Sexual Harassment and Misconduct Policy

Sexual discrimination and harassment, including domestic violence, dating violence, stalking and sexual assault, are prohibited under state and federal law, as well as under Drew University’s Sexual Harassment and Misconduct Policy. The Policy represents Drew’s commitment to creating and maintaining a diverse and open educational community that addresses unwelcome, gender-based or sexual conduct, whether through words or actions, that is sufficiently severe, persistent, or pervasive to unreasonably interfere with or limit a person's ability to participate in or benefit from the University’s educational programs or work environment. It is intended to educate the community about sexual harassment and misconduct and to support and protect any member of the community who uses the Policy responsibly to pursue a complaint. Drew will investigate, adjudicate, and remedy reports of violations of the Policy and encourages the reporting of these matters to the Police.

The Policy and its procedures have been amended to address new and evolving requirements under federal, law designed to address domestic violence, dating violence, stalking, and sexual assault in campus settings. The revised Policy will be implemented in the 2014 Fall term. Comments, questions, and feedback are welcomed and community input will be sought over the course of the coming year as the federal government finalizes its regulatory proposals implementing the Campus Save Act and revisions to the Clery Act.

All members of the University community are required to familiarize themselves with the content of the Policy as well as with its procedures. Ongoing training and awareness programs, including written, in-person and/or on-line education and training are and will be continued to be made available and open to the community.

Under this Policy, each member of the University community is expressly prohibited from verbal, physical, written, or any technology-based conduct that constitutes sexual harassment or misconduct, including domestic violence, dating violence, stalking, and sexual assault.

Purpose

The purpose of the Drew University Sexual Harassment and Misconduct Policy is to instill a climate of mutual respect and responsibility on matters associated with gender and sex. The Policy seeks to advance shared community values and foster equal educational and employment opportunity, access, and benefits. The Policy is designed to educate the members of the University community on common standards and norms and on each individual’s responsibilities to address sexual harassment, including domestic violence, dating violence, stalking, and sexual assault. Under this Policy, the University will initiate a prompt, thorough, and impartial investigation of any report of sexual harassment, including domestic violence, dating violence, stalking, and sexual assault and will provide effective and reliable processes and procedures for seeking remedies, while affording those accused of violations a fair opportunity to be heard. The University will work to respect the parties, provide appropriate support and information, provide appropriate time in advance of the hearing, the opportunity to appeal decisions, and will assist those who wish to make criminal reports.
Scope of the Policy

The Drew University Sexual Harassment and Misconduct Policy applies to members of the University community, including students, faculty, staff, and University officials. Discrimination or harassment, based on protected class status, even if it occurs off campus, can create a hostile environment and is prohibited under this policy.

Visitors, alumni/ae, guests, vendors, and contractors, who violate this Policy may be referred for criminal prosecution, be required to leave University property and/or banned from the campus and from participating in future activities. Hosts, including students or employees, or other individuals directly affiliated with the Drew community, are subject directly to this Policy and may be held responsible for the actions of their visitors or guests.

1. Sexual Harassment and Misconduct

Sexual harassment and misconduct is unwelcome gender-based or sexual conduct, whether through words or actions, that are sufficiently severe, persistent or pervasive to unreasonably interfere with, deny or limit a person's ability to participate in or benefit from Drew’s educational program and/or activities. Sexual harassment and misconduct comes in many forms and consists of a variety of acts that a reasonable person would consider sufficiently severe or pervasive to create an intimidating, hostile, or objectively offensive educational environment.

Sexual misconduct includes actions that constitute serious criminal offenses, ranging from sexual assault or rape to other non-consensual sexual contact or activity. Sexual misconduct can also consist of acts that involve direct physical contact with another's intimate parts, without their consent or where the person is not capable of consenting. It includes forcing another to engage in a sexual or intimate act against their will. Other serious criminal offenses, such as domestic violence, dating violence, and stalking, can constitute sexual misconduct.

Sexual harassment can consist of acts that do not involve physical contact, such as derogatory verbal or on-line comments or graffiti, coercion, or intimidation.

