

# St. Bonaventure University Gender-Based Discrimination and Sexual Misconduct Policy

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## Statement of Intent

St. Bonaventure University promotes respect for the dignity and integrity of each person. Members of the University community, guests and visitors have the right to an environment free from all forms of gender and sex-based discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence and stalking. All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others. St. Bonaventure University takes reports of gender-based discrimination and sexual misconduct very seriously and treats each report with the utmost care and urgency. When an allegation of discrimination or misconduct is brought to an appropriate administrator's attention, and a responding party is found to have violated this policy, sanctions will be applied to prevent such actions from being repeated. In addition, accommodative and remedial measures will be offered to mitigate the effects of the conduct. This policy has been developed to reaffirm these principles, to provide a mechanism for determining when this policy has been violated, and to provide recourse for those individuals whose rights have been violated.

## Overview of Consensual Relationships Policy

The educational Mission of the University is promoted by professionalism in relationships between administrators, faculty, students and staff. Professionalism is fostered by an atmosphere of mutual trust and respect. Trust and respect are diminished when those in position of authority abuse, or appear to abuse, their power.

Sexual relationships between faculty and student, or staff and student, are expressly prohibited. Even when both parties have consented to the development of such relationships, they can raise serious concerns about the validity of the consent, conflicts of interests, and/or unfair treatment of others. Moreover, others may be adversely affected by such behavior because it places the faculty or staff member in a position to favor or advance one student's interests at the expense of others.

Sexual relationships between supervisor and employee are prohibited when a direct evaluative relationship exists. In such cases the University requires that the faculty member, administrator, staff member or employee divest him or herself of the professional responsibility for evaluation and/or cease such conduct.

## Gender-Based Discrimination and Sexual Misconduct Policy

St. Bonaventure University prohibits all forms of gender based discrimination and sexual misconduct. Gender-based discrimination or sexual misconduct can be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of the persons involved in the acts.

This policy prohibits the following forms of misconduct:

**Gender-Based Discrimination** – Gender-Based Discrimination includes discrimination on the basis of gender, sexual orientation, gender identity or domestic violence victim status in any aspect of employment or access to University curricular, co-curricular or extracurricular educational programs and/or resources, including without limitation:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing or grading;

- use of University facilities;
- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans, and disability leave;
- admissions and recruiting standards and practices;
- financial aid and scholarship awarding policies and practices;
- eligibility for academic programs;
- use of student housing
- participation in extracurricular student activities; and
- other terms and conditions of employment or the student experience.

This policy does not apply to decisions relating to requests for reasonable accommodation due to a disability. Student disability accommodations are handled by Adriane Spencer, [aspencer@sbu.edu](mailto:aspencer@sbu.edu), 716-375-2065 and pursuant to that office's policies. Work-related disability accommodations are handled by the Human Resources Office and pursuant to that office's policies.

**Sexual Harassment** – Sexual harassment is unwelcome, gender-based, sexual orientation-based or gender identity-based verbal or physical conduct that is sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the University's educational program, employment, and/or activities, and is based on power differentials (*quid pro quo*), the creation of a hostile environment, or retaliation.

It constitutes sexual harassment when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education opportunities or activities,
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions or educational opportunities or activities affecting such individual, or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working or learning environment.

For example, sexual harassment would include the following kinds of behavior, or other kinds of behavior with a similar harassing effect:

- a. Abusing an employee or student through insulting, degrading, or oppressive sexual remarks, jokes, innuendoes, or other sexually oriented conduct (including, among other things, graphic or descriptive comments relating to an individual's body or physical appearance, sexually oriented teasing or pranks, improper suggestions, objects or pictures, unwanted physical contact);
- b. Threats, demands, or suggestions that an employee's working conditions or a student's grade depends in any way upon tolerating or accepting or refusing sexual advances or sexually oriented conduct
- c. attempts to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; gender-based bullying.

**Sexual Assault** – Sexual Assault includes Non-Consensual Sexual Contact and Non-Consensual Sexual Intercourse, as defined below.

**Non-Consensual Sexual Contact** – any intentional touching, however slight, for purposes of sexual gratification or with sexual intent, directly or with any object that is without affirmative consent. Acts of non-consensual sexual contact may include but are not limited to intentional contact (directly or over clothing) with another person's breasts, buttocks, groin, genitals, or inner thigh, or touching another with any of these body parts, or making another touch oneself or themselves with or on any of these body parts.

