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Equal Opportunity, Civil Rights, and Sexual Misconduct

POLICY

1. Applicable Scope

Gateway Technical College (Gateway or the College) affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the College's Equity Resolution Process (ERP), as described in policy H-120. When the responding party (the person who is alleged to have violated this policy) is a member of the College community, such as a student or employee, the ERP is applicable regardless of the status of the reporting party (the person(s) making the allegations) who may be a member or non-member of the campus community, such as a student, student organization, employee, guest, visitor, etc.

2. Office for Equal Opportunity and Civil Rights

The Office for Equal Opportunity and Civil Rights is comprised of the Director, Human Resources who serves as the Equal Opportunity Officer and the Compliance Manager who serves as the Title IX Coordinator. The Equal Opportunity Officer's primary role is to provide oversight and final approval of investigation reports. The Compliance Manager is primarily responsible for addressing discrimination complaints (i.e. investigation and resolution), assuring compliance with applicable civil rights and employment laws, and prevention training and education. In the event the Title IX Coordinator conducts the investigation, the Equal Opportunity Officer serves as the Title IX Coordinator.

The Equal Opportunity Officer and Title IX Coordinator act with independence and authority free of conflicts of interest and bias that impacts the investigation or adjudication. To raise any concern involving a conflict of interest or bias by the Equal Opportunity Officer or Title IX Coordinator, contact the Senior Vice President of Operations, Bill Whyte, at 262-564-3228 or whyte@gtc.edu. To raise a concern involving a conflict of interest or bias about an investigator, contact the Title IX Coordinator. To raise concerns regarding a potential conflict of interest with any other administrator involved in the ERP, please contact the Office for Equal Opportunity and Civil Rights.

Inquiries about and reports regarding this policy and procedure may be made to:

<p>Joshua Vollendorf Compliance Manager Title IX Coordinator Department of Human Resources 3520 30th Avenue Kenosha, WI 53144 262-564-3062 vollendorfj@gtc.edu</p>	<p>Debbie Miller Director, Human Resources Equal Opportunity Officer Department of Human Resources 3520 30th Avenue Kenosha, WI 53144 262-564-3220 millerd@gtc.edu</p>
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3. Reporting Discrimination, Harassment, Sexual Misconduct and Retaliation

Anyone who believes that the policy on Equal Opportunity, Civil Rights, and Sexual

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Misconduct has been violated should file a report or contact the Title IX Coordinator. Reports of discrimination, harassment and/or retaliation may be made using any of the following options.

- Report online, using the Incident (Maxient) reporting form located at <https://www.gtc.edu/TitleIX>
- Report directly to the Office for Equal Opportunity and Civil Rights
- File an incident report with a Campus Security Officer (Racine/iMet: 262-619-6208; Kenosha/Horizon/Lakeview: 262-564-2208; Elkhorn/Burlington: 262-741-8208)

Reports of misconduct, discrimination, harassment or retaliation committed by the Equal Opportunity Officer or Title Coordinator should be reported to the Senior Vice President of Operations, Bill Whyte, at 262-564-3228 or whytew@gtc.edu.

Inquiries may be made externally to:

Employee complaints regarding employment discrimination:

Wisconsin Department of Workforce Development
Equal Rights Division PO Box 7997
Madison, WI 53707-7997
AND/OR
Equal Employment Opportunity Commission (EEOC)
Reuss Federal Plaza
310 West Wisconsin Avenue, Suite 500
Milwaukee, WI 53203-2292
Phone: 1-800-669-4000
Fax: 414-297-4133
TTY: 1-800-669-6820
ASL Video Phone: 844-234-5122

Student and/or employee or third party complaints regarding discrimination:

U.S. Department of Education Office for Civil Rights
Citigroup Center
500 W. Madison Street, Suite 1475
Chicago, IL 60661-4544
Telephone: (312) 730-1560
Facsimile: (312) 730-1576
Email: OCR.Chicago@ed.gov

While there is no time limitation on the filing of allegations, all individuals are encouraged to promptly report discrimination, harassment, sexual misconduct and/or retaliation. If a significant amount of time has passed and/or the responding party is no longer subject to the College's jurisdiction (for example, the reporting party leaves the college), the ability to investigate, respond and provide remedies may be more limited.

