which threatens or endangers the health or safety of any such person; or off-campus homicide, assault, aggravated or felony assault, or threat of the same.
- 29) Other conduct which harms a person in the College community, damage to the property of another, or otherwise constitutes behavior inappropriate in the DCC setting.

- 30) Violation of the terms of any disciplinary sanction imposed in accordance with the Student Code of Conduct.
- 31) Dating Violence: Violence, on the basis of sex, committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant;
  - a) *The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.*
  - b) *For the purposes of this definition dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.*
- 32) Domestic Violence: A Felony or misdemeanor crime of violence committed—
  - a) By a current or former spouse or intimate partner of the victim;
  - b) By a person with whom the victim shares a child in common;
  - c) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - d) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
  - e) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- 33) Sexual Assault: Sexual acts directed against another person (Complainant) without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - a) Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
  - b) Fondling: The touching of the private parts of another person for the purpose of sexual gratification, without the consent of the victim.
  - c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - d) Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.
- 34) Stalking: Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress. For the purposes of this definition:
  - a) Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
  - b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
  - c) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- 35) Discrimination: conduct based upon an individual's race, color, religion, national origin, creed, sex, gender, gender expression, gender identity, sexual orientation, age, political beliefs, marital or family status, pregnancy, physical or mental disability, genetic information ("protected classes") that either:
- a) Adversely affects a term or condition of an individual's education, employment, living environment, or participation in a College activity; or
  - b) Is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a College activity; or 3. Constitutes harassment, as defined below, by unreasonably interfering with an individual's employment, educational performance, on-campus living environment, or participation in a College program or activity.
- 36) Discriminatory Harassment: Unwanted conduct that is based on an individual's protected class status that has the purpose or effect of unreasonably interfering with a reasonable person's participation in a College Program or Activity. In determining the severity, pervasiveness, and objective offensiveness of the conduct, the following factors will be considered:
- a) The identity of the parties, the nature of the parties' relationship, and the influence of that relationship on the complainant's employment or education;
  - b) The nature, scope, frequency, and duration of the conduct; and c. The degree to which the conduct affected the Complainant's education or employment.
- 37) Sexual Harassment: Unwanted conduct that affects a student or employee that is based on/motivated by sex, gender identity, gender expression, or sexual orientation, and meets the elements of quid pro quo conduct, hostile environment sexual harassment, sexual assault, domestic violence, dating violence, stalking, or sexual exploitation, as defined under Article IX of the Student Code of Conduct.
- 38) Sexual Exploitation is any instance in which a person takes non-consensual or abusive sexual advantage of another for any person's benefit other than the person being exploited. Sexual exploitation is conduct that falls within other categories of sexual harassment but is identified separately for clarity. Examples of behavior that could constitute sexual exploitation include but are not limited to:
- a) Prostituting another person;
  - b) Non-consensual visual (video, photograph, snap chat) or audio-recording or sexual activity;
  - c) Non-consensual distribution of photos, images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
  - d) Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
  - e) Inducing incapacitation for sexual purposes vi. Engaging in non-consensual voyeurism; vii. Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status; viii. Exposing one's genitals in non-consensual circumstances, or inducing another to expose their genitals; or ix. Possessing, distributing, viewing, or forcing others to view illegal pornography.

- 39) Retaliation means any adverse action (including efforts to intimidate, threaten, coerce, or discriminate, and any adverse employment or educational action) that would discourage a reasonable person from engaging in activity protected under this policy, against any individual for the purpose of interfering with any right or privilege secured by this policy, or because the individual has served as an intervening bystander, made a report or complaint, responded to a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and accompanying Discrimination Grievance Procedure

### **Section 6.03 Sanctions and Mitigating Factors**

Committing any act prohibited by this Code may result in: fines, campus community service, educational courses, mandated counseling sessions, a disciplinary letter placed in student record, restitution, eviction from student Housing, expulsion or suspension from the College or any other action which the College deems appropriate dependent upon the circumstances. Mitigating factors may be considered in the sanctioning a student or student group. Such factors may include the present attitude and past disciplinary record of the offender, as well as the nature of the offense and the severity of any damage, injury, or harm resulting from it. Mental/Physical ability or reduced awareness caused by any drug, legal or illegal, will not be used to justify reduction of any sanctions.

### **Section 6.04 Application of the Student Code of Conduct to Off-Campus Offenses**

Student Code of Conduct proceedings may be initiated against a student who engages in conduct off-campus that threatens the health and safety of any member of the campus community or in cases when behavior is alleged to compromise DCC or its surrounding communities' standards. A student, College employee, or community member having knowledge of the off-campus offense may file a report with the Dean of People & Culture or designee. The Dean of People & Culture (or her/his designee) has discretion whether or not to adjudicate off-campus allegations. Criminal proceedings notwithstanding, DCC may decide to investigate, and if the party or individual found responsible is a student (or was at the time of the incident) sanctions may be imposed. Disciplinary procedures set forth in this Code apply to charges initiated under this section. If the health and safety of the campus community can be protected through the criminal justice proceedings, the College may choose to defer Student Conduct Code charges until criminal proceedings are concluded. College officials will encourage reports of alleged criminal conduct to criminal justice authorities. Proceedings under this Code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

### **Section 6.05 Disciplinary Sanctions**

The College will take necessary and appropriate action to protect the safety and well-being of the campus community. Sanctions for violating the Standards of Student Conduct will dependent on the severity of the incident. Minor incidents will generally result in a sanction which is intended to be educational in nature, for example working on an individual or group project with detailed learning outcomes. There are times when the nature of the behavior requires more immediate or sever sanctioning. In those instances, sanctions may include any combination of the following:

