

SEXUAL MISCONDUCT POLICY

I. INTRODUCTION

Notice of Nondiscrimination and Policy Statement

The health, safety, and well-being of all members of The College of New Rochelle (“College”) community are the College’s primary concerns. In furtherance of the College’s mission 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, 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, the Campus SaVE Act and/or Article 129-B of the New York State Education Law may be referred to the College’s Title IX Coordinator, or his or her designee. Questions regarding Title IX may also be referred, 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 FREE or email the OCR’s New York office ocr.newyork@ed.gov or by telephone at 646-428-3800

The College’s designated Title IX Coordinator is:

Elizabeth Spadaccini, MS, LMSW
Mooney Center (Campus Ministry Suite)
New Rochelle, NY 10805
Email: espadaccini@cnr.edu or TitleIXSupport@cnr.edu
Phone: (914) 654-5556

The College’s designated Title IX Deputy is:

Diane Lama, M.A.
Mooney Center (Campus Ministry Suite)
New Rochelle, NY 10805
Email: dlama@cnr.edu or TitleIXSupport@cnr.edu
Phone: (914) 654-5544

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. In the event that the Title IX Coordinator is unavailable, he or she may designate an individual(s) to carry out his or her responsibilities. Any such designee or deputy or Title IX Deputy will receive training, at least annually, on the issues relating to sexual misconduct, including sexual harassment, dating violence, domestic violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Scope of Policy

This policy governs sexual misconduct involving all College students and employees, and applies to such students and employees, whether part-time or full-time, and regardless of sex, race, national origin, disability, sexual orientation, gender identity, or other protected status.

This policy supersedes any other College policy to the extent that such policy applies to sexual misconduct. Complaints of discrimination or harassment on the basis of sex that do not involve sexual misconduct are governed, for students, by the student Code of Conduct. Complaints of discrimination or harassment on the basis of sex that do not involve sexual misconduct are governed, for employees, by the College's Non-Discrimination & Anti-Harassment Policy.

This policy 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-sponsored program or activity takes place. This policy also covers conduct that takes place off of College property, but which may have an impact on the College community, and in any work-related setting outside the workplace, such as during business trips, business meetings and business-related social events. In the event a respondent is an individual who is not a student or employee of the College, this policy shall apply to the extent legally permissible.

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

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 by 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 to 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 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 complainant, or respondent throughout the investigation and hearing process including during all meetings and hearings related to such process; and
 11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice or judicial or conduct process of the College.

II. RESOURCES AND REPORTING OPTIONS

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 and Emergency Assistance - Call 911
- Campus Security – 914-654-5204
- Local hospitals – Call 911 or Campus Security to obtain contact information

SAFE Centers of Excellence, Medical Assistance

- Jacobi Medical Center – 1400 Pelham Parkway South, Bronx, NY 10461- (718-918-5000)
- Harlem Hospital Center – 506 Lenox Avenue, New York, NY 10037-(212-939-1000)
- Westchester Medical Center – 100 Woods Road, Valhalla, NY 10595 – (914-493-7000)
- *****Forensic Acute Care Team at 1-866-GO-TO WMC (1866-468-6962)**

Centers for Immediate Assistance for Domestic Violence

- Safe Horizon Rape and Sexual Assault Hotline - (866) 689-HELP (4357)
- Safe Horizon Domestic Violence Hotline - (800) 621-HOPE (4673)
- New York State Office of Victim Services Toll Free Number – (800) 247-8035
- Westchester Community Opportunity Program (WESTCOP)
Victim Assistance Services - (914) 345-3113
- **New York State Coalition Against Domestic Violence**
- **24 Hour Domestic & Sexual Violence Hotline**
English: 1-800-942-6906 English TTY: 1-800-818-0656
Spanish: 1-800-942-6908 Spanish TTY: 1-800-780-7660
- **National Domestic Violence Hotline (800) 799-SAFE (7233)**
For the hearing impaired: 1-800-787-3224