**Non-Consensual Sexual Intercourse** – any penetration, however slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without affirmative consent. This type of sexual assault also includes non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.

**Sexual Exploitation** – occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation may include but are not limited to: any audio and/or visual recording of a consensual sexual act or private activity (such as undressing or showering) without the person's consent; distributing, without the prior consent of the victim of exploitation or beyond parameters of consent given by the victim, an audio and/or visual recording of a consensual sexual act; or private activity otherwise going beyond the boundaries of consent (such as allowing people to hide in the closet to view consensual sexual contact/intercourse); voyeurism; engaging in sexual activity with another while knowingly infected with a sexually transmitted disease; attempting to incapacitate someone for the purposes of committing sexual assault; exposing one's genitals in non-consensual circumstances; or sex or gender-based bullying.

**Stalking** - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety, the safety of others, or suffer substantial emotional distress. Examples of stalking behavior include but are not limited to: repeated attempts at communication (phoning, texting, email, social messaging); making direct or indirect threats to harm an individual or the individual's relatives, friends or pets; physical and/or verbal confrontations; entering one's residence hall room/apartment or vehicle without permission; following, observing or lying in wait for another; vandalizing or threatening to vandalize the property of another; gaining access to personal online accounts or information; etc.

**Domestic Violence** – Any violent behavior committed by a current or former spouse of a victim, by a person with whom a victim shares a child, by a person with whom the victim currently cohabitates or previously cohabitated as a romantic or intimate partner, by an individual who is or was similarly situated to a spouse of the victim, and/or by a person against a victim who is protected from the other person's acts under the domestic or family violence laws of the jurisdiction in which the act of violence occurs.

**Relationship/Intimate Partner Violence (Dating Violence)** – Any violent 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 may be determined based on consideration of the length of the relationship, the type of relationship, and/or the frequency of interaction between the persons involved in the relationship.

**Other Misconduct Offenses (will be addressed under this policy when based on gender, gender identity, sexual orientation, or domestic violence victim status)**

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of another person;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing (see Hazing Policy of the St. Bonaventure University Student Code of Conduct for definition); and
- Bullying, defined as repeated and or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or emotionally.

## **Additional Applicable Definitions:**

### **Affirmative Consent**

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

The following conditions apply to the term "consent" according to the University:

1. Silence, lack of physical resistance, and/or the absence of a verbal "no" are not forms of consent.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. In other words, it is not an excuse that the person initiating the act was intoxicated or incapacitated due to alcohol or other drugs.
3. Consent can be initially given but withdrawn at any time.
4. When consent is withdrawn or can no longer be given, sexual activity must stop. Once a person says "no," it is established that he or she is not giving consent to a sexual act. However, the absence of a verbal "no" does not constitute consent. Any activity or further encouragement beyond that point could be construed as force, coercion or intimidation.
5. A current or previous dating relationship is not sufficient to constitute consent. Further, past consent to engage in sexual activity with any person cannot be presumed to be consent to sexual activity in the future with the same or a different person. A sexual act must be mutually agreed upon each time it occurs.
6. Consent to one sexual act does not indicate consent to other sexual acts.
7. Consent cannot be given if a person is incapacitated (see definition of "incapacitation"). Sexual activity with someone whom one should know to be – or based on the circumstances should reasonably have known to be –incapacitated (for example, by disability, sleep, involuntary restraint, or the taking of drugs or alcohol, unconsciousness or blackout) constitutes a violation of this policy.
8. Consent cannot be given under coercion, force, or threat of physical harm or injury.
9. Consent cannot be given if someone is under the legal age of consent. In New York State, a minor (meaning a person under the age of 17 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 17 years old is a crime as well as a violation of this policy, even if the minor wanted to engage in the act.

### **Force**

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. It includes threats and/or intimidation (implied threats) that overcome resistance or produce purported (but ineffective) consent. It also includes rendering someone incapacitated by administering alcohol or any other drug.