- 1) **Disciplinary Reprimand:** The student is given a written reprimand for violation of the Student Conduct Code and a warning that further misconduct may result in more severe disciplinary action.
- 2) **Disciplinary Probation:** A status which is imposed for a designated period of time and includes the probability of more severe disciplinary sanctions, including suspension or expulsion, if the student is found to have violated the Student Conduct Code during the probation/warning period.
- 3) **Fines:** Fines in amounts up to \$250 may be imposed. Grades and transcripts will be withheld until all fines are paid.
- 4) **Community Service:** A hold will be placed on the student's account until all hours of Community Service are completed.
- 5) **Restitution:** The student is required to make compensation for actual loss, damage or injury. This may take the form of appropriate service and/or monetary and/or material replacement.
- 6) **Suspension:** The student is separated from the College for a specified period of time. The student shall not participate in any College sponsored activity and may be barred from College premises. The sanction of suspension requires administrative review and approval by the DCC Dean of People & Culture.
- 7) **Expulsion:** The student is permanently separated from the College and/or from any College-owned or -controlled property or events. The sanction of Expulsion requires administrative review and approval by the DCC Dean of People & Culture.
- 8) **Other Sanctions:** In addition to or in place of the above, other sanctions may be imposed such as eviction from College housing, restriction or banning from certain on-campus facilities, restriction or prohibition from attending campus events or participating in campus activities, and requirements to attend and complete classes, programs, workshops, and/or counseling sessions. Details of the terms of the sanction will be provided to the student in writing.

Repeated or aggravated violation of this Code may result in more severe disciplinary sanctions than any individual violation might warrant.

Notification of any sanction imposed will be sent to appropriate College officials.

## **Section 6.06 Interim Actions**

### **(a) Temporary Suspension:**

A student may be temporarily suspended from the College or evicted from College Housing by the DCC Dean of People & Culture pending disciplinary (on campus) or criminal (off-campus) proceedings.

- (i) *Such suspension or eviction will become immediately effective without prior notice whenever there is a possibility that the student's continued presence on the campus constitutes a threat to the student or others or to the continuance of normal College operations.*

### **(b) Right to Appeal Interim Action(s):**

The student is given an opportunity to appear before the DCC Dean of People & Culture within five (5) working days from the effective date of the suspension or eviction in order to discuss the following issues:

- 1) The reliability of the evidence against the student, and
- 2) Whether the alleged conduct and surrounding circumstances reasonably indicate that the student's presence on campus constitutes a threat to the student or others or to the continuance of normal College operations.

### **Section 6.07 Readmission from Suspension**

Following suspension for misconduct, readmission to the College is dependent upon the student's compliance with the conditions designated at the time of suspension and the student's fitness to return to the campus community. Appropriate documentation, depending upon the nature of the original violation and the conditions of suspension, is required. Upon readmission, the student may be placed on disciplinary probation for a designated period of time with required conditions and expectations of behavior monitored by a designated campus professional(s).

### **Section 6.08 Group Sanctions**

Every campus group and organization has the responsibility to take all reasonable steps to ensure that their collective and individual conduct is not in violation of the college code of conduct, regulations and/or federal, state and local laws. The following sanctions may be imposed upon campus groups or organizations:

- (a) **Group General Probation:** This is given to a college club or other organized group for a specified period. If group violations are repeated during the term of the probation, the charter may be revoked or activities restricted.
- (b) **Group Restrictive Probation:** Removing college recognition during the semester in which the offense occurred or for a longer period. While under restriction, the group may not seek or add members, hold or sponsor events in the college community, or engage in other activities as specified.
- (c) **Group Charter Revocation:** Removal of college recognition for a group, club, society, or other organization. A group may petition for re-charter if the Dean of People & Culture or his/her designee approves a time frame.

## **Article VII. Disciplinary Records**

- 1) Sanctions of expulsion and suspension affect the student's academic status and are entered as notations in the student's permanent academic record maintained by the Registrar during such time as the imposed sanctions are in effect.
- 2) During the period that a Student Conduct Case is in process, the student, unless temporarily suspended, evicted, or except as directed by college officials, continues to have the same rights and privileges as other students.
- 3) The Dean of People & Culture Office shall maintain disciplinary records, which shall include, but not be limited to, the student's name and related identifying information, applicable Student Conduct Code section(s), parties involved, description of the incident, sanction(s), expiration dates, agreements or restrictions, and any other data deemed relevant. Disciplinary records and related information shall be made available to assist in disciplinary proceedings and to aid in making recommendation of an appropriate sanction, and to other College personnel who require such information to fulfill their official duties.  
Students may arrange to review their own disciplinary records and related information by contacting the Dean of People & Culture.
- 4) Except as provided elsewhere in this Code and/or as required by law, the College shall not communicate a student's disciplinary record to any person or agency without the prior written consent of the student or, when the student is under the age of eighteen, the student's parents or legal guardian.

## **Article VIII. Disciplinary Procedures**

### **Section 8.01 Introduction**

The focus of inquiry in disciplinary proceedings is to determine if a violation of the Standards of Student Conduct has occurred and, if so, to decide appropriate sanctions. Student Code of Conduct proceedings are administrative proceedings and do not follow formal rules of evidence applicable in judicial proceedings. However, the accused student must receive due process, and the College has the burden of proof to establish a violation by a preponderance of evidence. Minor deviations from prescribed procedures will not invalidate a decision or proceeding, provided they do not significantly prejudice the student or the College.

