



Office of Diversity & Inclusion

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THE STATE UNIVERSITY OF NEW YORK DOWNSTATE HEALTH SCIENCES UNIVERSITY SEXUAL MISCONDUCT POLICY

I. POLICY STATEMENT

Every member of The State University of New York (SUNY) — Downstate Health Sciences University (hereinafter, “University” or “Downstate”) community, including students, employees, patients and visitors, deserves the opportunity to live, learn and work free from Sexual Misconduct (including sexual harassment, gender-based harassment and sexual violence). Accordingly, Downstate is committed to:

- 1) Providing clear guidelines for students, employees, patients and visitors on how to report incidents of Sexual Misconduct and a commitment that any complaints will be handled respectfully;
- 2) Promptly responding to and investigating allegations of Sexual Misconduct, pursuing disciplinary action when appropriate, referring such incidents to local law enforcement when appropriate, and taking action to investigate and address any allegations of retaliation;
- 3) Providing ongoing assistance and support to students and employees who make allegations of Sexual Misconduct;
- 4) Providing awareness and prevention information on Sexual Misconduct, including widely disseminating this policy, as well as a “Students’ Bill of Rights” and implementing training and educational programs on Sexual Misconduct to Downstate’s various constituencies; and
- 5) Gathering and analyzing information and data that will be reviewed in order to improve safety, reporting, responsiveness and the resolution of incidents.

This policy will be interpreted in accordance with the principles of [Academic Freedom](#) adopted by SUNY's Board of Trustees.

The Downstate community should also be aware of the following related policies:

- [Downstate's Policy on Equal Opportunity and Non-Discrimination](#) prohibits discrimination on the basis of numerous protected characteristics in accordance with federal and state law. That policy addresses sex discrimination other than Sexual Misconduct covered by this policy.
- [Downstate's Campus and Workplace Violence Prevention Policy](#) addresses workplace violence.
- [Downstate's Domestic Violence and the Workplace Policy](#) addresses domestic violence in or affecting employees in the workplace.
- [Downstate's Procedures for Implementing Reasonable Accommodations](#) addresses the procedures Downstate will follow when there is a request for a reasonable accommodation.
- [Downstate's Consensual Relationships Policy](#) addresses the procedures Downstate will follow regarding relationships between students and employees and/or employees and employees

In addition, campus crime statistics, including statistics relating to sexual violence, which Downstate is required to report under the Jeanne Clery Act, are available from Downstate's Office of University Police (UPD) and/or on the [UPD website](#).

SCOPE OF THIS POLICY

This policy governs the conduct of (i) all the members of the Downstate community, including employees and students, and (ii) non-members of the Downstate community who interact with members of the Downstate community (hereinafter "visitors"). Visitors are both protected by and subject to this policy. A non-member may make a complaint of or report a violation of this policy committed by a member of the Downstate community. A non-member may also be subject to restrictions for failing to comply with this policy. This policy applies to conduct that occurs on and off Downstate property.

II. DEFINITIONS

- a. **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 consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. In order to give consent, one must be of legal age (17 years or older).

Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, being involuntarily restrained, or if the individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

Consent may be initially given but withdrawn at any time. When consent is withdrawn or no can longer be given, sexual activity must stop.

- b. **Complainant** refers to the individual who alleges that he/she has been the subject of Sexual Misconduct, and can be a Downstate student, employee (including all full-time and part-time faculty and staff), patient or visitor. Under this policy, the alleged incident(s) may have been brought to the University's attention by someone other than the complainant.
- c. **Complaint** is an allegation of Sexual Misconduct made under this policy.
- d. **Confidentiality** is the commitment not to share any identifying information with others, except as required by law in emergency circumstances (such as risk of death or serious bodily harm). Confidentiality may only be offered by individuals who are not legally required to report known incidents of Sexual Misconduct to University officials. Licensed mental health counselors, medical providers and pastoral counselors may offer confidentiality.
- e. **Dating Violence** is violence or sexual assault committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the reporting party's statement and with consideration of the length of the relationship and the frequency of the interaction between the persons involved in

the relationship. Dating violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct. A relationship may be romantic or intimate regardless of whether the relationship was sexual in nature. Dating violence includes the threat of sexual or physical abuse.

f. **Domestic Violence** is any violence or sexual assault committed by (i) a current or former spouse or intimate partner of the victim; (ii) a person with whom the victim shares a child; (iii) a person who cohabits or cohabited with the victim as a spouse or intimate partner; or (iv) anyone else covered by applicable domestic violence laws. Domestic violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct.

g. **Forcible Touching/Fondling** is intentionally touching the sexual or other intimate parts of another person without the latter's consent that has the purpose or effect of degrading or abusing such person, or for the purpose or effect of gratifying the actor's sexual desire.

h. **Gender-Based Harassment** is unwelcome conduct based on an individual's actual or perceived gender, including conduct based on gender identity, gender expression, and non-conformity with gender stereotypes that is sufficiently serious to adversely affect an individual's participation in employment, education or other Downstate activities. The effect will be evaluated based on the perspective of a reasonable person in the position of the complainant. An example of gender-based harassment would be persistent mocking or disparagement of a person based on a perceived lack of stereotypical masculinity or femininity.

i. **Intimate Partner Violence (IPV)** includes both Domestic Violence and Dating Violence.

j. **Managers** are employees who have authority to make tangible employment decisions with regard to other employees, including the authority to hire, fire, promote, compensate or assign significantly different responsibilities.

k. **Pastoral counselor**. A person who is associated with a religious order or denomination, recognized by that order or denomination as someone who provides confidential counseling, and functioning within the scope of that recognition.

l. **Privacy** is the assurance that the institution will only reveal information about a report of Sexual Misconduct to those who need to know the information in order to carry out their duties or responsibilities or as otherwise required by law. Individuals who are unable to

offer the higher standard of confidentiality under law, but who are still committed to not disclose information more than necessary, may offer privacy.

m. Rape and Attempted Rape is the penetration or attempted penetration, no matter how slight, of any body part by a sex organ of another person, without the consent of that person.

n. Respondent refers to the individual who is alleged to have committed Sexual Misconduct against a Downstate student, employee, patient or visitor.

o. Retaliation is adverse treatment of an individual as a result of that individual's reporting Sexual Misconduct, assisting someone with a report of Sexual Misconduct, opposing in a reasonable manner an act or policy believed to constitute Sexual Misconduct, or participating in any manner in an investigation or resolution of a Sexual Misconduct report. Adverse treatment includes threats, intimidation and reprisals by either a complainant or respondent or by others such as friends or relatives of either a complainant or respondent.

p. Sexual Activity:

- contact between the penis and the vulva or the penis and the anus;
- contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

q. Sexual Assault is any form of sexual activity that occurs without consent.

r. Gender Discrimination is treating an individual differently or less favorably because of gender, including sexual orientation, gender or gender identity (including transgender status), as well as pregnancy, childbirth and related medical conditions. Examples of gender discrimination include giving a student a lower grade, or failing to hire or promote an employee, based on their sex.

s. Sexual Harassment is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances, requests for sexual favors, and other verbal,

nonverbal, graphic and electronic communications or physical conduct of a sexual nature when:

- i. submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo); or
 - ii. such conduct is sufficiently serious that it alters the conditions of, or has the effect of substantially interfering with, an individual's educational, work, or patient experience by creating an intimidating, hostile, or offensive environment (hostile environment). The effect will be evaluated based on the perspective of a reasonable person in the position of a complainant.
 - iii. Conduct is considered "unwelcome" if the individual did not request or invite it and considered the conduct to be undesirable or offensive.
 - iv. While it is not possible to list all circumstances that might constitute sexual harassment, the following are some examples of conduct that might constitute sexual harassment depending on the totality of the circumstances:
 - v. Inappropriate or unwelcome physical contact or suggestive body language, such as touching, groping, patting, pinching, hugging, kissing, or brushing against an individual's body;
 - vi. verbal abuse or offensive comments of a sexual nature, including sexual slurs, persistent or pervasive sexually explicit statements, questions, jokes or anecdotes, degrading words regarding sexuality or gender, suggestive or obscene letters, notes, or invitations;
 - vii. visual displays or distribution of sexually explicit drawings, pictures, or written materials; or
 - viii. Undue/unwanted attention, such as repeated inappropriate flirting, staring, or making sexually suggestive gestures or romantic overtures.
- t. **Sexual Misconduct** is sexual harassment, gender-based harassment or sexual violence, as defined in this policy.
- u. **Sexual Violence** includes: (1) sexual activity without affirmative consent, such as sexual assault rape/attempted rape, and forcible touching/fondling; (2) dating, domestic and intimate partner violence; (3) stalking as defined below; and (4) voyeurism, as defined below.

