

# H-110: Equal Opportunity, Civil Rights, and Sexual Harassment

## 1. Office for Equal Opportunity and Civil Rights

The Office for Equal Opportunity and Civil Rights is comprised of the Vice President of Diversity, Equity, and Inclusion who serves as the Equal Opportunity Officer and the Director of Compliance who serves as the Title IX & ADA Coordinator and Affirmative Action Officer. The Equal Opportunity Officer's primary role is to provide review and final approval of investigation reports, excluding those related to Title IX sexual harassment, that are completed by the Director of Compliance/Title IX Coordinator. The Director of Compliance is primarily responsible for managing the day-to-day operations of the Office and addressing discrimination complaints (i.e. investigation and resolution), assuring compliance with applicable civil rights and employment laws, reviewing and approving investigation reports, and prevention training and education. The Director of Compliance has the primary responsibility for coordinating Gateway's efforts related to investigation, resolution, and implementation of corrective measures and monitoring to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy. In addition, the Director of Compliance maintains equal opportunity policies and procedures.

The Equal Opportunity Officer, Director of Compliance, and other members of the Title IX team act with independence and authority free of conflicts of interest and bias that impacts the investigation or adjudication. The Director of Compliance oversees all resolutions under this policy and acts to ensure that all Institution representatives act with objectivity and impartiality and are assessed with respect to conflicts of interest and/or potential bias. To raise any concern involving a conflict of interest or bias by the Equal Opportunity Officer or Director of Compliance, contact the President of the college, Bryan Albrecht, at [albrechtb@gtc.edu](mailto:albrechtb@gtc.edu) or, to raise a concern involving a conflict of interest or bias about any other member of the Title IX team, contact the Director of Compliance.

Allegations of violations of policy, or inquiries about or concerns regarding this policy and procedure, may be made internally to:

**Joshua Vollendorf**  
Director of Compliance  
Title IX & ADA Coordinator/Affirmative Action Officer  
3520 30th Avenue  
Kenosha, WI 53144  
262-564-3062  
[vollendorfj@gtc.edu](mailto:vollendorfj@gtc.edu)

## 3. Glossary

- **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- **Complaint (formal)** means a document submitted or signed by a Complainant or signed by the Director of Compliance/Title IX Coordinator alleging harassment or discrimination based on a

protected class or retaliation for engaging in a protected activity against a Respondent and requesting that Gateway investigate the allegation.

- **Confidential Resource** means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- **Day** means a business day when Gateway is in normal operation.
- **Directly Related Evidence** is evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- **Education program** or activity means locations, events, or circumstances where Recipient exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Gateway.
- **Equity Resolution Process** means a method of administrative resolution of discrimination and misconduct complaints that relate to protected class discrimination with the exception of cases that fall under 34 CFR §106.30 (all forms of sexual harassment).
- **Final Determination:** A conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- **Finding:** A conclusion by the preponderance of evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Formal Grievance Process** means “H-130: Title IX Grievance Procedure,” a method of formal resolution designated by Gateway reserved for sexual harassment claims, and which complies with the requirements of the Title IX Regulations (34 CFR §106.45).
- **Grievance Process Pool** includes any investigators, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- **Hearing Officer** refers to those who have decision-making and sanctioning authority within Gateway’s Formal Grievance process.
- **Investigator** means the person or persons charged by a Recipient with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence for Title IX sexual harassment cases. In non-Title IX Sexual Harassment cases, the investigator also completes a credibility assessment, finding of fact, conclusion, and makes recommendations for sanctions in all other cases.
- **Mandated Reporter** means an employee of Gateway who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Director of Compliance/Title IX Coordinator.
- **Notice** means that an employee, student, or third-party informs the Director of Compliance/Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