**The following procedures apply in adjudicating charges of student misconduct:**

## Section 8.02 Disciplinary Procedures for Non-Academic Misconduct

- 1) When an incident of alleged non-academic misconduct is discovered by or brought to the attention of DCC, the investigator, prior to notifying the student of a pending investigation, will consult with the Dean of People & Culture in order to determine whether any record of prior non-academic misconduct is on file. If the Dean of People & Culture decides the student's alleged misconduct would warrant Suspension or Expulsion, the Dean of People & Culture will take over investigation and adjudication. If the reported incident does not include one of the above sanctions, an investigator may be designated by the Dean of People & Culture.
- 2) The investigator will then collect all available evidence and personally write to the accused student within ten (10) working days from the date the investigator was made aware of the alleged misconduct. The contact from the investigator will include:
  - a) A brief description of the allegation(s);
  - b) The list of specific non-academic misconduct violations being investigated;
  - c) A copy of the Student Code of Conduct; and
  - d) A request to meet with the student.
- 3) The investigator will then schedule a conduct meeting to take place in person or over the phone. During the conduct meeting, the investigator and the student may each have a person of choice present, as outlined within the Student Code of Conduct. The investigator will:
  - a) Present the student with the alleged non-academic misconduct;
  - b) Present the evidence supporting the allegation;
  - c) Discuss the possible sanction(s); and
  - d) Allow the student an opportunity to respond to the charge(s) and evidence.
- 4) The investigator will then make a determination of Responsible or Not Responsible, using the Preponderance of Evidence standard, and assign sanctions for any instance(s) in which a student is found "Responsible."
- 5) Within ten (10) working days of the conduct meeting, the investigator will provide to the student a brief written description of the rationale used to make the determination, the findings of the investigator (Responsible or Not Responsible), the sanctions imposed, and information about the appeal process.

### (b) Student Appeal of Non-Academic Misconduct

If a Respondent believes there to be bias on behalf of the investigator, has new and relevant evidence for consideration, or finds the sanctions imposed as unreasonable, the student may submit a written appeal. A request for an appeal with supporting evidence must be presented by the student in writing within ten (10) working days after the investigator sends notice of the conduct determination.

#### (i) Non-Academic Misconduct Appeal for Warning or Probation Sanctions:

- 1) Respondents who wish to appeal a finding of Responsibility must submit their appeal in writing to the Dean of People & Culture. The student should include the reason for the appeal and any new evidence in their written request for appeal.
- 2) Upon receipt of the appeal, the Dean of People & Culture will review the report provided, all evidence collected by the investigator, and the written appeal document provided by the student.
- 3) The Dean of People & Culture may choose, at their discretion, to meet with the investigator, the student, and any relevant witnesses.
- 4) After review of all relevant and available evidence, the Dean of People & Culture will then make a determination using a Preponderance of Evidence standard.
- 5) The Dean of People & Culture may make one of the following decisions to resolve an appeal:
  - a) Denied Appeal: the Dean may decide to uphold the original sanctions submitted by the instructor.
  - b) Altered Penalty: the Dean may decide to alter the sanctions originally submitted by the instructor. Altered penalties may include any college sanctions deemed appropriate and reasonable by the Dean.
  - c) Approved Appeal: the Dean may decide to approve the appeal submitted by the student. Approved appeals indicate the student is not held responsible for the alleged non-academic misconduct violation, and receives no penalties or sanctions.
- 6) Once the Dean of People & Culture has made a determination regarding the appeal, the Dean will provide the student and investigator with the determination and provide the student with a list of all penalties and sanctions assigned.

The Dean of People & Culture's appeal decision is final.

(ii) Non-Academic Misconduct Appeal for Suspension or Expulsion:

- 1) Respondents who wish to appeal a finding of Responsibility must submit their appeal in writing to the Dean of Academics. The student should include the reason for the appeal and any new evidence in their written request for appeal.
- 2) Upon receipt of the appeal, the Dean of Academics will review the report provided, all evidence collected by the investigator, and the written appeal document provided by the student.
- 3) The Dean of Academics may choose, at their discretion, to meet with the investigator, the student, and any relevant witnesses.
- 4) After review of all relevant and available evidence, the Dean of Academics will then make a determination using a Preponderance of Evidence standard.
- 5) The Dean of Academics may make one of the following decisions to resolve an appeal:
  - a) Denied Appeal: the Dean may decide to uphold the original sanctions submitted by the instructor.
  - b) Altered Penalty: the Dean may decide to alter the sanctions originally submitted by the instructor. Altered penalties may include any college sanctions deemed appropriate and reasonable by the Dean.
  - c) Approved Appeal: the Dean may decide to approve the appeal submitted by the student. Approved appeals indicate the student is not held responsible for the alleged non-academic misconduct violation, and receives no penalties or sanctions.
- 6) Once the Dean of Academics has made a determination regarding the appeal, the Dean will provide the student and investigator with the determination and provide the student with a list of all penalties and sanctions assigned.

The Dean of Academics' appeal decision is final.

### **Section 8.03 Informal Resolution**

Nothing contained in this Code limits the right of the appropriate College representative or the student at any time to agree to educational sanctions if the student agrees not to contest the charges. Any such agreement must be in writing and, when signed by the student and filed with the DEAN OF PEOPLE & CULTURE, concludes the case.

## **Article IX. Title IX, Discrimination and Harassment**

### **Section 9.01 Introduction and Purpose**

The policies and the accompanying procedure provides definitions for complaints involving harassment or discrimination based upon race, color, national origin, religion, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, gender, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. These complaints may involve, but are not limited to, sexual harassment, discrimination, sexual assault, stalking, etc.

### **Section 9.02 Title IX, Discrimination and Harassment Policy**

The College is in compliance with Executive Order 11246; Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972; Title IX regulation Implementing

Educational Amendments of 1972; Section 504, Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the 1991 Civil Rights Act; the Age Discrimination in Employment Act of 1967, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974; Title 49, the Montana Human Rights Act; and all other federal, state, and college rules, laws, regulations and policies.

