



## Office of Human Resources

### POLICIES AND PROCEDURES

#### Sexual Harassment, Gender-Based Harassment, and Sexual Misconduct

##### **POLICY:**

Utica College is committed to providing a learning and working environment in which all interpersonal relationships are based upon respect and dignity. Therefore, in accordance with Title IX of the Education Amendments Act of 1972 (Title IX) and the Violence Against Women Act, Utica College will not tolerate sexual or gender-based discrimination or harassment in any form, which includes any of the following when it impacts or has the potential to impact the educational or employment environment of any members of the College community: sexual harassment; harassment based on gender identity, gender expression, or transgender status; sexual violence; domestic or dating violence; or stalking.

Utica College endeavors to provide a fair, impartial, and prompt response when sexual and/or gender-based misconduct is alleged to have occurred within the College community. Reports of sexual harassment, gender-based harassment, or sexual misconduct will be promptly and thoroughly investigated. Individuals who are found to have been engaged in sexual harassment, gender-based harassment, or sexual misconduct will be sanctioned following guidelines established in the applicable handbook, contract, or policy. More specifically, any individual who engages in such behavior will be subject to disciplinary action through the appropriate disciplinary process.

The College encourages any individuals covered by this policy who believe they are the victim of sexual harassment, gender-based harassment, or sexual misconduct to report it and to take steps to preserve evidence, as it may be helpful in criminal and/or College disciplinary proceedings. Individuals believing they are a victim of sexual harassment, gender-based harassment, or sexual misconduct have the option of filing a report with the College, with local law enforcement, or with both. Those wishing to notify local law enforcement authorities will be assisted in doing so. Because the standards for finding a violation of criminal law are different from the standards in this policy, criminal investigations or reports will not determine whether or not a violation of this College policy has occurred.

For the purposes of this policy, the word “campus” refers to any property leased or owned by Utica College.

##### **SCOPE:**

This policy and its procedures apply to all Utica College students, faculty, and staff members. In addition, independent contractors, vendors, visitors, volunteers, alumni, and other guests of the College are expected to comply with this policy. This policy covers all academic, educational, co-curricular, athletic, and other College programs, including those that may take place off campus. Conduct that occurs off campus and not in connection with College programs may violate this policy if the conduct creates a threatening or hostile environment on campus or within a College program or if the incident causes concern for the safety or security of the College’s campus. This policy also applies regardless of the reporting party’s or responding party’s race, creed, color, sex, pregnancy, ethnic or national origin, religion, marital status, age, sexual orientation, gender

identity, gender expression, veteran status, disability, citizenship status, genetic predisposition, domestic violence victim status, or protected status under applicable local, state, or federal law.

## **REASON FOR POLICY:**

Utica College has an ethical and legal obligation to create a working and learning environment free from all forms of discrimination and harassment, including sexual assault, dating violence, domestic violence, or any other form of sexual misconduct, and is committed to fostering a healthy and safe environment in which every member of the College community can realize her or his fullest potential. This policy has been developed to reaffirm these principles, to define community expectations, to establish a mechanism for determining when those expectations have been violated, and to provide recourse for those individuals whose rights have been violated.

The cost of sexual harassment, gender-based harassment, and sexual misconduct to individuals is high and includes, but is not limited to, physical injury or illness, depression, feelings of helplessness, headaches, substance abuse, anxiety, sleep disturbances, and disordered eating. The cost of sexual harassment, gender-based harassment, and sexual misconduct to the College includes, but is not limited to, decreased productivity, absenteeism, increased demand for services needed to address issues raised for the targets of harassing behavior, and eroded trust in the institution. Sexual misconduct may also result in a decrease in morale, reduce participation in life-enriching student activities, and lower student success. Sexual harassment, gender-based harassment, and sexual misconduct interferes with employee's ability to perform their job duties and a student's ability to fully participate in the educational process.

All members of the Utica College community have a responsibility to cooperate in creating a climate where sexual misconduct and harassment does not occur. In addition to ensuring legal compliance, this policy is designed to prepare members of the College community for that responsibility by creating an awareness of behavior that is considered to be sexual harassment, gender-based harassment, or sexual misconduct, as well as fostering an understanding of the procedures Utica College will use to address such behavior in a way that protects reporting parties, witnesses, and responding parties.

### **Academic Freedom**

Utica College is an academic institution at which academic freedom is necessary and valued. The College will not construe this policy to prevent or penalize a statement, opinion, theory, or idea offered within the bounds of legitimate, relevant, and responsible teaching, learning, working, or discussion.

## **DEFINITIONS:**

### **Sexual Harassment:**

Sexual harassment may be committed by individuals who are in supervisory positions, by one's peers (i.e., coworkers or other students), or by a subordinate, and may occur between individuals of the same sex or between individuals of the opposite sex. Sexual harassment may also be committed by or towards a non-community member (i.e., guest, vendor, independent contractor, etc.).

There are two types of sexual harassment: quid pro quo sexual harassment and hostile environment sexual harassment.

**Quid pro quo** (or "this for that") sexual harassment involves an individual with organizational power or authority who either expressly or implicitly ties an academic decision or employment decision to the submission to unwelcome sexual advances. Examples of "quid pro quo" harassment include: a professor promising to give a student an "A" for complying with sexual requests or threatening to give a lower grade for failing to comply with the sexual request; a leader of a student organization permitting a student to join the group only if the other student allows the leader to watch the student engage in a sexual act; a coach promising a student-athlete a starting position on a team in return for sexual favors; or a supervisor promising to reward an employee for complying with sexual requests (e.g., a better job, promotion, pay raise) or threatening an employee's job for

failing to comply with the sexual requests (e.g., threatening to not promote the employee, threatening to give an unsatisfactory performance appraisal).

