

ST. FRANCIS COLLEGE
POLICY AND PROCEDURES FOR REPORTS OF STUDENT SEXUAL
MISCONDUCT (amended September 8, 2016)

PART 1: RESOURCES AND DEFINITIONS

I. INTRODUCTION

A. Notice of Nondiscrimination and Policy on Statement on Sexual Misconduct

The health, safety, and well-being of all members of the St. Francis College (“College”) community are the College’s primary concerns. In furtherance of the Franciscan Spirit, and in accordance with Title IX of the Education Amendments of 1972 (“Title IX”), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act/Campus Sexual Violence Act (“Campus SaVE Act”), and Article 129-B of the New York State Education Law (“Article 129-B”), the College is committed to maintaining a community free from all forms of sex discrimination, including sexual misconduct. In accordance with Title IX, the College does not discriminate on the basis of sex in its education programs and activities. Under Title IX, discrimination on the basis of sex includes sexual harassment and sexual violence.

Sexual misconduct includes a broad range of behaviors that will not be tolerated in the College’s education programs or activities. The College strictly prohibits sexual harassment and sexual violence, including the offenses of sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking. Sexual misconduct can occur between strangers, acquaintances, or people who know each other well, including those who are involved in an intimate or sexual relationship, and can be committed by anyone regardless of sex, gender, or gender identity. The College does not tolerate any form of sexual misconduct.

Questions regarding Title IX and the Campus SaVE Act and/or Article 129-B may be referred to the College’s Title IX Coordinator or to the U.S. Department of Education’s Office for Civil Rights, 400 Maryland Avenue, SW Washington, DC 20202-1100 or call the OCR main numbers (800) 421-3481 FREE, TDD or (800) 877-8339 FRE or email the OCR’s New York office ocr.newyork@ed.gov or by telephone at 646-428-3800.

B. The Title IX Coordinator

The College’s designated Title IX Coordinator is:

Linda Werbel Dashefsky
Vice President of Government and Community Relations
180 Remsen Street
Room 7304
Brooklyn, NY 11201

Phone: (718) 489-5370 or, if on campus, extension 5370

Email: lwerbel@sfc.edu

The Title IX Coordinator's responsibilities include, but are not limited to, overseeing the College's response to complaints of sexual misconduct, coordinating investigations into allegations of sexual misconduct, and identifying and addressing any patterns or systemic problems of sexual misconduct that arise during the investigation of a complaint of sexual misconduct.

C. Scope of Policy

This policy governs sexual misconduct involving College students, and applies to such students regardless of sex, race, religion, national origin, disability, part-time/full-time status, marital status, creed, genetic disposition, or carrier status, sexual orientation, gender identity, or other protected status. Complaints of discrimination or harassment on the basis of sex that do not involve sexual misconduct are governed by the College's Non-Discrimination and Anti-Harassment Policy contained in The Cord, the College's Student Handbook.

If the respondent is a College employee or other person doing business with the College, the investigation and disciplinary processes described in the College's Policy and Procedures for Reports of Employee Sexual Misconduct will apply. For information about this policy, please contact the Title IX Coordinator.

This Policy and Procedures for Reports of Student Sexual Misconduct applies to any allegation of sexual misconduct that takes place on College property, including student-occupied housing, or any other property on which a College program or activity takes place. This policy also covers conduct that takes place off of College property, or has a reasonable connection to the College.

This policy:

- i. sets forth the Students' Bill of Rights;
- ii. describes programs implemented by the College to educate and increase awareness among the College community regarding sexual misconduct;
- iii. sets forth available resources and reporting options for victims of sexual misconduct;
- iv. defines prohibited conduct;
- v. describes the College's procedures for responding to complaints of sexual misconduct, including the investigation, hearing, and sanctioning process.

STUDENTS' BILL OF RIGHTS

All Students have the right to:

1. Make a report to local law enforcement and/or state police;
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 investigation and hearing process and/or criminal justice process free from pressure from the College;
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 College courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the complainant 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 with as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the College, any student, the respondent, and or their friends, family and acquaintances within the jurisdiction of the College;
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, 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 College.

II. PREVENTION AND AWARENESS EDUCATION PROGRAMS

Creating a safe and respectful environment is the responsibility of all members of the College's Franciscan community. To promote and maintain this environment, the College engages in comprehensive educational programming to prevent sexual misconduct, (including sexual harassment, domestic violence, dating violence, sexual assault, stalking, and retaliation). The College provides primary prevention and awareness programs for all incoming students and employees, and ongoing prevention and awareness campaigns for all students and employees.

The College educates the student community about sexual misconduct through its mandatory freshman orientation program, certain required courses, and ongoing programming initiatives throughout the students' time at St. Francis College. Such programming and courses provide students with information about safety and security procedures, the College's procedures for responding to reports of sexual misconduct, options for safe and positive bystander intervention, and information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks. For additional information about the College's sexual misconduct prevention and awareness programming, please contact the College's Title IX Coordinator.