- **Official with Authority (OWA)** means an employee of Gateway explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of Gateway.
- **Parties** include the Complainant(s) and Respondent(s), collectively.
- **Recipient** means a postsecondary education program that is a recipient of federal funding.
- **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Gateway's educational program.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- **Resolution** means the result of an informal or Formal Grievance Process.
- **Sanction** means a consequence imposed by Gateway on a Respondent who is found to have violated this policy.
- **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section 14.a., for greater detail.
- **Director of Compliance/Title IX Coordinator** are interchangeable titles that refer to one position that is designated by Gateway to ensure compliance with Title IX and other anti-discrimination laws and Gateway's Title IX & equal opportunity programs. References to the Coordinator or Director of Compliance throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- **Title IX Grievance Procedure** means the Formal Grievance Process detailed below and defined above.
- **Title IX Team** refers to the Director of Compliance/Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

#### 4. Scope of this policy

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. Gateway is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational enterprise, Gateway has developed internal policies and procedures that will provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status. Gateway values and upholds the equal dignity of all members of its community, and strives to balance the rights of the parties in what is often a difficult time for all those involved.

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating

violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using H-130: Title IX Grievance Procedures for Title IX sexual harassment cases or H-120: Equity Resolution Procedure for non-sexual harassment cases, as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Recipient's community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Recipient community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

This policy applies to all allegations that occur from the date it went into effect. Allegations made prior to that date, regardless of when they are reported, are processed under the policy in effect at the time of the allegation and utilize the current resolution process applicable to the allegations.

## **5. Reporting Discrimination, Harassment, Sexual Misconduct and Retaliation**

Anyone who believes that the policy on Equal Opportunity, Civil Rights, and Sexual Harassment has been violated should file a report or contact the Director of Compliance. Reports of discrimination, harassment and/or retaliation may be made using any of the following options. Reports can be made in-person during business hours and any time electronically (Maxient, e-mail, US mail, or phone). Anonymous reports are accepted

- Report online, using the Incident (Maxient) reporting form located at [gtc.edu/TitleIX](http://gtc.edu/TitleIX) and [gtc.edu/eoo](http://gtc.edu/eoo).
- Report directly to the Office for Equal Opportunity and Civil Rights at 262-564-3062, [vollendorff@gtc.edu](mailto:vollendorff@gtc.edu), 3520 30<sup>th</sup> Avenue, Kenosha, WI 53405, or in-person at the Kenosha Administration Center, Room AD105.
- 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)

Anonymous reports are accepted but can give rise to a need to investigate. Gateway tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as Gateway respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows Gateway to discuss and/or provide supportive measures.

Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the Recipient investigate the allegation(s). A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the Recipient) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the Recipient investigate the allegations.

Allegations of misconduct, discrimination, harassment or retaliation committed by the Director of Compliance, Vice President of Diversity, Equity, and Inclusion, or President should be sent to the law

offices of Quarles & Brady at [lindsey.davis@quarles.com](mailto:lindsey.davis@quarles.com) or [sean.scullen@quarles.com](mailto:sean.scullen@quarles.com). To ensure an equitable, fair, and objective investigation, Quarles & Brady, or a third party designated by Quarles & Brady, will conduct the initial inquiry and investigation, should one be required.

Upon completion of the initial inquiry and a determination that there is not a likely policy violation, Quarles & Brady (or its designated third party) will provide a written justification of this decision to the reporting party and the Office for Equal Opportunity and Civil Rights. Should Quarles & Brady (or its designated third party) determine that the allegations indicate a likely policy violation, a copy of the final investigation report will be sent to the reporting party and the Office for Equal Opportunity and Civil Rights (or the Vice President of Facilities and Security if the Director of Compliance is the responding party).

**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 in the college's education program or activities:

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](mailto:OCR.Chicago@ed.gov)

There is no time limitation on providing notice/complaints to the Director of Compliance/Title IX Coordinator. However, if the Respondent is no longer subject to Gateway's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Acting on allegations significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Director of Compliance/Title IX Coordinator, who may document allegations for future reference, offer supportive measures, and/or engage in informal or formal action, as appropriate. When a significant time delay impacts the reporting of alleged misconduct, the Institution will apply the policy in place at the time of the alleged misconduct, and the procedures in place at the time the misconduct is reported.