**Hostile environment** sexual harassment involves a situation where an atmosphere or climate is created on the campus that makes it difficult, if not impossible, for a student to learn or an employee to work because the atmosphere is perceived by the employee or student to be intimidating, offensive, and hostile. The fact that a person was personally offended by a statement or incident does not alone constitute a violation of this policy. A determination as to whether a hostile environment has been created is based on a “reasonable person” standard and takes into account the totality of the circumstances, such as the severity of the particular incident, the context in which it occurred, the relationship of the individuals involved, whether the conduct was an isolated incident or part of a broader pattern or course of offensive conduct, whether the conduct was verbal or physical, and whether it was threatening or merely annoying.

The College reserves the right to discipline offensive conduct that is inconsistent with community standards even if it does not rise to the level of a hostile environment as defined by applicable law. Further, the College encourages individuals to report incidents that concern them even if the incidents are not particularly egregious, as early reporting assists the College in addressing and even correcting situations before they rise to a legal violation.

For purposes of this policy, sexual harassment may include, but is not limited to, the following:

- Unwelcome sexual advances
- Sexual innuendos, comments, and remarks
- Suggestive, obscene, or insulting comments
- Implied or expressed threat of reprisal for refusal to comply with a sexual request
- Patting, pinching, or brushing up against another’s body
- Sexually suggestive objects, books, magazines, posters, photographs, cartoons, e-mail, or pictures displayed in the work/classroom/faculty office area
- Actual denial of a job-related benefit for refusal to comply with sexual requests

Sexual harassment can occur if individuals are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity or femininity. In order to constitute harassment, the conduct must be such that it has the effect of unreasonably interfering with an individual’s academic/work performance or creating an intimidating, hostile, demeaning, or offensive academic or work environment.

**Gender-Based Harassment** includes acts of verbal, nonverbal, or physical aggression, intimidation, stalking, or hostility based on gender or gender-stereotyping. Gender-based harassment can occur if individuals are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex or for failing to conform to stereotypical notions of masculinity or femininity. Harassment that targets a member of the College community based on gender identity, gender expression, or transgender status is included in this definition. In order to constitute harassment, the conduct must be such that it has the effect of unreasonably interfering with an individual’s academic/work performance or creating an intimidating, hostile, demeaning, or offensive academic, living, or work environment.

Gender-based harassment also includes the following:

- **Dating Violence** is the use of physical violence, coercion, threats, intimidation, isolation, or other forms of violence directed towards a person who is or has been in a social relationship of a romantic or intimate nature with another. Dating violence can be a single act or a pattern of behavior in relationships. The “intimate” relationship may be characterized as short or long-term relationships (current or former) involving a series of sexual encounters, dating, “hooking up,” or similar interactions. The existence of such a relationship may be determined based on consideration of the length of the relationship, the type of relationship, and/or the frequency of interaction between the persons involved in the relationship.

- **Domestic Violence** refers to physical or non-physical violence between spouses or former spouses, cohabitating romantic partners or individuals who were formerly cohabitating romantic partners, individuals who share a child in common, or others in a family relationship.
- **Stalking** refers to a course of knowingly unwanted conduct directed at a specific person that would cause a reasonable person to fear for that person's safety or the safety of others, or suffer substantial emotional distress. Stalking involves repeated and continued harassment made against the expressed wishes of another individual, which causes the targeted individual to feel emotional distress, including fear and apprehension. Stalking behaviors may include, but are not limited to, intentional pursuing, following, or observing another; repeated non-consensual (unwanted) communication or contact (including face-to-face, telephone calls, voice messages, electronic messages, web-based messages, text messages, unwanted gifts, etc.); or using "spyware" or other electronic means to gain impermissible access to a person's private information. Such behaviors may also include interference with the safety of any of the immediate family of members of the community.

**Sexual Misconduct** is a term used by this policy to refer to forms of non-consensual sexual activity or offenses. While sexual misconduct can be a criminal offense under New York State law, a person's conduct may violate Utica College's policy even if it does not violate State law. Thus, offenders may be prosecuted under New York State criminal statutes and/or be subject to disciplinary action by the College. The College may choose to pursue disciplinary action while criminal action is pending, even if criminal justice authorities choose not to prosecute. Sexual misconduct includes the following behaviors:

- **Sexual Assault** is defined, consistent with federal law, as including non-consensual sexual intercourse and non-consensual contact which can be further defined as follows:
  - **Non-Consensual Sexual Contact** is any intentional sexual touching, however slight, for purposes of sexual gratification or with sexual intent, of any private body part or with an object, by a person upon another person that is without affirmative consent. This may include non-penetrative sexual assaults.
  - **Non-Consensual Sexual Intercourse** is any sexual penetration (anal, oral, or vaginal), however slight, with any body part or object by a person upon another person that is without affirmative consent. Non-consensual sexual acts includes the following:
    - **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, forcibly or without affirmative consent of the victim.
    - **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.
- **Sexual Exploitation** occurs when, without affirmative consent, a person takes sexual advantage of another to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to, prostitution, observing or recording (whether by video or audio tape) of a sexual or other private activity (such as consensual sexual activity, undressing, or showering) without the consent of all involved; engaging in voyeurism; engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of such infection; or exposing one's genitals in non-consensual circumstances.

**Affirmative Consent:** In order for individuals to engage in sexual activity of any type with each other, there must be clear affirmative consent. Whenever the term consent is used in this policy, it should be understood to mean affirmative consent as defined here. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack

of resistance, in and of itself, does not demonstrate consent. The definition of affirmative consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Under this policy, "No" always means "No." At the same time, silence, or the absence of an explicit "no," cannot be assumed to indicate consent.

Consent to some form of sexual activity cannot be automatically taken as consent to any other sexual activity. Past consent to sexual activity cannot be presumed to be consent to engage in the same sexual activity in the future. Consent can be withdrawn at any time by expressing in words or actions that the individual no longer wants the sexual activity to continue and, if that happens, the other person must stop immediately.