III. RESOURCES AND REPORTING OPTIONS FOR VICTIMS OF SEXUAL MISCONDUCT

A. Immediate Medical Assistance and Counseling,

If you or someone you know is or may be the victim of any form of sexual misconduct,

the College strongly urges you to seek immediate assistance. Assistance is available 24 hours a day, 7 days a week, from:

- Local Police (84th Precinct) and Emergency Assistance - Call 911
- Campus Security - (718) 489-5333 or, if on campus, extension 5333
- Safe Horizon Rape and Sexual Assault Hotline - (866) 689-HELP (4357)
- Safe Horizon Domestic Violence Hotline - (800) 621-HOPE (4673)
- Beth Israel Hospital Emergency Room, First Avenue and 16th Street Manhattan
- Maimonides Medical Center Emergency Rm - 4802 10th Ave., Brooklyn, NY 11219 (718) 283-7222
- NYPD Sex Crimes Report Hotline - (212) 267-7273
- Brooklyn District Attorney's Office Special Victims Bureau- (718) 250-3170
- New York City Gay and Lesbian Anti-Violence Project – (212) 714-1141
- St. Luke's Hospital Crime Victim Treatment Center – (212) 523-9058
- Center Against Domestic Violence - (718) 254-9134
- New York State Office of Victim Services Toll Free Number – (800) 247-8035

B. Sexual Assault Forensic Examiners

Victims of sexual assault should receive immediate medical attention. Sexual Assault Forensic Examiners (SAFE) are considered the best and most appropriate medical professionals to conduct such an examination.

- The College has an MOU with Beth Israel Hospital (Manhattan)
- St. Luke's Hospital (Manhattan)
- Roosevelt Hospital (Manhattan)

- Bellevue Hospital (Manhattan)
- Mount Sinai (Manhattan)
- New York Presbyterian – Weill Cornell (Manhattan)
- Woodhull Hospital (Brooklyn)
- Coney Island (Brooklyn)
- King's County Hospital (Brooklyn)

C. College Counseling Resources

Regardless of whether or not an official complaint of sexual misconduct is made, various counseling options are available from the College's Counseling Center.

Student Health Services
180 Remsen Street, Room 2310
Brooklyn, NY 11201
Phone: (718) 489 - 5366
Monday – Friday 9AM – 5PM

Francesca Cerchione, LMSW
The SFC Counseling Center

180 Remsen Street, Room 2310
Brooklyn, NY 11201
Phone: (718) 489 – 5335 or, if on campus, extension 5335

Fr. Brian Jordan, OFM McArdle
Student Lounge
180 Remsen Street, Room 1304
Brooklyn, NY 11201
Phone: (718) 489-5493 or, if on campus, extension 5493

IV. Reporting of Incidents of Sexual Misconduct

A. Law Enforcement Notification

If you are the victim of sexual misconduct, the College strongly encourages you to promptly report the incident to the police. Timing is a critical factor in collecting and preserving evidence that may assist in proving that the alleged misconduct occurred, or may be helpful in obtaining a protection or restraining order from the police. College representatives are available to assist you in notifying law enforcement of an incident of sexual misconduct and in contacting law enforcement or legal service organizations to learn about these remedies. You may also decline to notify law enforcement.

B. College Notification

The College is committed to providing a prompt, fair, and impartial investigation and resolution to all allegations of sexual misconduct. Therefore, the College also encourages the reporting of sexual misconduct to a College representative in a timely manner. Incidents of sexual misconduct can be reported to the College's Title IX Coordinator or the Dean of Students.

Dean of Students
Dr. Jose Rodriguez
180 Remsen Street Room 3307
Brooklyn, NY 11201
Phone: (718) 489-3515
Cell Phone: (347) 633-1374
Email: JRodriguez2300@sfc.edu

Linda Werbel Dashefsky
Title IX Coordinator
180 Remsen Street Room 7304
Brooklyn, NY 11201
Phone: (718) 489-5370
Email: LWerbel@sfc.edu

Any incident of sexual misconduct reported to another College employee, with the exception of those employees designated as confidential, as set forth herein, must be reported by the employee to the Title IX Coordinator.

When the College receives a report from a student that he or she has been the victim of sexual misconduct including dating violence, domestic violence, sexual assault or stalking, whether the offense occurred on or off campus, the College will provide the reporting individual with a written explanation of his or her rights and options regarding existing counseling, health, mental health, victim advocacy, legal assistance, student financial aid and other services available both within the College and in the community. If the reporting individual is not the complainant, and the identity of the complainant is made known to the College, the College will provide written notification to the complainant.

A reporting individual will have emergency access to the Title IX Coordinator, or his or her designee, who is trained in interviewing victims of sexual misconduct. The Title IX Coordinator, or other designated College official will be available to provide the reporting individual with information regarding his or her options to proceed, and other important information about his or her rights under College policy and the law.