Examples

The range of actions that make up sexual harassment and misconduct is extensive. Examples include, but are not limited to:

- Sexual assault
- Intercourse without effective consent
- Intercourse with an individual incapable of giving consent. Individuals incapable of giving consent include, but are not limited to, children or minors, someone who is intoxicated to the point of incapacitation, or someone who is asleep, unconscious, or otherwise unaware.
- Sexual or intimate physical contact without the effective consent of the other person
- Unwelcome touching, kissing, hugging, or massaging
• Unwelcome sexual advances
• Unwelcome remarks about another person's private parts
• Unwelcome requests or propositions for sexual favors or sexual contact
• Unwelcome sexual innuendo or demeaning comments, whether oral, written, or digital, about a person's gender, sexual orientation, or gender affiliation,
• Insults or threats based on sex or gender,
• Recording, (whether by video, audio, photo, or any other digital medium), another person in a sexual or private context without their consent.
• Using force or coercion in furtherance of a sexual, romantic, or intimate interest, or
• Use of e-mail, the Internet, social media, or other emerging digital technologies to do any of the above or harass or discriminate against another based on their gender or sexual orientation, or in unwelcome furtherance of a romantic, sexual, or intimate advance.

2. Forms of Sexual Harassment and Misconduct and Important Related Terms

Sex Offenses

Sex offenses consist of any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Criminal law definitions under state law may be found in the Annual Security Report.

2(a). Sexual Assault or Non-Consensual Sexual Intercourse

Non-consensual sexual intercourse is sexual intercourse or penetration (anal, oral or vaginal), without effective consent, however slight, with any object. It can constitute sexual assault under state law and can result in criminal prosecution.

Intercourse includes: vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation, involving contact between the genitals and the mouth, no matter how slight the penetration or contact.

2(b) Non-Consensual Sexual Contact or Fondling

Nonconsensual sexual contact can consist of the deliberate and unwelcome touching, (however slight, with any object), of another’s intimate parts (genitalia, groin, breast, buttocks or clothing covering those areas), as well as fondling, and groping, kissing or using force to cause someone to touch another’s intimate parts. Sexual contact includes: contact with the breasts, buttocks, groin, or genitals; touching another with any of these body parts; making another touch you or themselves with any of these body parts; or other intentional bodily contact in a sexual manner.

Fondling consists of the touching of the private body parts of another person, without the consent of the victim, including where the victim is incapable of giving consent as a result of age or incapacity.
2(c) Effective Consent

Effective consent is clear, informed, and freely given. It is communicated by mutually understandable words or actions which indicate a willingness to participate in mutually agreed upon sexual activity by persons of legal age. Consent as a result of coercion, intimidation, threat of force, or force is not effective consent. Effective consent may never be given by minors, mentally disabled persons, and those who are incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary) or those who are unconscious, unaware or otherwise physically helpless.

Effective consent to one form of sexual activity cannot imply consent to other sexual acts. A previous relationship or previous consent, including a dating relationship or previous sexual involvement, does not imply consent to future sexual acts. Consent may be withdrawn by either party at any time by an outward demonstration through words or actions effectively indicating intent to end sexual activity. Consent cannot be effective when it results from threat of physical force, intimidation, or coercion.

2(d) Incapacity (Alcohol, Drugs, etc.)

Incapacity means an individual is not capable of making a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction. Incapacity may also result from involuntary physical restraint as well as from voluntary or involuntary drug or alcohol use. Incapacity can arise from alcohol or drug use, or from ingestion of substances often referred to as date rape drugs, including, but not limited to Rohypnol, Ketamine, GHB, or Burundanga.

Spiking or adding drugs, including prescription drugs, high-proof alcohol, or over the counter medication, to anything that can be ingested, is prohibited under this policy. A person, who has sexual activity with someone who is mentally or physically incapacitated as a result of alcohol or other drug use, unconscious or in a blackout state, is in violation of this policy.

