

## **D'YOUVILLE**

### General Conduct Expectations

D'Youville College expects its students to obey all applicable federal, state, and local laws, to behave in moral, ethical, professional, civil, and courteous ways, and to observe the specific policies, procedures, regulations, rules, and standards that are declared by D'Youville College for conducting its own affairs.

Schools and/or departments within the College may insert additional policies, regulations, rules in keeping with their professional standards, within their own student handbooks. It is expected that students within these schools and/or departments will abide by these additional policies, regulations and rules as set forth in their school/departmental handbook.

Listed below are some of the basic rules governing a person's behavior on campus, non-campus property used by the college and at functions sponsored by the college or any group affiliated with the college. Violation(s) of these rules, or other conduct which reflects unfavorably on the student or the college, may result in disciplinary action up to and including dismissal from the college. The following is PROHIBITED:

1. Violence, including assault, sexual assault/misconduct or the threat of violence, against any person.
2. Intimidation or harassment which has the intent or effect of preventing a person from performing his/her legitimate role at D'Youville College, to include, but not limited to, bullying, cyber-bullying, and harassment.
3. The use, possession, sale, or purchase of any type of unlawful drug. Possession, consumption, or sale of drugs is a serious offense which is subject to severe penalties. Additional information related to federal penalties at the US Drug Enforcement Administration can be found at: <http://www.justice.gov/dea/index.htm> and information on services rendered through the New York State Office of Alcoholism and Substance Abuse Services (OASAS) website: <http://www.oasas.state.ny.us/index.cfm>
4. As a matter of policy, the College will cooperate fully with all law enforcement agencies in the investigation and prosecution of substance abuse and drug trafficking cases. Violations of these regulations will cause the student to be subject to criminal prosecution, disciplinary action, or both. Distribution, sale, or use of drugs will ordinarily result in immediate disciplinary action by college officials. Prohibited drugs are defined as including, but not limited to:
  - marijuana
  - cocaine/crack
  - LSD
  - D.M.T.
  - barbiturates
  - mescaline
  - opiates
  - amphetamine
  - psilocybin
  - tranquilizers
  - rohypnol (the "date rape" drug) and similar substances and all other drugs which are either outlawed outright or illegal when not prescribed by a physician (a more extensive list can be found at the USDEA website link above)
5. While on campus or participating in D'Youville College activities, possession or use of explosives, firearms, fireworks, knives, incendiaries, or other dangerous weapons including gas or air guns.
6. Tampering with fire alarms and/or other fire safety equipment or otherwise hindering the proper function of the college's fire and/or safety procedures. No fires may be set by students for any reason.
7. Abusive or disruptive behavior on campus or at any college activity or event (on or off campus), the effect of which might bring discredit to D'Youville College.
8. Disregard of the rights of other members of the campus community and/or their guests.
9. Failure to follow the directive of an official of the college or his/her representative.
10. Giving false information to any college official or office.
11. Gambling in any form, except legal raffles, lotteries or casino gambling conducted by recognized student organizations and approved by the college.
12. Destruction, damage, or defacement of college property or that of students, vendors or guests of the college.
13. The use, possession, sale or purchase of alcoholic beverages by students under the legal age of 21.
14. Violation of any other college policies, procedures and/or regulations.

### **SEXUAL MISCONDUCT**

Sexual misconduct/assault/harassment is illegal under both federal and state law and is also a form of sex discrimination which is also illegal under federal laws Title VII (employees) and Title IX (students) and the New York State Human Rights

Law. The Title IX coordinator is Debbie Owens, who may be reached at [owensde@dyc.edu](mailto:owensde@dyc.edu) (716.829.8198, College Center room 111). Pursuant to the aforementioned laws, in keeping with the Clery Act, the Violence Against Women Reauthorization Act of 2013, and other applicable law and in keeping with our institutional values the college has established a sexual misconduct policy. The policy, in its entirety may be found at: <http://www.dyc.edu/campus-life/support-services/safety-and-security.aspx>

### **Affirmative Consent**

Consent to sexual activity must be affirmative consent. **Affirmative consent** is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

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

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

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

### **Student Bill of Rights**

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

### **Definitions**

Sexual misconduct is a term used to encompass unwanted or unwelcome conduct of a sexual nature that is committed without valid consent, including sexual assault, stalking, dating violence and domestic violence. Sexual misconduct may occur between people of the same sex or between people of different sexes. Sexual misconduct can include both intentional conduct and conduct which results in negative effects, even if those negative effects were unintended.