It is the policy of Dawson Community College to expressly prohibit any acts or threats of violence or discriminatory misconduct—whether verbal, physical, visual, or through electronic means—by any DCC student, staff, or faculty member against another at any time or place. DCC recognizes that such misconduct interferes with all aspects of its functioning. By this policy, DCC notifies its community that it fosters a safe learning and working environment that supports academic and professional growth of students, staff, and faculty and has zero tolerance for violence or for discriminatory misconduct that is motivated by race, color, ethnicity, national origin, gender, sexual orientation, disability, class, religion, creed, age, marital or relationship status, or political ideas. When incidents occur, the College will hold perpetrators accountable through appropriate disciplinary actions, while respecting the rights of the aggrieved party, in accordance with federal and State laws, the College's Student Conduct Code, and other applicable College policies.

Each member of the DCC community is responsible for creating an atmosphere free of violence, discrimination, intimidation, and harassment. All DCC members have a duty to report misconduct represented under this policy to the Title IX Coordinator or Human Resources Director. Employees who engage in such unlawful discrimination will be subject to disciplinary action up to and including discharge.

DCC prohibits any form of retaliation against anyone affiliated with DCC for reporting violence and misconduct or for cooperating with efforts to investigate and stop it.

### **Section 9.03** Complaint Advice, Reporting, and Grievance Process

DCC encourages prompt reporting of conduct that may violate this policy. Employees or students seeking advice or wishing to file a report of prohibited conduct or a grievance related to or arising out of prohibited conduct are to contact the Title IX Coordinator.

Any individual (student, third party) may report prohibited conduct to the Title IX Coordinator. Upon receipt of a report of prohibited conduct, the Title IX Coordinator will promptly reach out to the identified Complainant to offer supportive and protective measures, consider the Complainant's wishes with respect to those measures, inform the Complainant of the availability of supportive or protective measures with or without the filing of a Formal Complaint, and meet to assess jurisdiction and discuss potential resolution options, including the process for filing a Formal Complaint. A report of prohibited conduct does not automatically trigger a grievance procedure, informal resolution process, or formal complaint process. The Title IX Coordinator determines whether there is jurisdiction to adjudicate a report. Individuals should not avoid reporting prohibited conduct on jurisdictional grounds or wait to report ongoing conduct until it becomes sufficiently serious to constitute a policy violation. The Title IX Coordinator may be able to provide advice, take non-punitive preventive measures, and creatively address conflict in the interest of maintaining a safe and equitable campus environment.

### **Section 9.04** Supportive and Protective Measures

Supportive and protective measures are non-disciplinary, non-punitive individualized services and tools offered as appropriate, as reasonably available, and without fee or charge to a Complainant or Respondent before, during, or after the filing of a formal complaint or report. These measures are designed to restore

or preserve equal access to the College’s programs and activities without unreasonably burdening the other party, and includes measures designed to protect the safety of all parties, the College’s campus environment, or prevent or deter potential prohibited conduct.

Supportive and protective measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, safety planning, referrals to on and off-campus services, trainings, mutual restrictions on contact, and other similar measures.

Supportive and protective measures may also be provided to bystanders who intervened in preventing prohibited conduct.

### **Section 9.05** Definitions

1. **Advisor** means a person chosen by a Complainant or Respondent to be present during an investigation and hearing who will assist through the investigation process and conduct cross-examination on behalf of a party during any live hearing. If a party does not have an Advisor during a live hearing, the College will appoint an Advisor to conduct cross-examination on behalf of that party. The parties may each have one Advisor of their choice present for all meetings, interviews, and hearings, if they so choose. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside the College community. Advisors may not be witnesses to an investigation. The Advisor is not allowed to speak on behalf of a Complainant or Respondent unless asking questions during cross-examination. The Advisor does not “represent” a Complainant or Respondent during an investigation, and may not provide answers on behalf of any party.
2. **Complainant** means an individual who asserts or believes themselves to be a victim of misconduct under the college’s policies.
3. **Day** means any day the College is open for business (administering any business of the college, including but not limited to educating students), which excludes weekends and College-recognized holidays. Unless specified as other days, e.g., calendar days.
4. **Exculpatory Evidence** means evidence that tends to clear a Respondent from responsibility for misconduct.
5. **Formal Complaint**, means a signed document or verified email that is submitted by a Complainant or signed by the Title IX Coordinator alleging misconduct by a Respondent. A Formal Complaint may be filed by submitting a report online ([https://dawsoncommunitycollege.formstack.com/forms/sexual\\_misconduct\\_report](https://dawsoncommunitycollege.formstack.com/forms/sexual_misconduct_report)), with the Title IX Coordinator or Deputy Title IX Coordinator in person, by mail, by electronic mail, or at the contact information listed