All College employees have a duty to report allegations of discrimination, harassment, sexual misconduct, and/or retaliation, unless exempted from doing so under the "Confidential Reporting" section below (see Section 19). All employees receiving reports of a potential

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violation of this policy shall promptly file an Incident Report within 48 hours of becoming aware of a report or incident. Failure of a non-confidential employee to report an incident or incidents of discrimination, harassment, sexual misconduct or retaliation of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply. Additionally, all employees of the College, with the exception of Student Support Counselors, are designated as mandated reporters and must notify the Office for Equal Opportunity and Civil Rights within 48 hours of any disclosure they receive of a violation covered under this policy. Confidentiality and mandated reporting is addressed more specifically later in this policy.

All initial contacts will be treated with privacy: specific information on any allegations received by any party will be reported to the Title IX Coordinator, but, subject to the College's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, Gateway will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared with the Title IX Coordinator. Employees must promptly share all details of the reports they receive. Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made. Remedial actions may result from such disclosures without formal College action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. Note that the College's ability to remedy and respond to a reported incident may be limited if the reporting party does not want the institution to proceed with an investigation and/or the Equity Resolution Process.

In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have allegations taken seriously by Gateway when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to Campus Safety and Security, Human Resources, Campus Dean, and the CARE Team. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online Maxient

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reporting form posted at www.gtc.edu/TitleIX, or by contacting the Title IX Coordinator. Note that these anonymous reports may prompt a need for the institution to investigate.

All reports are acted upon promptly while every effort is made by the College to preserve the privacy of reports.

4. Jurisdiction

This policy applies to behaviors that take place on the campus, at College- sponsored events (whether on- or off-campus) and may also apply to off-campus and online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest. A substantial College interest is defined to include:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b. Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c. Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests of the College as determined by the Title IX Coordinator.

Any online postings or other electronic communication by students, including but not limited to cyber-bullying, cyber-stalking, or cyber-harassment, occurring completely outside of the College's control (e.g. not on College networks, websites or between College email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial educational disruption. Otherwise, such communications are considered speech protected by the First Amendment. Remedies for such conduct will be provided, but protected speech cannot be legally subjected to discipline.

Off-campus discriminatory or harassing speech by employees may be regulated by the College only when such speech is made in an employee's official or work- related capacity or is directed at a student or employee of the College and has the propensity to create a hostile environment in the educational or work activities of the college.

5. Gateway's Policy on Nondiscrimination

Gateway adheres to all federal and state civil rights laws prohibiting discrimination in employment and in public institutions of higher education.

The College will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, color, national origin, ancestry, sex, sexual orientation, creed, religion, political affiliation, marital status, parental status, pregnancy, disability, age, membership in any reserve component of the armed forces, union affiliation, arrest and conviction record, or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any

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resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community who acts to deny, deprive or limit the educational or employment access, benefits and/or opportunities of any member of the campus community, guest or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of Gateway's policy on nondiscrimination. When brought to the attention of the College, any such discrimination will be appropriately addressed and remedied by the College according to the Equity Resolution Process. Non-members of the campus community who engage in discriminatory actions within Gateway's programs or on College property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with the College. All vendors serving the College through third-party contracts are subject by those contracts to Gateway policies and procedures, in addition to any in place through their employment.

6. College Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. Gateway's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include relevant, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under College policy.

7. Discriminatory and Bias-Related Harassment

Harassment constituting a form of discrimination is prohibited by Gateway policy as well as the law. Gateway condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by policy or law. Gateway will remedy all forms of harassment, including by imposing sanctions on the harasser through application of the Equity Resolution Process. Gateway's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is so severe or persistent/pervasive, and objectively offensive such that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.

The College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a protected status. Addressing such behaviors may not result in the imposition of discipline under Gateway policy, but may be addressed through respectful confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Human Resources Department.

8. Gateway's Policy on Accommodation of Disabilities

Gateway is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other applicable federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Compliance Manager has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegation of noncompliance. Employees, students, and others may file a grievance using the reporting methods described in this policy.

9. Students with Disabilities

Gateway is committed to providing qualified students with disabilities with reasonable accommodation(s) and support needed to ensure equal access to the academic programs and activities of the College. All accommodations are made on a case-by-case basis. A student requesting an accommodation should first contact Disability Support Services (DSS) (<https://www.gtc.edu/disability-support-services>) who coordinates services for students with disabilities. The Disability Services Specialist reviews documentation provided by the student and, in consultation with the student and other College faculty and staff (as necessary and appropriate), determines which reasonable accommodations are appropriate to the student's particular needs and academic programs.