At the first instance of disclosure by a reporting individual to a representative, the following information shall be presented to the reporting individual: "You have the right to make a report to Campus Safety & Security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution."

C. Reports of Sexual Misconduct from Anonymous Sources

If the College receives a report of alleged sexual misconduct by someone other than the complainant (e.g., friend or roommate) or from an anonymous source, the College's Title IX Coordinator will promptly notify the complainant of the report, and inform the complainant of the available resources and assistance. The College will respond to the report of sexual misconduct as if the complainant had made the initial report and an investigation will commence.

D. Time for Reporting.

There is no time limit for reporting sexual misconduct. Nevertheless, any member of the College community who believes that he or she has been a victim of sexual misconduct is encouraged to report the alleged sexual misconduct immediately in order to maximize the College's ability to obtain evidence and conduct a thorough, impartial, and reliable investigation.

Under no circumstances will the College allow an impending graduation to compromise its resolution of a sexual misconduct complaint. The conferral of a degree may, therefore, be withheld, if necessary, until proper resolution of any sexual

misconduct charges, provided that a hearing opportunity will be scheduled for the earliest practicable date that can accommodate the parties and their witnesses.

V. Confidentiality

The College understands that, for many victims of sexual misconduct, confidentiality is a primary concern. However, certain College employees are required by state and federal laws to share information from a report of sexual misconduct with the College or governmental agencies. Even College employees who cannot guarantee confidentiality will maintain the privacy of the reporting individual to the greatest extent possible. The information that the reporting individual provides to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. When reporting crimes for the purposes of Clergy Act compliance, the College will not release identifying information of the victim. The ability of College employees to maintain confidentiality is as follows:

A. Professional and Pastoral Counselors

Professional, licensed counselors and pastoral counselors (ordained clergy) whose official responsibilities include providing mental-health counseling to College students, including those who act in that role under the supervision of a licensed counselor, are not required to report any information about an incident of sexual misconduct to the Title IX Coordinator.. The following is a list of the College's professional and pastoral counselors:

Francesca Cerchione, LMSW
The SFC Counseling Center
180 Remsen Street, Room 2310
Brooklyn, NY 11201
Phone: (718) 489 – 5335 or, if on campus, extension 5335

Fr. Brian Jordan, OFM
McArdle Student
Lounge
180 Remsen Street, Room 1304
Brooklyn, NY 11201
Phone: (718) 489-5493 or, if on campus, extension 5493

B. Non-Professional Counselors and Advocates

Non-professional counselors and advocates may be found in the College's Student Health Services and Counseling Center. These individuals may maintain a victim's confidentiality while reporting the nature, date, time, and general location of the incident to the Title IX Coordinator.

C. Responsible Employees

A "responsible employee" is a College employee who has the authority to redress

sexual misconduct, who has a duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty. This definition encompasses virtually every College employee, including all faculty, staff and administrators, except those who are acting as pastoral and professional counselors and non-professional counselors and advocates.

A responsible employee must report all relevant details about the alleged sexual misconduct shared by the victim to the Title IX Coordinator. A responsible employee will strive to maintain privacy and information reported to the responsible employee will be shared only with those having a need to know such information in order to respond in accordance with College policy.

D. Requests for Confidentiality

The College is obligated by law to investigate all allegations of sexual misconduct regardless of whether the complainant wishes to file a complaint. Therefore, if a complainant reports an incident of sexual misconduct to a responsible employee but wishes to remain anonymous or requests that no investigation into the incident be conducted, the College will weigh that request against the College's obligation to provide a safe, nondiscriminatory environment for all members of the College community, including the complainant. If the College honors the request for confidentiality, the complainant must understand that the College's ability to effectively investigate the incident and pursue disciplinary action against the respondent may be limited. In certain circumstances, the College may not be able to honor a complainant's request for confidentiality when doing so would jeopardize the College's responsibility to provide a safe, non-discriminatory environment. The Title IX Coordinator is notified of alleged sexual misconduct.

When weighing a complainant's request for confidentiality or the need to continue to pursue the investigation, the Title IX Coordinator will consider a range of factors, including, but not limited to, the following:

- whether there have been other sexual misconduct complaints about the same respondent;
- whether the respondent has a history of arrests or records from a prior school indicating a history of violence;
- whether the incident represents an escalation in and unlawful conduct on behalf of the respondent from previously noted behavior;
- whether there is an increased risk that the respondent will commit additional acts of violence;
- whether the sexual misconduct was committed by multiple perpetrators;
- whether the complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- whether the alleged sexual misconduct was perpetrated with a weapon;
- the age of the complainant;
- whether the College has other means to obtain relevant evidence (e.g., security cameras or personal, physical evidence).

After considering these factors, the College may be compelled to investigate the alleged sexual misconduct and, if appropriate, pursue disciplinary action in a manner that may require the College to disclose the complainant's identity to the respondent. If the College determines that an investigation is required, the College will inform the complainant and take immediate action necessary to protect and assist the complainant.