**Mandated reporting of policy violations**

All Gateway employees, including casual, temporary, and student 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, that they observe or have knowledge of,

even if not reported to them by the Complainant or third-party. All employees shall promptly file an Incident Report within 48 hours of becoming aware of a such information. 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. Confidentiality and mandated reporting are addressed more specifically later in this policy. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Director of Compliance/Title IX Coordinator.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though Gateway is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves. Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

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 Director of Compliance 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.

### **When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Director of Compliance/Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Director of Compliance/Title IX Coordinator has ultimate discretion over whether Gateway proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Director of Compliance/Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires Gateway to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Gateway may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Director of Compliance/Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the Recipient's ability to pursue a Formal Grievance or Resolution Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When Gateway proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting

to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the Recipient's ability to remedy and respond to notice may be limited if the Complainant does not want the Recipient to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the Recipient's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the Recipient to honor that request, the Recipient will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Recipient, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence or present issues with respect to the status of the parties.

## **Privacy**

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 Office for Equal Opportunity and Civil Rights, 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.

Information will be shared as necessary with investigators, Decision-makers, 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, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under H-120: Equity Resolution Process or H-130: Title IX Grievance Procedure.

The Director of Compliance/Title IX Coordinator reserves the right to determine which Gateway officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

All reports are acted upon promptly while every effort is made by the College to preserve the privacy of reports. Regardless of whether the reporting party has opted-out of allowing the College to share "directory information," personally identifiable information about the reporting party and witnesses will be treated as private, and shared with those on a "need to know" basis. In cases where a formal complaint is filed and the reporting party wishes to proceed with a resolution, the responding party will be provided with the name of the reporting party, the nature of the allegations, and the names of witnesses provided. Likewise, the responding party's list of witnesses will be shared with the reporting party.

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Recipient must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Gateway will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **Federal Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a. All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b. Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c. VAWA -based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with campus security regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities are addressed in more detail in Gateway's policy H-106: Clery Act Compliance.

### **Amnesty for reporting parties and witnesses**

The Gateway community encourages the reporting of harassment, discrimination, and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to college officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident.

It is in the best interests of the Gateway community that reporting parties choose to report to Gateway officials, and that witnesses come forward to share what they know. To encourage reporting, Gateway maintains a policy of offering reporting parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs - related to the incident. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to campus security).

Gateway maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, Gateway may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

Employees: Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to College officials.

Gateway may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

## **6. Jurisdiction of this policy**

This policy applies to the employment and education program and activities of Gateway, to conduct that takes place on the campus or on property owned or controlled by the Gateway, at Gateway-sponsored events, or in buildings owned or controlled by Gateway's recognized student organizations. This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Gateway's educational program or benefits and opportunities of employment. Gateway may also extend jurisdiction to off-campus and/or to online conduct when the Director of Compliance/Title IX Coordinator determines that the conduct affects a substantial Gateway interest. Regardless of where the conduct occurred, Gateway will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

A substantial Gateway interest includes:

- 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 Director of Compliance.

If the responding party is unknown or is not a member of the Gateway community, the Director of Compliance/Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. In addition, Gateway may take other actions as appropriate to protect the reporting party against such third parties, such as barring the latter from Institution property and/or events. All vendors serving the college through third-party contracts are subject to the policies and procedures of their employers. Further, even when the Respondent is not a member of Gateway's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Director of Compliance/Title IX Coordinator.

When the responding party is enrolled in or works at another Institution, the Director of Compliance/Title IX Coordinator can assist the reporting party in liaising with the appropriate individual for that Institution, as it may be possible to allege violations through that Institution's policies.

Similarly, the Director of Compliance/Title IX Coordinator may be able to assist and support a student or employee reporting party who experiences discrimination in an externship, study abroad program, or other environment external to the Institution where sexual harassment policies and procedures of the facilitating organization may give recourse to the reporting party. Further, even when the responding party is not a member of Gateway's community, remedies and resources can be accessed by contacting the Director of Compliance or by visiting [gtc.edu/TitleIX](http://gtc.edu/TitleIX).