- v. **Stalking** is intentionally engaging in a course of conduct directed at a specific person that:
1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
 2. is likely to cause such person to reasonably fear that said person's employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct. Where stalking is directed at an individual with whom the perpetrator has, had, or sought some form of sexual or romantic relationship, it will be addressed under this policy. Stalking that lacks a sexual or gender-based nexus may be addressed under the institution's employee/student Codes of Conduct.
- w. **Supervisors** are employees who are not managers, but have a sufficient degree of control over the working conditions of one or more employees, which might include evaluating their performance and making recommendations for changes in employment status that are given particular weight.
- x. **Visitor** is an individual who is present at Downstate's campus but is not a student or an employee.
- y. **Voyeurism** is unlawful surveillance and includes acts that violate an individual's right to privacy in connection with that individual's body and/or sexual activity such as:
- i. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent.
 - ii. Recording images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent;
 - iii. Disseminating images (e.g. video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure;

iv. Using or installing, or permitting the use or installation of a device for the purpose of recording another person's sexual activity, intimate body parts or nakedness in a place where the person would have a reasonable expectation of privacy without that person's consent.

z. **Writing.** Whenever this policy requires in "writing," electronic mail satisfies the writing requirement.

III. PROHIBITED CONDUCT

A. Sexual Harassment, Gender-Based Harassment and Sexual Violence

This policy prohibits sexual harassment, gender-based harassment and sexual violence (together "Sexual Misconduct") against any Downstate student, employee, patient or visitor.

Sexual harassment includes unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic and electronic communications or physical conduct that is sufficiently serious to adversely affect an individual's participation in employment, service experience or education or other Downstate activities.

Sexual harassment is considered a form of employee misconduct and an employee who engages in such conduct, or, managerial and supervisory personnel who knowingly allow such behavior to continue, shall be subject to discipline in accordance with applicable rules, policies and collective bargaining agreements.

Gender-based harassment is unwelcome conduct based on an individual's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes that is sufficiently serious to adversely affect an individual's participation in employment, service experience, education or other Downstate activities.

Sexual violence is an umbrella term that includes: (1) sexual activity without affirmative consent, sexual assault, rape/attempted rape, and forcible touching/fondling; (2) dating, domestic and intimate partner violence; (3) stalking/cyberstalking ("stalking,") and (4) voyeurism.

The complete definitions of these terms, as well as other key terms used in this policy, are in Section II above.

B. Retaliation

This policy prohibits retaliation against any person who reports Sexual Misconduct, assists someone in making such a report, participates in any manner in an investigation or resolution of a Sexual Misconduct complaint, including testifying or assisting in a legal proceeding, or opposes in a

reasonable manner an act or policy believed to constitute Sexual Misconduct. SUNY policy, Federal and state laws also prohibit retaliation.

C. Certain Intimate Relationships

This policy also prohibits certain intimate relationships when they occur between a faculty member or employee and any student for whom he or she has a professional responsibility as set forth in Section XIII below.

IV. TITLE IX COORDINATOR

Downstate has an employee who has been designated as the Title IX Coordinator. This employee is responsible for compliance with Title IX of the Education Amendments of 1972, which prohibits sex discrimination, including Sexual Misconduct, in education programs, and with New York State Law Article 129B, commonly referred to as Enough is Enough, Combating Sexual Assault and Domestic Violence on College Campuses (hereafter, “Enough is Enough”). The Title IX Coordinator has overall responsibility for implementing this policy, including overseeing the investigation of complaints at Downstate and carrying out the other functions of that position set forth in this policy. The Title IX Coordinators shall receive annual training on Sexual Misconduct as required by Title IX, the Clery Act, Enough is Enough, and other civil rights law.

The name and contact information for Downstate’s Title IX Coordinator can be found on the Office of Diversity & Inclusion’s website: www.Downstate.edu/diversity.

V. ASSISTANCE IN CASES OF SEXUAL VIOLENCE

A. Reporting to Law Enforcement

Students, employees, patients, visitors and other community members who experience any form of sexual violence on or off-campus (including Downstate-sponsored trips and events) and visitors who experience sexual violence on Downstate property may, but are not required to, report to local law enforcement, and/or state police. Downstate does not require a complainant to report sexual misconduct to law enforcement; however, if a student, employee, patient, visitor or other community member does wish to report to law enforcement, Downstate University Police will provide assistance. Downstate’s University Police Office shall have an appropriately trained employee available at all times to provide the complainant with information regarding options to proceed, including information regarding the criminal justice process and the preservation of evidence. University Police Officers can also assist the complainant with filing a complaint both on and off-campus, and in obtaining immediate medical attention and other services.

Additional information is available here: <https://www.suny.edu/violence-response/>.

B. Relationship of Downstate's Investigation to the Action of Outside Law Enforcement

In cases where the complainant files a complaint with outside law enforcement authorities as well as with Downstate, Downstate shall determine what actions to take based on its own investigation. Downstate may coordinate with outside law enforcement authorities in order to avoid interfering with their activities and, where possible, to obtain information regarding their investigation. Neither a law enforcement determination whether to prosecute a respondent, nor the outcome of any criminal prosecution, is dispositive of whether the respondent has committed a violation of this policy.

Students, employees, patients, visitors and other community members should be aware that Downstate procedures and standards differ from those of criminal procedures. When Downstate investigates allegations of sexual misconduct or brings disciplinary proceedings for violations of this policy, the issue is whether the respondent violated Downstate policy. The standard applied in making this determination is whether the preponderance of the evidence substantiates the complaint, or, stated another way, whether it is more likely than not that the alleged conduct occurred. An individual found to have violated this policy may be sanctioned by Downstate and SUNY. In the criminal justice system, on the other hand, the issue is whether the accused violated state criminal law. The standard applied is proof beyond a reasonable doubt and an individual found *guilty* of a crime is subject to *criminal penalties*, such as incarceration, probation and fines. More information about relevant criminal laws is available in '[A Plain Language Explanation of Distinction Between the New York Penal Law and the College Disciplinary Processes](#)'.

C. Obtaining Immediate Medical Attention and Emotional Support

Downstate encourages anyone who has experienced sexual assault or domestic, dating or intimate partner violence to seek medical attention as soon as possible. Medical resources can provide treatment for injuries, preventative treatment for sexually transmitted diseases, emergency contraception, and other health services. They can also assist in preserving evidence or documenting any injuries. Taking these steps promptly after an incident can be very helpful if an individual later decides to seek criminal proceedings or a protective order. Individuals who have experienced or witnessed sexual violence are also encouraged to seek emotional support, either on or off-campus.

