



**DONNELLY  
COLLEGE**  
EST. 1949

## Sexual Misconduct Policy

Approved Date: July 2016  
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### Policy Statement

## SEXUAL MISCONDUCT - TITLE IX POLICY

Donnelly College will not tolerate any acts of sexual misconduct committed by or against any member of our community which includes students, staff, faculty, approved volunteers, visitors, and vendors.

### Donnelly College Title IX Contacts

If you would like to speak directly with a trained member of the College community, you may contact one of the individuals listed below:

**Title IX Student Coordinator**  
**Dr. Mary Pflanz**  
Associate VP of Student Affairs  
913-621-8764  
[mpflanz@donnelly.edu](mailto:mpflanz@donnelly.edu)

**Title IX Employee Coordinator**  
**Robin Kimbrough**  
Human Resource Director  
913-621-8786  
[hr@donnelly.edu](mailto:hr@donnelly.edu)

**Title IX Supervisor**  
**Msgr. Stuart Swetland**  
President  
913-621-8746  
[sswetland@donnelly.edu](mailto:sswetland@donnelly.edu)

We encourage inquiries be referred to the Title IX Coordinator identified above.

### Sexual Misconduct Offenses:

Sex Offenses are defined as any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent. The term “sexual assault” means an offense that meets the following definitions of rape, fondling, incest, or statutory rape.

- **Rape** is the penetration, no matter how slight, of the vagina, anus, or orally with any body part or by a sex organ of another person, without the consent of the victim.
- **Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental incapacity.
- **Incest** is non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- **Statutory Rape** is non-forcible sexual intercourse with a person who is under the statutory age of consent. Kansas law defines the age of consent as 16 years of age.

## **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 the victim.

## **Domestic Violence**

Domestic violence means an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member (including roommates). Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member. For the purposes of this definition:

- Dating relationship means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when deciding on whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.
- Family or household member means persons 18 years of age or older who are spouses, former spouses, parents or stepparents, children or stepchildren, persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

## **Stalking**

Stalking means intentional harassment of another person that places the other person in reasonable fear for that person's safety.

Harassment means a knowing and intentional course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose.

Course of conduct means conduct consisting of two or more separate acts over a period of time, however short, evidencing a continuity of purpose which would cause a reasonable person to suffer substantial emotional distress. Constitutionally protected activity is not included within the meaning of "course of conduct."

## Sexual Exploitation

Sexual Exploitation occurs when a person takes nonconsensual sexual advantage of another for her/his own benefit or the benefit of others. Sexual Exploitation includes but is not limited to recording or broadcasting (audio, visual, or pictorial) of sexual activity, voyeurism, or prostitution.

## Sexual Harassment

Sexual Harassment is defined as unwelcome and/or repeated sexual advances, requests, or threats; offensive or demeaning sexual language or actions which is severe, pervasive, or objectively offensive as to have the effect of unreasonably interfering with a person's educational performance or creating an intimidating, hostile, or offensive environment. The College's complete Harassment Policy may be found at [www.donnelly.edu](http://www.donnelly.edu), Current Students, Campus Information section.

## Provisions on Retaliation

Retaliation or intimidation against anyone involved in a potential sexual misconduct situation will not be tolerated by Donnelly College. This includes the potential victim, potential respondent, or anyone participating in the reporting or investigation.

## Consent

For the purposes of this policy, **consent** means words or actions that indicate a willingness to participate in a mutually agreed upon sexual act. Consent is informed, freely and actively given, and cannot be obtained through coercion, intimidation, physical force or if either party is incapacitated. Silence or lack of active resistance should never be interpreted as consent.

Consent cannot be inferred from previous sexual activity or intimate relationships.

*Ill Note: Use of alcohol and/or drugs is not an excuse for violation of the Title IX Sexual Misconduct policy. A person who is intoxicated may have his or her judgment seriously impaired and thus might not be able to give informed consent to sexual activity. In addition, a person who has consumed alcoholic beverages to the degree that he or she is intoxicated or under the influence of drugs may not be capable of discerning and confirming consent to sexual activity. It also should be reemphasized that silence, previous sexual activity or intimate relationships, and/or the current relationship status between the parties should not be taken as an indication of consent.*

## Victim Assistance

When there is reasonable cause to believe that federal or state laws prohibiting sexual misconduct have been violated, the College will assist and fully support individuals who wish to pursue filing a criminal report through the local police and/or civil action through the legal system. The College will also support individuals who wish to pursue disciplinary action against the employee, student, or third party accused of sexual misconduct through the College sexual harassment policy or student conduct process.

Procedures have been developed to provide medical, emotional, and judicial assistance to victims of sexual misconduct. Because the right to privacy is a particularly sensitive issue in dealing with incidents of a sexual nature, these procedures have been designed specifically to maintain the highest level of confidentiality possible. The College strongly believes that it is important whenever possible for victims to be active in the decision-making process and thus recover a sense of control in their lives.

## Reporting Procedure

A student who is the victim of sexual misconduct is encouraged to seek assistance as soon as possible after the incident. Community members who become aware of sexual misconduct (regardless of their

involvement) are likewise encouraged to report the information for the College to assist potential victims and protect the community.