If, after considering these factors, the College determines that it is able to respect the complainant's request for confidentiality, the College will nevertheless take all reasonable steps to respond to the complaint consistent with the complainant's confidentiality request, and will determine whether interim measures are appropriate or necessary. The College will also consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported sexual misconduct occurred, increasing training, education and prevention efforts, and conducting climate surveys.

VI. College Amnesty Policy

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) 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 bystander acting in good faith or reporting individual acting in good faith that discloses any incident of domestic violence, dating

be subject to the College Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the domestic violence, dating violence, stalking or sexual assault incident.

VII. Immediate Measures and Accommodations

Any individual who has been the victim of sexual misconduct may request assistance in changing academic, living, transportation, and working situations. The College will grant such accommodations, provided they are reasonable and available, regardless of whether the student chooses to report the crime to law enforcement.

Such accommodations may include providing increased security, supervision or monitoring at location or activities where the alleged misconduct occurred, moving a student's residence, adjusting a student's academic or College work schedule, and issuing a "no- contact" order. The complainant or respondent may request a review of any individual against whom a no-contact order is issued and will, upon request, receive a prompt review of the need for, and terms of, the no-contact order, including potential modification, and may submit evidence in support of his or her request. The College will conduct a prompt review in response to such request.

When the respondent is a College student and is determined to present a continuing threat to the health and safety of the College community, the respondent may be subject to interim suspension pending the outcome of the hearing resolution process, described herein. In the event the College imposes an interim suspension on the respondent, the complainant or respondent may request a review of the need for an interim suspension, including potential modification, and may submit evidence in support of his or her request. Upon such request, the College will conduct a prompt review.

Requests for accommodations in connection with incidents of sexual misconduct should be made to the College's Title IX Coordinator. The College will provide information about the student's request for accommodations only to those having a need to know such information in order to implement the accommodations. Both the complainant and the respondent may ask the College to review the need for and terms of any interim measures or accommodations that directly affects him or her and may submit evidence in support of his or her request. Upon such request, the College will conduct a prompt review.

VIII. Orders of Protection

The College may also assist an eligible complainant in acquiring an order of protection from either the Family or Criminal Court.

If an order of protection is granted, the requesting individual will have the right to receive a copy of the order of protection when the order is received by the College. The complainant will also have the opportunity to have an appropriate College employee explain the order, the consequences for violating the order, and answer any questions about the order. Additionally, if the respondent violates the order of protection, the no contact order is violated and the complainant may receive assistance from the College

in calling local law enforcement to inform them of the violation.

IX. Anti-Retaliation Policy

The College prohibits retaliation against any person who reports sexual misconduct or participates in the investigation of any allegation of sexual misconduct, including testifying as a witness. Retaliation should be reported promptly to the College's Title IX Coordinator. Reports of retaliation will be investigated in accordance with the appropriate College policy, and such conduct may result in disciplinary action independent of the sanction(s) or interim measures imposed in response to the underlying allegations of sexual misconduct.

X. Definitions within the Policy

"Bystander" means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior or conduct that is in violation of rules or policies of the College.

“Complainant” means the individual who experienced the sexual misconduct, regardless of whether such individual reports such sexual misconduct to the College or participates in the College’s conduct process for responding to complaints of sexual misconduct described herein.

“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, including but not limited to 20 U.S.C. 1092 (f) and 20 U.S.C. 1681 (a). Licensed mental health counselors, medical providers and pastoral counselors are examples of College employees who may offer confidentiality.

“Consent” must be affirmative. 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 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 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 may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated.
- Consent cannot be when it is the result of any coercion, intimidation, force, threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

“Force” The use of physical violence and/or imposing on someone physically to engage in sexual contact or intercourse. Force can also include threats, intimidation (implied threats), or coercion used to overcome resistance.

“Incapacitation” A state where a person cannot make a rational, reasonable decision because the person lacks the ability to understand his or her decision. A person can become incapacitated as a result of disability, involuntary physical constraint, sleep, or consumption of alcohol or other drugs.

“Intimidation” means implied threats or acts that reasonably cause another to fear for his/her safety or well-being.

“Privacy” may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a complainant or bystander to a crime or incident reporting individual, including appropriate College employees, above what is necessary to comply with this and other applicable laws or College policy.

“No-Contact Order” A directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party.

“Reporting Individual” Any individual who reports a violation of this policy to the College..

“Respondent” means the individual alleged to have committed acts constituting sexual misconduct.

“Retaliation” Taking any adverse action or attempting to take adverse action, including intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint of sexual misconduct or participation in an investigation or proceeding related to alleged sexual misconduct.

Definitions of Gender-Based Misconduct

“Sexual Misconduct” means a range of unwelcome behavior of a sexual nature that is committed without consent or by intimidation, coercion, threat or force. Sexual Misconduct includes, but is not limited to, sexual assault, sexual coercion, sexual exploitation, sexual harassment, dating violence, domestic violence, and stalking.