Affirmative consent cannot be obtained by use of physical force, compelling threats, intimidating behavior, or coercion. Coerced sexual activity violates this policy just as much as physically forced sex violates this policy. Coercion happens when someone unreasonably pressures someone else for sex.

Certain conditions prevent a person from being able to consent. Consent cannot be given by a person if the following conditions or influences exist:

- **Incapacitation:** Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness, mental disability, being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. In order to give affirmative consent, one must be of legal age, which is 17 in the state of New York. Use of alcohol or other drugs does not, in and of itself, negate a person's ability to give affirmative consent. However, depending on the degree of intoxication, someone who is under the influence of alcohol or drugs or other intoxicants may be incapacitated and therefore unable to consent. A person who has been drinking or using drugs is still responsible for ensuring that the other person provides affirmative consent to engage in sexual activity. An individual's incapacity may also be caused by the taking of so-called "date rape" drugs. Possession, use, and/or distribution of any of these substances (including Rohypnol, Ketamine, GHB, Burundanga, and others) is prohibited, and administering any of these drugs to another person for the purpose of inducing one to consent to sexual activity is a violation of this policy.
- **Coercion:** Coercion is unreasonable pressure for sexual activity. The degree of pressure is such that it deprives the person of the ability to make a choice as to whether or not she or he wants to engage in sexual activity.
- Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When one person makes it clear to another that they do not want sex, 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.
- **Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent.
- **Predatory Drugs:** A person under the influence of predatory drugs is also considered incapacitated. Predatory drugs, also called date rape drugs, include but are not limited to GHB (gamma hydroxybutyrate), Rohypnol, and Ketamine. These are odorless, colorless drugs that can easily be slipped into a drink. They can produce disorientation, loss of inhibition, and unconsciousness, and may also cause amnesia as an aftereffect. These drugs are fast-acting and more dangerous when combined with alcohol.

**Reporting Party:** The reporting party is the person who files a report. A person who files a report on behalf of another person is referred to more specifically as a third-party reporter. The person who is directly affected by the reported behavior, whether reported by them or a third party, will be referred to as the complainant. A

complainant has a right to withdraw the complaint and/or refrain from participating in the College's investigatory process at any time.

**Responding Party:** The responding party is the person who is alleged to have engaged in behavior that violates this policy and is responding to the allegations. The responding party may also be referred to as the respondent.

## **PROCEDURE:**

Any Utica College community member who has been the victim of sexual harassment, gender-based harassment, or sexual misconduct has the right to make a report to the College, local law enforcement, and/or the state police, or choose not to report. If reported to the College under this policy, a reporting individual will be protected from retaliation and will receive appropriate assistance and resources from Utica College. Please see the Students' Bill of Rights for cases involving sexual assault, domestic violence, dating violence, or stalking.

### **Confidential Resources**

All members of the Utica College community have a number of resources available to discuss sexual harassment, gender-based harassment, or sexual misconduct concerns or questions. Individuals who have experienced sexual harassment, gender-based harassment, or sexual misconduct are encouraged to seek support for their physical and emotional needs.

A student seeking confidential emotional or medical care may contact the following:

Utica College Student Counseling Center  
Student Wellness Center, Room 204 Strebel Student Center  
(315) 792-3094

Utica College Student Health Center  
Student Wellness Center, Room 204 Strebel Student Center  
(315) 792-3094

The health and counseling services noted above are available to Utica College students free of charge.

An employee seeking confidential emotional support may contact the College's employee assistance program, ENI, at 1-800-EAP-CALL (1-800-327-2255).

These resources afford students and employees the opportunity to discuss a concern or situation and the available options. These resources also offer the opportunity to gain information about the College's formal complaint procedures under this policy. Reports made to these resources will **not** be reported to other College officials in any personally identifiable manner (reports made to some of these individuals may result in a report to College officials that an incident occurred, but will not result in the reporting of any personally identifiable information), and, as a result, any individual making a report solely to such confidential resources should not expect action to be taken by the College against any alleged perpetrator. Similarly, if a victim discloses actions constituting a violation of this policy through public awareness events, such as "Take Back the Night" or other event or forum, Utica College is not obligated to begin an investigation. Utica College may, however, use the information to inform the need for additional education and prevention efforts.

Confidential reports of any form of sexual misconduct can also be made to off-campus resources, including:

Oneida County's YWCA Domestic and Sexual Violence Services  
(315) 797-7740

Suicide/Crisis Services

24 Hour Hotline  
(315) 732-6228

NYS Office of Victim Services  
Hotline  
1-800-247-8035

Crisis Services for Students, Faculty, Staff, and Contract Staff at Liverpool, NY site:  
Vera House  
6181 Thompson Road, Suite 100  
Syracuse, NY 13206  
Phone: (315) 425-0818  
24-Hour Hotline: (315) 468-3260  
*Sexual Assault Nurse Examination (SANE) services are provided to all area emergency rooms through Vera House.*

Crisis Services for Students, Faculty, Staff, and Contract Staff at St. Petersburg, FL site:  
Suncoast Center, Inc.  
PO Box 10970  
St. Petersburg, FL 33733  
Phone (appointments): (727) 388-1220  
Hotline: (727) 530-7273

Crisis Services for Students, Faculty, Staff, and Contract Staff at Miramar, FL site:  
211 Broward/First Call for Help (Information and Referral Line)  
Dial 211 or (954)527-0211  
[www.211-broward.org](http://www.211-broward.org)

In addition to the resources listed above, Utica College shares a Memorandum of Understanding (MOU) with Mohawk Valley Health System, located in Utica, NY. This MOU ensures that any member of the College community who is a victim of sexual assault will have access to a sexual assault examination by a sexual assault nurse examiner or through a physical referral to a sexual assault nurse examiner.

