

THE ADMINISTRATIVE POLICY

TAP NO. 31: UNIVERSITY POLICY ON GENDER DISCRIMINATION AND SEXUAL MISCONDUCT

I. POLICY STATEMENT:

The Mission and Identity of Duquesne University includes a profound respect for the dignity of each person including a commitment that the mental, physical and spiritual well-being of each and every individual be preserved and respected. It is the policy of Duquesne University to provide an educational, employment, and business environment free of all forms of sex discrimination, including rape, domestic violence, dating violence, sexual assault, stalking and as further defined in this policy and as otherwise prohibited by state and federal statutes. This policy applies to all University students, faculty, and staff, to other members of the University Community, and to contractors, consultants, and vendors doing business or providing services to the University. This applies to on and off campus activities.

II. APPLICABLE LAW:

This policy also addresses the requirements of federal and state law which prohibit sexual discrimination, specifically Title IX of the Education Amendments Act of 1972 (“Title IX”), which is a federal law that prohibits sex discrimination in federally funded education programs and activities. Title IX states as follows:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

This policy also addresses the requirements of the Violence Against Women Reauthorization Act (VAWA).

III. DEFINITIONS:

Discrimination on the basis of sex (sex discrimination) can be committed by men or women and it can occur between people of the same or different gender. It includes both gender bias in employment or educational practices and sexual misconduct. The following are definitions and examples of each:

1. **Gender bias in employment or educational practices:**

Unequal treatment in employment opportunity or educational programming and expectations due to attitudes based on the gender of an employee, student or group of employees or students. Example: Unequal promotion, pay, benefits and privileges.

2. **Sexual Misconduct:**

Sexual misconduct is a continuum of behavior encompassing any unwelcome act of a sexual nature that is committed without consent or by force, intimidation, coercion, or manipulation. It can include the following:

A. **Sexual Harassment:**

Unwelcome sexual advances, requests for sexual favors, and verbal or physical contact through whatever means of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a condition of an individual’s academic or employment continuation or advancement.
2. Submission to or rejection of such conduct by an individual is used as a criteria for academic or employment decisions affecting that individual.
3. Such conduct has the purpose or effect of substantially interfering with an individual’s academic or employment performance or creates an intimidating, hostile, embarrassing or offensive employment, educational or living environment.

Sexual harassment may consist of repeated actions or may even arise from a single incident if sufficiently extreme. The complainant and the alleged perpetrator may be of either gender and need not be of different genders.

Because of the potential for sexual harassment in certain situations, the University prohibits romantic and/or sexual relationships in the following situations:

1. No faculty member may engage in a romantic and/or sexual relationship or in romantic and/or sexual conduct with any student currently enrolled at Duquesne University.
2. No athletic department employee may engage in a romantic and/or sexual relationship or in romantic and /or sexual conduct with a student athlete.
3. No campus police officer or security officer may engage in a romantic and/or sexual relationship or in romantic and/or sexual

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conduct with any student currently enrolled in Duquesne University.

4. No Residence Life staff member may engage in a romantic and/or sexual relationship or in romantic and/or sexual conduct with any student currently enrolled in Duquesne University.
5. A supervisor may not engage in a romantic and/or sexual relationship or in romantic and/or sexual conduct with any employee in the supervisor's department or division.
6. All universities hold a special relationship with their students. At Duquesne our actions are guided by our identity and mission as a Catholic university. Therefore, we expect all employees to exercise good judgment and to demonstrate appropriate professional behavior when interacting with students.

B. **Sexual Exploitation:**

Sexual exploitation involves taking non-consensual sexual advantage of another person. Examples can include, but are not limited to the following behaviors:

1. Electronically recording, photographing, or transmitting intimate or sexual utterances, sounds, or images without the knowledge and consent of all parties involved;
2. Voyeurism (spying on others who are in intimate or sexual situations)
3. Distributing intimate sexual information about another person without that person's consent

C. **Sexual Violence/Sexual Assault/ Relationship Violence:**

The terms "sexual violence" and "sexual assault" are often used interchangeably. They are defined as attempted or actual sexual contact performed without the active, verbal consent of another individual. Sexual assault is an "umbrella term" that describes different forms of non-consensual contact. Sexual assault/violence can be committed by any gender against a person of the same or opposite gender.

Relationship violence is a pattern of controlling and coercive behaviors that may include physical, sexual and emotional abuse.

Additional Examples/Definitions:

1. Rape: A felony of the first degree when the person engages in sexual intercourse with a complainant:

- a. By forcible compulsion.
- b. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
- c. Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
- d. Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
- e. Who suffers from a mental disability which renders the complainant incapable of consent.

2. Acquaintance Rape: Act of rape committed to the victim by a person known to them.
3. Domestic Violence: Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.
4. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim is dating violence. The existence of such a relationship shall be determined based on a consideration of the following factors:
 - a. the length of the relationship
 - b. the type of relationship
 - c. the frequency of interaction between the persons involved in the relationship
5. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - a. Fear for his or her safety or the safety of others; or
 - b. Suffer substantial emotional distress
6. Unwanted touching of a sexual nature: May include non-consensual sexual intercourse,

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sexual battery, or non-consensual touching of an intimate body part.