Centers for Legal Assistance

NYC Family Justice Center Bronx

Address:198 East 161st Street, Bronx

Phone: (718) 508-1222

NYC Family Justice Center Brooklyn

Address:350 Jay Street, downtown Brooklyn

Phone: (718) 250-5111 and select 6

NYC Family Justice Center Manhattan**Address:** 80 Centre St.**Phone:** (212) 602-2800**Women's Justice Center**

Pace Law School

27 Crane Avenue

White Plains, NY 10603

Phone: (914) 422-4069, Fax: (914-422-4102) **Helpline:** (914) 287-0739

In instances involving physical injury or sexual assault, the College strongly encourages the victim to obtain a medical examination to determine the extent of injuries. A hospital, with the victim's permission, will collect physical evidence in a sexual offense evidence collection kit. Consenting to the completion of a sexual offense evidence collection kit does not obligate the victim to pursue criminal charges with the police; it is a way to preserve evidence should there be a choice to pursue criminal charges at a later time. Hospitals are required by law to preserve such evidence for a minimum of 30 days.

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.

College Resources and Reporting

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 should be reported to the College's Title IX Coordinator, or his or her designee. Any incident of sexual misconduct reported to another College employee, with the exception of those employees designated as confidential, as set forth below, will be reported by the employee to the Title IX Coordinator, or his or her designee, however, care will be taken to protect the privacy of the complainant to the greatest extent possible.

Upon the first instance of disclosure of sexual misconduct to the College, the reporting individual (defined below) will be provided with emergency access to the Title IX Coordinator, his or her designee, or other designated College official, trained in interviewing victims of sexual assault. The Title IX Coordinator, or other designed 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.

Regardless of whether or not an official complaint of sexual misconduct is made, medical assistance and counseling services are available from the College. Students and employees may obtain medical assistance and counseling services through the College's Office of Counseling and Health Services, located in Angela Hall on the New Rochelle campus, Room 100, (914) 654-5311. The Office of Counseling and Health Services may also be able to

direct students and employees to additional resources. Employees may also seek assistance from the College's Employee Assistance Program, Higher Ed EAP, (1-800-225-2527, or 1-800-252-4555) or log on to: www.HigherEdEAP.com.

Reasonable Accommodations

Any individual who has been the victim of sexual misconduct may request assistance in changing academic, living, transportation, and working situations, as applicable. The College will grant such accommodations, provided they are reasonable and available, regardless of whether the victim chooses to report the crime to law enforcement. Such accommodations may include, but are not limited to, moving a student's residence, adjusting a student's academic or College work schedule, adjusting an employee's work schedule, and issuing a "no-contact" order.

Requests for accommodations in connection with incidents of sexual misconduct should be made to the College's Title IX Coordinator, or his or her designee. The College will provide information about the student's or employee's request for accommodations only to those having a need to know such information in order to implement the accommodations.

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 officials and employees who cannot guarantee confidentiality will maintain the privacy of the complainant to the greatest extent possible. The information the complainant 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 Clery Act compliance, the College will not release identifying information of the victim. The ability of College employees to maintain confidentiality is as follows:

Professional and Pastoral Counselors

Professional, licensed mental health counselors, medical providers and pastoral counselors (accredited clergy), 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, disclosed while acting within the scope of providing counseling, to the Title IX Coordinator, or his or her designee, without a complainant's permission. State law requires professional counselors to report: (i) when a patient is likely to engage in conduct that would result in serious harm to the patient or to others; or (ii) if there is reasonable cause to suspect that a minor has been sexually abused. The following is a list of the College's professional and pastoral counselors:

Fr. Joseph Flynn in his capacity as Chaplain
Mooney Center 150 (Campus Ministry Suite)
JFLYNN@cnr.edu
Phone: (914) 654-5052

Dr. Stephanie Carlson in her capacity as Counselor
Director Counseling & Health Services
Angela 105R

scarlson@cnr.edu
Phone: (914) 654-5311

Dr. Susan Conte, O.S.U., in her capacity as Counselor
Assoc Prof Guidance & Counseling GRS
Chapel Hall G13
sconte@cnr.edu
Phone: (914) 654-5671

Non-Professional Counselors and Advocates

College representatives who work or volunteer in the College's Office of Counseling and Health Services generally may talk with and provide assistance and resources to a victim of sexual misconduct. These individuals may maintain confidentiality while reporting the nature, date, time, and general location of the incident to the Title IX Coordinator, or his or her designee.