Sexual interaction while under the influence of drugs or alcohol represents a threat to the well-being of persons engaging in sexual acts and can result in charges of sexual misconduct, including claims that a party was unable to provide effective consent to sexual acts. Use of alcohol or other drugs by the person complained against will not excuse behavior that violates this Policy or diminish his/her responsibility.

Possession of date rape drugs constitutes a serious criminal offense under the laws of the State of New Jersey and university policies. Administering alcohol or a drug to another person for the purpose of inducing incapacity, in order to engage in sexual misconduct, is in violation of this Policy. Such conduct, whether alone, or in concert with others, is a crime, and represents a serious breach of community norms and standards and if found responsible will result in expulsion.
2(e). Sexual Exploitation

Another type of sexual misconduct is termed sexual exploitation and occurs when an individual takes nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- prostituting another,
- non-consensual or surreptitious video or audio-taping of sexual activity,
- going beyond the boundaries of consent (such as permitting another to secretly observe you engaging in consensual sex),
- voyeurism (peeping toms),
- inducing or attempting to cause another to become incapacitated,
- employment or achievement related inducements,
- knowingly transmitting a sexually transmitted infection, including HIV, to another.

2(f) Domestic Violence

Domestic violence involves a variety of serious offenses, including acts of violence, that are committed against someone by their current or former spouse or intimate partner, by a person with whom the parties have a child in common, a current or former cohabitant, or by someone who is similarly situated, such as persons in a relationship or children with respect to their parent or guardian. Under New Jersey criminal law, domestic violence can include acts or such as homicide, assault, terroristic threats, kidnapping, criminal restraint, false imprisonment, sexual assault, criminal sexual contact, lewdness, criminal mischief, burglary, criminal trespass, harassment, and stalking.

2(g) Dating Violence

Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with another. It is determined based on the reporting party’s statements, and in consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in that relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence applies to individuals who are in a dating relationship, a romantic relationship, or have sexual relations with each other. It can include a pattern of behavior where one person threatens to use, or uses, physical, sexual, verbal, or emotional abuse to control a dating partner.

2(h) Stalking

Stalking means a course of conduct directed at a specific person on at least two or more occasions that would cause a reasonable person to fear for her, his, or another’s safety, or to suffer substantial emotional distress.

Stalking can be accomplished, by direct action, indirect action or through third parties. The type of actions that can constitute stalking include following another, monitoring another, surveilling
another, threatening another, communicating with another or by interfering with another’s property.

2(i) Quid-Pro-Quo Sexual Harassment

Another form of sexual harassment or misconduct arises from a person’s exploitation of his or her position, power, or authority. Quid-pro-quo sexual harassment (Latin for “this for that”) is unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature. Common to all such behaviors is that non-compliance is accompanied by an implied or explicit threat to an individual’s employment, academic or co-curricular status or access and/or compliance carries an implicit or explicit offer of advantage or preference.

2(j) Hostile Environment Harassment

Hostile environment harassment can involve verbal or physical actions based on gender or sex that are sufficiently severe, pervasive, and objectively offensive to unreasonably interfere with or limit another’s ability to participate in or benefit from the University’s education program, living or work place. Most often such behaviors constitute sexual harassment when they are frequent and repeated or when they continue after someone has asked that they stop. The more severe the conduct, the less need there is to show a repetitive series of incidents.

Sexual harassment can be effected through spoken words, physical actions, written or graphic material, or electronic or social media. Verbal, written or electronic conduct can constitute harassment or stalking. Harassment can be committed by differing individuals, including but not limited to, faculty, staff, contractors, vendors, friends, dates, romantic or interested partners, roommates, hall-mates, teammates, strangers, or by a group.

2(k). Gender Discrimination

Discrimination is any distinction, preference, advantage for or detriment to an individual, when compared to others that is based on gender, gender identity, gender orientation, or gender expression. The discrimination must be sufficiently severe, pervasive and objectively offensive to create an intimidating, hostile, or offensive living, educational or working environment, or otherwise unreasonably interfere with or limit a student’s or employee’s ability to participate in or benefit from the University’s educational programs, activities, or work.