### **Coercion**

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes it clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

## **Incapacitation**

Incapacitation is a state where someone lacks the ability to knowingly choose to participate in a specific activity. Incapacitation can result from disability, sleep, lack of consciousness, involuntary restraint, or other factors that prevent voluntary choice. 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.

**NOTE:** There is no requirement that a party resists a sexual advance or request, but resistance is a clear demonstration of non-consent. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

## **Confidentiality and Reporting of Offenses Under This Policy**

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. The University offers a number of confidential and non-confidential resources on-campus.

Certain University employees are considered “confidential” resources because they are not required by law to report known incidents of sexual assault or other crimes to University officials, including the Title IX Coordinator. Confidential resources generally will not share information about an individual without the individual’s express written permission.

Other employees at the University are non-confidential resources and are required to share your report with the Title IX Coordinator so that the University may take steps to offer support services and prevent the recurrence of gender-based discrimination or sexual misconduct. If you are unsure of an individual’s reporting obligations, please ask before disclosing information you wish to remain confidential. This policy is intended to make individuals aware of the various reporting and confidential disclosure options available so that individuals can make informed choices about where to turn should they become the victim of gender-based discrimination or sexual misconduct.

Even University offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

## **Confidential Assistance**

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with counselors or health care providers in the Center for Student Wellness, clergy within the University acting in their role as clergy (friars or sisters), and/or off-campus resources such as Victim’s Services or Olean General Hospital. All of these resources will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Confidential resources that are University employees will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

Quick Reference Contact Information:

- University Center for Student Wellness: 127 Doyle Hall (first floor right side entrance) – 716-375-2310
- Olean General Hospital Sexual Assault Forensic Examiner (SAFE) Unit: Report to the OGH Emergency Room – 716-372-0614
- Cattaraugus County Community Action - Victim Services: Toll Free Crisis Hotline – 1-888-945-3970

*Complete descriptions of services provided by the resources listed above can be found in the University’s Guide to Understanding Gender-based discrimination and sexual misconduct, or online at <http://www.sbu.edu/life-at-sbu/conduct-at-sbu/gender-based-sexual-misconduct>.*

## **Non-Confidential Resources**

All University employees other than confidential resources have a duty to share reports of gender-based discrimination or sexual misconduct with the Title IX Coordinator or a Deputy Coordinator so that the University may take steps to offer support services and prevent the recurrence of any misconduct. If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator or a Deputy Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law.

In cases of pattern, predation, physical threat, weapons, and/or violence, the University will likely be unable to honor a request for confidentiality. If the University determines that it must proceed with an investigation, the reporting party can choose whether or not he/she is going to be part of it. The burden of investigation, disciplinary charges, and consequences is not on the reporting party, but instead rests with the University. In cases where the reporting party requests confidentiality, and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action.

## **University's Procedures for Investigation of Gender-Based Discrimination and Sexual Misconduct**

St. Bonaventure University strongly encourages any individual who has been subjected to gender-based discrimination or sexual misconduct to report the misconduct to University officials and/or law enforcement. A reporting party has the right and can expect to have reports taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through these procedures. The University's main concern is that reporting parties receive the help and guidance essential for beginning the process of healing, while also giving consideration to the welfare of the campus community.

Anyone wishing to report incidents of gender-based discrimination or sexual misconduct should do so through Safety and Security Services, Residential Staff (RAs or RDs), the reporting party's supervisor, a CODAH Advocacy Officer, or directly with the Title IX Coordinator (Vice President for Student Affairs). Investigations (including Judicial Sanctioning Board proceedings, if applicable) will ordinarily take no longer than 60 days. However, the nature of a complaint and/or extenuating circumstances (such as the time of the academic year, the timing of University break periods, the effect of concurrent criminal proceedings, etc.) may require an extension of that timeframe.

Complaints will be considered according to the following procedure:

1. Once a report is received, information is shared with the Title IX Coordinator and/or a Deputy Coordinator.
2. Preliminary information gathering will occur to determine whether or not a formal investigation is appropriate.
3. Some complaints may be resolved through conflict resolution in lieu of a formal investigation. Conflict resolution may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal process to resolve conflicts. The Title IX Coordinator and Deputy Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, the Title IX Coordinator and/or Deputy Coordinator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies, in which case the complaint is resolved. The Title IX Coordinator will keep records of

any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions. Conflict resolution will not be used to address complaints of sexual assault or violent behavior of any kind, or in other cases of serious violations of policy. It is not necessary to pursue conflict resolution first in order to make a formal complaint, and anyone participating in conflict resolution can stop that process at any time and request a formal process.