Responsible Employees

A "responsible employee" is a College employee who has the obligation and/or authority to redress sexual misconduct, who has a duty to report incidents of sexual misconduct, or who a student or employee could reasonably believe has this authority or duty. This definition encompasses virtually every College employee except those pastoral and professional counselors and non-professional counselors and advocates noted above.

A responsible employee must report all relevant details about the alleged sexual misconduct shared by the reporting individual to the Title IX Coordinator, or his or her designee. 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.

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 the Title IX Coordinator or 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 College has designated the Title IX Coordinator, to evaluate requests for confidentiality once he or she is notified of alleged sexual misconduct.

When weighing a complainant's request for confidentiality, 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 escalation 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 Title IX Coordinator may determine that the College is 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 Title IX Coordinator determines that the College must disclose the complainant's identity to the respondent, the Title IX Coordinator will promptly inform the complainant and take immediate action necessary to protect and assist the complainant.

If, after considering these factors, the Title IX Coordinator, or his or her designee, determines that the College 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 increasing monitoring, supervision, or security at locations where the reported sexual misconduct occurred, increasing training, education and prevention efforts, and conducting climate surveys.

Reports of Sexual Misconduct from Others or Anonymous Sources

If the College receives a report of alleged sexual misconduct from someone other than the complainant (e.g., a friend or roommate) or from an anonymous source, the College's Title IX Coordinator, or his or her designee, 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 accordingly, as if the complainant had made the initial report.

College Alcohol and Drug 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) 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 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 College officials or law enforcement will not 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 commission of the domestic violence, dating violence, stalking, or sexual assault.

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.

Written Notifications

When the College receives a report of sexual misconduct 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. The College will also provide the reporting individual with written notification regarding existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services available for victims, 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 also provide such written information to the complainant.

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, or his or her designee. 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.

III. DEFINITIONS WITHIN THE POLICY

"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.

The following principles, along with above definition, will be used to evaluate whether affirmative consent was given:

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

“Complainant” means the individual who reportedly experienced 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 institution employees who may offer confidentiality. “

“Dating violence” means violence 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. Dating violence does not include acts covered under the definition of domestic violence.

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

“Intimidation” means unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack .

“Incapacitation” occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by a 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.

“No Contact Order” means 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.

"**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 reporting individual more than necessary to comply with applicable laws or College policy.

"**Reporting individual**" means any individual who reports a violation of this policy to the College.

"**Respondent**" means the individual alleged to have committed acts constituting sexual misconduct, regardless of whether such individual has entered into the College's conduct process for responding to complaints of sexual misconduct described herein.

"**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.

"**Sexual activity**" includes any "sexual act" or "sexual contact."

- A "**sexual act**" means (a) contact between the penis and the 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 a 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 a non-consensual sexual act and non-consensual sexual contact.

- A "**non-consensual sexual act**" 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.
- "**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.
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"**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).

“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 harassment, sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking.

“Sexual Violence” refers to a sexual act perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to the person’s age or use of drugs or alcohol, or because an intellectual or other disability prevents the person 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 purposes of the definition of stalking:

- “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 reasonable person under similar circumstances and with similar identities to the victim.

Conduct that violates the College’s sexual misconduct 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.

IV. 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, or his or her designee. 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, or his or her designee.

At the time of disclosure, the reporting Individual will be informed: "*You have the right to make a report to university police or campus 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.*"

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.

Initial Steps

Intake Meetings

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, 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 in the Interim Measures section below.

The Title IX Coordinator, or his or her designee, will consider how the complainant wishes to proceed, i.e., whether the complainant wishes to pursue a Formal Resolution, as described below, 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, the Title IX Coordinator, or his or her designee, will ascertain the name of the respondent, and the date, location and nature of the alleged sexual misconduct and will promptly schedule an individual intake meeting with the respondent. The College will provide written notice to 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, or when the College deems Formal Resolution required under the circumstances, the Title IX Coordinator, or his or her designee, will promptly prepare a formal letter to the College's Sexual Misconduct Hearing Committee ("Committee") notifying the Committee of the initiation of a formal investigation.