Gender-based harassment includes verbal or physical conduct that demeans or shows hostility, or aversion, toward an individual because of his/her gender and includes physical, verbal, written or electronic conduct of a sexual nature which is sufficiently severe or pervasive to create an intimidating, hostile, or offensive educational or employment environment.

3. Retaliation

Drew University’s Human Rights Policy seeks to encourage students, staff, and faculty to express freely and responsibly their opinions and feelings about any complaint of discrimination or harassment. Any act of reprisal, interference, restraint, penalty, discrimination, coercion, or
harassment — overtly or covertly — against a person who uses this Policy and its procedures not only undermines the University’s atmosphere of trust and collegiality, but threatens its ability to conduct investigations and to address violations. Retaliation includes any threats or other form of intimidation directed at a complainant, a witness, or a supporter at any point before, during or after an investigation, mediation and/or hearing. Accordingly, such acts violate this Policy and will be subject to appropriate and prompt disciplinary action.

4. Upstander/Bystander Intervention

Upstander/Bystander intervention is taking reasonable and prudent actions to prevent or stop an act, or potential act of sexual misconduct, domestic/dating or other acts of violence. Intervening can prevent serious incidents from occurring and can consist of indirect or direct actions, including but not limited to, making a comment, removing someone from a situation, or calling for assistance

A simple statement, word of caution, offer of assistance, or phone call can serve to protect others and prevent serious harm.

The safety of Upstanders/Bystanders, as well as the safety of those targeted for sexual violence or assault, is a priority. We encourage members of the campus community to carefully consider their ability to take safe, reasonable, and prudent actions to prevent or stop an act of sexual misconduct, domestic/dating or other acts of violence. Upstanders/Bystanders are encouraged to contact Drew Public Safety, Campus Life, or Human Resources personnel. If off-campus, you should immediately seek assistance from a person in authority, or the local law enforcement.

Retaliation against an Upstander/Bystander is a violation of this Policy and will result in disciplinary action.

5. Amnesty

Drew encourages the reporting of sexual harassment and misconduct. As a result, Drew will not pursue drug or alcohol charges against students reporting offenses involving sexual harassment and misconduct based on their personal consumption of drugs or alcohol at or near the time of the incident. However, any such violation cannot have imperiled the health or safety of any other person. Amnesty does not preclude the University from pursuing educational measures, including discussion of the drug or alcohol offense regarding the risks and consequences of such activity.

6. False Complaints

This Policy shall not be used to bring frivolous or malicious charges against students, faculty or staff members. Discipline under the appropriate University Policy may be taken against any person knowingly bringing a false complaint of any form of discrimination, including sexual harassment and misconduct.
7. Multiple or Related Complaints

Where the same facts or circumstances involve violations of different aspects of Drew policies, all related complaints against a person will be addressed, heard, and resolved in one forum and proceeding. Complaints alleging violations of this Policy cannot be pursued in multiple forums or on a serial basis when the same facts and circumstances are involved. In the event that a proceeding under this Policy also involves claims under another University Policy or forum, the appropriate administrator shall determine which Policy or forum has a predominant interest and which procedure must be applied. All related violations shall be considered in the proceeding selected, based on the constituency of the person complained against.

8. Free Academic Inquiry

Academic freedom is central to the University’s mission. This Policy is not intended to restrict free academic inquiry, educational purpose, or artistic expression.

9. Reporting

University faculty, staff and administrators, as well as student employees and volunteers with the responsibility for supervising students or responsibility for their welfare are required to share with one of the designated individuals listed on the contacts page any report of sexual harassment or misconduct, including domestic violence, dating violence, stalking, or sexual assault. This obligation does not extend to employees with legal privileges precluding disclosure, such as psychological or psychiatric counselors, medical staff, or pastoral ministers.

Other employees as well must report instances of sexual harassment or misconduct, including domestic violence, dating violence, stalking, or sexual assault when they become aware of such acts or reports. A variety of contacts to whom these reports may be made are listed on the Contacts and Resources page at the end of the Procedures section.