The policies of Gateway are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the Gateway's education program and activities or use Gateway's networks, technology, or equipment.

Although Gateway may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Gateway, it will engage in a variety of means to address and mitigate the effects where possible.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Gateway community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the Gateway's control (e.g., not on Gateway networks, websites, or between Gateway email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by Gateway only when such speech is made in an employee's official or work-related capacity.

## **7. Gateway's Policy on Non-Discrimination**

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

To provide equal employment, advancement, and learning opportunities to all individuals, employment and student admission decisions at Gateway will be based on merit, qualifications, and abilities. Gateway 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, gender identity or expression, creed, religion, political affiliation, marital status, parental status, pregnancy, disability, age, membership in any reserve component of the armed forces, union affiliation, viewpoint expression, or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

The above protected classes are governed by various state and federal law. Application and governance of this policy relating to any of the above protected classes will be done in accordance with the applicability of the law(s) governing the specific protected class. For example, arrest and conviction record discrimination is prohibited by the Wisconsin Fair Employment Act and applies only to employees.

This policy covers nondiscrimination in employment and in access to educational opportunities and protects the rights of those engaging in activities protected by civil rights laws. 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 procedures described in this and referenced policies. 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.

## **8. 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. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Gateway policy, though remedies may be offered to those impacted. All policies encompass actual and/or attempted offenses.

### **Discriminatory Harassment**

Discriminatory 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 or Formal Grievance Procedure. 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, *when* that conduct creates a hostile environment, as defined below.

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.

Any employee, student, visitor, or guest who is affected by unwelcome harassing conduct is encouraged to make a report so that the College can offer assistance and resources. Where conduct does not rise to the level of creating a hostile environment, the College may invite persons alleged to be responsible to meet and discuss remedial actions, education, and/or effective conflict resolution mechanisms. Participation in such actions is voluntary.

## **9. College Policy on Affirmative Action**

Gateway is committed to affirmative action for women, minorities, veterans, and disabled individuals in employment and academic advancement. The college completes a comprehensive affirmative action plan every year and uses this data to guide placement goals relating to these groups. Placement goals, when indicated, are neither rigid nor inflexible goals that set a ceiling or floor for employment of particular groups. Goals do not create set-asides for employment groups nor are they intended to achieve proportional representation or equal results. Goals do not supersede objective criteria and merit selection principles. All employment decisions are made in a nondiscriminatory manner and placement goals are not used to extend a preference to any individual or adversely affect an individual employment status on the basis of race, sex, religion, etc. In addition, the college conducts an adverse impact analysis to identify possible barriers to employment for all groups to ensure equal employment opportunity.

Gateway's affirmative action officer will share relevant information relating to the affirmative action plan with human resource leaders and other members of the college and the public through various methods. Select information regarding the affirmative action plan will be published on the college's website at [gtc.edu/eo](http://gtc.edu/eo).

## **10. 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 Director of Compliance 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. Grievances related to disability status and/or accommodations for both students and employees will be addressed using the procedures below.

## **11. 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 in accordance with applicable college policies.

## **12. 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 Compliance intranet page and submitting the completed form, along with appropriate documentation, to the Office for Equal Opportunity and Civil Rights. While ADA requests are managed with a high level of confidence, the Director of Compliance may, in certain circumstances, work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and to implement the specific accommodation. In these situations, only information about the accommodation, and not the medical condition being accommodated, will be shared with the supervisor. In addition, the Director of Compliance may work with the employee and their supervisor to determine the appropriate accommodation in accordance with applicable college policies.

## **13. Training and prevention programming**

Gateway provides all students and employees with the opportunity to complete training that focuses on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, stalking, and other forms of discrimination. Primary programming is provided to incoming and existing employees through the Title IX for Employees workshop and for incoming and existing students online through the Know Your (Title IX) Rights training. In addition, ongoing programming is provided to employees and students through such campaigns and events, including but not limited to, tabling events, presentations to students and employees, awareness campaigns (i.e. sexual assault awareness month and domestic violence awareness month), and bystander intervention training.