The letter will provide the 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, and either requests that his or her complaint remain confidential, or refuses to participate in the initial intake meeting with the Title IX Coordinator, or his or her designee, the Title IX Coordinator, or his or her designee, 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. As noted herein, 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.

The complainant reserves the right to withdraw a complaint or his/her involvement in the College's investigation or resolution process at any time. However, in such instances the College's ability to respond will be limited and Title IX may nevertheless require the College to complete the investigation processes.

Respondents and complainants are provided an opportunity to review and present relevant evidence and information that will be used during the conduct meetings and proceedings, consistent with the College's policies and procedures, where appropriate and in accordance with the local, state, and federal laws including FERPA. The evidence must be relevant to the allegation as to permit a meaningful opportunity to respond and an opportunity to offer responsive evidence and information.

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.

To ensure the safety and well-being of the complainant, the Title IX Coordinator, or his or her designee, may also 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 complainant's academic, transportation, College housing, and/or College employment arrangements, or other appropriate protections. Any employee or 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 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.

No Contact Order

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, pending the investigation and, if applicable, the hearing. If the respondent and complainant observe each other in a public place, it shall be the responsibility of the respondent to leave the area immediately and without directly contacting

the complainant. In the event the College imposes a No Contact Order, the complainant or respondent may request a 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.

Order 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 complainant 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 speak with an appropriate College official who can explain the order and the consequences for violating the order, and answer any questions about the order. Additionally, if the respondent violates the order of protection, the complainant may receive assistance from the College in calling local law enforcement to inform them of the violation.

Interim Suspension

When the respondent is determined to present a continuing threat to the health and safety of the College community, the respondent may be subject to an interim suspension pending the outcome of the resolution process, described below. The complainant or respondent may also request a review of the need for and terms of any interim suspension, interim measures, or accommodations that directly affects him or her, and may submit evidence in support of his or her request. The College will conduct a prompt review of such request.

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 complainants 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, for purposes of the 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 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.

Formal Resolution Process

When the complainant chooses to pursue Formal Resolution or when the College deems Formal Resolution necessary, the reported allegations will be investigated promptly, thoroughly, and impartially by the Title IX Coordinator and/or any individual(s) designated as investigators by the Title IX Coordinator, or his or her designee. All individuals conducting an investigation of sexual misconduct under this policy receive training, at least annually, on the issues relating to sexual misconduct, including sexual harassment, dating violence, domestic violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. The investigation may include, without limitation, individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge, and/or the review of relevant documentation and other available evidence.

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.

Pre-Hearing Meeting

Promptly following the Title IX Coordinator's, or his or her designee's, intake meeting with the respondent, a member of the Hearing Committee, selected by the Committee Chair, will schedule separate pre-hearing meetings with the complainant and the respondent. The Committee member will provide written notices to the complainant and the respondent, stating the date, time, and place of their respective pre-hearing meetings with the Committee member. Notices of the pre-hearing meetings will be delivered by email or in person, and will be considered effective immediately upon delivery.

At the pre-hearing meetings, the Committee member will review hearing procedures and preliminary matters separately with the parties. The Committee member will instruct all parties concerned to avoid any private discussion of the merits of the complaint.

Hearing

The Committee Chair will provide written notice to both parties stating the date, time, and place of the hearing with the Committee at least five business days before the hearing date.

A party wishing to challenge the participation of any member appointed to the Committee must notify the 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, or his or her designee, 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, or his or her designee, will determine whether the challenge has merit, and reserves discretion to appoint a new Committee Chair.

i. Pre-Hearing Submissions

The parties will provide the Committee 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 Committee will provide each party with a copy of the list of witnesses, and identification or copies of documents or

other information submitted by each party in accordance with the federal state, and local laws including the Family Education Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99). 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. Committee Review

The Committee will review all evidence gathered during the investigation by the Title IX Coordinator or the individual(s) designated by Title IX Coordinator to carry out the investigation, and may interview witnesses and collect and review such other evidence as the Committee deems necessary or helpful to its investigation into the alleged sexual misconduct.

iii. 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 Committee will provide both parties with written notice explaining the reason for such change. The Committee may arrange for the hearing to be recorded, and may arrange for the preparation of any transcript of the recording that the Committee 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 Committee will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. The Committee 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 Committee determines may remain anonymous. The Committee will review, in advance of the hearing, all the written materials provided.