A report to a Confidential Resource is not a report to the College and will not result in an investigation or disciplinary action.

### **Non-Confidential Resources: Responsible Administrators**

Any person having a complaint of sexual harassment, gender-based harassment, or sexual misconduct is encouraged to make a report to any one of the following non-confidential resources, who are considered “Responsible Administrators” for purposes of Title IX:

Title IX Coordinator  
Lisa Green, Vice President for Human Resources & Personnel Development, (315) 792-3736,  
[lgreen@utica.edu](mailto:lgreen@utica.edu)

Deputy Title IX Coordinator  
Alane Varga, Dean for Diversity and Inclusion, (315) 792-3324, [avarga@utica.edu](mailto:avarga@utica.edu)

Deputy Title IX Coordinator  
David Fontaine, Director of Physical Education and Athletics, (315) 792-3050 or [dsfontai@utica.edu](mailto:dsfontai@utica.edu)

Director of Campus Safety

Musco Millner, (315) 792-3201, [mumillne@utica.edu](mailto:mumillne@utica.edu)

Assistant Vice President for Student Affairs and Dean of Students  
Timothy Ecklund, Ph.D., (315) 792-3100, [trecklun@utica.edu](mailto:trecklun@utica.edu)

Executive Director of Student Living and College Engagement  
Scott Nonemaker, (315) 792-3285, [scnonema@utica.edu](mailto:scnonema@utica.edu)

Faculty, staff, students and contracted staff in Utica College's ABSN programs, or any other programs that exist in other physical Utica College locations, may also make a report to the site's assigned Success Coach. Success Coaches are also non-confidential resources who have been trained to engage the appropriate parties in order to assist others in reporting an incident.

Emergency access to the Title IX Coordinator is made available through contact with the Office of Campus Safety.

These individuals have been trained to receive and respond to allegations of violations of this policy. Complaints can be made to any of the Responsible Administrators by those who have been the victim of a violation of this policy, by a third party on a victim's behalf, or anonymously. While all employees are strongly encouraged to report incidents of sexual harassment, gender-based harassment, or sexual misconduct, and certain other employees may be required to report them, if a complaint is made to anyone other than the Responsible Administrators listed above, the reporting party risks the possibility that it will not come to the attention of the proper College officials and may, therefore, not be acted upon. For this purpose, faculty members are not Responsible Administrators, and one should not assume that information brought to the attention of a faculty member will be reported to the College. On the other hand, unless a report is made to a Confidential Resource, one cannot be assured of confidentiality.

#### **Non-Confidential External Resources: Law Enforcement**

All persons covered by this policy have the right to involve state and/or local law enforcement in matters of sexual or gender-based harassment. Utica College partners with law enforcement agencies in any way necessary to provide cooperative assistance as needed, whether or not the individual chooses to also make a report to the College. Following is contact information for those resources:

New York State Police (state police)  
1-844-845-7269

Utica Police Department (local police)  
413 Oriskany Street West  
Utica, New York 13502  
Phone: (315) 735-3301

New Hartford Police Department (local police)  
32 Kellogg Rd, New Hartford, NY 13413  
Phone: (315) 724-7111

For Students, Faculty, Staff, and Contract Staff at Liverpool, NY site:  
Liverpool Police number  
Phone: (315) 457-0722  
Onondaga County Sherriff (located in Liverpool)  
Phone: (315) 435-0722

For Students, Faculty, Staff, and Contract Staff at St. Petersburg, FL site:  
Pinellas County Police  
Phone: (727) 582-6200

For Students, Faculty, Staff, and Contract Staff at Miramar, FL site:  
Miramar Police Department  
(954) 602-4000

A reporting party who is not satisfied with the attempts to resolve the sexual harassment, gender-based harassment, or sexual misconduct may seek resolution through other sources, such as the New York State Division of Human Rights, the Equal Employment Opportunity Commission, the Office for Civil Rights, or the U.S. Department of Education.

### **Third Party Reports**

In cases where the sexual harassment, gender-based harassment, or sexual misconduct is reported by a third party (e.g. a faculty member, Residence Life staff member, student organization advisor, etc.), the person identified as the target of the behavior will be notified by the Title IX Coordinator or, if appropriate, by one of the Deputy Title IX Coordinators, that a report has been received. Every effort will be made to meet with the individual to discuss her/his options and resources at the College and in the community.

### **Confidentiality**

#### **Reporting Party Request for Confidentiality:**

Reporting parties may make an anonymous report or request that the College maintain the report as confidential. This type of request may be made if reporting parties do not want their identity known to the responding party and witnesses wish that the College not conduct an investigation or that action not be taken against an alleged perpetrator. An anonymous report may be made in writing, by phone to any of the College resources listed in this policy, or in any other way in which the reporting party wishes to make contact. A reporting party may also make an anonymous report online through the following anonymous reporting link:

<http://www.utica.edu/college/tix/report.cfm>

If a report is made using the above link, the report will be sent to the Title IX Coordinator and Deputy Title IX Coordinators for review and potential action. Reports will not require a login and therefore will not be traceable.

In situations where a reporting party makes such a request (or if the reporting party makes an anonymous report), the College's ability to investigate and respond to the allegations may be limited. If at any point the reporting party requests confidentiality, the College will make all reasonable attempts to comply with this request, but it is not required to honor these requests. The College may, in appropriate circumstances, decide it must move forward with an investigation and/or disciplinary process.