## **14. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Wisconsin regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Gateway has adopted the following definition of Sexual Harassment, which is consistent with Title IX regulations, in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

### **a. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Wisconsin Equal Rights Division regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. 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.

Conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

1) Quid Pro Quo:

- a. an employee of the recipient,
- b. conditions the provision of an aid, benefit, or service of the recipient,
- c. on an individual's participation in unwelcome sexual conduct.

2) Sexual Harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the Gateway's education program or activity.

3) Sexual assault, defined as:

Sex Offenses, Forcible:

- Any sexual act directed against another person
- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.

a) Forcible Rape:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

b) Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

c) Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

d) Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sex Offenses, Non-forcible:

- a. Incest:
  - Non-forcible sexual intercourse,
  - between persons who are related to each other,
  - within the degrees wherein marriage is prohibited by Wisconsin law.
- b. Statutory Rape:
  - Non-forcible sexual intercourse,
  - with a person who is under the statutory age of consent of 18.

4) Dating Violence, defined as:

- violence,
- on the basis of sex,
- committed by a person,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
  - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - iii. Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic Violence, defined as:

- violence,
- on the basis of sex,
- committed by a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Wisconsin, or
- by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Wisconsin.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

- engaging in a course of conduct,

- on the basis of sex,
- directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

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, 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.

Gateway reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

## 15. Legal Definitions

Domestic violence is defined under Wisconsin statute 968.075 (1)(a) as any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.

3. A violation of s. 940.225 (1), (2) or (3) [sexual assault statute]

4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

Wisconsin does not have a separate legal definition of dating violence.

Wisconsin statute 940.32(1)(1) defines stalking as a course of conduct, which is a series of two or more acts carried out over time, however short or long, that show a continuity of purpose, including any of the following:

1. Maintaining a visual or physical proximity to the victim.
2. Approaching or confronting the victim.
3. Appearing at the victim's workplace or contacting the victim's employer or coworkers.
4. Appearing at the victim's home or contacting the victim's neighbors.
5. Entering property owned, leased, or occupied by the victim.
6. Contacting the victim by telephone or causing the victim's telephone or any other person's telephone to ring repeatedly or continuously, regardless of whether a conversation ensues.
- 6m. Photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the victim. This subdivision applies regardless of where the act occurs.
7. Sending material by any means to the victim or, for the purpose of obtaining information about, disseminating information about, or communicating with the victim, to a member of the victim's family or household or an employer, coworker, or friend of the victim.
8. Placing an object on or delivering an object to property owned, leased, or occupied by the victim.
9. Delivering an object to a member of the victim's family or household or an employer, coworker, or friend of the victim or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the victim.
10. Causing a person to engage in any of the acts described in subds. 1. to 9.

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 940.225, 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:

- (1) First degree sexual assault. Whoever does any of the following is guilty of a Class B felony:
  - (a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) Second degree sexual assault. Whoever does any of the following is guilty of a Class C felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(h) Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

(i) Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agent's supervision of the individual. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

(j) Is a licensee, employee, or nonclient resident of an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c), and has sexual contact or sexual intercourse with a client of the entity.

(3) Third degree sexual assault.

(a) Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony.

(b) Whoever has sexual contact in the manner described in sub. (5) (b) 2. or 3. with a person without the consent of that person is guilty of a Class G felony.

(3m) Fourth degree sexual assault. Except as provided in sub. (3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

The cities of Racine, Elkhorn, Kenosha, and Burlington; the villages of Sturtevant and Pleasant Prairie; and the counties of Racine, Kenosha, and Walworth do not have local ordinances relating to dating violence, domestic violence, sexual assault, or stalking.

## 16. 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>

## 17. 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.

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.

## 18. Force and Consent

As used in the offenses above, the following definitions and understandings apply:

- a. **Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g. "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent. 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.

- b. **Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, 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.

### Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

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. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease.

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 intimate

relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Gateway to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Gateway’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

- c. Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when 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).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs

## 19. Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which are covered by Title IX, Gateway additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- a. Sexual Exploitation**, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy.