Only the 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 FERPA 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, 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 will have access to a full and fair record of the hearing subject to the limitations set forth above.

Both the complainant and the respondent may have an advisor of their choice present to assist and advise them throughout the Formal Resolution process including during all meetings and hearings related to such process. An advisor may not direct questions to the Committee or witnesses at the hearing, but may consult with the party that he or she is assisting. The 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 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.

If the Committee determines that unresolved issues exist that would be clarified by the presentation of additional information, the 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 or other information that should have been presented at the pre-hearing meeting.

Determination and Sanction

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 respondent will be found to be responsible for the alleged sexual misconduct if the Committee concludes, based upon careful review of all information presented, that such sexual misconduct more likely than not occurred. The Committee shall determine whether the respondent is responsible for sexual misconduct, and will provide a written statement of such determination to the Dean of Students, when the respondent is a student, or, when the respondent is an employee, the Vice President who oversees the department in which the employee works (“Area Vice President”).

The Committee shall also recommend that the Dean of Students or Area Vice President, as applicable, impose any of the following sanction(s) that is determined to be fair and proportionate to the violation (as applicable):

- Reprimand or warning
- Change in respondent’s academic schedule
- Change in respondent’s work schedule
- Forfeiture of a benefit, honor, leadership position, or other privilege enjoyed by virtue of the person’s membership as full- or part-time faculty, adjunct faculty, staff, or administration, or student
- Demotion or forfeiture of promotion or salary increase
- Reassignment of College employment
- Restitution
- Disciplinary probation
- Revocation of honors or awards
- Restriction of respondent’s access to College facilities or activities
- Community service
- Issuance of a “no-contact” order to the respondent or requirement that such an order remain in place
- Change in respondent’s housing assignment
- Dismissal from, limitation on, or reassignment of College employment
- Removal from student or employee housing
- Suspension (limited time or indefinite, with or without pay (for employees))
- Expulsion
- Revocation of degree

An individual’s own prior sexual history with people other than the party in the conduct

process or his/her own mental health diagnosis and/or treatment is not relevant in determining responsibility. Prior sexual history of either party will never be used to prove character or reputation. Past findings of domestic violence, dating violence, stalking, or sexual assault may be relevant in the disciplinary stage that determines sanction.

In recommending an appropriate sanction(s), the Committee will consider any record of past violations of College policies, as well as the nature and severity of such past violation(s). The Committee will also consider as part of the deliberations whether the respondent poses a continuing risk to the complainant and/or the College community.

Complainant and Respondent Impact Statements

Within three business (3) days of the conclusion of the hearing, both the complainant and respondent will be offered an opportunity to provide an impact statement to the Dean of Students or Area Vice President when such individuals are deliberating on the appropriate sanctions.

The impact statement may be up to five (5) pages single spaced. The impact statement is the party's 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 report, hearing, or determination of the Committee.

The impact statement must be submitted to the Title IX Coordinator, and will be provided by the Title IX Coordinator to the opposing party and the Dean of Students or Area Vice President.

The Dean of Students or the Area Vice President, as applicable, shall review the parties' impact statements and the Committee's recommended sanction, and may either accept the recommended sanction, modify the recommended sanction, or reject the recommended sanction and impose a sanction which he or she deems more appropriate. Any sanction imposed will be explained and supported in the written decision of the Dean of Students or the Area Vice President, as applicable.

If another College policy or handbook requires the College to comply with specific procedures prior to imposing a certain sanction on an employee, the Area Vice President will ensure that the College complies with such other procedures.

In addition to the sanctions set forth above, the Dean of Students or the Area Vice President, as applicable, may find it necessary to mandate that the respondent participate in certain supportive and/or rehabilitative activities, such as educational training and/or counseling.