4. If a formal investigation is deemed appropriate, the Title IX Coordinator will appoint investigators to the case. If it is determined a formal investigation is not appropriate, the University will offer the reporting party and/or alleged victim accommodations, which may include “No Contact” orders if requested.
5. The University may, but shall not be obligated to, delay the institution of its processes when criminal charges on the basis of the same behaviors that invoke this process are being investigated. Such delays will not last more than ten calendar days except when law enforcement authorities specifically request and justify a longer delay. University action will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.
6. In each case, a responding party is entitled to a presumption that he or she is “not responsible” until a finding of responsibility is made pursuant to the provisions of this policy. The responding party will receive written notice, prior to any interview or meeting he or she is required or entitled to attend, referencing the specific policy provisions alleged to have been violated and the specific possible sanctions. This notice will also include the date, time, location and factual allegations concerning the alleged violation(s) to the extent known.
7. Investigators will seek to conduct interviews with any individuals who may be able to provide information pertaining to the potential violation, or other potential violations that may become apparent through the course of the investigation. They will also gather, examine and assess relevance of evidence, or other resources, brought forward throughout the course of the investigation. The investigators have the authority to investigate all allegations of collateral misconduct, meaning that they may consider allegations of gender-based discrimination or sexual misconduct, but also may hear any allegations of additional conduct or policy violations that are alleged to have occurred as part of the same set of circumstances as the alleged gender-based discrimination or sexual misconduct, even though those collateral allegations may not otherwise fall within this policy. Accordingly, investigations should be conducted with as wide a scope as necessary. Final determination of whether the investigation will deal with collateral misconduct will be made by the Title IX Coordinator.
8. After the investigation is complete, and based on the *preponderance of the evidence standard* (“more likely than not”), investigators will determine whether it is “more likely than not” the responding party(s) violated one or more policies and prepare the final report. Investigators will provide the final report to the Title IX Coordinator. **This is the finding in the case.** Final reports will include documented summary of interviews, evidence, credibility assessments and any other factual support for the investigators’ findings.
9. The Title IX Coordinator and/or Deputy Coordinator will inform the reporting party and responding party in writing of the outcome of the investigation, including the relevant findings of fact and the rationale for the determination. If the determination is that the responding party is responsible for one or more violations, the Title IX Coordinator and/or Deputy Coordinator will determine the appropriate sanctioning body dependent on whether the responding party is a faculty/staff member, or student.
10. Should a student be accused of a violation of the Gender-Based Discrimination or Sexual Misconduct Policy, they are NOT subject to the same process and procedure outlined in the Code of Conduct under the “Judicial Process”, and the processes and procedures in this policy will be

followed instead. There is no hearing to determine responsibility, as that is the purpose of the investigation process. If there is a determination by the Title IX Coordinator and/or Deputy that the case should move forward for sanctioning, a Judicial Sanctioning Board will be called to determine sanctions.

11. If the responding party found responsible for a violation is a faculty or staff member, the Title IX Coordinator will consult with the chair of CODAH, the Director of Human Resources, and the appropriate executive officers to review:

- the responding party's personnel file;
- any past informal complaint where there has been a finding of discrimination and/or harassment;
- a finding of discrimination and/or harassment by the responding party through the formal complaint process; or
- any past formal or informal complaint against the responding party that was not judged to be a spurious complaint.

After this history has been taken into consideration, the Title IX Coordinator and Chair of CODAH will make their final recommendation for corrective action to the appropriate executive officer for implementation, if appropriate. Copies of the final recommendation will be sent to the reporting party, responding party, Chair of the CODAH, Director of Human Resources and appropriate executive officer for both the reporting party and responding party. This process will be done within 60 days of the registration of the complaint in writing unless there are extenuating circumstances.

The executive officer will fully implement the recommendations unless she/he has good reason not to.

An executive officer who, for whatever reason, chooses not to fully implement the recommendations will explain her/his reasons for this decision in writing (insofar as possible) or in a face-to-face meeting with the Title IX Coordinator and Chair of CODAH.