“Sexual Activity” includes any “sexual act” or “sexual contact.”

A “sexual act” means (a) contact between the penis and vulva or the penis and the anus where penetration occurs, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (c) the penetration, however slight of the anal or genital opening of another by hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (d) the intentional touching, not through the clothing of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

“Sexual contact” means the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.

“Sexual Assault” includes non-consensual sexual intercourse and non-consensual sexual contact. “Non-consensual sexual intercourse” means any form of sexual penetration or intercourse (vaginal, anal, or oral), however slight, with any object by an individual upon another individual without consent and/or by force. Intercourse means: vaginal or anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact). “Non-consensual sexual contact” means any intentional sexual touching, however slight, with any body part or object by an individual upon another individual without consent. Intentional sexual contact includes contact with the breasts, buttocks, or groin, or touching another with any of these body parts; making another person touch any of these body parts; and any intentional bodily contact in a sexual manner.

“Sexual Coercion” is the application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.

“Sexual Exploitation” means abuse or exploitation of another person’s sexuality without consent, for the perpetrators own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Sexual Exploitation includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.

“Sexual Harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic or physical conduct of a sexual nature, when: (1) submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, education or campus life activities, or used as the basis of any academic, student life or employment decision (quid pro quo); or (2) such conduct is sufficiently severe, persistent or pervasive such that it limits an individual’s ability to participate in, or benefit from, the College’s education or work programs or activities (hostile environment).

“Dating Violence” means violence or coercive behavior committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. 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. Dating violence includes, but is not limited to, sexual, physical, or psychological abuse, or the threat of such abuse.

“Domestic Violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of New York, 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 New York.

“Sexual Violence” refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to the student’s age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of

others; or (2) suffer substantial emotional distress.

For purpose of this definition:

“Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker 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.

“Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

“Reasonable person” means a person under similar circumstances and with similar identities to the victim.

“Retaliation” means taking any adverse action or attempting to take adverse action, including intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint of sexual misconduct or participation in an investigation or proceeding related to alleged sexual misconduct.

Conduct that violates the College policy may also violate New York State laws and subject the perpetrator to criminal prosecution. Sex Offenses under New York law are described in Sections 130.00 to 130.96 of the New York State penal Code, available at <http://public.leginfo.state.ny.us/menueftf.cgi?COMMONQUERY=LAWS>

PART II: PROCEDURES FOR RESPONDING TO A COMPLAINT OF SEXUAL MISCONDUCT

The College is committed to providing a prompt, fair, and impartial investigation and resolution of all allegations of sexual misconduct. Incidents of sexual misconduct should be reported to the College’s Title IX Coordinator. Any incident of sexual misconduct reported to another College responsible employee, with the exception of those

employees designated above as confidential, will be reported by the responsible employee to the Title IX Coordinator.

XI. Initial Steps

A. Intake Meeting with Complainant

Upon notice of any allegation of sexual misconduct, the Title IX Coordinator or his or her designee will schedule an individual intake meeting with the complainant. At the intake meeting, the Title IX Coordinator or his or her designee will provide the complainant with a general understanding of this policy for reports of student sexual misconduct, and identify forms of support or immediate assistance available to the complainant (e.g., referrals to appropriate law enforcement agencies; referrals for medical treatment at local hospitals and trauma centers). The Title IX Coordinator or his or her designee will also provide the complainant with a written explanation of his or her rights and options with respect to his or her report of sexual misconduct. The intake

meeting may also involve a discussion of any interim accommodations that may be appropriate concerning the complainant's academic schedule, College housing, and/or College employment arrangements. Additional information regarding interim accommodations is set forth below.

At the initial intake meeting or at a subsequent time the Title IX Coordinator or his or her designee will seek to determine how the complainant wishes to proceed, i.e., whether the complainant wishes to pursue Formal Resolution, Informal Resolution, or does not wish to pursue resolution of any kind. Regardless of how the complainant chooses to proceed, the College seeks to resolve every report of sexual misconduct within 60 calendar days of the initial report, excluding any appeal. The time frames included in

this policy may vary depending on the details of the complaint and, in some cases, the time of the academic year (e.g., during College breaks or final exams). The College may extend any time frame for good cause, provided the complainant and respondent are given a written explanation as to the reason for such extension.

If the complainant wishes to proceed with either Formal Resolution or Informal Resolution, the Title IX Coordinator will ascertain the name of the respondent, and the date, location, and nature of the alleged sexual misconduct, and, in a timely fashion, will schedule an individual intake meeting with the respondent. The College will notify the respondent that a complaint has been filed and provide the date, time, location and factual allegations concerning the alleged violation, and possible sanctions.