Within five business days from the conclusion of the Committee hearing, the Dean of Students or the Area Vice President, as applicable, will issue a determination letter to the complainant and respondent. 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 and detailing the factual findings supporting the determination; (iii) the sanction or sanctions that may be imposed and those actually imposed, if any; (iv) the rationale for the sanctions actually imposed; (v) the College's appeal process; (vi) any change to the results that occurs prior to the time that the results become final; and (vii) when the results become final. Both the respondent and the complainant have a right to this information.

Transcript Notation

In accordance with Article 129-B of the New York State Education Law, if a student 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 established in 20 U.S.C. § 1092(f)(1)(F)(i)(I)-(VIII) the College will make one of the following notations on the transcript of such student that they were:

- "suspended after a finding of responsibility for a code of conduct violation";
- "expelled after a finding of responsibility for a code of conduct violation"; or

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 they "withdrew with conduct charges pending."

For more information on the College's Transcript Notation Policy, please contact the Title IX Coordinator.

Appeal Process

Either party may appeal the Committee's determination and/or the disciplinary decision Appeals Committee consisting of [], which shall not include Dean of Students or Area Vice President, as applicable, or members of the Hearing Committee and will be assembled by the Title IX Coordinator. A party has three grounds under which to appeal the College's determination: (i) the Committee committed procedural errors that had an impact on the determination, (ii) there is new evidence that was not reasonably available at the time of the Committee hearing, or (iii) the sanctions are not consistent with the severity of the alleged sexual misconduct. Sanctions shall remain in effect pending the resolution of any timely appeal.

The procedure to file an appeal is as follows:

1. A party wishing to appeal the findings of the Committee and/or sanctions of the Dean of Students or Area Vice President, as applicable, must file a formal appeal within five business days of the date the party is notified of the Committee determination and the sanctions of the Dean of Students or the Area Vice President, as applicable. The appeal must be submitted in writing to the Title IX Coordinator or his or her designee. The appeal must contain the party's grounds for the appeal. The appealing party must also submit copies of any and all materials the party wishes to provide as evidence for his or her appeal.
2. Except for appeals brought under (ii) above, the Appeals Committee, entire review process will be based on the party's appeal and the record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard.
3. The Appeals Committee will make a final determination on the appeal. The final determination shall be rendered within 10 College business days (i.e., days during which the College is open for business).
4. Within three days of the Appeals Committee's determination, the Vice President for Student Services or Vice President for Finance and Administration, or his or her designee, as applicable, will concurrently issue final determination letters to the respondent and the complainant.

Informal Resolution Process

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 a complaint. **The Informal Resolution procedure is not available for complaints of sexual violence.**

A trained counselor, trained mediator, or, if appropriate, a College employee, will preside over the Informal Resolution and may be assisted by another member of the senior staff of the College or outside expert. The complainant and the respondent each may bring an advisor to the Informal Resolution. Advisors are subject to the same restrictions set forth in the Policy.

If, in the course of the Informal Resolution, the respondent admits to violating the Policy, that admission will serve as a finding of responsibility after an independent investigation into the matter by the College. The Dean of Students or Area 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 below. If the recommended sanction(s) is accepted, the process is concluded. If it is rejected, the complaint will proceed to the Formal Resolution process.

Participation in the Informal Resolution process is voluntary. The College will not compel a complainant or a respondent to engage in Informal Resolution and will allow a complainant or respondent to withdraw from the Informal Resolution process at any time. The College may, at any time, elect to end such proceedings and initiate Formal Resolution instead. Pursuing Informal Resolution does not preclude later use of Formal Resolution if the Informal Resolution fails to achieve a resolution acceptable to the parties and the College. Statements or disclosures made by the parties in the course of the Informal Resolution may be considered in the Formal Resolution.

V. PREVENTION AND AWARENESS EDUCATION PROGRAMS

Creating a safe and respectful environment is the responsibility of all members of the College community. To promote and maintain this environment, the College is engaging in comprehensive educational programming to prevent sexual misconduct, including sexual harassment, domestic violence, dating violence, sexual assault, stalking, and retaliation. To learn more about the College's initiatives in this regard, please contact the Title IX Coordinator, or his or her designee.