After disposition and/or implementation of the corrective actions, the executive officer must notify the reporting party, Title IX Coordinator and Chair of CODAH, in writing, of the disposition and/or corrective actions that have been implemented.

12. Each party shall have the right to exclude from consideration, for purposes of determining responsibility, the party's sexual history with persons other than the other party, their mental health diagnosis, or mental health treatment. Prior disciplinary violations may be considered for purposes of assessing sanctions.



## **Judicial Sanctioning Board for Gender-based discrimination and sexual misconduct (for students only)**

The Judicial Sanctioning board will be called to determine sanctions in cases where a student is found responsible for violation of the Gender-Based Discrimination and Sexual Misconduct Policy through an investigation. The board composition shall be:

- The Chief Judicial Officer, or appropriate designee of the Vice President for Student Affairs, and
- one faculty member, and
- one staff person.

No member of this Board shall have been a party to the case, a witness to the case, worked as an investigator on the case, the current faculty advisor to any party in the case, a current instructor to or supervisor of any party in the case, or have any familial relation, professional relationship or close friendship to any party or witness to the case, or otherwise have any actual or perceived conflict of interest that may give the perception of a lack of ability to fairly determine any sanctions. Any potential conflict of interest shall be disclosed prior to the Board convening and if there is a conflict of interest, the conflicted person shall recuse him or herself and a non-conflicted replacement shall be named prior to the Board convening. Any conflicts of interest should be reported to the Title IX Coordinator, and the Title IX Coordinator will make the determination as to whether recusal is warranted.

The Board will allow the reporting party and responding party to present impact statements. The Board may also call upon the investigators to answer questions the Board may have regarding the final report. Both reporting and responding parties have the right to be present for any testimony before the Board. The Board will convene privately to review the case file, impact statements, and prior violations of the responding party. Based on all information available, and guidelines outlined in this policy, the board will determine the sanctions, and inform both the reporting party and responding party in writing of the sanctions and the rationale for the sanctions.

## **Sanctioning for Gender-Based Discrimination and Sexual Misconduct**

Both the reporting party and the responding party shall be notified verbally and in writing of the outcome of any investigation, hearing or administrative action and any sanctions and changes to the forgoing.

The following sanctions may be imposed upon any member of the community found to have violated the Gender-Based Discrimination and Sexual Misconduct Policy. Ranges for violations are referenced below.

### **Student Sanctions (where Applicable, as defined in the Code of Conduct):**

- Written Warning
- Disciplinary Fines
- Community Service
- Attendant Restrictions
- Participation in Educational Activities Addressing the Nature of the Violation
- Disciplinary Probation
- Loss of Campus Residency
- Organizational Sanctions
- Suspension
- Expulsion
- Withholding of Diploma and/or Degree Conferral
- Revocation of Degree

### **Employee Sanctions:**

- Warning – written
- Performance Improvement Plan
- Required Counseling
- Written Reprimand
- Formal Apology
- Transfer or reassignment
- Disciplinary Probation
- Non-Renewal of Employment Agreement
- No Contact Order
- Required Training/Education
- Demotion
- Loss of Annual Pay Increase
- Suspension Without Pay
- Suspension With Pay
- Termination

No corrective action will be implemented that violates any provision of a St. Bonaventure University employment contract.

### **Transcript Notation**

The following standards for institutional transcript notation apply to any student accused of a violation of any St. Bonaventure University policy that is defined as a crime of violence reportable under the Clery Act:

- Students suspended after a finding of responsibility for said violations will have the following noted on the transcript: “Suspended after a finding of responsibility for a code of conduct violation.”
- Students expelled after a finding of responsibility for said violations will have the following noted on the transcript: “Expelled after a finding of responsibility for a code of conduct violation.”
- Students withdrawing from the University during an investigation, or any time prior to the completion of judicial procedures (including an appeal process), with respect to allegations of said violations, will have the following noted on the transcript: “Withdrew with conduct charges pending.”

### **Withdrawal Prior to Completion of Process**

Students withdrawing from the University during an investigation, or any time prior to the completion of judicial procedures (including an appeal process), to which they are subject as a responding party, may not be eligible for re-admission to the University or re-enrollment in any courses offered by the University on campus, online, or through any affiliate programs, unless and until the pending charges are resolved to the University’s satisfaction.

