

Sexual Misconduct Policy and Procedures

Dean College prohibits sexual misconduct in any form. Any form of violence, intimidation, abuse, exploitation or harassment based on sex, gender identity or sexual preference is contrary to the ideals of Dean and may jeopardize a community member's ability to learn, work, or otherwise participate in the life of the College.

Dean College strongly encourages all members of the community to take action, seek support and report incidents of sexual misconduct. If the College becomes aware of alleged sexual misconduct that impacts one or more members of the College community, the College will investigate the matter and, where misconduct is found to have occurred, it will take action to end the behavior, eliminate any hostile environment, remedy its effects, and prevent its recurrence. The College will do so whether the perpetrator of the misconduct is a student, employee, guest, vendor or other third party.

For purposes of investigating and adjudicating allegations of misconduct, Sexual Misconduct has two categories:

- a. Title IX Policy Violations.
- b. Non-Title IX Policy Violations

Each of these categories has its own investigation and hearing model. Complete process details and contact information for supporting staff may be found at www.dean.edu/titleix.

Title IX Policy Violations include the following conduct, if it occurs in connection with the College's educational programs or activities and in the United States:

- a. Sexual Harassment in which an employee of the College conditions the provision of an aid, benefit or service of the College on an individual's participation in unwelcome sexual conduct (quid pro quo harassment).
- b. Sexual Harassment involving unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity (hostile environment harassment).
- c. Sexual Assault, dating violence, domestic violence or stalking as those terms are defined under the Clery Act or the Violence Against Women Act.

Non-Title IX Policy Violations comprise any Sexual Misconduct that is not a Title IX Policy Violation.

All students, staff, and faculty at Dean College are responsible for adhering to the College's policy on Sexual Misconduct.

The Title IX Coordinator will oversee the College's response to alleged Sexual Misconduct Violations (Title IX and Non-Title IX) and ensure that appropriate resources are available to students and employees involved.

If a Title IX Sexual Misconduct Investigation occurs, and the student is also charged with a non-Title IX policy violations arising from the same incident, the charges will be adjudicated together in accordance with the Title IX procedures.

I. Definitions

Title IX Definitions:

In May 2020, pursuant to Title IX of the Education Amendments of 1972, the Department of Education issued new regulations concerning how colleges must respond to certain types of sexual misconduct. Effective August 14, 2020, those regulations require all colleges to use specific procedures in response to reports of what the Department calls “sexual harassment” – a term the department uses to cover all types of sexual misconduct that are addressed under Title IX. The College’s policies will use the term “Title IX Sexual Harassment” or “Title IX Policy Violation” to refer to conduct defined as sexual harassment by the Department.

Title IX Sexual Harassment

Title IX Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the college conditioning the provision of an aid, benefit, or service of the college on an individual’s participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college’s education program or activity; or
- (3) Sexual assault, dating violence, domestic violence, or stalking, as defined below.

“Sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

“Dating violence” means violence committed by a person (A) who is or has been in a social relationship of an intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

“Domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Massachusetts, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Massachusetts.

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others or (B) suffer substantial emotional distress.

To be considered Title IX sexual harassment, the conduct described above must occur in a Dean education program or activity within the United States. A Dean “education program or activity” is a location, event, or circumstance over which the college exercises substantial control over both the respondent and the context in which the Title IX sexual harassment occurs.

Other Definitions:

Coercion is the unreasonable use of pressure to compel another individual to initiate or continue sexual activity against an individual’s will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

Complainant is the person who reportedly was subjected to sexual misconduct.

Consent: Effective consent requires that at the time of the sexual contact, all participants are of legal age to consent to the activity at issue and use words or conduct to communicate freely given approval or agreement, without force, coercion, or incapacitation. Consent may not be inferred from silence or passivity. Consent to one act does not imply consent to other acts, nor does past consent to an act imply present or future consent. In addition, consent once given may be withdrawn at any time. If consent is withdrawn, whatever sexual contact is occurring must immediately stop.

Individuals are unable to give effective consent if they are:

- incapacitated by illness, alcohol or drugs, and the other person knew or reasonably should have known of the incapacitation
- forced, coerced, threatened or subject to intimidation
- physically incapable of communicating, asleep, or unconscious

Force means the use or threatened use of violence or imposing on someone physically.

Incapacitation means an individual lacks the ability to make informed, rational judgments and/or to coherently communicate those judgments. Incapacitation may result from illness, injury, or the use of alcohol and/or other drugs. Incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person is or may be approaching incapacitation may include (but are not limited to) slurred speech, vomiting, unsteady gait, combativeness, or unusual emotional volatility.