If the complainant wishes to proceed with Formal Resolution, the Title IX Coordinator will promptly prepare a formal letter to the Hearing Committee on Student Behavior ("Hearing Committee") notifying the Hearing Committee of the initiation of a formal investigation. The letter will provide the Hearing Committee with the names of the complainant and respondent and the date, location, and nature of the alleged sexual misconduct.

If the complainant does not wish to pursue Formal Resolution or Informal Resolution, and either requests that his or her complaint remain confidential, or refuses to

participate in the initial intake meeting with the Title IX Coordinator, the Title IX Coordinator will inform the complainant that the College's ability to respond may be limited. In such scenarios, Title IX nevertheless requires the College to evaluate the complainant's request(s) for no action in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment for the entire College community.

B. Interim Measures

In all complaints of alleged sexual misconduct, the College will undertake an appropriate inquiry and take immediate action to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any. Accordingly, at or after the intake meeting, the College may impose a "no-contact" order, which typically will include a directive that the parties refrain from

having contact with one another, directly or through proxies, whether in person or via electronic means, including social media, pending the investigation and, if applicable, the hearing.

To ensure the safety and well-being of the complainant, the Title IX Coordinator also may take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, which may include directing appropriate officials to alter the students' academic, transportation, College housing, and/or College employment arrangements, or other appropriate protections. Any student who has been the victim of sexual misconduct may request assistance in changing academic, living, transportation, and working situations after a report of sexual misconduct. The College will grant such accommodations, provided they are reasonable and available, regardless of whether or not the victim chooses to report the crime to law enforcement. When taking such steps to separate the complainant and the respondent, the College will, to the extent practicable, minimize the burden on the complainant.

Violation(s) of the Title IX Coordinator's directives and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

Effect of Criminal Proceedings

Sexual misconduct may constitute a violation of both law and College policy. The College encourages students to report alleged sexual misconduct promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Therefore, criminal investigations or reports are not determinative of whether sexual misconduct under this Policy, has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

The filing of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding. The College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the complainant and the College community. However, the College may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code.

XII. Formal Resolution Process

A. Investigation

When the complainant indicates a desire to pursue Formal Resolution, the reported allegations will be investigated promptly, thoroughly, and impartially.

The College will notify the respondent that a complaint has been filed and will include

notice of the allegations. The complainant and respondent will be given the opportunity to meet separately with the Title IX Coordinator. Additionally, the Title IX Coordinator will inform both the complainant and respondent that both parties have the right to an advisor of their choice to assist in the resolution process. During all phases of the Formal Resolution Process, the parties will be provided with advance notice of any meeting they are required or eligible to attend.

The Title IX Coordinator will collect and review evidence it deems necessary or helpful to the investigation of the alleged sexual misconduct. The Title IX Coordinator may designate a specially trained investigator or investigators to conduct the interviews and investigation. The investigation will include individual interviews with the parties involved and with individuals who may have observed the alleged conduct or may have other relevant knowledge. The investigation may also include examination of medical records, surveillance video, cell phone and other electronic records, and other evidence.

In response to the investigation, both the complainant and the respondent will be given the opportunity to submit a written statement. The written statement will be provided to the Title IX Coordinator, the opposing party, as well as members of the Hearing ,Committee.

B. Hearing Committee

Formal Resolution involves a hearing before a committee. The Committee is comprised of at least three College faculty members, all of whom receive training, at least annually, on the issues relating to sexual misconduct, including sexual harassment, dating violence, domestic violence, sexual assault, and stalking. They will also be trained regarding how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. The Hearing Committee Chair will select the Hearing Committee members who will participate in the hearing and will either serve as the presiding chair of the hearing, or will appoint the presiding chair.

C. The Hearing

After the investigation the College will provide written notice at least five business days before the hearing date to both parties stating the date, time, and place of the hearing.

A party wishing to challenge the participation of any member appointed to the Committee must notify the Hearing Committee Chair, in writing, within three business days of receipt of the notice of hearing, stating the specific reason(s) for the party's objection. The Committee Chair will determine whether the challenge has merit, and reserves discretion to make changes in the composition of the Committee at any time. A party wishing to challenge the participation of the Committee Chair must notify the Title IX Coordinator, in writing, within three business days of receipt of the notice of hearing, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit and reserves discretion to instruct the Hearing Committee to designate a new Committee Chair.

i. Pre-Hearing Submissions

In addition to the written statements submitted by the parties, the parties will provide the Title IX Coordinator with a list of witnesses they wish the Committee to call, copies of documents, and a description of any other information they propose to present at the hearing at least three business days prior to the hearing. The Title IX Coordinator will determine whether such witnesses and documents are deemed relevant to the Hearing. The Title IX Coordinator will provide each party with a copy of the list of witnesses and copies of documents or other information submitted by each party.

In the absence of good cause, as determined by the Committee, the parties may not introduce witnesses, documents, or other information at the hearing that were not provided by this deadline.

ii. Conduct of the Hearing

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the College will provide both parties with written notice explaining the reason for such change. The College will arrange for the hearing to be recorded, and may arrange for the preparation of any transcript of the recording that the College deems appropriate.