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

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)

- Invasion of sexual privacy.
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
  - Prostituting another person
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Creation, possession, or dissemination of child pornography
- b. Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- c. Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- d. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- e. Harassment: Unwelcome protected class (race, national origin, etc.) verbal, physical, or online conduct that creates a hostile environment. A hostile environment is created when the harassment is severe and/or pervasive, and objectively offensive, 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.
- f. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Gateway community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- g. Bullying, defined as:
- Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
  - That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other Gateway policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a

discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

## **20. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and particularly time-sensitive. Gateway will inform the Complainant of the importance of preserving evidence by taking the following actions:

1. Seek forensic medical assistance at the [specify] hospital, ideally within 120 hours of the incident (sooner is better)
2. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container [available from ...].
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence. During the initial meeting between the Complainant and the Director of Compliance/Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

## **21. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Director of Compliance/Title IX Coordinator and will be promptly investigated. Gateway will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Gateway and any member of Gateway's community are prohibited from taking or attempting materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Filing a complaint could be considered retaliatory when the charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, Recipient vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of

sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding or equity resolution process under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **22. Remedial Action**

Upon notice of alleged discrimination, harassment, sexual misconduct, or retaliation, Gateway will provide written notification to the parties and 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. Requests for accommodations can be made to the Office for Equal Opportunity and Civil Rights.

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.

## **23. Bystander Intervention**

Safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of harm, dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes: a.) recognizing situations of potential harm; b.) understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking actions to intervene.

The most basic and best action an active bystander can take is to call Security or local law enforcement at 911.

Additional ways to be a prosocial (active) bystander, include:

- Being vigilant by watching out for your friends and fellow students or employees
- If you see someone who is too intoxicated to consent, enlist their friends to help them leave safely
- Intervening and asking if a person needs help (e.g., "Do you need a ride?" or "Do you want me to call Security or the police?")
- Confronting people who seclude, hit on, and try to make out with, or have sex with people who may be incapacitated.
- Speaking up when someone discusses plans to take sexual advantage of another person.
- Believing someone who discloses sexual assault, abusive behavior, or experience with stalking.

- Encouraging victims to self-report;
- Refer people to on- or off- campus resources listed in this document for support in health, counseling, or with legal assistance.

## **23. 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. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared. Employees who are confidential and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client. Other resources exist to report crimes and policy violations and these resources will act when an incident is reported to them. If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will promptly pass reports to the Director of Compliance/Title IX Coordinator (and/or law enforcement, if desired by the Complainant), who 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. 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

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.

## **25. 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.

## **26. Parental Notification**

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or student conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations.

When a student is non-dependent, the College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

## **27. False Allegations and Information**

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 that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Recipient policy.

## **APPENDIX A: POLICY EXAMPLES**

Some examples of possible sexual harassment include:

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask the student to stop, but the student does not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the

class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.

- An ex-partner widely spreads false stories about an individual's sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo at the bar. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

#### Examples of Stalking

- Students A and B were friends with benefits. Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if they had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.
- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at

her, questions her religious convictions, and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would have never done it 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.

- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.
- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

#### Examples of Retaliation:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the faculty member's tendency to “ruffle feathers.”
- A student from Organization A participates in a sexual misconduct investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

Updated August 14, 2020 to reflect the major revisions to comply with new Title IX regulations.

Reaffirmed &/or Updated: 8-20-19 (updated privacy information in bullet #3, added VAWA related crimes under legal definitions as well as a statement that such crimes are prohibited by the college, added support services under bullet 23, updated process for employee accommodation requests, added prosocial bystander information)

7-17-19: Updated (Section 2 clarifications regarding office structure, policy on affirmative action was created, free speech elements were clarified throughout; titles updated).

Adopted: August 20, 2018

March 22, 2011 (Clarified EEO Officer and AA Officer positions & eliminated evaluation form which is not used.)

Supersedes: June 29, 2015, October 12, 2009; August 24, 2005, November 2002