Non-Consensual Sexual Contact is any intentional sexual touching, however slight, with any object or body part, by a person upon another person, without effective consent.

Relationship Abuse is the use of physical force, coercion, threats, or sexual misconduct toward a current or former partner in a personal, intimate relationship. Psychological, verbal and/or emotional manipulation also constitute relationship abuse if it has the effect of creating reasonable fear, isolation, or restriction of access to resources, education, or work. Relationship abuse includes behaviors that are defined as dating and/or domestic violence for purposes of Massachusetts law, Title IX, or Clery Act reporting. The behaviors generally form an ongoing pattern of behavior, although one severe instance of physical or sexual abuse may be sufficient to establish relationship abuse. Relationship abuse is directed primarily against a person who is or has been involved in a sexual, dating, domestic or other emotionally, romantically, and/or physically intimate relationship with the respondent, although the abuse may be directed toward the family members, friends, pets, or property of the targeted partner. Examples of relationship abuse include:

- Physical abuse (e.g., slapping, pulling hair, punching)
- Threats of abuse (e.g., threatening to hit, harm or use of a weapon on another or self, or other forms of verbal abuse)
- Emotional/psychological abuse (e.g., harassment, name calling, manipulation) that creates and maintains a degrading environment.
- Sexual abuse (e.g., forced sexual conduct and/or any behavior that meets the definition of sexual assault).
- Financial Abuse (e.g. Quid Pro Quo, forcing one to use financial resources, withholding financial resources).

Reporting Party is the individual who brought forward information regarding the incident. This may or may not be the complainant as described below.

Respondent is the alleged perpetrator of sexual misconduct.

Retaliation is a materially adverse action taken against a person because they have complained about sexual misconduct, participated in an investigation of alleged sexual misconduct, or supported a victim of sexual misconduct.

Sexual Assault is any sexual penetration, however slight, using any body part or object, by a person upon another person without that person's effective consent.

Sexual Exploitation involves taking non-consensual or abusive advantage of another person's sexuality, including without limitation invading someone's sexual privacy; obtaining or distributing images or audio of sexual activity, intimate body parts or nudity without consent; allowing another person to observe or listen to sexual activities without consent; and voyeurism.

Sexual Harassment: is unwelcome physical, verbal or other conduct of a sexual nature which is sufficiently severe, persistent and pervasive that it has the effect of interfering with a person's employment or educational experience at the College. The harassing behavior may be based upon power differentials (a person in a position of authority over another conditions some aspect of the other person's employment or educational experience on that person's submission to unwelcome sexual behavior), the creation of a sexually hostile environment (unwelcome sexual touching, leering, comments or other behavior creates a hostile environment in the office, classroom or other setting).

Stalking is a pattern of behavior directed towards another person, which would cause a reasonable person to experience substantial emotional distress or fear for their safety or the safety of others.

Supportive Measures are individualized, non-punitive, non-disciplinary services offered to a complainant or respondent in order to restore or preserve equal access to education, protect student or employee safety, or deter sexual harassment.

Title IX Advisor is a person who acts as an advisor to the respondent or complainant during a Title IX investigation process. This person may but need not be an attorney. If a student does not have an advisor, the College will provide one.

II. Reporting

Reporting Options and Confidentiality

Students have multiple options with respect to reporting sexual misconduct:

- The Title IX Coordinator or his/her designee will meet with the Reporting Party and/or Complainant, provide information about supportive measures and resources on and off-campus, and collect available information. Students will receive information about on campus and off campus resources both verbally as well in a writing. The Title IX Coordinator or designee also considers the initial information about the incident to determine whether interim emergency measures may be appropriate.
- The Complainant may ask the college to conduct a Formal Sexual Misconduct investigation, in which case the student must file a complaint in writing. This can be done during a meeting with the Title IX Coordinator, a member of Counseling Services, Health Services, or any Dean College employee. It can also be reported via email to any Dean College employee.
- The Complainant may ask the college to facilitate an informal resolution or mediation with the Respondent to remedy the situation.
- To report to Franklin Police for criminal investigation Ken Corkran, Director of Law Enforcement Services and Risk Management is available to assist students with this process, or students may contact Franklin Police directly. If a sexual assault or sexual harassment might be

the subject of a criminal investigation, it is important to take certain steps preserve any evidence. The individual should:

- Seek medical assistance which may include a sexual assault forensic exam.
- Avoid showering or bathing prior to a forensic exam.
- Place any evidence (clothes, sheets, etc.) in a paper bag. Do not use a plastic bag as it may impact the later testing of items.