### **Resignation Prior to Completion of Process**

Employees who resign from the University during an investigation, or any time prior to the completion of judicial procedures or other resolution process (including an appeal process), to which they are subject as a responding party, may not be eligible for re-hire unless and until the pending charges are resolved to the University’s satisfaction.

### **Temporary Withholding of Degree/Diploma; Denial of Participation in Commencement**

The University may withhold a student's degree and/or diploma for a specified period of time and/or deny a student participation in commencement activities if the student is the subject of a pending complaint or investigation, or has disciplinary charges pending.

### **Guidelines for Sanctioning**

- Any person found responsible for Non-Consensual Sexual Contact (where no intercourse has occurred) or Stalking will likely receive a sanction ranging from probation to expulsion/termination, depending on the severity of the incident, and taking into account any previous disciplinary violations/issues.
- Any person found responsible for Non-Consensual Sexual Intercourse, Domestic Violence or Dating Violence will likely receive a sanction of suspension or expulsion (student) or suspension or termination (employee).
- Any person found responsible for Sexual Exploitation or Sexual Harassment will likely receive a sanction ranging from warning to expulsion/termination, depending on the severity of the incident, and taking into account any previous violations/issues.
- Any person found responsible for Gender-Based Discrimination will likely receive a sanction ranging from warning to expulsion/termination, depending on the severity of the incident, and taking into account any previous violations/issues.

*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of significant mitigating or aggravating circumstances.*

### **Amnesty**

The health and safety of every student at St. Bonaventure University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs, (whether such use is voluntary or involuntary) at the time that violence occurs, including but not limited to Domestic Violence, Dating Violence, Stalking, or Sexual Assault, may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report Domestic Violence, Dating Violence, Stalking or Sexual Assault to University 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 University officials or law enforcement will not be subject to the University's Code of Conduct action 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.

### **Appeals (for students only)**

An Appeals Board shall be convened when either the reporting party or the responding party choose to appeal the finding of the investigating officers and/or the sanction imposed by the Judicial Sanctioning Board. Additionally, the Appeals Board may consider appeals for removal of a suspension notation from the official transcript. If granted, the suspension notation will be removed no less than one year after the suspension is completed. No member of the Judicial Sanctioning Board who determined the sanctions in the case shall be part of the Appeals Board. The same rules that apply in selecting members of the Judicial Sanctioning Board (including rules with respect to conflicts of interest) shall apply to the Appeals Board. The Appeals Board composition shall be:

- The Vice President for Student Affairs (VPSA) or his/her designee, and
- One faculty or staff member, and
- One student.

### **Appeal of Investigative Finding**

The appealing student shall file a written appeal to the VPSA. Appeals may be filed for the following reasons:

- Material procedural defect in the original investigation that is likely to have impacted the outcome, and/or
- Presence of new material evidence that was not available through no fault of the appealing party throughout the course of the investigation, and that, if known, would be likely to have impacted the outcome, and/or
- Substantial disregard for factual evidence that is likely to have impacted the outcome.

### **Appeal for Review of Sanction**

The Appeals Board will hear appeals of sanctions in cases involving a finding of responsibility for Sexual Assault, Domestic Violence, Dating Violence or Stalking, and in other cases where the sanction is expulsion, suspension loss of good disciplinary standing, or loss of campus residency, if either party contends that the sanction is disproportionate to the nature of the severity of the violation. Other sanctions are not subject to review.

### **Appeal Procedure (Students Only)**

The appealing party must file the appeal electronically as a Word Document attachment via University email to the VPSA within five class days of the later of notification of (a) the outcome of the investigation or (b) if applicable, the outcome of the Judicial Sanctioning Board hearing, stating the specific reason and justification for the appeal. The VPSA will review the appeal request and determine whether or not the appeal request states a proper basis for appeal. If the VPSA determines the appeal states the proper basis, the Appeals Board will convene. Sanctions imposed are implemented immediately unless the VPSA stays their implementation pending the outcome of the appeal.