The College is required by Title IX to weigh the reporting party's request for confidentiality with the College's commitment to provide a reasonably safe and non-discriminatory environment. In evaluating a request for confidentiality, the Title IX Coordinator will consider a range of factors, including, but not limited to:

- Whether the reporting party wants to participate in a formal investigation process;
- The severity and impact of the sexual harassment, gender-based harassment, or sexual misconduct;
- The respective ages of the parties;
- Whether the reporting party is a minor under the age of 18;
- Whether the responding party has admitted to the sexual harassment, gender-based harassment, or sexual misconduct;
- Whether there have been other sexual harassment, gender-based harassment, or sexual misconduct complaints about the responding party;
- Whether the responding party has a history of arrests or records from a prior school indicating a history of violence;

- Whether the responding party threatened further sexual violence against the victim or others;
- Whether the sexual harassment, gender-based harassment, or sexual misconduct was committed by multiple responding parties;
- Whether the sexual harassment, gender-based harassment, or sexual misconduct was perpetrated with a weapon; and
- The overall safety of the campus community (including the reporting party).

The Title IX Coordinator will notify the reporting party if the College cannot honor the reporting party's request for confidentiality. However, even when confidentiality is not available, Utica College officials acting under this policy will maintain privacy to the greatest extent possible. Information reported to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator, and those acting under this policy, to carry out the purposes of this policy. The reporting party's identity will only be revealed to those individuals who need to know the name of the reporting party in order for an investigation to occur. In fact, the College will make all reasonable efforts to maintain the privacy of all parties involved in investigations under this policy and to restrict information to those with a legitimate need to know. Individuals participating in an investigation, proceeding, or hearing will be encouraged to maintain the privacy of the process in order to assist the College in conducting a thorough, fair, and accurate investigation.

### **Interim Measures**

In certain cases, investigators or other College personnel may recommend that interim measures be put in place before the investigation is completed and/or pending completion of the investigation to ensure the safety of all parties and/or the College community and to ensure the integrity of the investigation. In cases involving only students, the appropriate Office of Student Affairs staff will be responsible for ensuring that the recommended measures are taken. In cases involving employees or third parties, the Office of Human Resources will be responsible for ensuring that the recommended measures are taken. The College will review the facts and circumstances of each case, as well as the reporting party's wishes, in deciding whether and what steps are reasonable and appropriate.

If interim measures are put in place, the Title IX Coordinator will communicate the measures to all affected parties. Implementing interim measure(s) does not imply a future finding of responsibility but is meant to create a safer environment. Examples of interim measures for students may include (but are not limited to) contact restrictions through the issuance of a no-contact order, the transfer of the reporting party or responding party to different classes, other accommodations in the classroom, transportation arrangements, and/or changing residence hall assignments. Interim measures for employees may include (but are not limited to) the transfer of the reporting party or responding party to a different department, alternative scheduling or reporting arrangements, and/or transportation arrangements. In cases involving third parties (vendors, contract employees, clients, and consultants), examples of interim measures may include (but are not limited to) the temporary reassignment of the third-party employee or a temporary suspension of services.

In situations where the College becomes aware of a pattern of behavior by one of more responding parties, the College will take appropriate action in an attempt to protect the College community. Such action may include interim actions involving individual students or safety measures intended to address broader concerns, such as escorts or increased monitoring of an area. The College may impose an interim suspension from the campus or parts of the campus, pending the outcome of an investigation and disciplinary proceeding. Failure to comply with the restrictions of any interim measures is a violation of this policy and may result in disciplinary action.

Upon request, the reporting party or responding party may request a prompt review of the need for and terms of any interim measures imposed that directly affects him/her, including the potential addition, modification, or elimination of those measures. Such a request for review must be made in writing to the Assistant Vice President of Student Affairs and Dean of Students and must include the basis for that request and any evidence in support of the request. Upon receipt of such a request, the Assistant Vice President of Student Affairs and Dean of Students will inform the other party of the request and allow the other party to respond, including submitting evidence if desired. The Assistant Vice President of Student Affairs and Dean of Students may, at that individual's discretion, modify or suspend the interim measures on a temporary basis while the parties are

submitting their information and responses. The Assistant Vice President of Student Affairs and Dean of Students will respond to any such requests as soon as possible, but generally no later than one calendar week after receipt of the request and the parties' submission of any evidence. The Assistant Vice President of Student Affairs and Dean of Students will consult with the Title IX Coordinator throughout the review process.

For cases where interim measures are put in place for employees, the reporting or responding party may submit a written request for a review of the measures to the Vice President for Human Resources and Personnel Development. Upon receipt of such a request, the Vice President for Human Resources and Personnel Development will inform the other party of the request and allow the other party to respond, including submitting evidence if desired. The Vice President for Human Resources and Personnel Development may, at that individual's discretion, modify or suspend the interim measures on a temporary basis while the parties are submitting their information and responses. The Vice President for Human Resources and Personnel Development will respond to any such requests as soon as possible, but generally no later than one calendar week after receipt of the request and the parties' submission of any evidence. The Vice President for Human Resources and Personnel Development will consult with the Title IX Coordinator throughout the review process.

### **Investigations and Disciplinary Proceedings**

If a report identifies a potential violation of this policy, the College will conduct an investigation. An investigation may occur because a reporting party wishes to proceed with a complaint, or because the College determines that this is necessary despite the wishes of the reporting party. The College endeavors to ensure that complaints are responded to in a prompt, fair, and impartial manner.

It is possible that during the course of an investigation, other instances of collateral misconduct may surface that do not in and of themselves meet the definition of sexual or gender-based misconduct. The Title IX Coordinator may, however, determine that a particular issue or issues of collateral misconduct are directly associated with the reported incident. If that is the case, the Title IX Coordinator may include in her/his determination a finding of responsibility on those separate but associated issues and will be included in sanctioning. Any information gathered regarding conduct that is not directly associated with the Title IX investigation will be forwarded to the Director of Student Conduct and Community Standards.