D. On-campus resources

On campus resources include Employee Health Services, Office of Student Affairs counselors. The [Employee Assistance Program \(EAP\)](#) is also available to Downstate employees. Counselors are trained to provide crisis intervention and provide referrals for longer-term care as necessary. Downstate also maintains a [list of off-campus emergency contacts and resources](#), including rape crisis centers, available throughout New York City ODI's web page. This includes a list of local hospitals designated as SAFE (Sexual Assault Forensic Examiner) hospitals, which are specially equipped to handle sexual assaults and trained to gather evidence from such assaults.

VI. IMPORANT INFORMATION ABOUT CONFIDENTIALITY, PRIVACY ANDREQUIRED REFERRALS

Downstate values the privacy of its students, employees, patients and visitors. They should be able to seek the assistance they need without fear that the information they provide will be shared more broadly. Some individuals who serve as resources on campus are **confidential** resources and will not share any identifying information with others, except as required by law in emergency circumstances. Other individuals are not permitted to maintain confidentiality but will protect **privacy** to the greatest extent possible and share information with other staff only on a need-to-know basis.

Confidential resources. Individuals considered confidential resources include counselors, Employee Health Services, Student Health Services, EAP, campus counseling centers, and pastoral counselors. *Students may use these resources even if they decide not to make a report or participate in Downstate University disciplinary proceedings or the criminal justice process.*

Private but non-confidential resources. Many Downstate employees are required by federal and state law to provide information about possible sexual misconduct to the Title IX Coordinator. Individuals designated as non-confidential but private resources will protect **privacy** to the greatest extent possible, but must share relevant information about sexual misconduct with the Title IX Coordinator.

More information about confidential and private but non-confidential resources is provided in Section VIII, below.

Under the Clery Act, Downstate is required to maintain records, advise the U.S. government about reports of certain crimes, and issue timely warnings when there is a serious, continuing threat to the campus community. Such reports and warnings do *not* disclose the names of reporting individuals.

VII. COMPLAINT PROCEURES/REPORTING SEXUAL MISCONDUCT TO THE UNIVERSITY

In order for Downstate to address allegations of sexual misconduct, it has to learn about them. Accordingly, Downstate strongly encourages individuals who have experienced sexual misconduct to file a complaint with a designated campus official, as outlined below. The designated officials are trained to accept complaints, to ensure they are investigated in accordance with this policy, and to help complainants get necessary assistance.

Students, faculty, staff, patients and visitors are encouraged to report incidents of sexual misconduct to campus officials, even if they have reported the incident to outside law enforcement authorities, and regardless of whether the incident took place on or off-campus (including “study abroad” programs). Such reporting will enable complainants to get the support they need and provide Downstate with the information it needs to take appropriate action.

A. Complaint Procedures

Procedures for Filing Complaints:

1. Downstate employees may file complaints by downloading [ODI's Complaint Intake Form](#) available at www.Downstate.edu/diversity and emailing it to AskODI@downstate.edu.
2. Non-Downstate employees (e.g., visitors, vendors, patients) may also file complaints by downloading [ODI's Complaint Intake Form](#) available at www.Downstate.edu/diversity and emailing it to AskODI@downstate.edu. In addition, such individuals may file complaints by notifying ODI at (718) 270-1738 or by emailing AskODI@Downstate.edu.
3. An individual may file an anonymous complaint alleging a violation of this regulation. ODI will review such complaints to determine how they should be processed in light of the information provided.

Procedures for Investigating ODI Complaints

1. Upon receipt of a complaint, ODI will determine whether the complaint articulates a violation of this regulation and, if so, will assign the complaint to an ODI investigator who shall conduct an investigation. If ODI believes that irreparable harm will occur before the complaint can be fully investigated and resolved, ODI may recommend interim relief pending completion of the investigation of the complaint.
2. Following the investigation, ODI will submit written findings and a recommendation as to whether there has been a violation of this policy to the President or the President's designee. The President or the President's designee will issue a written determination as to whether there has been a violation of this policy within 60 working days of ODI's receipt of the complaint, unless circumstances warrant an extension of the time period.
3. If ODI's determination concludes that a violation of this policy has occurred, ODI will confer with the respondent's supervisor to determine if any corrective action is required.
4. ODI will ensure that any equal opportunity related corrective action required by the written determination is implemented.

B. Complainant's Rights

Individuals who have experienced sexual misconduct have the right to file a complaint with ODI or to decide not to do so. (The decision on whether to bring disciplinary charges, however, rests with the Downstate.) Students who report sexual misconduct have all of the rights contained in the Student Handbook under [“Student Bill of Rights.”](#)¹

Complainants also have these rights:

- To notify University Police, local law enforcement, and/or the state police; or to choose not to report.
- To have emergency access to a Downstate official trained to interview victims of sexual assault and able to provide certain information, including reporting options and information about confidentiality and privacy. The official will, where appropriate, advise the reporting individual about the importance of preserving evidence and obtaining a sexual assault forensic examination (“SAFE”) as soon as possible. The official will also explain that the criminal process uses different standards of proof, evidence, and that any questions about whether an incident violated criminal law should be addressed to a law enforcement official or a district attorney’s office.
- To disclose the incident to a Downstate representative who can offer confidentiality or privacy and assist in obtaining services for reporting individuals. See Section VIII, below.
- To describe the incident only to those campus officials who need the information in order to properly respond and to repeat the description as few times as practicable.
- To have complaints investigated in accordance with Downstate policy.
- To have privacy preserved to the extent possible.
- To receive assistance and resources on campus, including confidential and free on-campus counseling, and to be notified of other services available on- and off-campus, including the New York State Office of Victim Services.
- To disclose the incident to the Downstate’s Human Resources Department or designee (if the accused is a Downstate employee) or request that a confidential or private resource assist in doing so.
- To disclose the incident confidentially and obtain services from state and local governments.
- To receive assistance from Downstate or others in filing a criminal complaint, initiating legal proceedings in family court or civil court, and /or seeking an Order of Protection or the equivalent. In New York City, this assistance is provided by Family Justice Centers located in each borough:
<http://www1.nyc.gov/site/ocdv/programs/family-justicecenters.page>.

¹ Students’ Bill of Rights SUNY Downstate Health Sciences University Student Handbook 2019-2020 (pg. 132).

- To receive assistance with effecting an arrest when an individual violates an Order of Protection, which may be provided by assisting local law enforcement in effecting such an arrest.
- To withdraw a complaint or involvement from the process at any time.

Students can speak with confidential resources on a strictly confidential basis before determining whether to make a report to Downstate authorities. See Section VIII, below. Students also have the right to consult confidentially with Federal, state, local and private resources who can provide other assistance.

c. Where to File a Complaint on Campus

Students, employees, patients and visitors who experience sexual misconduct should bring their complaints to one of these campus officials/offices:

- Title IX Coordinator;
- University Police;
- Office of the Vice President for Academic & Student Affairs
- Residence Life staff (a division of the Office of Academic & Student Affairs) in Downstate owned or operated housing (students and residence visitors only); and
- Human Resources (employees only).

Contact information for these officials can be found at www.Downstate.edu/diversity.

There is no prescribed method for filing a complaint of sexual misconduct and Downstate will respond to complaints whether they are oral or written. Complainants may, but are not required to, fill out [ODI's Charge of Discrimination/Intake Form](#) (See attached). After the form is filled out, it should be returned to ODI or to one of the offices listed above.

Once any of the officials or offices above is notified of an incident of sexual misconduct, said official will provide a copy of this policy to the Complainant and coordinate with appropriate Downstate office to address the matter in accordance with this policy, including taking appropriate interim and supportive measures. These officials and offices will maintain a complainant's privacy to the greatest extent possible, and all information in connection with the complaint, including the identities of the complainant and the respondent, will be shared only with those who have a legitimate need for the information.