#### **Title IX Coordinator**

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Dean of People & Culture

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*or*

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John Solomon

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6. **Grievance Proceeding** means the process described below in Section V, and includes an investigation, informal resolution, live hearing, and where applicable, a sanction and opportunity to appeal.
7. **Hearing Panel** determines whether the Respondent(s) is responsible for the allegations of Prohibited Conduct. The Chair of the Hearing Panel is responsible for the writing the final written report. The Chair of the Hearing Panel will be appointed by the Title IX Coordinator. Two other individuals will be appointed by the Title IX Coordinator to serve on the Hearing Panel. If conflict or bias exists within the Hearing Panel, the Title IX Coordinator will select another individual to serve in that role.
8. **Hearing Panel File** means the final written decision, the recording or transcription of the live hearing, and all evidence directly related to the matter.
9. **Inculpatory Evidence** means evidence that tends to establish responsibility for the alleged misconduct.
10. **Investigator** means an individual responsible for collecting evidence and providing an investigation report that outlines all relevant evidence found. An investigator does not have a conflict of interest or bias for or against complainants or respondents. An investigator has been trained on the definitions of misconduct, and the scope of the college's jurisdiction.
11. **Misconduct** means conduct that violates DCC policy or any academic or non-academic violation(s) of the student code of conduct.
12. **Report of Prohibited Conduct** means information submitted to the Title IX coordinator. The information may be submitted using the form located on the Title IX website <https://www.dawson.edu/about/title-ix.html>.
13. **Respondent** means an individual who has been alleged to be the perpetrator of conduct that could constitute Prohibited Conduct.
14. **Title IX Coordinator** means the individual who is primarily responsible for coordinating efforts of the College to maintain Title IX, VAWA, and Clery compliance. The Title IX Coordinator is responsible for intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment and retaliation prohibited under this policy, which includes coordinating responses to reports of misconduct, ensuring that the Grievance Procedure provides for prompt and equitable resolution of Formal Complaints of Prohibited Conduct, ensuring that investigators, Advisors, Hearing Panel members, and all other College officials facilitating an Informal Resolution or Formal Grievance Proceeding are properly trained, and ensuring effective implementation of any remedies. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

15. **College Program or Activity** means locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which Prohibited Conduct is alleged to have occurred, and also includes any buildings owned or controlled by a student organization that is officially recognized by the College.
16. **Preponderance of the Evidence** refers to the evidentiary standard used to evaluate the outcome of an investigation. The preponderance of the evidence standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it.
17. **Consent** means knowingly and voluntarily, by freely giving clear permission by word or overt action, to have sexual intercourse or sexual contact. If coercion, intimidation, threats, or physical force are used, expressed, or implied, or there is duress or deception, there is no consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption or being asleep or unconscious. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing or future consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent. Consent can also be withdrawn once given as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease immediately. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.
18. **Force** is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g. “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”)
19. **Coercion** is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Threats, whether or not a person has the intention of carrying out a threat, are a serious matter with possible criminal implications.
20. **Supportive and Protective Measures** are non-disciplinary, non-punitive individualized services and tools offered as appropriate, as reasonably available, and without fee or charge to a Complainant or Respondent before, during, or after the filing of a formal complaint or report. These measures are designed to restore or preserve equal access to the College’s programs and activities without unreasonably burdening the other party, and includes measures designed to protect the safety of all parties, the College’s campus environment, or prevent or deter potential prohibited conduct. Supportive and protective measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of

certain areas of campus, safety planning, referrals to on and off-campus services, trainings, mutual restrictions on contact, and other similar measures. Supportive and protective measures may also be provided to bystanders who intervened in preventing prohibited conduct.

21. **Hostile Environment Sexual Harassment** unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person to DCC's programs, services, and activities.
22. **Quid pro quo Sexual Harassment** a DCC employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct.

## Section 9.06 College Response

### A. Burden of Proof and Standard of Evidence

Neither a Complainant nor a Respondent has any burden to prove or disprove Prohibited Conduct. The College has the burden to prove through the Grievance Proceeding that a Respondent engaged in Prohibited Conduct. The College presumes that the Respondent has not engaged in Prohibited Conduct until it has made a final determination at the conclusion of the Grievance Proceeding. The standard of evidence for determining whether a Respondent has engaged in Prohibited Conduct is the Preponderance of the Evidence standard.

### B. Timely Warning

Particular conduct reported may trigger the obligation of the College to make a timely warning notification in accordance with the Clery Act. Specifically, the College must issue timely warnings for incidents reported that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The College will undertake efforts to ensure that names and other personally identifiable information is not released, while providing sufficient information to members of the campus community to make informed decisions consistent with the circumstances.

### C. Dismissal.

The Title IX Coordinator may dismiss a Formal Complaint, if at any time during the investigation or hearing the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or withdraw any allegations the Complainant has made; the Respondent is no longer enrolled or employed by the College; the allegations do not meet the definition of misconduct; or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein. Upon dismissal of the Formal Complaint for any reason, the Title IX Coordinator will promptly send written notice of the dismissal and the reason(s) therefore to the parties.

#### D. Complaint Procedure

- 1) Following receipt of a Report of Prohibited Conduct and/or a Formal Complaint, the Title IX Coordinator will promptly contact the Complainant to offer Supportive and Protective Measures, consider the Complainant's wishes with respect to Supportive and Protective Measures, inform the Complainant of the availability of Supportive and Protective Measures with or without the filing of a Formal Complaint, and to assess jurisdiction and discuss potential resolution options, including the process for filing a Formal Complaint.
- 2) The Title IX Coordinator may consolidate Formal Complaints as to allegations of Prohibited Conduct 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 Prohibited Conduct arise out of the same facts or circumstances.
- 3) Notice.
  - a) Following receipt of a Formal Complaint, the Title IX Coordinator will promptly issue a written notice to the Complainant(s) and Respondent(s) who are known. The notice will include a link to or copy of these procedures; a description of the allegations in the Formal Complaint, including sufficient details, including the identity of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s), if known. The written notice will include a statement that the Respondent(s) is presumed not responsible for the alleged conduct and that a determination regarding responsibility will not be made until the conclusion of the Grievance Process. The notice will inform the parties that they may have an Advisor of their choice, and that the parties may inspect and review evidence as described in these Procedures. If any student is a party, the written notice will also reference the Student Conduct Code.
- 4) The College has two processes to resolve a Formal Complaint:
  - a) Grievance Proceeding: A Grievance Proceeding involves an investigation, a hearing, and, if applicable, sanctions and an appeal. There are two hearing formats to be utilized under these Procedures, one applies to any matter in which Sexual Harassment is alleged; the other applies to all other forms of Prohibited Conduct. The format for all live hearings under these Procedures will comply with the Grievance Proceeding section of this code.
  - b) Informal Resolution: An Informal Resolution, as described below at Section VI, involves both parties' voluntary written consent to participate in the Informal Resolution Process. The Informal Resolution Process may not be used to resolve allegations that an employee sexually harassed a student.
- 5) Investigation.