1. The Appeals Board process is not a “re-hearing” of the case. It will only consider facts and issues relevant to the basis for the appeal, and will not be conducting new investigations.
2. It will be assumed by the board that the original investigation and sanctions are sound, and the burden is on the appealing party to prove otherwise.
3. The Board shall meet with the appealing party and the non-appealing party (if requested), and may meet with anyone else deemed necessary to make their determination, including the investigators in the case.
4. The Board will make one of the following decisions:
  - a. **Finding/Sanction Stands:** If upon review of relevant information the Board finds that there is no merit to the appeal, or that any issue brought up in the appeal would not change the finding or the appeal, then the Board will affirm the finding and (if applicable) the sanction. This decision is final, and the case is closed.
  - b. **Appeal Granted:** If upon review of relevant information the Board finds that the appellant has met the burden of establishing that one or more grounds for appeal have merit, the Board has discretion to take action consistent with that determination. That may include, without limitation, in the case of procedural error or new information, remanding the case in whole or in part to the original investigators or new investigators or, in the case of disproportionality of a sanction, modifying that sanction as appropriate.

5. Once an appeal of a case is concluded, no further appeals are allowed, except to the extent that one or more parties seek review of proceedings ordered by the Appeals Board on remand.

### **Accommodations and Interim Measures**

Certain accommodations and interim measures may be made by the Title IX Coordinator and/or Deputy Coordinators, or appropriate designee, in an effort to protect the safety and/or well-being of any member(s) of the campus community. Initial or interim remedies are intended to address the immediate and ongoing effects of harassment, discrimination, sexual assault, sexual exploitation, domestic violence, dating violence, stalking or retaliation, or to prevent further harm to the alleged victim and to prevent further violations. These accommodations could include, but are not limited to: (a) changes in academic, living, transportation, and working situations if those changes are requested by the alleged victim and reasonably available; (b) “No Contact” Orders, Summary Suspension, or Access Restrictions as provided in the Code of Conduct under “Interim Sanctions”; or (c) any other interim restriction or sanction deemed appropriate by the Title IX Coordinator or Deputy Coordinators, or appropriate designee. A written summary of rights, options, supports, and procedures, is provided to all reporting and responding parties, whether they are students, employees, guests, or visitors.

When interim measures or accommodations are issued, affected students have the right to submit evidence and request review of them by an appropriate University Official, appointed by the Title IX Coordinator or Deputy Coordinators, or appropriate designee, to reconsider the need for and/or terms of the interim measures and/or accommodations.

If an outside agency or court of law has put in place an order of protection, the University will assist in upholding the order, including explaining the legal consequences for violating the order. If the University receives a report of an official order of protection being violated, the University will provide assistance in contacting the appropriate law enforcement agency.

### **Title IX Investigators, Judicial Sanctioning Board Officers and Appeals Board Officers, etc.**

All Title IX officials (investigators, Judicial Sanctioning Board officers, Appeals Board Officers, Title IX Coordinator and Deputy Coordinators) will be individuals who receive annual Title IX training and participate in ongoing development on issues related to gender based discrimination, sexual harassment, domestic violence, dating violence, sexual assault and stalking. They will also receive training on how to sanction appropriately while protecting reporting party safety and promoting accountability.

### **Advisor of Choice**

The reporting party and the responding party have the right to an advisor of their choice present with them through any interviews throughout the investigation, any proceedings resulting from Title IX investigations and any related meetings. The role of the advisor is to be of support to the parties. Advisors are not permitted to represent the parties. Thus, advisors are not permitted to ask or answer questions, nor are they to interfere in the process for any reason at any time. If an advisor does not adhere to these or other applicable ground rules, the advisor will be dismissed from the applicable interview, proceeding, or meeting, which will continue without opportunity for the advisee to secure a new advisor. Additionally, the University will determine its own schedule, and it is incumbent upon the reporting party and responding party to ensure their advisors are available. The schedule for interviews, hearings, appeals, or any meeting necessary will not be driven by advisor availability. Except in cases involving allegations of Domestic Violence, Dating Violence, Stalking or Sexual Assault, the advisor of choice for an employee of the University must be another employee of the University.