10. Cooperation

All members of the campus community should cooperate in an inquiry, investigation, and complaint resolution processes as required to ensure a prompt, adequate, reliable and impartial investigation of complaints. Fact-finders are authorized to call upon any administrative subdivision of the University or employee or staff member for assistance as necessary to complete its investigation and/or may utilize external resources to conduct any aspect of the investigation as necessary.

11. Discussing Matters Confidentially

If you have questions or concerns about discussing a matter, or are simply not ready to make a report, to either Drew or law enforcement, confidential counseling is available to students at:

The Drew University Center for Psychological and Counseling Services (Counseling Center), which can be contacted at http://www.drew.edu/Counseling/ (973) 408-3398.
The Employee Assistance Program (EAP)

Staff and faculty may contact Drew’s Employee Assistance Program (EAP), CONCERN, through Drew Human Resources (973) 408-3223 or directly at (800) 242-7371.

Additional support services and resources are available to students, faculty, and staff at:

JERSEY BATTERED WOMEN'S SERVICE (JBWS)

P.O. Box 1437
Morristown, NJ 07962
Administrative: 973-267-7520
24-Hour Helpline: 973-267-4763
Fax: 973-605-5898
email: info@jbws.org

Jersey Center for Non-Violence,
A program sponsored by JBWS to help people examine the use of force and/or abuse within intimate relationships and to learn alternatives.
Email: jcnv@jbws.org;
Fax: 973-539-4068
Phone: 973-539-7801

Morris Cares

Morris Cares provides confidential counseling and advocacy for victims of sexual assault as a component of the Morris County Sexual Assault Response Team and can be reached (24/7) at: Hotline: (973)-829-0587).

Law Enforcement

In addition, the Morris County Prosecutor’s Office, the Madison Police Department, the Prosecutor’s Office’s Sexual Assault Nurse Examiner and Sexual Assault Response Team (SANE/SART) Program respond to allegations involving criminal conduct, including sexual assault.

Other resources are listed on the Contacts and Resources page at the end of the Procedures.

When health or safety is at risk, the Department of Public Safety should be contacted immediately.

12. Confidentiality and Privacy

All proceedings, documents, activities and meetings related to a specific fact-finding and/or complaint are considered private, as permitted by this Policy or applicable law. While privacy will be maintained to the extent possible, the University cannot commit to privacy on an across
the board basis with respect to matters that result in fact finding and/or hearing. The University will use its best efforts not to disseminate information about an inquiry or complaint beyond those who have a need to know. Consistent with its obligations under state and federal law, however, the University may be required to take reasonable investigative steps, even in the face of a student's request for privacy or a request not to pursue fact-finding.

In the event that a student/complainant decides not to approve any fact-finding, Drew may nonetheless be compelled to conduct an investigation in order to provide a safe environment without the threat of sexual harassment or misconduct. Consistent with federal guidance, these instances will be limited and Drew will make good faith efforts to limit the disclosure of that information to individuals involved in handling the school's response and will advise the complainant. That decision will be made by the Title IX Coordinator, or designee.

A student’s request that his or her identity not be disclosed to the accused, or that fact finding not be commenced, will necessarily limit Drew's ability to respond fully to the incident and may preclude Drew from pursuing disciplinary action against the accused. Retaliation against a student or employee for reporting an incident, whether by other students, employees, or officials, will be addressed consistent with University Policy and can result in discipline. The provision of accommodations to students or employees seeking interim protective measures will be effected after consultation with the student. Any protective measures provided will be maintained as confidential to the degree possible without impairing the ability to provide the accommodations or protective measures. Potential protective measures may include, but are not limited to: changing residence, adjusting work schedules or situations, adjusting academic schedules, changing transportation, permitting withdrawal/removal from a course, providing tutoring, and no contact orders.

Parties and those interviewed in connection with a claim of discrimination or harassment should not disclose information about the report, investigation, mediation, or adjudication to those outside the process in order to avoid interference, claim of undue influence, or retaliation.