Patients/Visitors: Downstate strongly encourages patients/visitors to report all incidents of sexual misconduct that they observe or experience while at Downstate or at a Downstate sponsored event to University Police Office, Residence Life staff, or other appropriate Downstate officials listed above. In certain instances, Downstate may be able to offer those patients/visitors who have experienced sexual misconduct with resources and assistance.

C. Request that Downstate Maintain a Complainant's Confidentiality or Not Conduct an Investigation

After a report of an alleged incident of sexual misconduct is made to the Title IX Coordinator, a complainant may request (a) that the matter be investigated only to the extent possible without further revealing the complainant's identity or any details regarding the incident being divulged further (b) that no investigation into a particular incident be conducted, or (c) that an incident not be reported to outside law enforcement.

In all such cases, the Title IX Coordinator will weigh the complainant's request against the institution's obligation to provide a safe, non-discriminatory environment for all students, employees, patients and visitors, including the complainant. Factors used to determine whether to honor such a request include, but are not limited to: (a) whether the respondent has a history of violent behavior or is a repeat offender; (b) whether the incident represents escalation of unlawful conduct by the accused from previously noted behavior; (c) any increased risk that the accused will commit additional acts of violence, (d) whether the accused used a weapon or force; (e) whether the complainant is a minor; (f) whether the institution possesses other means to obtain evidence such as security footage; and (g) whether available information reveals pattern of misconduct at a given location or by particular group.

A decision to maintain confidentiality does not mean that confidentiality can be absolutely guaranteed in all circumstances, but that reasonable efforts will be made to keep information confidential consistent with law. Notwithstanding the decision of the Title IX Coordinator regarding the scope of any investigation, Downstate will provide the complainant with ongoing assistance and support, including, where appropriate, the interim and supportive measures set forth in Section X of this policy.

If the Title IX Coordinator determines that Downstate may maintain confidentiality as requested by the complainant, Downstate will, if possible, take reasonable steps to investigate the incident consistent with the request for confidentiality. However, the institution's ability to meaningfully investigate the incident and pursue disciplinary action may be limited by such a request for confidentiality.

D. Filing External Complaints/Alternative Complaint Procedures

Complainants who feel that they have been subjected to unlawful sexual harassment and/or violence have the right to avail themselves of any and all of their rights under law, including but not limited to filing complaints with one or more of the outside agencies listed below.

- U.S. Department of Education, Office for Civil Rights
<http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>
- U.S. Equal Employment Opportunity Commission
https://www.eeoc.gov/federal/fed_employees/filing_complaint.cfm
- New York State Division of Human Rights

<https://dhr.ny.gov/complaint>

- New York State Office of the Attorney General, Office for Civil Rights
<https://ag.ny.gov/bureau/civil-rights>

E. Action by Bystanders and Other Community Members

While only employees designated as “responsible” employees are required reporters as set forth in Section VIII below, Downstate encourages all other community members, including faculty, students and visitors, to take reasonable and prudent actions to prevent or stop an act of sexual misconduct that they may witness. Although these actions will depend on the circumstances, they may include direct intervention, calling law enforcement, or seeking assistance from a person in authority.

In addition, Downstate encourages all campus community members to report any incident of sexual misconduct that they observe or become aware of to the Title IX Coordinator, or the offices of the University Police, the Vice President of Academic & Students Affairs (students), or Human Resources (employees). Community members who take action in accordance with this paragraph will be supported by Downstate, and anyone who retaliates against said community member will be subject to disciplinary charges.

F. Amnesty for Drug and Alcohol Use

The health and safety of every student at Downstate is of the utmost importance. Downstate recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at a 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. Downstate strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to Downstate officials. A bystander or complainant acting in good faith who discloses any incident of sexual violence to University officials or law enforcement will not be subject to Downstate’s code of conduct under [Downstate’s Policy Against Drugs and Alcohol](#)² 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.

This policy applies to students and refers to the student conduct code, not to academic or external policies and requirements. Further, students in clinical programs may also be subject to professional standards beyond the campus conduct code. In a clinical setting, being under the influence of alcohol or drugs while performing patient care cannot be overlooked.

² Policy for Alcohol And/Or Drug Use Amnesty in Sexual and Interpersonal Violence Cases- Downstate Health Sciences University Student Handbook 2019-2020 (pg. 131).

This policy does not provide amnesty for drug dealers or those who use drugs or alcohol as a weapon or to facilitate assault. This policy also does not provide amnesty for personal drug use and possession, whether it is intentional or accidental.

G. Reporting Suspected Child Abuse

Certain members of the Downstate community who interact with, supervise, chaperone, or otherwise oversee minors in programs or activities at Downstate or sponsored by Downstate are required to report immediately to the New York State Maltreatment Hotline if they have reasonable cause to suspect abuse or maltreatment of individuals under the age of 18. If anyone other than New York State mandated reporters has reasonable cause to believe that a minor is being or has been abused or maltreated on Downstate's campus, he/she should notify either the Title IX Coordinator or University Police. If any Downstate community member witnesses child abuse while it is happening, he/she should immediately call 911.

H. Reporting Retaliation

An individual may file a complaint with the Title IX Coordinator if the individual has been retaliated against for reporting sexual misconduct, opposing in a reasonable manner an act or policy believed to constitute sexual misconduct, assisting someone making such a report, or participating in any manner in an investigation or resolution of a sexual misconduct complaint. All retaliation complaints will be investigated in accordance with the investigation procedures set forth in Section X of this policy, and individuals who are found to have engaged in retaliation will be subject to disciplinary action.

VIII. REPORTING/CONFIDENTIALITY OBLIGATIONS OF THE INSTITUTION AND ITS EMPLOYEES

An individual who speaks to Downstate or a Downstate employee about sexual misconduct should be aware that employees fall into three categories:

- “confidential” employees, who have an obligation to maintain a complainant’s confidentiality regarding the incident(s);
- “responsible” employees, who are required to report the incident(s) to the Title IX Coordinator;
- all other employees, who are strongly encouraged but not required to report the incident(s).

A. Confidential Employees

i. For Students. Downstate students who wish to speak to someone who will keep all of the communications confidential should speak to one of the following:

- Counselor or other staff member in the [Student Health Center](#) via is Student Counseling Services;
- Employee Health Services staff member;
- Pastoral counselor/Chaplain;

These individuals will not report information about an incident to the Title IX Coordinator or other Downstate employees without the student’s permission. The only exception is in the case where there is an imminent threat of serious harm to the complainant or any other person.

If a student speaks solely to a “confidential” employee, it is unlikely that Downstate would be able to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Confidential employees will assist students in obtaining other necessary support. A student who first requests confidentiality may later decide to file a complaint with Downstate or with local law enforcement.

- ii. **For Employees.** Downstate employees can speak on a confidential basis regarding sexual misconduct. Free confidential support services are available through Downstate’s [EAP Coordinator](#). Confidential community counseling resources are also available [throughout New York City](#).

BB. “Responsible” Employees – Private, but not confidential.

“Responsible” employees have a duty to report incidents of sexual misconduct, including all relevant details, to the Title IX Coordinator. Such employees are not permitted to maintain a complainant’s confidentiality, except that the Title IX Coordinator may honor a request for confidentiality under the circumstances described in Section VII above. However, these employees will maintain a complainant’s privacy to the greatest extent possible, and information reported to them will be shared only with the Title IX Coordinator and other people responsible for handling the response to the report.

To the extent possible, before a complainant reveals any information to a responsible employee, the employee shall advise the complainant of the employee’s reporting obligations—and if the complainant wants to maintain confidentiality, direct the complainant to confidential resources identified above.