Upon receipt of a complaint, the Title IX Coordinator will identify two appropriate investigators to investigate the complaint. The reporting party and responding party will be given an equal opportunity to present information in the context of the investigation. Both the reporting party and the responding party shall receive notice referencing the specific provision of this policy alleged to have been violated and the specific possible sanctions. This notice shall also include the date, time, location, and factual allegations concerning the alleged violation. In most cases, the investigators will first request an investigatory meeting with the reporting party. An investigation usually involves interviews with witnesses and the responding party, as well as reviewing any relevant documentation. In order to ensure that a thorough investigation is conducted, the investigators may determine that it is necessary to meet with the parties and/or witnesses on more than one occasion. The reporting party and responding party will have the right to have their own prior sexual history with persons other than the other party and their own mental health diagnosis and/or treatment excluded from the investigatory and disciplinary proceedings held under this policy for purposes of determining responsibility (*i.e.*, whether a violation has occurred). The investigators will maintain written documentation of all meetings. Throughout the investigatory process, the investigators will issue notification, via letter or email, about the next steps to the reporting party and the responding party. In the interest of the safety of the College community, the College may decide to proceed with a complaint, including an investigation and going as far as a disciplinary outcome, even if the reporting party and/or responding party elect not to participate.

**Advisor of Choice:** The reporting party and responding party may be accompanied during any investigatory meetings and/or disciplinary proceedings by an advisor of their choice (at the party's own expense, if the advisor is a paid advisor). The advisor must be a member of the Utica College community (*i.e.*, faculty, staff or student); provided that in sexual assault, stalking, dating violence, and domestic violence cases, the advisor may be an individual from outside of the College. The advisor's role is to support the reporting parties or responding parties throughout the process and aid in their understanding of the investigatory and/or disciplinary process.

Advisors may talk quietly with parties, but may not participate in the interview or other proceeding, and parties are required to speak on their own behalf. Advisors may not intervene in an investigatory meeting or disciplinary proceeding, and are not permitted to speak or otherwise make any direct statements to the investigators or other College personnel. An advisor who does not abide by this role may be precluded from further participation in investigatory meetings or disciplinary proceedings. Investigations will not be delayed based on the availability of a party's desired advisor. A list of individuals who have been trained in the student conduct system and the basics of Title IX is available to both the reporting party and the responding party through the Office of Student Affairs.

**Timeliness of the Investigation:** The assigned investigators will conduct their investigation of complaints under this policy expeditiously. To the extent possible, the investigation will begin promptly upon receipt of the complaint. The College endeavors to complete the investigatory phase within 60 days, but this timeframe may be extended if necessary depending upon the circumstances.

### **Informal Complaint Resolution: Mediation**

In some cases, an informal resolution may be appropriate. An informal resolution usually takes the form of mediation in which a third party designated by the College explores whether the parties can agree on a result. Mediation could be used, if appropriate, as an initial attempt to resolve a concern. It is also possible that mediation could be used as a potential outcome of an investigation, for example if there were no findings but there is a clear need for some sort of informal resolution.

Mediation must be agreed upon by both parties, and the Title IX Coordinator must agree that mediation is appropriate. At any time during the mediation, the reporting party or the responding party has the right to initiate or resume the formal complaint resolution process. Mediation is not appropriate in cases of sexual assault or sexual violence of any kind. If the mediation results in an agreement, and if this agreement is acceptable to the College's Title IX Coordinator, the mediation is considered successful. Both parties will sign a statement agreeing that the mediation was successful, and that the matter will be considered resolved. If the mediation is not successful, the formal process will resume.

There may be instances when, for the safety of others who may be affected by the alleged action, an investigation will still be conducted. Should this type of situation arise, the investigators will communicate the need to investigate to the reporting party and responding party.

### **Investigation Findings**

At the conclusion of the investigation, the investigators will document their findings, including determinations of fact and recommendations, in an investigatory report. The investigatory report will be submitted to the Title IX Coordinator, who will provide the reporting party and responding party a reasonable opportunity to review the report, and will offer each party an opportunity to meet with the Title IX Coordinator to comment on the report and share his/her/their perspective. The Title IX Coordinator will then render a decision as to whether the responding party is responsible for one or more violations by a "preponderance of the evidence" standard. The Title IX Coordinator will notify the reporting party and responding party, in writing (via letter or email), regarding the findings of the investigation, the determination(s) as to responsibility, and the basis for the outcome.

If the investigatory report contains a recommended finding of responsibility, it will include referrals to the appropriate conduct or disciplinary process for sanctioning action. The report may also contain recommendations in terms of maintaining ongoing restrictions already in place.

In cases where the responding party is a student, the disciplinary process outlined in the current Utica College Code of Student Conduct will be followed for purposes of sanctioning as described below. In cases where the responding party is a Utica College staff member, the employee disciplinary process found in the Utica College Employee Handbook will be used. If the responding party is a bargaining unit member, the most current Collective Bargaining Agreement between Utica College and the AAUP-UC will be used.

Regardless of whether a recommended finding of responsibility is made, the College may offer other non-disciplinary remedies available to the reporting party, such as a change in a residential or working situation, changes in class assignments, and so on. The College may also take additional action that is more environmental in scope and impact, such as making recommendations regarding procedures, suggesting alternative safety measures such as enhanced lighting or modifying access to buildings, and/or educational interventions with groups or organizations.

The parties, upon submission of a written request to the Title IX Coordinator, may be permitted to review information in the case file, subject to redaction permitted and/or required by law and consistent with College policy and applicable federal and state law, including the Family Educational Records Privacy Act.

### **Disciplinary Proceedings**

This policy applies College-wide and sets forth behavioral expectations for all. However, the applicable disciplinary procedure that will be applied for purposes of sanctioning in a particular case depends on whether the responding party is a student, a faculty member, a staff member, or someone who is not a member of the College community.