Domestic Violence: includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

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 and where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship The type of relationship The frequency of interaction between the persons involved in the relationship

Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others; or suffer substantial emotional distress

Sexual Assault: offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation; sexual assault is any type of sexual contact or behavior that occurs without the explicit consent of the recipient; falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling and attempted rape

### **Confidentiality**

Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials in a manner consistent with state and federal law. Licensed mental health counselors, medical providers and pastoral counselors are examples of employees who may offer confidentiality.

### **Privacy**

Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but shall not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with federal, state and local laws, including informing appropriate institution officials.

### **Support Persons**

The Impacted Party and Respondent may have a support person accompany him or her through the process. A support person may not speak for the Impacted Party or Respondent, present evidence or question witnesses. The Impacted Party and Respondent are responsible for presenting evidence on their own behalf. Support persons may speak privately to their advisee during the investigation process. Either party may request a recess from an investigatory meeting to consult with their support person which will be granted at the discretion of the Title IX Coordinator or his/her designee.

### **D'Youville Sanctions**

College officials will work in close cooperation with the impacted party(s) and local law enforcement agencies to address any violations of the college's sexual misconduct policy. The college will change an impacted party's academic and living situations after an alleged sex offense if these changes are requested by the impacted party.

If, after an investigation, the respondent is found responsible for sexual misconduct appropriate sanctions will be imposed to address the misconduct, prevent its reoccurrence and remedy its effects while supporting the college's educational mission and Title IX obligations. Sanctions may also serve to promote safety or deter students or employees from similar future behavior.

Sanctions include:

- Termination from the college or college employment
- Expulsion
- Suspension
- Reprimand/warning
- Mandatory leave of absence
- Probation
- Counseling
- Restitution
- Community Service
- Housing reassignment
- Removal from student housing or otherwise restricting access to college facilities or activities
- Permanent Transcript Notation: For Code of Conduct violations and crimes of violence, including, but not limited to, hazing, murder, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, and arson, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), the University shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." The notation will be applied along with the date it was imposed. For the respondent who withdraws from the college while such conduct charges are pending and declines to complete the disciplinary process, institutions may make a notation on the transcript of such students that they "withdrew with conduct charges pending." The College may also choose to adjudicate such cases in a student's absence. A suspended student may petition removal of a transcript notation only after the student's suspension term has ended. A student transcript may be subject to a "disciplinary sanction" notation for other serious violations.

The college will, upon written request, disclose to the impacted party the results of any disciplinary proceeding conducted by the college against the respondent. If the impacted party is deceased as a result of such crime or offense, the next of kin of such individual shall be treated as the impacted party for the purposes of this statement.

### **Other Unlawful Harassment**

Unlawful harassment is defined as verbal or physical conduct which denigrates or shows hostility or aversion to an individual because of his/her race, color, gender, sexual orientation, age, religion, national origin, marital status, veteran status, disability, genetic predisposition, carrier status or status as a victim of domestic violence, or that of his/her relatives, friends, or associates, and which:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working or educational environment.
2. Has the purpose or effect of unreasonably interfering with an individual's performance.
3. Otherwise adversely affects an individual's educational or employment opportunities.

Any harassment of D'Youville College employees, students or applicants in violation of these rules is absolutely prohibited and will not be tolerated. Interim protective measures may be made while a complaint is investigated. Both complainant and alleged offender shall be treated equitably throughout the investigation.

### **ALCOHOL/DRUG POLICIES**

#### **Alcohol**

D'Youville College complies with federal, state and local laws regarding the possession, use and sale of alcoholic beverages and controlled substances. The college's policies pertain to students and employees and include the following prohibited actions:

- Distribution, possession or use of any illegal drug or controlled substance or drug paraphernalia.
- The misuse and/or sharing of prescription drugs and other products being used other than as intended.
- Providing alcoholic beverages to individuals under the age of 21.
- Possession or consumption of alcoholic beverages by individuals under the age of 21.
- Illegal possession of an open container of an alcoholic beverage.
- Unauthorized consumption of alcoholic beverages in public space.
- Public intoxication.