Downstate has designated the following individuals as “responsible” employees. Complainants who wish to report sexual violence are encouraged to speak with one of the responsible employees marked “*” first:

- i. Office of Diversity & Inclusion (all staff)*
- ii. Office of Public Safety employees (all staff)*
- iii. Vice President for Academic & Student Affairs (all staff)
- iv. Residence Life staff in Downstate owned or operated hours*
- v. Resident Assistants (all) (for students and housing visitors)*

- vi. Department of Human Resources staff (all staff)*
- vii. Downstate President, Vice Presidents and Deans
- viii. Department Chairpersons/Executive Officers
- ix. Office of the General Counsel/Senior Managing Attorney (all staff)
- x. Office of Labor Relations (all staff)*
- xi. International Education Liaisons/Field Directors for Global Health Learning Health Opportunities (GHLO) (i.e. Study Abroad Programs).
- xii. Faculty and staff members at times when they are leading or supervising student on off-campus trips
- xiii. Faculty or staff advisors to student groups
- xiv. Employees who are managers or supervisors (all)
- xv. Faculty or staff academic advisors

C. All Other Employees

Employees other than those identified in subsections “A” and “B” above are strongly encouraged but not required to report any possible sexual misconduct to the Title IX Coordinator. They are also strongly encouraged to maintain individual privacy to the greatest extent possible by sharing information, including the identities of the complainant and the respondent, only with the Title IX coordinator.

It is important to emphasize that faculty members other than those specifically identified in sub Section “B” above have not been designated as “responsible” employees and do not have an obligation to report the matter to the Title IX Coordinator, although they are *strongly* encouraged to do so. An individual who wishes to ensure that the Title IX Coordinator is notified of an incident is strongly encouraged to speak with the Title IX Coordinator or one of the other individuals identified above.

D. Special Rules Concerning Public Awareness and Advocacy Events

Downstate supports public awareness events that help provide its community with information about sexual misconduct and how it can be addressed and prevented. In order to preserve the ability to participate freely in public awareness and advocacy events, if an individual discloses information about sexual misconduct at such event (for example, candlelight vigils, or protests) the Downstate will not treat the disclosure as triggering an obligation to commence an investigation based on that information. Such individuals are encouraged to report sexual misconduct to Downstate officials so that the institution can provide resources and assistance.

IX. NO CONTACT ORDERS AND OTHER INTERIM AND SUPPORTIVE MEASURES

When Downstate becomes aware of an allegation of sexual misconduct and the complainant or other affected parties request interim or supportive measures, Downstate will take appropriate interim and supportive measures to protect the complainant and other affected parties, to assist the parties, and

to protect against retaliation. Appropriate interim and supportive measures may also be available to respondents. Downstate may also take interim measures to protect the campus community at large. Downstate's Title IX Coordinator is responsible for coordinating interim and supportive measures, which are available even if the complainant chooses not to file or continue to pursue a complaint. Requests for interim and supportive measures should be made to the Title IX Coordinator.

The Title IX Coordinator will work with the Chief Student Affairs Officer (i.e. the Office of Academic & Student Affairs) to identify a trained staff member to assist students to obtain interim and supporting measures. The Title IX Coordinator will work with the AVP of ODI to assist employee complainants to obtain interim and supporting measures.

A. No Contact Orders

When the respondent is a Downstate student, the complainant has the right to a University-issued "no contact order" under which continued intentional contact with the complainant would violate this policy. No contact orders may be issued for both the complainant and the respondent, as well as other individuals as appropriate.

B. Types of Interim and Supportive Measures

Possible interim and supportive measures include:

- i. Making appropriate changes to academic programs, including changes in class schedule, accommodations to permit the complainant to take an incomplete or drop a course or courses without penalty, permitting complainant or respondent to attend a class via skype or other alternative means, providing an academic tutor, or extending deadlines for assignments;
- ii. Making appropriate changes to residential housing assignments or providing assistance in finding alternate housing;
- iii. Changing an employee's work assignment or schedule;
- iv. Providing the complainant with an escort to and from class or campus work location;
- v. Arranging appropriate transportation services to ensure safety;
- vi. Offering counseling services through the institution's Student Health Center via its student counseling center or other appropriate office, or referral to an off-campus agency;
- vii. Assisting the complainant in obtaining medical and other services, including access to rape crisis centers;

- viii. Assisting the complainant with filing a criminal complaint and/or seeking an order of protection;
- ix. Enforcing an order of protection;
- x. Obtaining a copy and/or explaining the terms of an order of protection and the consequences of violating it;
- xi. Addressing situations in which it appears that a complainant's academic progress is affected by the alleged incident;
- xii. In exceptional circumstances, where a respondent is determined to present a continuing threat to the health and safety of the community, Downstate may seek an emergency interim suspension of a student or take similar emergency measures against an employee, consistent with applicable Downstate rules, policies and collective bargaining agreements. The Office of the University Police, in cooperation with the Title IX Coordinator and appropriate other campus officials, determine whether a respondent presents a continuing threat to the health and safety of the campus, including:
 - (a) whether the respondent has a history of violent behavior or is a repeat offender;
 - (b) whether the incident represents escalation in unlawful conduct by the accused; and
 - (c) any increased risk that the accused will commit additional acts of violence.

C. Interim Emergency Student Suspensions

The President or the President's designee may in emergency or extraordinary circumstances, temporarily suspend a student pending an early hearing, unless the student requests an adjournment. See Section B above; or review the most recent Student Handbook which can be found [here](#).

D. Process for Review of Interim Measures, including "No Contact" Orders and Interim Suspensions

Upon request, the complainant and the respondent shall each be afforded a prompt review of the need for and terms of restrictive interim measures, including "no contact" orders and interim suspensions. Issues that may be raised include possible modification or discontinuance of a "no contact" order.

Complainants and respondents shall be allowed to submit evidence to support their request. The request shall be made to Downstate's Chief Student Affairs Officer, if either the complainant or the respondent is a student, or to Downstate's Vice President of Human Resources, if neither the complainant nor the respondent are students. If a request is made in a case involving both a student and an employee, the Chief Student Affairs Officer shall consult with the VP of Human Resources. The Chief Student Affairs Officer or VP of Human Resources may consult with other relevant Downstate officials regarding the request. If appropriate and possible, Downstate may establish an appropriate schedule for the

complainant and the respondent to access Downstate facilities when they are not being used by the other party to enable both parties to use Downstate facilities to the maximum extent feasible, without violation of the “no contact” order.

X. INVESTIGATING COMPLAINTS OF SEXUAL MISCONDUCT

Downstate will conduct an investigation when it becomes aware, from any source (including third-parties not connected to the hospital/university), that sexual misconduct may have been committed against a student, employee, patient or visitor, unless the information provided is insufficient to permit an investigation or the complainant has requested that Downstate refrain from such an investigation and Downstate has determined that refraining from an investigation will not result in a continuing threat to the campus community. See Section VII, above.

A. Rights of the Complainant and Respondent

Whenever an investigation takes place, the complainant and respondent shall have these rights:

- to an investigation and process that is fair, impartial, timely and thorough and provides a meaningful opportunity to be heard;
- to have the complaint investigated and/or adjudicated by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, and the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until any finding of responsibility;
- to have Downstate’s judicial or conduct process run concurrently with any criminal justice investigation and proceeding, except for temporary delays requested by applicable external entities while law enforcement gathers evidence;
- to receive reasonable advance written or electronic notice of any meeting they are required to or eligible to attend, of the specific rule or law alleged to have been violated and in what manner;
- to exclude their own prior sexual history with individual(s) who are not party to the instant case; their own mental health diagnosis and/or treatment from admittance in the stage that determines responsibility. (Past findings of sexual misconduct may be admissible in the stage that determines sanction.)
- to offer evidence during the investigation;
- to review documents and tangible evidence, consistent with FERPA and other law;

- to be accompanied by an attorney or other advisor of their choice, who may assist and advise the complainant or respondent throughout the process including during all related meetings and hearings. Such attorneys or advisors must comply with Downstate policies and procedures; and
- to simultaneous notice of the outcome of proceedings.