10. Employees with Disabilities

Pursuant to the ADA, Gateway will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing using the [Accommodation Request Form](#) found on the Human Resources intranet page and submitting the completed form, along with appropriate documentation, to the Human Resource Department. The Compliance Manager may work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability. In addition, the Compliance Manager may work with the employee and their supervisor to determine the appropriate accommodation.

11. Expectations with respect to consensual relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). The relationship may be less consensual than the person who has greater power perceives. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore,

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circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor. Under such circumstances, the College will likely remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual romantic or sexual relationship. While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

12. Sexual Misconduct

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Gateway has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Gateway considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Gateway reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved. Violations include:

a. Sexual Harassment

Sexual harassment is a form of sex discrimination and, therefore, is an unlawful discriminatory practice. Gateway has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment is:

- a. unwelcome,
- b. sexual, sex-based and/or gender-based,
- c. verbal, written, online and/or physical conduct.

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Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator. Remedies, education and/or training will be provided in response.

Sexual harassment may result in disciplinary action when it takes the form of *quid pro quo* harassment, creates a hostile environment, and/or constitutes retaliation.

Quid Pro Quo Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of employment or access to educational opportunities.

Some examples of possible Sexual Harassment include:

- a. An instructor insists that a student have sex with him/her in exchange for a good grade.
- b. A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus.
- c. An employee displays explicit sexual pictures in his/her office or other public location.
- d. An instructor engages students in her class in discussions about their past sexual experiences, although the conversation is not in any way relevant to the subject matter of the class and the students are clearly uncomfortable and hesitant.

A hostile environment is created when sexual harassment is:

- a. Severe or pervasive, and
- b. Objectively offensive,
- c. Such that it unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational, employment, or social programming.

A single isolated incident may create a hostile environment if the incident is sufficiently severe, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression is typically not sufficient to constitute a hostile environment. It is also important to note that the College need not determine a hostile environment was created to call behavior harassment, to initiate an investigation, or to resolve the complaint. The creation of a hostile environment triggers a duty to respond, but a single act of conduct that is harassing is taken seriously and is sufficient to trigger a response from the College.

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b. Non-Consensual Sexual Intercourse

Non-consensual sexual intercourse is defined as:

- a. any sexual intercourse
- b. however slight
- c. with any body part or object
- d. by a person upon another person
- e. that is without consent and/or by force

Sexual intercourse includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

Some examples of behavior that would constitute non-consensual sexual intercourse include:

- a. Engaging in sexual intercourse with an unconscious person
- b. Engaging in sexual intercourse with someone who said “no”
- c. “Fingering” another person without his or her consent

c. Non-Consensual Sexual Contact

Non-consensual sexual contact is defined as:

- a. any intentional sexual touching
- b. however slight
- c. with any body part or object
- d. by a person upon another person
- e. that is without consent and/or by force
 - Sexual touching includes intentional contact with the breasts, groin, genitals, or mouth; touching another with any of these body parts; making another touch you or themselves with or on any of these body parts; or any other bodily contact in a sexual manner.

Examples of non-consensual sexual contact include:

- a. Touching a woman’s breasts without consent
- b. Slapping someone’s buttocks without consent
- c. Intentionally rubbing up against another person’s genitals without consent

d. Sexual Exploitation

Sexual Exploitation refers to a situation in which a person takes non- consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within

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the definitions of Sexual Harassment, Non- Consensual Sexual Intercourse or Non-Consensual Sexual Contact.

Examples of Sexual Exploitation include, but are not limited to:

- a. Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed)
- b. Invasion of sexual privacy
- c. Prostitution
- d. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection
- e. Administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent
- f. Exposing one’s genitals in non-consensual circumstances
- g. Sexually-based stalking and/or bullying

e. Intimate Partner Violence

Intimate partner violence is defined as violence or abuse between those in a current or previous intimate (sexual, dating, spousal, domestic) relationship. Intimate partner violence includes dating and domestic violence.