D. **Consent:**

Both parties who have the capacity to act freely must receive verbal agreement and positive cooperation for sexual contact to be considered consensual. A verbal “no,” even if it may sound indecisive or insincere, constitutes a lack of consent. The absence of a verbal “no” does not mean “yes.” Lack of protest does not imply consent.

Consent cannot be given under the following circumstances:

1. If either participant is unable to provide positive cooperation either due to unconsciousness or incapacitation (under the influence of drugs or alcohol)
2. If a participant has a mental disability that renders them unable to appreciate the fact, nature, or extent of the sexual situation in which they find themselves, and that is known or reasonably knowable to a non disabled sexual partner.
3. Either party used physical force, threats, intimidation, or coercion to gain consent.

Past consent of sexual activities does not imply ongoing future consent. Consent to some form of sexual activity does not necessarily imply consent to other forms of sexual activity.

IV. REPORTING PROCEDURES:

1. **Employees:**

- A. If you are an employee and a victim of sexual misconduct, you are urged to contact the University Director of Anti-Discrimination Policy & Compliance and /or the Department of Public Safety (as appropriate).
- B. If you are an employee and you have knowledge of or suspicion of sexual misconduct, you are required to contact the University Director of Anti-Discrimination Policy & Compliance and/or the Department of Public Safety (as appropriate). If the matter involves a student, on or off campus, you are required to contact the University Title IX Coordinator, Director of Student Conduct and or the Department of Public Safety or Pittsburgh Police Department as appropriate. All allegations of sexual misconduct involving students, including anonymous, will be investigated.
- C. If the matter involves a minor, see TAP No. 50, Protection of Minors.

D. **Contact Information:**

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| Director of Anti-Discrimination Policy & Compliance | 412-396-2560 |
| Department of Public Safety* | 412-396-2677 |
| University Title IX Coordinator | 412-396-2560 |
| Director of Student Conduct | 412-396-6642 |
| Office of the General Counsel | 412-396-5181 |
| Pittsburgh Police Department* | 911 |

* **These phones answer 24/7**

2. **Students:**

If you are a student (including graduate assistants, teaching assistants, resident assistants and commuter assistants) for purposes of reporting, please follow this process:

- A. If you are a student and a victim of sexual misconduct or a student who has knowledge of or suspicion of sexual misconduct, you are urged to contact any of the following to report the incident and ask for help:

1. **Emergency:**

- a. Department of Public Safety*
412-396-COPS (2677)
- b. Residence Life Staff* 412-396-5888
- c. Pittsburgh Police* 911

2. **Medical Treatment:**

- a. Student Health Service 412-396-1650
- b. Mercy Hospital ER 412-232-8222

3. **Non-emergency:**

- a. Office of Student Conduct
412-396-6642
- b. Office of Residence Life
412-396-5028
- c. Office of Commuter Affairs
412-396-6660
- d. Department of Public Safety
412-396-6002

4. **Emotional Support:**

- a. University Counseling Center*
412-396-6204
- b. Campus Ministry 412-396-2561

* **These phones answer 24/7**

- B. University personnel are required to notify the University Title IX Coordinator as soon as reasonably possible upon receiving a report of sexual misconduct.

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3. Allegations of sexual misconduct involving both employees and students:

- A. If the employee is the alleged perpetrator, the investigation will be managed by the University Director of Anti-Discrimination Policy & Compliance.
 - B. If the student is the alleged perpetrator, the investigation will be managed by the Director of Student Conduct.
 - C. In any such cases both Offices will be involved to ensure the safety of the victim.
4. If the investigation of any claim results in a finding that the claim was deliberately false, the employee or student making the claim is subject to discipline up to and including termination or dismissal.

V. INVESTIGATION OF COMPLAINTS:

The University will investigate all allegations promptly and in accordance with defined internal procedures.

Complaints against students will be investigated in accordance with the procedures in the Code of Student Rights, Responsibilities and Conduct Procedures

Complaints against faculty, staff and administrators shall be investigated in accordance with the procedures established by the University Director of Anti-Discrimination Policy & Compliance.

Duquesne University is committed to investigating all alleged or suspected violations of this policy, regardless of whether a complaint alleging a violation of this policy has been filed and regardless of where the conduct at issue occurred. Employees and/or students who are found to have violated this policy will be subject to disciplinary action, up to and including expulsion or termination.

VI. PROHIBITION AGAINST RETALIATION:

Retaliation exists when action is taken against a complainant or a participant in the complaint process that (i) adversely affects the individual's employment or academic status; and (ii) is motivated in whole or in part by the individual's participation in the complaint process.

No individual who makes a complaint alleging a violation of this policy or who participates in the investigation or resolution of such a complaint shall be subject to retaliation as a result of such activity or participation. Any acts of retaliation, as defined in this policy, shall be grounds for disciplinary action, up to and including expulsion for students and termination for faculty and staff.

VII. CONFIDENTIALITY:

Because of the serious nature of allegations of sexual misconduct and potential impact on the broader campus community, confidentiality cannot be guaranteed. However, when requested, confidentiality will be protected to the greatest extent possible in keeping with the obligation to conduct a thorough investigation and providing a safe environment for the entire campus community.

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