B. The Investigation

Downstate's Title IX Coordinator is responsible for conducting any investigation in a prompt, thorough, and impartial manner and may designate another appropriately trained administrator to conduct all or part of the investigation. Whenever an investigation is conducted, the Title IX Coordinator shall:

- coordinate investigative efforts with other appropriate offices;
- inform the complainant that an investigation is being commenced and that the respondent will receive a written summary of the allegations;
- inform the respondent that an investigation is being commenced and provide the respondent with a written summary of the allegations of the complaint. A respondent employee who is covered by a collective bargaining agreement may consult with and have a union representative present at any interview of that employee conducted as part of such investigation;
- interview witnesses who might reasonably be expected to provide information relevant to the allegations, and review relevant documents and evidence. Both the complainant and respondent shall be informed that they have the right to provide relevant documents and to propose for interview witnesses whom they reasonably believe can provide relevant information.

Neither the complainant nor the respondent is restricted from discussing and sharing information related to the complaint with others who may support or assist them. This does not, however, permit unreasonable sharing of private information in a manner intended to harm or embarrass another, or in a manner that would recklessly do so regardless of intention. Such unreasonable sharing may constitute retaliation under this policy.

Downstate's Title IX Coordinator shall maintain all documents of the investigation in accordance with [SUNY's Records Retention and Disposition Policy](#).

Downstate shall make reasonable efforts to ensure that the investigation and resolution of a complaint are carried out as timely and efficiently as possible. However, Downstate may need to temporarily delay the fact-finding portion of its investigation during the evidence-gathering phase of a law enforcement investigation. Temporary delays will generally not last more than ten days except when law enforcement specifically requests and justifies a longer delay. While some complaints may require more extensive investigation, when possible, the investigation of complaints should be completed within sixty (60) working days of the receipt of the complaint. If there is a delay in completing the investigation, the Title IX Coordinator shall notify the complainant and the respondent in writing.

Role of the Advisor

In cases involving this policy, both the complainant and respondent may be accompanied by an advisor of their choice (including an attorney) who may advise throughout the entire process, including all meetings and hearings. While advisors may represent a party and fully participate at a hearing, they may not speak during the meetings that proceed the hearing nor give testimony as a witness at the hearing.

C. Conflicts

If a complainant or respondent believes that any individual involved in the investigatory or adjudication process has a conflict of interest, he or she may make a request to the Chief Student Affairs Officer (or, if no students are involved, to the Office of the Senior Managing Counsel or the Office of Employee and Labor Relations) to have that conflicted individual removed from the process. The request for removal must be in writing within five days of the complaint or respondent's notification that the individual is to be involved and include a detailed description of the conflict. If the Chief Student Affairs Officer (or Legal or Labor Designee) determines that a conflict does exist, he or she will take immediate steps to address the conflict in order to ensure an impartial and fair process.

If any administrator designated by this policy to participate in the investigation or resolution of a complaint (including but not limited to the Title IX Coordinator) is the respondent, Downstate's President will appoint another University administrator to perform such person's duties under this policy. If the President is the respondent, the investigation will be referred to Downstate's Title IX Coordinator or and ODI designee.

D. Informal Resolution

Except in instances involving sexual assault, the Title IX Coordinator, in the Title IX Coordinator's discretion, may offer the respondent and the complainant the opportunity to participate in the informal resolution process. Informal resolution may take place after the Title IX Coordinator has completed the investigation, but before the Title IX report has been completed, in an effort to resolve the matter by mutual agreement. The informal resolution process shall be conducted by the Title IX Coordinator, or by a qualified staff or faculty member designated by Title IX Coordinator, in coordination with the Chief Student Affairs Officer.

Both the complainant and the respondent have the right to end the informal resolution process at any time. Any informal resolution must be acceptable to the complainant, the respondent, and the Title IX Coordinator. Even if both the respondent and complainant agree to a resolution, the Title IX Coordinator must also agree with the resolution for it to be final.

If a resolution is reached, the complainant and the respondent shall be notified in writing, and the Title IX Coordinator will confer with the Chief Student Affairs Officer when creating a written memorandum memorializing the agreed upon resolution and consequences for non-compliance. This memorandum will be included in the respondent's student record.

If no agreement is reached within a reasonable time, the Title IX Coordinator shall complete the Title IX report and take action in accordance with subsection E below. Information learned during and directly from the informal resolution process will not be documented in the Title IX investigative report.

E. Action Following the Investigation or Closure of a Complaint

- i. Within 30 days following the completion of an investigation, the Title IX Coordinator shall report ODI's findings to VP of Human Resources in writing ("Confidential ODI Investigation Report.") In the event the complainant or the respondent is a student, substantiated reports shall also be sent to the Chief Student Affairs Officer. A copy of the report shall be maintained in the files of the Title IX Coordinator.
- ii. In making findings regarding the allegations, the Title IX Coordinator shall use the "preponderance of the evidence" standard.
- iii. Following receipt of the Confidential ODI Investigation Report, the President shall, when warranted by the facts, authorize such action as he/she deems necessary to address the issues raised in the Confidential ODI Investigation Report, including action to correct the effects of the conduct investigated or prevent further harm to an affected party or others similarly situated. This may include a recommendation that disciplinary action be commenced against a respondent, as set forth in Section XI below.
- iv. Within 30 calendar days following the termination of an investigation that has not been completed (for example, because it was resolved by informal resolution or the complainant withdrew cooperation); the Title IX Coordinator will summarize for the file the actions taken in response to the complaint and the basis on which the investigation was closed.

F. Malicious Allegations

Members of the Downstate community who make false and malicious complaints of violations of this policy of as opposed to complaints which, even if erroneous/misguided, are made in good faith, may be subject to disciplinary action.

XI. DISCIPLINARY PROCESS AND PROCEDURES

Disciplinary Action

If the President recommends that disciplinary action be commenced against a respondent student or employee for violations of this policy, the following procedures shall apply:

Discipline Against Students:

- a. In cases where the President of the President's designee recommends discipline against a student for violations of this policy, the matter shall be referred to the Office of Academic and Student Affairs and action shall be taken in accordance procedures set forth the most recent Student Handbook which can be found [here](#). These procedures provide for, among other things, a faculty-student based disciplinary committee consisting of faculty members, students and, in some cases staff members, specially trained to hear and decide charges of violation of this policy.
- b. As described in Sections X above, complainants have the same rights as respondents:
- to receive notice of the charges, including the date, time, location and factual allegations, concerning alleged violation of this policy;
 - to receive notice of the specific provisions alleged to have been violated and possible sanctions;
 - to present evidence and testimony at any hearing, where appropriate;
 - to be represented by an attorney or advisor of their choice;
 - to receive access to a full and fair record of any hearing;
 - to receive written notice of the decision of the faculty-student disciplinary committee, specifically whether the allegations were substantiated and what, if any, penalty was imposed;
 - to make an impact statement at the point when the decision maker is deliberating on appropriate sanctions;
 - To written notice of findings of fact, decisions and sanctions if any, as well as the rationale for the decision and any sanction;
 - to choose whether to or discuss the outcome of a conduct or judicial process;
 - to appeal to a decision maker that is fair and impartial and does not include individuals with conflicts of interest;
 - to have all information obtained during the conduct process protected from public release until a decision maker on appeal makes a final determination, unless otherwise required by law.
- c. Penalties for students instituted after a hearing before the faculty-student disciplinary committee range from a warning to suspension or expulsion from the University. Students accused of crimes of violence are also subject to the University's policy on transcript notations which is discussed in the section below.