The Title IX Coordinator will assign a properly trained and impartial investigator.

  - i) The investigator is responsible to gather evidence sufficient to reach a determination regarding responsibility or no-responsibility.
  - ii) The investigator may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to a party, unless the Title IX Coordinator obtains that party's voluntary, written consent to do so for this Grievance Process.

- iii)* The investigator will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other Inculpatory and Exculpatory Evidence.
- iv)* The College will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. The College will not restrict students' and employees' ability to discuss the allegations under investigation to the extent such discussion aligns with a party's right to meaningfully participate in furthering the party's interests in the case. However, this provision in no way immunizes a party from abusing the right to discuss the allegations under investigation by, for example, discussing those allegations in a manner that constitutes Retaliation as defined in the Discrimination, Harassment, and Retaliation Policy. Similarly, where a party's conduct toward a witness might constitute tampering (for instance, by attempting to alter or prevent a witness's testimony), it is prohibited and may constitute a violation of the Student Code of Conduct or relevant employment agreement or policy. Counterclaims made with retaliatory intent will not be permitted. If a counterclaim is not made in good faith, it will be considered retaliatory and may constitute a violation of the Policy.
- v)* The investigator will provide the parties with the same opportunities to have support persons and an Advisor of their choice present during any interview or meeting related to the investigation.
- vi)* The investigator will provide written notice of the date, time, participants, and purpose of all investigative interviews and other meetings, with sufficient time for a person to prepare to participate.
- vii)* The investigator shall provide a Garrity warning to a Respondent who is an employee if the allegations could lead to criminal prosecution.
- viii)* The investigator will 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 College 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 can meaningfully respond to the evidence prior to conclusion of the investigation.
- ix)* If in the course of the investigation, information becomes available that leads to the investigation of additional allegations about the Respondent or Complainant that were not included in the initial written notice, the investigator will provide an additional written notice of the additional allegations to the parties whose identities are known.
- x)* Prior to the completion of the investigation, the investigator will provide to each party and the party's Advisor, if any, the evidence subject to inspection and review in an electronic format, and the parties will have 10 business days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- xi)* The investigator will create a pre-hearing investigative report that fairly summarizes relevant evidence. The pre-hearing investigative report will state whether there is reasonable cause to believe that Prohibited Conduct occurred based upon an objective evaluation of all relevant evidence. The objective evaluation will be based upon the preponderance of the evidence standard.
- xii)* The investigator will send to each party and the party's Advisor, if any, the investigative report in an electronic format or a hard copy.
- xiii)* Within ten (10) days following the investigative report being sent, each party may submit a written response to the investigator.

- xiv)* After receipt of the parties' responses to the investigative report, or expiration of the time permitted for such responses, the investigator will provide the following to the Title IX Coordinator and to the parties and their respective Advisors, if any, the following:
  - a. Written Notices;
  - b. Description of the procedural steps taken from the receipt of the Formal Complaint through the final investigative report and receipt of any responses to the final investigative report, including all notifications to the parties, interviews with the parties and witnesses, digital or physical evidence, and methods used to gather other evidence;
  - c. All evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint and any additional allegations of which the parties were provided written notice, including evidence upon which the investigator did not rely in forming an opinion, and any Inculpatory or Exculpatory evidence whether obtained from a party or other source;
  - d. The pre-hearing investigative report; and
  - e. All written responses and any other submissions provided by the parties and their advisors to the investigator.
- xv)* Witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline.

6) Hearing.

- i)* After receipt of the information described above, the Title IX Coordinator will establish a Hearing Panel that includes, but is not limited to, at least 3 members. The panel must include at least 1 full-time faculty member, at least 1 full-time staff member, and one other adult employee of the College. The Panel may include up to 1 student. The Chair will preside over the Hearing Panel and will work with the Hearing Panel, the parties, and their Advisors, to schedule a date, time, and location for a live Hearing.
- ii)* The Chair of the Hearing Panel may convene a pre-hearing conference with the parties and their Advisors to discuss matters of procedure, including logistics of technologies to be used; any requests for parties to be located in separate rooms; time allocations; identity and logistics of witnesses to be called; sequestration of witnesses; evidence to be presented; recording or transcription of the hearing; identity of support persons to be present; process for questions and cross-examinations; anticipated evidentiary disputes; and any other matters that will help to enable a fair and impartial hearing. Prior to the pre-hearing conference, the Chair of the Hearing Panel will request each party to submit a list of anticipated witnesses and cross-examination questions. The Chair of the Hearing Panel will discuss the party's submitted questions with the submitting party and their Advisor during the pre-hearing conference.
- iii)* The Chair of the Hearing Panel will conduct all proceedings. For all hearings conducted under these Procedures, the Chair will make determinations regarding relevancy and will permit only relevant cross-examination and other questions to be asked of parties and witnesses.
- iv)* Each party will be afforded an opportunity to make an opening and closing statement, personally, or through their Advisor. Following any opening statements, the Hearing Officer will invite parties and witnesses to answer questions posed by the Hearing Panel.
- v)* For charges of Sexual Harassment, cross-examination will be conducted as follows, in accordance with federal requirements:

- a. Before a Complainant, Respondent, or witness answers a cross-examination question, the Chair will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
  - b. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
  - c. Asking a question of a particular individual previously asked of and answered by that individual is impermissible as irrelevant.
  - d. If a party or witness does not submit to cross-examination at the Hearing, the Hearing Panel will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Hearing panel will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
  - e. Each party's Advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination will be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally.
- vi)* For Hearings involving only other charges of Prohibited Conduct and not Sexual Harassment, cross-examination will be conducted as follows:
- a. Cross-examination questions will be asked directly by the Chair of the Hearing Panel based on the questions submitted beforehand and discussed at the pre-hearing conference. Additional questions may be submitted to the Chair in writing during the hearing, which the Chair may ask of parties and witnesses.
  - b. If a party or witness does not attend the Hearing or refuses to answer a specific question at the Hearing, the Hearing Panel may elect to consider any other evidence made available to it during the hearing, including testimony offered by parties and witnesses present, and any documentation evidence included in the pre-hearing investigation report if authenticated by the Title IX Coordinator. The Hearing Panel will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- vii)* Either party may request that the hearing occur with the parties located in separate rooms with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or the witnesses answering questions.
- viii)* The College will create an audio or audiovisual recording or transcript of the live hearing and will make it available to the parties for inspection or review. Other recordings or transcriptions of the hearing will not be permitted.
- ix)* Following conclusion of a Grievance Proceeding, the Hearing Chair will promptly issue a written determination on behalf of the Hearing Panel regarding responsibility. To reach this determination, the Hearing Panel will begin its analysis with the presumption that the Respondent(s) is not responsible for the alleged conduct and will weigh the evidence to determine whether the preponderance of the relevant evidence weighs in favor of a finding of responsibility or no finding of responsibility for the alleged Prohibited Conduct.
- x)* The written determination will be provided to the Complainant and Respondent as simultaneously as possible and will include the following:

- a. Identification of the allegations potentially constituting Prohibited Conduct;
  - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of the Policy to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent; and whether remedies designed to restore or preserve equal access to the College's Program or Activity will be provided by the College to the Complainant; and
  - f. The College's procedures and permissible bases for the Complainant and Respondent to appeal.
- xi)* The Chair of the Hearing Panel will provide to the Title IX Coordinator the final written decision, the recording or transcription of the live hearing, and all evidence directly related to the matter ("Hearing Panel File").

## 7) Appeal

Either or both parties may appeal from a determination regarding responsibility and from the College's dismissal of a formal complaint or any allegations therein.

- i)* An appeal must be submitted to the Title IX Coordinator within 10 business days of the date the written determination was submitted to the parties.
- ii)* Grounds for appeal must be stated in the notice of appeal. An appeal is limited to the following grounds:
  - a. Procedural irregularity that affected the outcome of the matter;
  - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
  - c. The Title IX Coordinator, investigator(s), or member(s) of the Hearing Panel had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that specifically affected the outcome of the matter.
- iii)* Upon receipt of an appeal, the Title IX Coordinator will notify the other party in writing that an appeal was filed, provide a copy of the notice of appeal, and will issue instructions, including reasonable deadlines for the non-appealing party to submit a written response.
- iv)* Once the Title IX Coordinator has received the written statements or the deadlines for submission of the written statements has expired, the Title IX Coordinator will provide to the President, or their designee, written statements submitted by the parties and the Hearing Panel's final written decision and will make available the Hearing Panel File.
- v)* The President, or their designee, will issue a written decision describing the result of the appeal and the rationale for the result and will provide the written decision simultaneously to both parties.
- vi)* A decision by the President is the final decision of the College and thus the conclusion of the grievance proceeding. As such, appropriate disciplinary sanctions may be immediately imposed.

## **Section 9.07** Informal Resolution

1. At the discretion of the Title IX Coordinator, this process is available to resolve all allegations of Prohibited Conduct except Sexual Harassment by employees against students.
2. After the parties are provided with written notice of Formal Complaint, the Title IX Coordinator may contact both parties to explore whether they would like to engage in an Informal Resolution Process.
3. The Title IX Coordinator is responsible for either overseeing or conducting the informal resolution process. Examples of Informal Resolution may include, but are not limited to, mediation, facilitated conversation, and education.
4. Both parties must provide voluntary written consent to Informal Resolution, and the Title IX Coordinator must determine an Informal Resolution process is appropriate before prior to initiating the informal resolution process.
5. At any time, before completing a resolution, any party has the right to withdraw from the Informal Resolution Process and resume the Grievance Process with respect to the Formal Complaint.
6. A completed resolution must contain signatures of the parties and the Title IX Coordinator. The Title IX Coordinator retains the authority to determine whether any Informal Resolution is sufficient.
7. The only record resulting from the Informal Resolution process will be a Written Agreement of Informal Resolution signed by both parties and the Title IX Coordinator. Each party will receive a copy of the written agreement and the Title IX Coordinator will maintain a copy in the Title IX Office records.
8. None of the information learned solely as a result of the Informal Resolution process may be used in the Grievance Process. The fact that the parties participated or that any party declined to participate or withdrew from the Information Resolution Process may not be considered in a Formal Grievance Process.

## **Section 9.08** When a Complainant Does Not Wish to Proceed

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. The Title IX Coordinator's decision should be based on results of the violence risk assessment that shows a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community. "Compelling risk" includes but is not limited to evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the

College's ability to pursue a Formal Grievance Process fairly and effectively. The College may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, the College will offer informal resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