Following the conclusion of the investigation, if the responding party is found responsible for one or more violations, the Title IX Coordinator will forward the investigatory report and determination as to responsibility to the appropriate person identified below.

#### **Student Responding Party**

In cases involving allegations against a student where there are findings of a policy violation, the case will be referred to the Director of Student Conduct and Community Standards for sanctioning. The Director of Student Conduct and Community Standards will review the findings of the Title IX Coordinator and will issue the appropriate sanctions. Both the reporting party and the responding party will be asked to meet individually with the Director of Student Conduct and Community Standards to discuss the sanctioning outcome.

For those crimes of violence that the College is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and appeal, if any, shall include the following notation (as applicable):

- Withdrew with conduct charges pending;
- Suspended after a finding of responsibility for a code of conduct violation; or
- Expelled after a finding of responsibility for a code of conduct violation.

Transcript notations for suspensions may be removed after a request for appeal at the discretion of the College, no earlier than one year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed.

#### **Faculty Responding Party**

The Title IX Coordinator will make recommendations to the school dean and any other appropriate parties regarding discipline or other appropriate action to be taken with respect to the responding party, including any other non-disciplinary remedial actions, and in accordance with the collective bargaining agreement currently in force between faculty members and the College. Disciplinary action, if necessary, will be issued by the appropriate academic administrator (s).

#### **Staff/Contract Employee Responding Party**

If the Title IX Coordinator determines that an employee has engaged in a violation of this policy, as determined by a “preponderance of the evidence” standard, the coordinator will also make recommendations to the supervisor and any other appropriate parties regarding discipline or other appropriate action to be taken with respect to the responding party, including any other non-disciplinary remedial actions. Disciplinary action, if necessary, will be issued by the appropriate supervisor (s).

For specific information on employee disciplinary processes, please consult the Utica College Employee Handbook.

### **Vendor, Visitor, or Other Non-Community Member**

In cases involving allegations against a non-community member (e.g., a vendor, visitor, contractor, parent, etc.), If the Title IX Coordinator determines that a non-community member has engaged in a violation of this policy, as determined by a “preponderance of the evidence” standard, the Title IX Coordinator will consult with other appropriate College administrators (such as the Director of Campus Safety, Director of Student Conduct and Community Standards, and/or Deputy Title IX Coordinators) and make a final determination regarding remedies, including, if appropriate, the imposition of action such as banning the non-community member from College property or other appropriate responsive measures.

In any case where a student is a reporting party or responding party, both the reporting party and responding party will be permitted to submit a written impact statement to the Title IX Coordinator after a finding of responsibility for violation of this policy and prior to the determination of an appropriate sanction(s). The Title IX Coordinator will provide copies of any such written impact statements to the official responsible for making a determination regarding appropriate sanctions.

A non-community member may make a report that a College community member has violated this policy. A non-community member’s complaint will be processed in accordance with the applicable disciplinary procedures listed above.

The College will endeavor to complete the disciplinary proceedings within 60 days of receiving the initial complaint, but this timeframe may be extended if necessary under extenuating circumstances. Circumstances that may require an extension of that timeframe may include, but are not limited to, the time of the academic year, the timing of College breaks, the effect of concurrent criminal proceedings, etc. The standard for decisions in investigatory and disciplinary proceedings is a preponderance of the evidence, meaning that it is more likely than not a violation of this policy occurred. Both parties will receive written notice, at or about the same time, of outcomes of all disciplinary proceedings, to the extent permitted by law. In cases where a student is the reporting party and/or responding party, the final outcome letter shall include factual findings supporting the determination, the decision and sanction, if any, as well as the rationale for the decision and sanction.

### **Appeals**

In all cases (except when a vendor, visitor, or other non-community member does not have a right to appeal), if either party is dissatisfied with the decision made through the student conduct or employee disciplinary process regarding the responding party’s responsibility (or the lack of such a finding), or the sanction(s) imposed, or both, either party may file an appeal within three (3) business days of the decision.

Where the responding party is a student, the appeal will go to an appeals panel comprised of three individuals from the College community who are appointed to serve as an appeals board. Where the responding party is a faculty member, the appeal should be made to the Provost. Where the responding party is a staff member, the appeal should be made to the Vice President for Human Resources and Personnel Development.

The grounds for appeal are limited to the following:

- A procedural error occurred during the process that had a direct impact on the outcome;
- New evidence that was not previously available has come to light that has a direct impact on the outcome;
- The sanction (if applicable) is too severe or too lenient; or
- The decision is not supported by a preponderance of the evidence.

In the event that an appeal is submitted, both parties will be notified. Sanctions remain in place pending the outcome of the appeal, unless the Director of Student Conduct and Community Standards, or his/her designee, decides otherwise.

The individual or body considering an appeal may take any of the following actions:

- Deny the appeal;
- Approve the appeal;
- Approve the appeal in part (which may result in a modification of the findings and/or sanction(s) (if applicable)); or
- Remand the case for further investigation or other process, with guidance.

The appeal decision will be provided to both parties in writing, at or about the same time, and will be final, except to the extent that one or more parties seek review of proceedings ordered on remand..

### **Law Enforcement and Criminal Charges**

A victim of a crime, including sexual misconduct, is encouraged, but is not required, to report the incident to local law enforcement and pursue criminal charges. Members of the College community who want to pursue criminal charges may contact the Student Counseling Center, Office of Student Affairs, or Campus Safety for assistance in making a report of a crime to local law enforcement, or may contact the local police department directly.

The criminal process and the College's investigatory/disciplinary processes are not mutually exclusive or dependent on each other, meaning that a person may pursue either a criminal complaint or internal complaint with the College or both. Any internal College investigation and/or hearing process will be conducted concurrently with any criminal justice investigation and proceeding that may be pending. Temporary delays in the College's internal processes may be requested by local law enforcement authorities for the purpose of evidence gathering. Any temporary delay shall not last more than ten (10) days, except when local law enforcement authorities specifically request and justify a longer delay. The College will cooperate with any criminal proceedings as permitted by law.