As a non-adversarial process, the hearing will not follow a courtroom model, and formal rules of evidence will not be observed. The Hearing Committee will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. The College will ask for all necessary witnesses to be present, or to have provided written statements in lieu of attending the hearing. This may be done as necessary to accommodate a witness who cannot be present, or whom the Hearing Committee determines may remain anonymous.

Only the Hearing Committee may question the individual parties and any witnesses, unless permission is granted to modify the questioning process. After all witnesses have been questioned, each party may make a closing statement.

In order to comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, the College will not disclose documents prepared in anticipation of the hearing, documents, testimony, or other information introduced at the hearing, and any transcript of the hearing itself may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law and/or College policy.

Both the complainant and the respondent may have advisors present to support and assist them during any meeting, the hearing and appeal stages of the Formal Resolution process. At the complainant's or respondent's request, the Title IX Coordinator will appoint to each party an advisor who has been formally trained. An advisor may not direct questions to the Hearing Committee or witnesses

at the hearing, but may consult with the party that he or she is assisting. The Hearing Committee will not allow an advisor's presence to inhibit the parties' sharing of information or the conduct of the hearing.

The parties are expected to cooperate at the hearing. If either party fails to appear at the scheduled hearing, the Hearing Committee may postpone the proceedings if there is a legitimate documented reason for the absence, or proceed and determine the complaint on the basis of the evidence available, provided the absent party was duly notified of the scheduled hearing date.

In general, any information or questioning about the prior sexual history of the complainant or respondent with individuals other than the other party is precluded and will not be admitted as evidence at the hearing. Additionally, any information or questioning about either party's mental health history diagnosis, and/or treatment is precluded and will not be admitted into evidence at the hearing. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanctions. After all witnesses have been questioned, each party may make a closing statement.

If the Hearing Committee determines that unresolved issues exist that would be clarified by the presentation of additional information, the Hearing Committee may suspend the hearing and reconvene it in a timely manner to receive such information. A delay may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents which were readily available at the time of the hearing.

D. Determination

In all investigations into alleged sexual misconduct, the College will evaluate evidence under a "preponderance of the evidence" standard. A preponderance of the evidence means that information shows it is "more likely than not" that the respondent violated this policy. The Hearing Committee must decide if the respondent is responsible, not responsible, or whether there is sufficient evidence to make a determination.

The respondent will be found to be responsible for the alleged sexual misconduct if the Hearing Committee concludes, based upon careful review of all information presented, that such sexual misconduct more likely than not occurred. The Hearing Committee shall determine whether the respondent is responsible for sexual misconduct, and will provide a written statement of such determination to the Vice President for Academic Affairs.

Complainant and Respondent Impact Statement

Within three business (3) days of the conclusion of the hearing, both the complainant and respondent will be given access to the record of the hearing and offered an opportunity to provide an impact statement to the Vice President for Academic Affairs while he is deliberating on the appropriate sanctions. The record of the hearing may not be copied.

The impact statement may be up to five (5) pages single spaced. The impact statement is the students' opportunity to discuss his or her experience, and the incident in question, as well as respond to how the investigation and hearing was conducted and any areas of agreement or/disagreement with the investigation or hearing, or determination of the Hearing Committee.

This impact statement must be provided to the Title IX Coordinator who will provide it to the opposing party as well and the Vice President for Academic Affairs, and all members of the Hearing Committee.

XIII. Sanctions

The Vice President for Academic Affairs may consider suspending or expelling any student found responsible for sexual misconduct; however, he or she may impose any of the following sanctions that are determined to be fair and proportionate to the violation:

- Reprimand or warning
- Changing the respondent's academic schedule
- Disciplinary probation
- Revocation of honors or awards
- Restricting the respondent's access to College facilities or activities
- Community service
- Issuing a "no-contact" order to the respondent or requiring that such an order remain in place
- Changing the respondent's housing assignment
- Dismissal from or restricting or reassignment of College employment
- Removing the respondent from student housing
- Suspension (limited time or indefinite)
- Expulsion

In determining appropriate sanctions, the Vice President for Academic Affairs will consider any record of past violations of College policies, as well as the nature and severity of such past violation(s). The Vice President for Affairs will consider as part of the deliberations whether the respondent poses a continuing risk to the complainant and/or the College community. Any sanction imposed will be explained and supported in the written decision of the Vice President for Academic Affairs.

Within five business days from the determination of the Committee hearing, the Vice President for Academic Affairs will simultaneously issue a determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this determination letter.

The determination letter will contain only the following information: (i) the name of the respondent; (ii) whether the respondent has been found responsible or not responsible for specific violation(s) of the sexual misconduct policy; (iii) a list of the possible sanctions imposed, if any; (iv) the sanctions actually imposed; (v) the rationale for the sanctions imposed, if any; (vi) the College's appeal process; (vii) any change to the results that occur prior to the time that the results become final; and (viii) when the results become final. Both the respondent and the complainant have a right to this information.

