



Mandatory Reporters: A Policy for Faculty, Trustees and Professional Staff

This document is intended to outline the College’s policy regarding mandated reporting of concerning behaviors, discrimination, harassment and crimes by employees. It explains briefly the meaning and purpose of mandatory reporters, outlines the legal context, and articulates a straightforward set of guidelines for all employees to follow.

Mandatory Reporters: What and Why?

There are four federal laws that establish responsibilities for employees of colleges to report certain types of crimes and incidents, especially sexual misconduct---the Clery Act in tandem with the Violence Against Women Reauthorization Act of 2013 (VAWA), Title VII and Title IX. Each of these areas of federal law has a different purpose, but generally the laws are intended to protect members of the campus community, visitors and guests from criminal and discriminatory behavior. The responsibilities established by these laws give rise to the term “mandatory reporter.” Reporting of concerning and disruptive behaviors is not legally mandated, but is a policy mandate to assist the BIT in early identification and detection of at-risk situations. Additionally, state law imposes mandates with respect to the reporting of child abuse and sexual abuse as follows...

The Legal Context

The Clery Act in tandem with VAWA creates a duty for institutions to report crimes in 15 different categories and has the broadest scope. It is the College that has the duty to report these crimes and failure to do so can result in substantial fines being imposed on the institution by the Department of Education. Guided by the language of the Clery Act and subsequent amendments, the College is required to define which employees – called Campus Security Authorities – must report crime information they receive.

The language of the Act would allow the College to exclude some faculty some of the time and many professional staff from the obligation to report. Such an approach, however, risks creating confusion for faculty and staff, takes a minimalist approach to the ethical obligation to inform our community about serious crimes, and makes the institution more vulnerable to enforcement action.

Title VII focuses on sexual harassment in the workplace and failure to take appropriate action can lead to financial liability for the College. Under Title VII, the law creates a duty to report for employees who supervise other employees, including students being paid by the College. As with the Clery Act/VAWA, this language means that some faculty and staff would be expected to report while others might be exempted. Once again, however, this selective approach may create confusion and risk; and it fails to ask all of us to share the responsibility to create a work place free of sexual harassment.

Title IX focuses on the adverse consequences faced by victims of gender discrimination and sexual harassment and creates obligations for the College to investigate and to provide a “prompt and effective remedy.” Title IX obligates the College to provide a safe environment that does not interfere with the victim’s right to pursue an education or employment opportunities, benefits or privileges. The

College incurs this obligation when a victim has given notice to a “responsible employee,” or when the College, in the exercise of reasonable care, should have known, about the assault or harassment. As with the other laws, the definition of “responsible employee” under Title IX would allow the College to treat only some faculty and staff as mandated reporters but with the same possibility of confusion and risk of institutional exposure.

College Policy

1. Confidentiality and Reporting of Offenses Under This Policy

All College employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment 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, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials – 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 for reporting parties 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 the College:

a. Confidential Reporting

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

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- [On-campus Victim Advocates]
- [On-campus members of the clergy/chaplains working within the scope of their licensure or ordination]
- [Athletic trainers] (if licensed, privileged under state statute and/or working under the supervision of a health professional)
- Off-campus (non-employees):
 - Licensed professional counselors
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains

All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors [and/or the Employee Assistance Program] are available to help free of charge and can be seen on an emergency basis during normal business hours. College employees listed above will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

b. Formal Reporting Options

All College employees have a duty to report, unless they fall under the “Confidential Reporting” section above. 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 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 the College 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: [Office for Institutional Equity, Division of Student Affairs, Integrity and Compliance Office, College Police, and the Threat Assessment 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 reporting form posted at www.College/ERPAllegationForm, or the reporting hotline at ###-###-####. Note that these anonymous reports may prompt a need for the institution to investigate.]

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of College policy and can be subject to disciplinary action for failure to comply.

2. Federal Timely Warning Obligations

Parties reporting sexual misconduct should be aware that under the Clery Act, College administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a victim’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.

Mandatory Reporting Under the Clery Act/VAWA, Title VII and Title IX: Guidelines for Employees of [] College

1. The College has defined all employees, both faculty and professional staff, as mandatory reporters, except those designated as “confidential”.
2. When an employee becomes aware of an alleged act of sexual harassment, discrimination or assault, the employee must promptly contact the Title IX Coordinator [and/or...]. The employee should use the Sexual Assault Reporting Form, which can be found on the website at []. Alternatively, the employee may call the Title IX Coordinator and then follow-up by filing the form.
3. If the reported conduct also constitutes a possible crime, the Title IX Coordinator will promptly inform the Department of Public Safety about the report, though may withhold identifiable information at their discretion.
4. When an employee thinks that a student may be about to report an act of sexual harassment, discrimination or assault, the employee should, if at all possible, tell the student that the College will maintain the privacy of the information, but the employee cannot maintain complete confidentiality and, is required to report the act and may be required to reveal the names of the parties involved. If the student wishes to proceed, the employee should inform the student of the implications of sharing the names of the parties involved, which puts the College on notice.
 - a. Rather than speaking to the student about confidential information, the employee should offer to refer or accompany the student to Counseling Services or Health Services during the hours that those offices are open: Monday-Friday, 8 a.m. to 5 p.m.
 - b. The student can be referred to the Sexual Assault Response Team/hotline at any time of the day or week, including daily 5 p.m. to 8 a.m. and weekends. ###-###-####
5. The Sexual Assault Response Team is also available to provide guidance on how to handle a situation to faculty and professional staff at any time.
6. Under the Clery Act & VAWA, College employees are mandatory reporters for a broader array of serious crimes, including the following:
 - a. Criminal Homicide
 - i. Murder & Non-Negligent Manslaughter--The willful (non-negligent) killing of one human being by another.
 - ii. Negligent Manslaughter--The killing of another person through gross negligence.
 - b. Sex Offenses: Any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent.
 - i. Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim.
 - ii. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - iii. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - iv. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.
 - c. Domestic Violence: A felony or misdemeanor crime of violence committed:

- i. By a current or former spouse or intimate partner of the victim;
 - ii. By a person with whom the victim shares a child in common;
 - iii. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - iv. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - or
 - v. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- d. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- e. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - i. Fear for the person's safety or the safety of others; or
 - ii. Suffer substantial emotional distress.
- f. Robbery: The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.
- g. Aggravated Assault: An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)
- h. Burglary: The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.
- i. Motor Vehicle Theft: The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned, including joyriding.)
- j. Arson: Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.
- k. Arrests for Weapon Law Violations: The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned.
- l. Arrests for Drug Abuse Violations: Violations of State and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (Demerol, methadones); and dangerous nonnarcotic drugs (barbiturates, Benzedrine).
- m. Arrests for Liquor Law Violations: The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor;

drinking on a train or public conveyance; and all attempts to commit any of the aforementioned. (Drunkenness & driving under the influence are not included in this definition.)

- n. Disciplinary Referrals for Weapon Law Violations
- o. Disciplinary Referrals for Drug Abuse Violations
- p. Disciplinary Referrals for Liquor Law Violations
- q. Hate Crimes: Crimes motivated by the victim's actual or perceived: race, gender, gender identity, religion, sexual orientation, ethnicity, national origin and disability.