## Sanctions

1. Student Respondents. The Hearing Panel is responsible for determining sanctions against student respondents.
  - i. Possible sanctions against students may include one or more of the following:
    - a. Disciplinary probation: A designated period of time during which the respondent is not in good standing with the College. The terms of disciplinary probation may involve restrictions of privileges and/or set specific behavioral expectations;
    - b. Restriction from employment at the College: Prohibition of or limitation on College employment;
    - c. Class/Workshop/Training/Program attendance: Enrollment in and completion of a class, workshop, training, or program that could help the respondent or the College community;
    - d. Educational project: Completion of a project specifically designed to help the respondent understand why certain behavior was inappropriate and to prevent its recurrence;
    - e. College housing transfer or removal: Permanent placement in another room or housing unit or removal from College housing. Housing transfers or removals may be for a specified time (e.g., a year) or permanent depending on the circumstances;
    - f. Removal from specific courses or activities: Suspension or transfer from courses or activities at the College for a specified period of time or permanently;
    - g. Banning from all or specific College activities and events: The College may prohibit an individual from attending College sponsored activities either on or off-campus;
    - h. Permanent No Contact: Restriction from entering specific College areas and/or from all forms of contact with certain persons;
    - i. Suspension: Separation from the College for a specified period of time or until certain conditions are met;
    - j. Expulsion or permanent separation: Termination of student status for an indefinite period for students or termination from employment for employees;

- k. Transcript hold: The College may prevent a student from receiving a copy of their transcript; or
- l. The College may delay the conferral of the degree pending the outcome of an investigation or withhold the conferral of the degree due to a finding of prohibited conduct. In extraordinary circumstances, the College may revoke the conferral of a degree.
- ii. Student Respondents may submit to the Hearing Panel a mitigation statement explaining any factors that the respondent believes should mitigate or otherwise be considered in determining the sanctions imposed. Complainants may submit to the Hearing Panel an impact statement describing the impact of the Prohibited Conduct on the complainant and expressing the complainant's preferences regarding appropriate sanctions.
- iii. In determining the appropriate sanctions for students, the Hearing Panel will be guided by a number of considerations, including but not limited to:
  - a. The nature of the conduct at issue and the Prohibited Conduct for which Respondent was charged;
  - b. The impact of the Prohibited Conduct on the Complainant;
  - c. The impact of the Prohibited Conduct on the community or the College;
  - d. Whether the Respondent has accepted responsibility for the Prohibited Conduct, which may be considered as a factor that may lessen, not increase, the severity of the sanctions;
  - e. Maintenance of a safe and respectful environment conducive to learning;
  - f. Protection of the College community;
  - g. The necessity of any specific action in order to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects on the Complainant or other College community members; and
  - h. Any other mitigating, aggravating, or compelling circumstances, including those set forth in the impact or mitigation statements.
- 2. Employee Sanctions. If the Respondent(s) is an employee, the Hearing Panel will not make a determination regarding sanctions. After any appeal or opportunity for appeal has been exhausted, the Title IX Coordinator will provide the Hearing Panel's written decision and any final decisions on appeal to the College President who has the authority to impose sanctions in accordance with applicable employment policies and procedures and collective bargaining agreements. The College President will consult with the Director of Human Resources. The Title IX Coordinator will inform the Complainant(s) of the status of the employee sanctioning process and outcomes as they directly relate to the Complainant(s)'s participation in College Programs or Activities or Residential Life.

3. Student-Employee Sanctions. If the Respondent is a student-employee, the Hearing Panel will determine sanctions with respect to the Respondent's status as a student and the Title IX Coordinator will provide the Hearing Panel's decision to the Director of Human Resources to impose sanctions in accordance with applicable employment policies and procedures.

### **Section 9.09** Records

1. The Title IX Coordinator is responsible for maintaining for a period of seven years the following records:
  - i. Records of the Grievance Process following the filing of each Formal Complaint including:
    - a. Hearing Panel File;
    - b. Any disciplinary sanctions imposed upon the Respondent(s);
    - c. Any remedies provided to the Complainant(s) designed to restore or preserve equal access to the College's Programs or Activities;
    - d. Any documents submitted as part of an appeal and any written decisions as a result of an appeal;
    - e. Any written agreement of Informal Resolution.
  - ii. All materials used to train the Title IX Coordinator and any deputy Title IX Coordinators, investigators, the Hearing Panel, the President (or designee), all other decision-makers for appeals, and any person who facilitates an Informal Resolution Process. The Title IX Coordinator must make these training materials available on the College website.
  - iii. Records of all Reports of Prohibited Conduct including:
    - a. A record of the initial report;
    - b. A record of any actions taken in response to a report of Prohibited Conduct;
    - c. A record of supportive measures provided to a Complainant, or if supportive measures are not provided to a Complainant, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances;
    - d. Documentation of measures taken by the College to restore or preserve equal access to the College's Programs or Activities;
    - e. Documentation of the basis for the conclusion that the College's response was not deliberately indifferent to a report of Prohibited Conduct.
2. The College will keep confidential the identity of any individual who has made a report or filed a Formal Complaint of Prohibited Conduct, any Complainant, any Respondent, and any witnesses, except as may be permitted by the Family Education

Right of Privacy Act (“FERPA”), 20 U.S.C. § 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, appeal, or judicial proceeding arising thereunder.

### **Section 9.10** Timeframe

Consistent with timeframes identified herein and where otherwise unspecified, the College will respond to and seek resolution of all Reports of Prohibited Conduct and Formal Complaints under these Procedures, promptly, as determined by fact and circumstance, and in accordance with federal regulation. The Title IX Coordinator will set and provide advanced notice of timelines and deadlines to parties, witnesses, and Advisors.

Except as otherwise specified, the Title IX Coordinator may extend a deadline or permit delay of any resolution process described herein upon a showing of good cause and written notice to the parties of the reason for extension or delay. Good cause may include considerations such as the unavailability of a party, witness, or Advisor; concurrent law enforcement activity; or the need for language assistance or accommodation of disability.

The College will make a good faith effort to complete the process within 90 calendar days, including appeal, which may be extended as necessary for appropriate cause by a Title IX Coordinator, who will provide notice and rationale for any extension or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

### **Section 9.11 MUS Complaint Processes**

(<https://www.umt.edu/provost/students/concerns/MUSComplaintProcess.php>)