The following individuals are required to report information regarding alleged sexual misconduct involving students (as victim or accused) to the Title IX Coordinator to ensure victims receive support and understand their rights:

- College administrators
- College athletic personnel including coaches, assistant coaches and trainers
- Campus ministry staff **except** for the College Chaplain or priests acting in a role as a pastoral counselor
- College faculty
- Public safety officers and administrators
- Residence life staff including resident assistants and professional staff members • College staff

The following individuals, if requested by the victim, may maintain confidentiality and are thus not required to submit an identifiable report to the Title IX Coordinator:

- College Counselors
- The College Chaplain or priests acting in a role as a pastoral counselor

A victim can also contact the Metropolitan Organization to Counter Sexual Assault, a rape and sexual assault crisis center, directly by calling (816) 531-0233. MOCSA can provide counseling, emotional support and information regarding legal options. In addition, the University of Kansas Medical Center provides S.A.N.E. services (Sexual Assault Nursing Examiner) to aid in the process of rape examination and evidence collection.

## **Evidence Protection**

A victim of sexual assault should:

- Try to preserve all physical evidence.
- Do not wash, use the toilet, bathe, shower, or change clothing if it can be avoided. If clothes are changed, place all clothing worn at the time of the assault or immediately following the assault in a paper (not plastic) bag. Victims should also preserve bedding (sheets, pillows, blankets, etc.) whenever possible.
- Get medical attention as soon as possible to make sure there are not any physical injuries or other health related issues and to collect important evidence that will assist with prosecution.

## **Investigation**

When the Title IX Coordinator receives a report from a victim, community member, or College employee, the Title IX Coordinator (or designee) will initiate an investigation. This investigation may include but is not limited to: meeting with the victim, meeting with the accused respondent, and meeting with anyone who may have information regarding the alleged incident.

The College's investigation will be handled separately from any other investigation (including criminal or civil) and every attempt will be made to have the College's investigation completed in a timely manner independent of any other investigation.

Victims have the option to share as much or as little information as they are comfortable disclosing, and the College will maintain the strictest privacy possible. Information will only be disclosed to those responsible for the investigation and/or resolution of the situation when absolutely necessary.

While a victim can decide whether he or she wishes to pursue disciplinary action against the accused individual through the College's sexual harassment policy or the student conduct process, as applicable, the College reserves the right, at its sole discretion, to pursue an investigation and disciplinary process in order to protect the College community.

## **Student Conduct Process**

Once an investigation has concluded, the Title IX Coordinator will provide a report of the investigation to the Vice President of Academic Affairs and the President. If there is reason to believe that a student has violated the sexual misconduct policy, the Vice President of Academic Affairs will initiate the Student Conduct Process. The "preponderance of the evidence" (meaning "more likely than not") standard will be applied in the Student Conduct Process. Sanctions for violating this policy include but are not limited to:

- A "no contact order" may be issued preventing all attempts at contact between the violator and the victim.
- Change in class schedule.
- Change in living arrangements if living in campus housing.
- Mandatory training/counseling.
- Suspension from all academic programs.
- Expulsion from all academic programs. Academic Transcripts will be noted as student withdrawal.
- Ban from College campus.

These sanctions will be weighed and applied depending on the implied severity of the violation based upon the results of the investigation.

The Vice President of Academic Affairs will then refer the sanction recommendations to the College President. The Title IX Coordinator, VP of Academic Affairs and/or the President will present the sanctions to the violator.

The victim will be notified of the outcome of the Student Conduct Process by the Title IX Coordinator.

## **Rights of the Victim**

Any student who is a victim of sexual misconduct shall have the following rights:

- The right to decide whether he/she wants to initiate College disciplinary action against the accused and/or file charges with the Kansas City Kansas Police Department.

- The right to file for a Protection from Abuse or Protection from Stalking order with the Wyandotte County Civil Clerk's Office prohibiting the accused or friends of the accused from contacting the victim.
- The right to have a person of the victim's choice accompany her/him during a college conduct conference or other College disciplinary proceeding. All participants will be bound by the rules of confidentiality governing the conference conduct.
- The right to request modified living arrangements (if living in campus housing) pending the outcome of the College conduct process.
- The right, where possible, to have classes reassigned to not share classes with the accused.
- The right to make up academic work the victim has missed because of time lost due to the assault, investigation, and the College conduct process.
- The right to request that the College proceedings be conducted so that the accused and the victim are never in the same room together.
- The right not to have his/her sexual history discussed during the College conduct process.
- The right to make a victim impact statement.
- The right to be notified of the outcome of the College conduct process.

## **Rights of the Accused**

Any student accused of sexual misconduct has the following rights:

- The right to an explanation of the information brought against him/her.
- The right to an explanation of the student conduct process.
- The right to be presumed not responsible.
- The right to a fair and impartial conduct process.
- The right to have an advisor accompany him/her during a college conduct conference. All participants will be bound by rules of confidentiality. The advisor cannot address the hearing or give evidence or facts.
- The right to know ahead of time the names of witnesses to be called in the conduct conference.
- The right to testify on his/her own behalf.
- The right to be free from a second conduct conference on the same charge after the actions of the accused has been found not to be in violation of college policies.
- The right to be informed of the outcome of the conduct process.

## **Title IX Grievance Policy**

If a student feels she/he has been discriminated against by the College based on sex, the student may file a complaint with the U.S. Department of Education. For more information on this process please visit <http://www.ed.gov/ocr>

For further inquiries on discrimination, you can also check the KS Dept. of Education Civil Rights website: <https://tinyurl.com/yutbc9nm> or call 1-800-421-3481.