- a. “Dating Violence” is physical acts of assault or threats of assault, detainment, or unwanted touching committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence. Whether there was such a relationship will be determined based on, among other factors, the reporting and responding party’s statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the parties involved in the relationship.
- b. “Domestic Violence” is physical acts of assault or threats of assault, detainment, or unwanted touching committed by: (1) a current or former spouse or intimate partner of the victim; (2) a person with whom the victim shares a child in common; (3) a person who is cohabiting with, or has cohabitated with, the victim as a spouse or intimate partner; (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Wisconsin; or (5) any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws in the State of Wisconsin.

Examples of intimate partner violence include:

- i. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend.
- ii. An ex-girlfriend shames her female partner by threatening to out her as a lesbian if she doesn’t give the ex another chance.

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f. Stalking

Stalking may take one of two forms:

- a. First, stalking includes (Stalking 1):
 - i. A course of conduct
 - ii. Directed at a specific person
 - iii. On the basis of actual or perceived membership in a protected class
 - iv. That is unwelcome, and
 - v. Would cause a reasonable person to feel fear or substantial emotional distress
- b. Second, stalking includes (Stalking 2):
 - i. Repetitive and menacing
 - ii. Pursuit, following, harassing and/or interfering with the safety of another

Examples of stalking include:

- a. A student repeatedly shows up at another student's classroom at the end of class after being told to leave them alone. (Stalking 1).
- b. An employee continues to pursue a colleague who declined an invitation for a date. The employee then posts personal and private information about the person online, inviting others to their home without their knowledge (Stalking 2).

14. Legal Definitions

Rape is generally defined as forced sexual intercourse. It may also include situations where the victim is incapable of giving consent due to incapacitation by means of disability or alcohol or other drugs. Many rapes are committed by someone the victim knows, such as a date or friend.

Under State of Wisconsin law, rape is referred to as sexual assault, and is defined as sexual intercourse against the will of the victim that can occur under a variety of circumstances, including:

- a. Where the victim is prevented from resisting due to alcohol or drugs.
- b. Where the assailant uses physical force or the threat of force to overpower and control the victim.
- c. Where the victim fears that she or he or another will be injured if the victim does not submit.
- d. Where the victim is at the time unconscious of the nature of the act, and this is known to the assailant.

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- e. Where the victim is incapable of giving legal consent due to a mental disorder or developmental or physical disability, and this is known or reasonably should be known to the assailant.
- f. Where the act is accomplished by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another person.
- g. Where the assailant uses duress, such as a direct or implied threat of hardship or retribution, to coerce the victim.
- h. Where the assailant uses force, fear or threats to accomplish sexual intercourse against the will of the spouse. This provision is known as the “spousal rape law.”

15. Other sexual offenses

Besides rape, other sexual offenses include the following: sodomy (forced anal intercourse); oral copulation (forced oral-genital contact); rape by a foreign object (forced penetration by a foreign object, including a finger); and sexual battery (the unwanted touching of an intimate part of another person for the purpose of sexual arousal).

In Wisconsin, sexual consent is defined as words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence:

- a. A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.
- b. A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

Complete Wisconsin sexual assault offense definitions can be found in WIS.STAT.940.225: <http://docs.legis.wisconsin.gov/statutes/statutes/940/II>

16. Sex Offenders

In accordance with the Campus Sex Crimes Prevention Act of 2000, which amends the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, the Jeanne Clery Act and the Family Educational Rights and Privacy Act of 1974, you can view sex offenders on the Wisconsin Department of Corrections website: <http://offender.doc.state.wi.us/public>. All sex offenders are required to register in the state of Wisconsin and to provide notice of each institution of higher education in Wisconsin at which the person is employed or is a student.

In addition to the above notice to the State of Wisconsin, all sex offenders are required to deliver written notice of their status as a sex offender to the Associate Vice President, Security and Facilities, no later than three (3) business days prior to enrolling with, commencing employment with, or volunteering at the College.

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Such notification may be sent out by the College to, and for the safety and well-being of, the College community and may be considered by the College for disciplinary purposes.

17. Force and Consent

- a. **Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent (“Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

NOTE: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. Using force or threat of force to obtain sexual access is by definition non-consensual. Likewise, sexual activity that is non-consensual is not always forced, such as in situations where the party is incapacitated.

- b. **Consent:** Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Consent is required for any sexual activity between two or more individuals. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given, as long as the withdrawal is clearly communicated. Consent is an ongoing process, and as soon as one participant communicates that they no longer want to engage in sexual activity, it should stop.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

- c. **Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party. Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from taking incapacitating drugs.