Discipline Against Employees

In cases where the President or the President's designee recommends discipline against an employee, the matter shall be referred for disciplinary action in accordance with the applicable Downstate policies, rules and collective bargaining agreements. Penalties for employees include, depending on the employee's title, reprimand, suspension, demotion, fine, or termination of employment following applicable disciplinary procedures. For many respondent employees, these procedures may include a hearing before a fact-finder other than Downstate, as required by the particular collective bargaining agreement.

For additional information on the disciplinary process in specific cases, complainants should consult the Title IX Coordinator, who will work with the Office of Employee and Labor Relations to provide information. Respondents should consult their union representative, if any, or with the Human Resources Department.

Action Against Visitors/Patients

In cases where the person accused of sexual misconduct is not a Downstate student or employee, the University's ability to take action against the accused is usually extremely limited. However, the Downstate shall take all appropriate actions within its control, such as restricting the visitor's access to campus. In addition, subject to Section V, above, the matter may be referred to local law enforcement for legal action, including seeking Orders of Protection and/or reporting to local law enforcement, where appropriate. The Office of the University Police will assist both students and employees in enforcing orders of protection on the campus.

Respondent Withdrawal Before Completion of the Process

In the event that a student respondent withdraws from Downstate before a decision is rendered on the charges, the respondent is required to participate in the disciplinary hearing or otherwise to resolve the pending charges and shall be barred from attending any other unit of the University until a decision on the charges is made, or the charges are otherwise resolved.

Immediately following such withdrawal, Downstate shall place a notation on the respondent's transcript that the respondent "withdrew with conduct charges pending." If the respondent fails to appear, Downstate may proceed with the disciplinary hearing in absentia, and any decision and sanction shall be binding, and the transcript notation, if any, resulting from that decision and penalty shall replace the notation.

Issuance of Charges & Notice of Hearing

Notice of the charge(s) and of the time and place of the hearing shall be sent to the respondent by both first-class mail and email to the address appearing on the records of the University. Notice shall also be sent in a similar manner to the complainant to the extent that charges relate to the complainant. The Chief Student Affairs Officer is also encouraged to send the notice of charges to any other e-mail address that he or she may have for the respondent and the complainant.

The hearing shall be scheduled within a reasonable time following the filing of the charges or the mediation conference. Any further action shall be taken in accordance procedures set forth the most recent Student Handbook which can be found [here](#). The content of Notice of Charges and Hearing shall contain the following:

- A. A complete and itemized statement of the charge(s) being brought against the respondent including the policy, rule and/or bylaw the respondent is charged with violating, and the possible penalties for such violation.
- B. A statement that the respondent and the complainant have the right to attend and participate fully in the hearing including the right:
 - i. to present their side of the story;
 - ii. to present witnesses and evidence on their behalf;
 - iii. to cross-examine witnesses presenting evidence, the exception being that the complainant and respondent may not cross-examine each other as discussed below;
 - iv. for the respondent to remain silent without assumption of guilt; and
 - v. to be represented by an advisor or legal counsel at their expense;
 - vi. A warning that anything the respondent says may be used against the respondent at a hearing/process unrelated to Downstate.

Review of Evidence before Hearing:

Prior to the commencement of a student disciplinary hearing, the University shall provide the respondent and the complainant and/or their designated representative, with similar and timely access to review documents or other tangible evidence that the institution intends to use at the disciplinary hearing, consistent with the restrictions imposed by the Family Educational Rights and Privacy Act ("FERPA.") Should Downstate seek to introduce additional documents or other tangible evidence during the disciplinary hearing, the respondent and the complainant shall be afforded the opportunity to review the additional documents or tangible evidence. If during the hearing the complainant or the respondent submits documentary evidence, the chairperson may, at the request of any other party grant, adjournment of the hearing as necessary in the interest of fairness, to permit the requesting party time to review the newly produced evidence.

Admission & Acceptance of Penalty

After the charges have been preferred by the Chief Student Affairs Officer, but prior to the commencement of a disciplinary hearing, the respondent may admit to the charges and accept the penalty that the Chief Student Affairs Officer or said designee determines to be appropriate to address the misconduct. If required by this policy, the agreed-upon penalty shall be placed on the respondent's transcript consistent with Downstate's policy on Transcript Notations. Before resolving a complaint in

this manner, the Chief Student Affairs Officer, or designee, shall first consult with the complainant and provide the complainant with an opportunity to object to the proposed resolution, orally and/or in writing. If a resolution is reached over the complainant's objection, the Chief Student Affairs Officer or said designee shall provide the complainant with a statement of the reasons supporting such resolution, and the complainant may appeal the resolution to the President or the President's designee.

Roles and Responsibilities of Individuals during the Hearing

The roles and responsibilities of the participants of a student disciplinary hearing, hearing rules, penalty phase, determinations, appeals/reviews, and transcript notation(s) shall be addressed in accordance procedures set forth the most recent Student Handbook which can be found [here](#).

XII. UNIVERSITY OBLIGATIONS UNDER THIS POLICY

In addition to addressing possible violations of this policy, Downstate has the following obligations:

a. Dissemination of Policies, Procedures and Notices

The Title IX Coordinator, in coordination with the Office of Academic & Student Affairs, the Office of the University Police, the Human Resources Department and other appropriate offices, is responsible for the wide dissemination of the following on this campus: (i) this policy; (ii) Downstate Notice of Non-Discrimination; (iii) the Title IX Coordinator's name, phone number, office location, and email address; and (iv) contact information for the Office of University Police. Such dissemination shall include posting the documents and information on the University website, and including it in residence life materials and training and educational materials. In addition, the [Students' Bill of Rights](#)³, which is appended to and made a part of this policy, must be distributed to any individual reporting an incident of sexual misconduct at the time the report is made. It must also be distributed annually to all students, made available on the University's website and posted in Downstate owned and operated housing.

b. Training and Educational Programming

Downstate is responsible for providing training to the Title IX Coordinators and others who may serve as investigators. The Title IX Coordinator, in coordination with other applicable offices, including the Office of University Police, the Department of Human Resources and the Office of Academic & Student Affairs, is responsible for ensuring that Downstate provides training to Downstate employees on their obligations under this policy; provides education on this policy and on sexual misconduct (including domestic violence, dating violence, stalking and sexual assault) to new and continuing students; and promotes

³ A copy of the Student Bill of Rights may be found in Downstate Health Sciences University Student Handbook 2019-2020 (pg. 131). Also see Appendix 1.

awareness and prevention of sexual misconduct among all students and employees. Specific required trainings include the following:

i. Training For Responsible and Confidential Employees

Downstate shall provide training to all employees who are required to report incidents of sexual misconduct under this policy, as well as those employees who have been designated as confidential employees.

ii. Training For the Title IX Coordinator and/or the AVP of ODI.