Students may report an incident of Sexual Harassment to any employee of the College, some of whom are “confidential” resources. A “confidential” resource is one who will not share with anyone (including college officials or law enforcement) any information that identifies or could be used to identify the person making the report of sexual misconduct, with very limited exceptions – i.e., with the reporting person’s consent, where there is an imminent threat to the safety of the reporting person or someone else, or where disclosure is necessary in order to comply with the College’s legal obligations. College employees who are not confidential resources are obligated to report any allegation of sexual misconduct to the Title IX Coordinator.

Confidential Resources On-Campus:

- Dean College Health Services: 508-541-1600
- Dean College Counseling Services: 508-541-1838
- Campus anonymous reporting form: www.dean.edu/anonymousreporting

Confidential Resources Off-Campus:

- Wayside Trauma Intervention Services: 800-511-5070 (24-hour confidential hotline)
 - Resources include free trauma counseling, hospital and medical advocacy, safety planning
- New Hope Inc.: 800-323-4673 (24-hour confidential hotline)
Provides resources for addressing domestic and sexual violence
- 1in6.org/helpline: 24- hour chat line
Provides resources for male survivors
- Milford Regional Medical Center: 508-473-1190 Address: 14 Prospect St., Milford, MA
SANE (Sexual Assault Nurse Examiner)

III. Interim and Supportive Measures

Regardless of whether a formal investigation is pursued, the College will implement such supportive measures as are appropriate in the circumstances. They can include, without limitation:

- no contact directives
- changes in class, laboratory, or other educational activities (students)
- changes in campus workplace arrangements or schedules
- restrictions on participation in one or more campus activities
- scheduled use of on campus facilities such as the dining hall, gym, library, etc.
- emergency interim suspensions from the College or living on campus, based on an immediate threat to campus to justify the removal of a student. The respondent has the right to respond to the decision to an interim suspension immediately
- emergency changes in living arrangements for the reporting student or accused student

Student who wish to request interim or supportive measures must contact Shannon Overcash, Title IX Coordinator at sovercash@dean.edu. Decisions about interim or supportive measures will be made by the Title IX Coordinator or a Deputy Title IX Coordinator, in consultation with other College officials as

appropriate under the circumstances. Violations of Interim or Supportive Measures will be addressed by the Title IX Coordinator or Deputy Title IX Coordinator.

IV. Title IX Investigation and Hearing Process

This section describes the investigation and hearing process for allegations of Title IX Violations. The investigation and hearing process for allegations of Non-Title IX Violations involving student respondents is described in the Student Code of Conduct. The investigation and decision process for allegations of Non-Title IX Violations involving employee respondents is described in the Employee Policy Handbook.

Investigators

The College has designated five Title IX Investigators (4 for incidents involving students, 1 for incidents involving faculty/staff). Each investigator will receive training involving sexual harassment, policies and the investigation process. They are responsible for conducting an unbiased Title IX investigation. Generally, one Title IX investigator will investigate each reported incident. In certain situations, there may be a second Title IX Investigator who serves primarily as a note-taker. Neither the investigator nor the note taker decides responsibility or determines sanctions. The Hearing Officer will hear the case and render a decision.

Investigation

The Title IX Coordinator (Shannon Overcash, Associate Dean of Students) or their designee will oversee the College's investigation, which in the ordinary course will include the following steps.

The investigation process outlined below is always subject to adjustment as appropriate under the circumstances of any case.

At each stage of the process, both the complainant and the respondent have the right to be accompanied by an advisor of his or her choosing.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not on the parties involved.

1. To initiate a formal investigation and conduct process, the complainant must submit a report of alleged sexual misconduct in writing. This may be done via email, via a Maxient reporting form or by signing a statement made with a responsible employee. A formal investigation and conduct process also may be initiated by the Title IX Coordinator.
2. The College may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegation of sexual misconduct arises out of the same facts or circumstances.
3. An unbiased and objective Title IX Investigator is assigned to begin the Investigation. The Investigator will update both parties in writing at appropriate stages of the investigation.
4. Both the complainant and the respondent student will be notified in writing of any disciplinary charges that are to be investigated.