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In Wisconsin, a minor (meaning a person under the age of 18 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 18 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

Example of lack of consent:

- a. Amanda and Bill are students attending a college-sponsored trip out of state. Amanda and Bill meet at an evening social arranged as part of the trip. They spend the evening getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never have engaged in this sexual contact but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left.

It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda was unreasonable and therefore a violation of this policy. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced or coerced. Sex without mutual consent that is clearly understood between both parties is sexual misconduct.

18. Other Civil Rights Offenses

In addition to the forms of sexual misconduct described above, the following behaviors are also prohibited as forms of discrimination when the act is based upon the reporting party's actual or perceived membership in a protected class.

- a. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- b. Discrimination, defined as actions that deprive, limit or deny other members of the community of educational or employment access, benefits or opportunities;
- c. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- d. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group- affiliation activity;
- e. Bullying, defined as
 - i. Repeated and/or severe,
 - ii. Aggressive behavior

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- iii. Likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally,
- iv. That is speech not otherwise protected by the First Amendment

Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's protected class.

19. Retaliation

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity.

Retaliation against an individual for alleging discrimination, harassment, or sexual misconduct, or for supporting a party bringing an allegation or for assisting in providing information relevant to the foregoing claims is a serious violation of College policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Gateway is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of retaliation including:

- A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from a student group participates in a sexual misconduct investigation against another member. The student is subsequently removed from the student group because he participated in the investigation.

20. Remedial Action

Upon notice of alleged discrimination, harassment, sexual misconduct, or retaliation, Gateway will consider and implement appropriate initial remedial, responsive and/or protective actions. Such actions could include but are not limited to: no contact orders, providing counseling services, academic support, student financial aid counseling, providing a campus escort, changes in transportation, changes to academic or work schedules, safety planning, and/or referral to campus and community support resources.

The College will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in discriminatory, harassing or retaliatory behavior.

The College will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the College's ability to provide the accommodations or protective measures.

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21. Confidentiality and Reporting of Offenses Under This Policy

All College employees (faculty, staff, administrators) are expected to report actual or suspected discrimination, harassment, sexual misconduct and retaliation to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, Student Support Counselors may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials (except in limited circumstances include suspected child abuse or threat of harm to others) – thereby offering options and advice without any obligation to inform an outside agency or campus official unless a reporting party has requested information to be shared. Other resources exist to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the reporting options at Gateway:

a. Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- i. On-campus licensed professional counselors (Student Support Counselor)
 1. Elkhorn: 262-741-8300
 2. Burlington: 262-741-8300
 3. Kenosha: 262-564-2300
 4. Racine: 262-619-6300
- ii. On-campus Victim Advocates: Women and Children's Horizons (Kenosha only)
- iii. Off-campus (non-employees):
 1. Licensed professional counselors
 2. Local rape crisis counselors
 - a) Elkhorn: 800-365-1587
 - b) Burlington: 262-638-6741
 - c) Kenosha: 800-236-7188
 - d) Racine: 262-638-6741
 3. Domestic violence resources
 - a) Elkhorn: 262-723-4653
 - b) Burlington: 262-633-3233
 - c) Kenosha: 800-853-3503
 - d) Racine: 262-633-3233
 4. Local or state assistance agencies
 5. Clergy/Chaplains

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All of the above-listed individuals should maintain confidentiality except in extreme cases of immediacy of threat, danger or abuse of a minor. Student Support Counselors are available to help students free of charge and can be seen during normal business hours. For employees, the Employee Assistance Program is available to provide confidential support services and referrals. College employees listed above will submit anonymous statistical information for Clery Act purposes.

22. Reporting child abuse and sexual abuse of children

Wisconsin law 48.981(2) requires that any mandated reporter who has a reasonable cause to suspect that a child (defined as any person under the age of 18) seen by the person in the course of professional duties has been abused or neglected, or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur is required to make a report. Mandated reporters include health professionals and mental health providers, among others. For the purpose of this policy, any employee who has reasonable cause to believe that a child who they've seen in the course of their duties at the College has been abused or neglected or threatened with abuse or neglect that will occur should immediately contact the Office for Equal Opportunity and Civil Rights and may be required to contact the local department of human services.

23. False Allegations

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations made in good faith, but that result in a finding of "not responsible" by the institution.

This policy and procedure was implemented on 8-20-18.