Downstate shall provide at least annual training to the Title IX Coordinator, AVP of ODI and in investigators who conduct investigations of sexual misconduct, including:

- the effects of trauma;
- impartiality;
- the rights of the respondent, include the right to a presumption that the respondent is "not responsible" until any finding of responsibility is made;
- relevant SUNY policies and procedures; and
- other issues including what constitutes crimes of sexual misconduct.

iii. Student Onboarding and Ongoing Education

Downstate shall adopt a comprehensive student onboarding and ongoing education campaign to educate students about sexual misconduct, including domestic violence, dating violence, stalking, and sexual assault. During the student onboarding process, all new first-year and transfer students shall receive training on this policy and on a variety of topics relating to sexual misconduct. In addition, Downstate shall offer and administer appropriate educational programming to residence hall students and student leaders. Downstate shall also provide such educational programming to any other student groups which it determines could benefit from education in the area of sexual misconduct. Downstate shall also share information on domestic violence, dating violence, stalking and sexual assault prevention with parents of enrolling students.

c. Campus Climate Assessments

Downstate shall conduct, no less than every other year, a climate assessment using an assessment instrument provided by SUNY's Systems, to ascertain its students' general awareness and knowledge of Downstate's policy and procedures regarding sexual misconduct, including but not limited to student experiences with and knowledge of reporting, investigation and disciplinary processes. The assessment instrument shall include all topics required to be included under applicable law, including Section 129-B

of the New York State Education Law. Downstate shall publish the results of the surveys on its Title IX web page. The published results shall not contain any information which would enable a reader to identify any individual who responded to the climate assessment.

XIII. RULES REGARDING CONSENSUAL RELATIONSHIPS

Relationships between Faculty or Employees and Students

Amorous, dating or sexual activity or relationships (intimate relationships,) even when apparently consensual, are inappropriate when they occur between a faculty member or employee and any student for whom he or she has a professional responsibility. Those relationships are inappropriate because of the unequal power dynamic between students and faculty members and between students and employees who advise or evaluate them. Such relationships necessarily involve issues of student vulnerability and have the potential for coercion. In addition, conflicts of interest or perceived conflicts of interest may arise when a faculty member or employee is required to evaluate the work or make personnel or academic decisions with respect to a student with whom he or she is having an intimate relationship. Finally, if the relationship ends in a way that is not amicable, the relationship may lead to charges of and possible liability for sexual misconduct. Therefore, faculty members and other employees are prohibited from engaging in intimate relationships with students for whom they have a professional responsibility.

For purposes of this section, professional responsibility for a student means responsibility over any academic matters, including teaching, counseling, grading, advising for a formal project such as a thesis or research, evaluating, hiring, supervising, making decisions or recommendations that confer benefits such as admissions, registration, financial aid, other awards, remuneration, or fellowships, or performing any other function that might affect teaching, research, or other academic opportunities.

Relationships between Supervisors and Employees

Many of the concerns about intimate relationships between faculty members or employees and students also apply to relationships between supervisors and employees they supervise. Those relationships therefore are strongly discouraged. Supervisors shall disclose any such relationships to their supervisors in order to avoid or mitigate conflicts of interest in connection with the supervision and evaluation of the employees with whom they have an intimate relationship. Mitigation may involve the transfer of either the supervisor or employee, reassigning the responsibility to evaluate the employee to a different supervisor, or other appropriate action.

For purposes of this section, supervising an employee means supervising in an employment setting, including hiring, evaluating, assigning work, or making decisions or recommendations that confer benefits such as promotions, raises or other remuneration, or performing any other function that

might affect employment opportunities. For more information about this subject, please see: [Downstate's Consensual Relationships Policy](#).

XIV. APPENDICES

1. SUNY Downstate Health Science's University Students' Bill of Rights"

For Downstate students who experience Sexual Violence, including sexual assault; domestic, dating or, intimate partner violence, stalking or voyeurism

All students have the right to

- A. Make a report to local law enforcement and/or state police;
- B. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- C. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
- D. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- E. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- F. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- G. Describe the incident to as few institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- H. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- I. Have access to at least one level of appeal of a determination;
- J. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- K. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

This *Student Bill of Rights* was established by the “Enough is Enough” Law, New York State Education Law Article 129-B, effective October 7, 2015.

Information about filing a report, seeking a response, and options for confidential disclosure or for more information about preventing and addressing Sexual Violence at Downstate see www.Downstate.edu/diversity

Questions about Downstate’s Sexual Misconduct policy and procedures may be directed to the Office of Diversity & Inclusion at: AskODI@Downstate.edu or by calling (718) 270-1738.

2. [ODI Complaint Intake Form](#)



OFFICE OF DIVERSITY & INCLUSION
 450 Clarkson Avenue - MSC1220, Brooklyn, NY 11203
 Tel: (718) 270-1738 Fax: (718) 270-2276
AskODI@Downstate.edu

OFFICE OF DIVERSITY & INCLUSION COMPLAINT FORM

Instructions: Use this form to file a claim of discrimination based on race, color, national origin, creed/religion, age, sexual misconduct, gender (including pregnancy, gender-identity, gender-expression) marital/family status, disability, prior arrest/conviction, sexual orientation, predisposing genetic characteristics, military status, domestic-violence-victim status, and/or EEO retaliation.

Complete and return this form to the OFFICE OF DIVERSITY & INCLUSION.

Section 1: Complainant Information

Name	<input type="text"/>	Title	<input type="text"/>
Department/Unit	<input type="text"/>	Work Schedule (days/hours)	<input type="text"/>
Work Cite Address	<input type="text"/>	Cell Phone	<input type="text"/>
Home Address	<input type="text"/>	Email Address	<input type="text"/>

Section 2: Supervisory Information

Immediate Supervisor Name	<input type="text"/>	Title	<input type="text"/>
Work Address	<input type="text"/>	Work Phone	<input type="text"/>
2nd Level Supervisor Name	<input type="text"/>	Title	<input type="text"/>
Work Address	<input type="text"/>	Work Phone	<input type="text"/>

Section 3: Details of Claim

1. Your claim of discrimination is based upon (check all that apply):

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Race/Color | <input type="checkbox"/> Disability | <input type="checkbox"/> Pregnancy and Related Conditions | <input type="checkbox"/> Predisposing Genetic Characteristics |
| <input type="checkbox"/> Sexual Harassment | <input type="checkbox"/> Religion/Creed | <input type="checkbox"/> Gender/Sex | <input type="checkbox"/> Sexual Assault/IP/Dating Violence |
| <input type="checkbox"/> Age | <input type="checkbox"/> Arrest/Criminal Conviction Record | <input type="checkbox"/> Marital/Familial Status | <input type="checkbox"/> Sexual Orientation |
| <input type="checkbox"/> Military Status | <input type="checkbox"/> National Origin | <input type="checkbox"/> Domestic-Violence-Victim Status | <input type="checkbox"/> Retaliation |
| | | | <input type="checkbox"/> Other |

2. Your claim of discrimination is made against:

Name 1	<input type="text"/>	Title	<input type="text"/>
Work Address	<input type="text"/>	Work Phone	<input type="text"/>
Relationship to you:	<input type="checkbox"/> Supervisor <input type="checkbox"/> Co-worker <input type="checkbox"/> Subordinate <input type="checkbox"/> Other → Please Specify: <input type="text"/>		

Name 2	<input type="text"/>	Title	<input type="text"/>
Work Address	<input type="text"/>	Work Phone	<input type="text"/>
Relationship to you:	<input type="checkbox"/> Supervisor <input type="checkbox"/> Co-worker <input type="checkbox"/> Subordinate <input type="checkbox"/> Other → Please Specify: <input type="text"/>		

Continued →

3. Date(s) discrimination occurred:

Is the discrimination continuing?

Yes No

4. Please describe briefly the alleged discriminatory conduct and your reasons for concluding that the conduct was discriminatory. Please include the names of witnesses, if any, and attach supporting data, if available. Attach additional pages, if necessary.

5. A. Have you filed a claim regarding this complaint with a federal, state or local government agency? Yes No

B. Have you instituted a legal suit or court action regarding this complaint? Yes No

C. Have you hired an attorney with respect to the allegations in the complaint? Yes No

6. This complaint form was completed by: Complainant
 Supervisor/Manager
 Union Representative

Signature

Date

Return the completed form (by email, fax or mail) to the:
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