If a respondent is found responsible through the College's conduct process for crime(s) of violence, including, but not limited to Sexual Violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act, the College will make one of the following notations on the transcript of such student.

- "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."
- If a student withdraws from the College while such conduct charge(s) is pending and declines to complete the disciplinary process, the College will note on the student's transcript that he or she "withdrew with conduct charges pending."

Please see the College's Transcript Notation Policy for more information.

XIV. Appeal Process

Either party may appeal the Hearing Committee's determination and/or the disciplinary decision of the Vice President for Academic Affairs. A party has three grounds under which to appeal the College's determination: (i) the Hearing Committee committed procedural errors that had an impact on the complaint's decision, (ii) there is new evidence that was not reasonably available at the time of the hearing before the Hearing Committee, or (iii) the sanctions are not consistent with past practices or the severity of the alleged sexual misconduct.

Final sanctions are in effect until any timely appeal of the decision is resolved. The Vice President for Academic Affairs may suspend the determination pending exhaustion of appeal, allow the student to attend classes or other activity on a supervised or monitored basis, or make such other modifications to the determination as may be advisable. Interim measures will remain in effect until the appeal is resolved.

The procedure to file an appeal is as follows:

1. A party wishing to appeal the findings of the Hearing Committee and/or sanctions by the Vice President for Academic Affairs must file a notice of intent to appeal within five business days of the date the party is notified of the Hearing Committee's finding and the Vice President for Academic Affairs' sanctions. The notice of intent to appeal must be submitted in writing (either email or hard-copy) to the Title IX Coordinator. The notice of intent to appeal must contain the party's grounds for the appeal.

2. Within two weeks of filing a notice of intent to appeal, the party's formal appeal must be filed. The party should submit copies of any and all material the party wishes to provide as evidence for his/her appeal.

3. A committee made up of three full-time faculty members ("Appeals Committee"), which shall not include the Vice President for Academic Affairs or members of the Hearing Committee, will be assembled by the Title IX Coordinator. Except for appeals brought under (ii) above, the Appeal Committee's entire review process will be based on the party's appeal and the Hearing Committee's record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard.

4. The Appeals Committee will make a final determination on the appeal. The Appeals Committee shall render its decision regarding the appeal within 20 calendar days of receipt of the appeal, record of the case, and if applicable, any new evidence pursuant to (ii) above.

5. Within three business days of the Appeals Committee's determination, the Appeals Committee will issue a final determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this final determination letter.

XV. Informal Resolution

A complainant who wishes to file a complaint but who does not wish to pursue Formal Resolution may request a less formal proceeding, known as "Informal Resolution." While the Informal Resolution process is not as structured as the Formal Resolution process, it can be an effective and appropriate means to deal with the complaint. The Informal Resolution procedure is not available for complaints of sexual violence.

If the complainant wishes to proceed with Informal Resolution the Title IX Coordinator will ascertain the name of the respondent, and the date, location, and nature of the alleged sexual misconduct, and, within two business days, will schedule an individual intake meeting with the respondent in order to provide him or her with a general understanding of the policy.

The College will notify the respondent that a complaint has been filed and will include notice of the allegations. The complainant and respondent will be given the opportunity to meet separately with the Title IX Coordinator. The complainant and the respondent each may bring an advisor to the Informal Resolution. Advisors are subject to the same restrictions for advisors in Formal Resolution, as set forth above. During all phases of

the Informal Resolution Process, the parties will be provided with advance notice of any meeting they are required or eligible to attend. The Title IX Coordinator or designee will preside over the Informal Resolution and may elect to be assisted by another member of the senior staff of the College or outside expert.

If, in the course of the Informal Resolution, the respondent admits to violating the College's Policy and Procedures for Reports of Student Sexual Misconduct, that admission will serve as a finding of responsibility after an independent

investigation into the matter by the College. The College will not impose sanctions on the basis of an admission without an independent investigation into the alleged misconduct. The Vice President will recommend one or more sanctions, which the respondent can accept or reject. The sanctions that may be imposed as the result of the Informal

Resolution process are the same as those outlined in the Formal Resolution process above. If the Vice President for Academic Affairs' recommended sanction is accepted, the process is concluded. If it is rejected, the complaint will proceed to the Formal Resolution process.

Informal Resolution may result in the imposition of protective actions agreed upon by the parties, or (with or without such agreement) based on information derived from the Informal Resolution taken together with any other relevant information known to the College at the time of the Informal Resolution.

The College may, at any time, elect to end such proceedings and initiate Formal Resolution instead. Statements or disclosures made by the parties in the course of the Informal Resolution may be considered in the Formal Resolution.

The College may, at its discretion, designate another trained and experienced person(s) to act in the place of the investigator and / or adjudicator in this Policy. If there is such a designation, the parties involved will be informed.