Certain serious offenses, including reports of sexual misconduct offenses, are maintained by Drew in a log and in the Annual Security Report consistent with the requirements of federal law. That information, however, is logged and listed for statistical purposes without names or other personally identifiable information.

13. Confidentiality of Sanctions

Under federal law, a student’s sanction or discipline is part of the student’s educational record and is protected from release with certain exceptions. Those exceptions, however, will not typically apply in a matter involving a severe sanction. For example, the University may release publicly the name, nature of the violation and the sanction for any student found in violation of a University policy that constitutes a crime of violence, including arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/ vandalism and kidnapping or abduction. This information will be released to the complainant. Additionally, in matters involving non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment,
stalking and relationship violence, complainants have a right to be informed of the outcome and sanctions, in writing.

In matters involving faculty and or/staff only, both parties will be advised of the outcome and sanction of a disciplinary proceeding. Students who bring a sexual misconduct complaint against a faculty or staff member may be informed of both the outcome and sanction as well, because the person complained against is not a student and is not protected under federal law. Otherwise, as a general rule, an employee’s sanction will only be disclosed consistent with applicable legal standards and requirements.

14. Training & Education

All faculty, staff, and students are required to receive sexual harassment and misconduct training, including programs on dating violence, domestic violence, sexual assault, stalking, Upstander/Bystander intervention, and drug and alcohol education. In addition, there are opportunities available on-campus, for students, faculty, and staff, for self-defense and personal safety training. Employees who are likely to receive reports of discrimination or harassment, including faculty, administrators, resident assistants, health and counseling personnel, and athletic staff, should ensure they receive training, be familiar with these policies and procedures, and be able to identify appropriate contacts within the University for handling reports or complaints of violations.

The University reserves the right to impose interim status restrictions, on an accused, as well as on a complainant, in its discretion. Counseling, health, victim advocacy, and other services are available for victims both on the campus and in the community. A listing of available resources may be found at the end of this document.

Written explanations of the rights and options afforded any person reporting that he or she has been a victim of domestic violence, dating violence, sexual assault, or stalking (whether on-campus or off) will be provided to students and employees.

15. Notice of Prohibitions against Sexual Discrimination/Title IX Coordinator

Drew University does not discriminate on the basis of sex in its education program or activities as required by Title IX of the Education Amendments of 1972, 20 U.S.C. sec. 1681 et seq. Inquiries regarding the application of Title IX or this Policy may be made to the University’s Title IX Coordinator/AA/EEO Officer: George-Harold Jennings, 36 Madison Avenue, Madison, NJ 07940 or at: (973)-408-3392; or at: gjenning@drew.edu. Complaints of sexual harassment or misconduct may also be reported to the Campus Conduct Hotline at 1-866-943-5787 or at: investigations@drew.edu.

16. Notice of Prohibitions against Sexual Assault, Domestic Violence, Dating Violence, and Stalking

Drew prohibits domestic violence, dating violence, stalking, and sexual assault and will address claims of this conduct consistent with this Policy and its Procedures.
17. Notice of Prompt Reporting

Drew encourages accurate and prompt reporting of all criminal acts to the Madison Police, the Morris County Prosecutors Office, and to Drew Public Safety. Faculty, staff, and employees should report incidences of sexual harassment and misconduct. Information on to who these incidences should be reported to can be found on the contacts page at the end of this document.

18. Child Abuse and Endangerment

Every member of the Drew University community has an obligation under State law to report suspected child abuse. If you suspect that a minor who is on University premises for any reason, or is participating in a University-sponsored activity at another location, has been the victim of child abuse, you are required to immediately report the suspected abuse to the New Jersey Department of Children and Family (DCF), by immediately calling DCF at 1-877- NJ ABUSE (1-877-652-2873). Unless otherwise advised by DCF or law enforcement personnel, you should also provide notice of this report to the Drew Department of Public Safety, at 1- 973-408-3379. For more information on State reporting requirements and legal definitions, please see http://www.state.nj.us/dcf/reporting/how/ and http://www.nj.gov/dcf/reporting/links/

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