5. The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation process.
6. The Title IX Investigator will investigate within a reasonable time frame. This may involve:
 - a. Collecting additional information and statements from both the respondent and the complainant.
 - b. Meeting with witnesses for the complainant and the respondent who have relevant information about the incident.
 - c. Collecting additional information such as: documents, photos, emails, texts, etc. that are deemed relevant to the investigation.
 - d. Both parties have the ability to discuss the allegations under investigation or to gather and present relevant evidence.,
7. When the Title IX Investigator has completed a thorough and equitable investigation, they will share with both parties a draft report of the results of the investigation, along with all of the evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint. Both parties will have at least 10 days to submit a written response, which the investigator will consider and address as appropriate prior to the completion of the Investigation Report.
8. After receiving and considering comments from both parties and conducting any further investigation that is warranted in light of those comments, the Title IX Investigator will forward to the parties and any advisors the final Investigation Report, which will occur no less than 10 days before the live hearing.

Live Hearing

1. Unless the matter is resolved by way of an informal resolution, the College will conduct a live hearing with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
2. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
3. The hearing will be conducted by a Hearing Officer appointed by the Title IX Coordinator or his/her designee. This person will be distinct from the Investigator.
4. The hearing must be recorded or transcribed stenographically.
5. Both parties are required to have an advisor present at the live hearing, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
 - a. If a party does not have an advisor, the College will provide without fee or charge to that party, an advisor of the College's choice.
 - b. The live hearing permits the Hearing Officer to question the parties and witnesses and permits each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions including those that challenge credibility. Such cross-examinations must be conducted directly, orally and in real time by the party's advisor of choice and never by a party personally. Beyond this role, advisors may not participate directly in the proceedings.
 - c. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

- d. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant or concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
6. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the College's discretion, with some or all persons appearing remotely, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the College must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Hearing Officer and the parties to simultaneously see and hear the party or witness who is answering questions.

Determination of Responsibility and Sanctions

Within 5 business days of the conclusion of the live hearing, the Hearing Officer will use the information gathered during the investigation, as well as the live hearing, to make a decision of responsible or not responsible based on the preponderance of the evidence standard. The hearing officer will also determine sanctions when the outcome is responsible. Both parties will be notified simultaneously and in writing of the outcome of the investigation. The hearing officer will issue a report which includes the allegations that were the subject of the live hearing, the procedural steps taken in the case, the findings of fact supporting each finding of responsible or not responsible, conclusions regarding application of the code of conduct to the facts, an explanation of the rationale for any sanctions including whether remedies designed to restore or preserve access to the College's education program or activity will be provided to the complainant and the procedures and permissible bases for an appeal.

Sanctions

If the respondent is found responsible the sanctions imposed may include, but not be limited to loss of privileges, disciplinary probation, suspension, or expulsion.

Appeals

Both parties have the opportunity to appeal the decision, in writing, within 5 business days. The link to submit an appeal will be included in the decision letter. An appeal can be requested on the following bases:

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Any appeal will be referred for decision by a Title IX Investigator who was not involved in investigating the case.

The Title IX Coordinator will:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

In the request to appeal form, students must provide specific information to support the grounds of their appeal. The appeal officer will thoroughly review the information provided in the electronic appeal request form and the case documents. The Appeal Officer may request additional information if needed (such as meeting with the student).

The appeal officer will review the request for appeal and determine whether sufficient grounds for appeal exist. While an appeal is being reviewed, the original sanctions imposed are still in effect until an appeal decision has been made, including suspension or removal from housing or the College. In the majority of cases, the appeal officer will respond within 5 business days upon receipt of the appeal. The appeal officer will Issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

Dismissal of a Formal Title IX Complaint

A formal complaint may be dismissed by the Title IX Coordinator if he/she deems that the allegation does not constitute sexual harassment as defined in the Sexual Misconduct Policy.

- A dismissal of the formal Title IX complaint does not preclude adjudication of behavior as it may be defined as a non-Title IX violation within the Code of Conduct. The Complainant or the College may proceed with an investigation of the alleged non-Title IX violation.
- The Complainant may withdraw the complaint at any time during the investigation by notifying the Title IX Coordinator in writing.
- Upon dismissal of a complaint, both parties will be notified promptly in writing.

Informal Resolution

A complainant may request the facilitation of an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.

- The college will provide written notice to both parties of the allegations, including the requirements of the informal resolution process.
- Both parties must provide voluntary written consent to the informal process.
- In an informal resolution, either party has the ability to withdraw from the informal resolution process and resume a formal resolution process, but only *before* an agreement has been reached.
- All records collected during the Informal Process could be made available during the Formal Process.
- Once an agreement has been reached the parties are precluded from resuming a formal complaint of the same allegation