#### **Drugs**

There are several Federal and New York State laws prohibiting the use and/or sale of controlled and/or synthetic substances. Examples include and are not limited to, marijuana, heroin, cocaine, PCP, LSD, methamphetamine, fentanyl, bath salts, medphedrone, anabolic steroids and embutane. A conviction for violation of federal and state laws can result in a substantial fine and/or a lengthy imprisonment.

Members of the college community who violate this policy will be subject to discipline. Taking into account the circumstances of each case, sanctions for students and employees may range from warnings to termination. At the direction of the college, as an alternative to, or in addition to any disciplinary action taken, students or employees may be required to participate in and to satisfactorily complete an appropriate counseling or rehabilitation program. Records of such discipline may be maintained in a student's record or an employee's personnel file. Enforcement of these sanctions will be through the college's existing disciplinary procedures for students and employees of the college as appropriate.

#### **Amnesty for Alcohol and/or Drug Use Violations**

The health and safety of every student at the college is of utmost importance. The college recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence (including but not limited to domestic violence, dating violence, stalking, or sexual assault) occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The college strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to college officials. A student who is a bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to the college's officials or law enforcement will not be subject to disciplinary action by the college for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## **BIAS RELATED CRIMES/HATE CRIMES**

In compliance with the New York State Education Law, section 6436, Bias Related Crime Act of 2000, the following information is designed to outline to the D'Youville College Community the applicable laws on bias related crimes and the penalties for the commission of bias related crimes, the procedures for reporting crimes and the nature of and common circumstances relating to bias related crimes.

### **Applicable Laws, Ordinances and Regulations on Bias Related Crimes: New York State Penal Law, Article 485**

#### **Hate Crimes: 485.00** Legislative findings.

"...the legislature finds and determines as follows: criminal acts involving violence, intimidation and destruction of property based upon bias and prejudice have become more prevalent in New York State in recent years. The intolerable truth is that in these crimes, commonly and justly referred to as hate crimes, victims are intentionally selected, in whole or in part because of their race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation...our laws must be strengthened to provide clear recognition of the gravity of hate crimes and the compelling importance of preventing their recurrence."

#### **New York State Penal Law; 485.05, Hate Crimes:**

A person commits a hate crime when he/she commits a specified offense and either intentionally selects the person against whom the offense is committed or intentionally commits the act or acts constituting the offense in whole, or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person regardless of whether the belief or perception is correct

### **Title IX Statement: Nondiscrimination & Equal Opportunity Policy**

D'Youville College is committed to compliance with its obligations under Title IX of the Educational Amendments of 1972, Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Executive Orders, the New York State Human Rights Law and other applicable anti-discrimination laws.

It is the policy of the college to provide all students, applicants and employees equal access to all programs, facilities and employment opportunities without regard to race, color, sex, sexual orientation, age, religion, national origin, marital status, veteran status, disability, genetic predispositions, carrier status, or status as a victim of domestic violence. Furthermore, the college will not discriminate against any individual with respect to the application of college policies, terms and conditions of employment, or the criteria for the successful completion of any course or program on the basis of race, color, sex, sexual orientation, gender identity, age, religion, national origin, marital status, veteran status, disability, genetic predisposition, carrier status, or status as a victim of domestic violence. To the extent required by law, the college will also take affirmative action to ensure that qualified women, minorities, veterans, and persons with disabilities are provided full employment opportunities. This includes administrators, faculty, staff, students, contractors and vendors.

Any questions concerning this policy and any complaints of discrimination should be communicated to the appropriate Title IX Coordinator at: [owensde@dyc.edu](mailto:owensde@dyc.edu) 716.829.8198.

A student also has the right to file a complaint of discrimination with the Office for Civil Rights (OCR) of the U.S. Department of Education. Complaints are to be filed within 180 calendar days of the alleged act of discrimination and may be made to the regional office of OCR:

New York Office  
Office for Civil Rights  
U.S. Department of Education  
32 Old Slip, 26<sup>th</sup> Floor  
New York, NY 10005-2500

Telephone: 646.428.3900  
FAX: 646.428.3843; TDD: 877.521.2172  
Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

**For a complete overview of all college policies please go to:**

**<http://www.dyc.edu/campus-life/support-services/safety-and-security.aspx>**

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