In criminal cases, including non-consensual sex offenses, the preservation of evidence is critical and must be done properly and promptly. Local law enforcement agencies can assist in filing a criminal complaint and in securing appropriate examination, including by a sexual assault nurse examiner. The New York State Police Sexual Assault Hotline, which can be reached at 1-844-845-7269, may also be of assistance in reporting an incident to law enforcement. Additionally, orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence. In appropriate circumstances, an order of protection may be available that restricts the offender's right to enter College property, and the College will abide by a lawfully issued order of protection. Utica College officials will, upon request, provide reasonable assistance to any member of the College community in obtaining an order of protection or, if outside New York State, an equivalent protective or restraining order.

Upon receipt of the order by the College, College officials will also assist by providing all applicable parties with a copy of the order of protection (or equivalent order). Those parties will be given an opportunity to meet or speak with a Utica College representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the other person's responsibility to stay away from the protected person or persons. The College official, or other appropriate individual, will also provide an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension, and will assist in contacting local law enforcement related to alleged violations of such order of protection.

### **Amnesty**

The health and safety of every student at Utica College is of utmost importance. Utica College realizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Utica College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to Utica College officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Utica College officials or law enforcement will not be subject to the College's Student Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

### **Non-Retaliation**

Retaliation against any person involved in an investigation, including the reporting party, responding party, witnesses, or investigator(s) is strictly prohibited. This includes retaliation from a third party on behalf of the reporting party, responding parties, witnesses, or investigators. The College defines retaliation as any adverse action taken against an individual who has participated in any manner in an investigation, proceeding, or hearing under these policies and procedures. Any retaliation against such individuals is subject to disciplinary or conduct action, including additional interim measures or other sanctions through the appropriate employee or student conduct systems. Reports of retaliation should be directed to the Title IX Coordinator or Deputy Title IX Coordinators, who will then determine the most appropriate course of action.

### **Training**

Responsible Administrators, persons assigned as investigators, and individuals determining violations of this policy will receive annual training on relevant topics, including sexual harassment, sexual misconduct, stalking, domestic violence, and dating violence and how to conduct investigations and disciplinary proceedings that protect the safety of all parties and promote accountability to the College community.

The Title IX Coordinator will also endeavor to arrange training sessions for all members of the Utica College community about prevention of sexual harassment, sexual assault, and other forms of gender-based harassment and sexual misconduct. The intent of this training is to maintain an academic and work environment free of harassment. An environment that is free from sexual harassment, gender-based harassment, and sexual misconduct provides the opportunity for all individuals to reach their potential in the performance of their educational pursuits or assigned position.

Educational efforts are essential to sustain a College environment that is as free as possible of sexual harassment, gender-based harassment, and sexual misconduct; that fosters respect for all individuals; and that observes high standards of conduct in consensual relationships. The primary goals to be achieved through education include:

- Ensuring that all individuals are aware of their rights;
- Notifying individuals of prohibited behaviors;
- Informing parties of the proper way to address complaints of violations of this policy; and
- Maintaining a community awareness of the problems this policy addresses.

### **Clery Act Compliance and Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report incidents of sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes under the Clery Act. All personally identifiable information is kept confidential, but statistical information must be passed along to Director of Student Conduct and Community Standards regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses given) for publication in the College's Annual Security Report (ASR). This report helps to provide the College community with a clear picture of the extent and nature of campus crime.

In the case of an ongoing dangerous situation, the College will issue a timely warning to the College community. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the victim/reporting party will not be disclosed.

**Designation of Authority and College Counsel**

Any College administrator or official to whom this policy empowers to act may delegate their authority to any other appropriate College official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a College official named in this policy from fulfilling the person’s designated role. Any College administrator or official functioning under this policy may seek the advice and counsel of the Title IX Coordinator and/or the College’s legal counsel at any time.

**RESPONSIBILITY:**

The College’s Title IX Coordinator is responsible for ensuring compliance with this policy. Any questions or concerns about the administration of this policy should be directed to the Title IX Coordinator, Lisa Green, at 792-3736 or [lcgreen@utica.edu](mailto:lcgreen@utica.edu). Inquiries and complaints may be made externally to the U.S. Department of Education, Office for Civil Rights, 400 Maryland Avenue, SW, Washington, DC 20202-1100.

**ENFORCEMENT:**

Enforcement of Utica College policies is the responsibility of the office or offices listed in the “Resources/Questions” section of each policy. The responsible office will contact the appropriate authority regarding faculty or staff members, students, vendors, or visitors who violate policies.

Utica College acknowledges that College policies may not anticipate every possible issue that may arise. The College therefore reserves the right to make reasonable and relevant decisions regarding the enforcement of this policy. All such decisions must be approved by an officer of the College (i.e. President, Provost and Vice President for Academic Affairs, Vice President for Financial Affairs, or Vice President for Legal Affairs and General Counsel).

**RESOURCES/QUESTIONS:**

For questions regarding the implementation and interpretation of this policy, contact Lisa Green, Title IX Coordinator, at (315) 792-3736 or via email at [lcgreen@utica.edu](mailto:lcgreen@utica.edu).

Please note that other Utica College policies may apply or be related to this policy. To search for related policies, use the Keyword Search function of the online policy manual.

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	Laura M. Casamento, President	Date
Effective Date:	June 23, 2015	
Promulgated:	July 15, 2015	
Last Revised:	September 16, 2015	
Promulgated:	October 15, 2015	
Last Revised:	September 28, 2016	
Promulgated:	September 30, 2016	
Last Revised:	June 25, 2018	
Promulgated:	June 25, 2018	