## **Retaliation**

Reporting parties have the right to continue their employment or educational endeavors free from retaliation or further harassment as a result of filing a report or participating in a judicial process. Retaliation exists when an individual harasses, intimidates or takes other adverse action(s) against a person because of the person's participation in an investigation or other process undertaken pursuant to this policy, or their support of someone involved in such an investigation or process. Retaliatory actions include but are not limited to threats or actual violence against a person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism. An allegation that retaliation has occurred in violation of this policy will be investigated and adjudicated in accordance with the procedures set forth in this policy. Without limiting the preceding sentence, any evidence of such behavior from a responding party throughout the course of an investigation, or on behalf of the responding party, could warrant immediate summary suspension from the University pending the completion of the investigation and subsequent judicial process.

## **Distribution of Policies and Procedures**

The University Policy and Procedures for Gender-Based Discrimination and Sexual Misconduct as they relate to SBU students can be found in the Student Code of Conduct, Appendix S. The Code of Conduct is located online at [www.sbu.edu/codeofconduct](http://www.sbu.edu/codeofconduct), or by going to the student affairs webpage at [www.sbu.edu](http://www.sbu.edu). Students, faculty and staff can also locate the Code of Conduct and the Gender-Based Discrimination and Sexual Misconduct policy and procedures on MySBU under general links. Hard copies of the Code of Conduct can be obtained by contacting the Student Affairs Division, 716-375-2512, or by going to the Student Affairs Office, Reilly Center 201. Additionally, the Gender-Based Discrimination and Sexual Misconduct policy and procedures are available in the annual crime report, published on the Student Affairs page of the University website, and hard copies are available in both the Safety and Security Office on the first floor of Robinson Hall, and in the Student Affairs Office. *St. Bonaventure University's Guide to Understanding Sexual Misconduct* is a comprehensive booklet dedicated to the understanding of issues related to Gender-Based Discrimination and Sexual Misconduct, and includes extensive information about policies, procedures, local resources, bystander intervention, the importance of timely evidence collection, myths and facts, etc. This is distributed to each first year student as they attend an educational program focused on sexual violence during Welcome Days and is available in print upon request, and online as outlined above.

## **Training and Prevention Programming**

In an effort to reduce the risk of gender-based discrimination and sexual misconduct occurring among its students, St. Bonaventure University utilizes a range of campaigns, strategies and initiatives to provide awareness, educational, risk reduction and prevention programming.

It is the policy of the St. Bonaventure University to offer programming to prevent domestic violence, relationship/intimate partner violence, sexual assault (including stranger and known offender assaults) and stalking each year. Educational programs are offered to raise awareness for all incoming students and employees, and are often conducted during new student and new employee orientation and throughout an incoming student's first semester. These programs and others offered throughout the year include strong messages regarding not just awareness, but also primary prevention (including normative messaging, environmental management and bystander intervention), and discuss institutional policies on gender-based discrimination and sexual misconduct as well as the New York State definitions of domestic violence, dating violence, sexual assault, stalking and consent in reference to sexual activity. Bystander engagement is encouraged through safe and positive intervention techniques and by empowering third-party intervention and prevention such as calling for help, using intervention-based apps, identifying allies and/or creating distractions.

Programs also offer information on risk reduction that strives to empower victims, how to recognize warning signals and how to avoid potential attacks, and do so without victim-blaming approaches. Throughout the year, ongoing awareness and prevention campaigns are directed to students and employees, including faculty, often taking the form of campaigns, guest speakers, events, and programs sponsored by student clubs and organizations such as

Bona's for Equality (the University women's issues student organization). In addition, the University requires all first year students to complete Haven, an online sexual violence education program presented by EverFi.

### **Title IX Coordinator**

In accordance with Office of Civil Rights legislation pertaining to Title IX of the Education Amendments of 1972, the University is required to appoint and maintain a coordinator for Title IX Compliance on campus. St. Bonaventure University's Title IX Coordinator is the Vice President for Student Affairs, 716-375-2513, or rtrietle@sbu.edu. Documentation of investigations, findings, and Judicial Sanctioning Board Hearing outcomes regarding alleged gender-based discrimination and sexual misconduct will be kept on record with the Title IX Coordinator in accordance with University policies regarding records management.

### **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/intimate partner violence, stalking and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justices free from pressure by the University;
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 University courteous, fair and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few University representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the University, any student, the responding party and/or their friends, family, and acquaintances within the jurisdiction of the University;
9. Access to at least one level of appeal of determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial process including 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 University.

### **FACULTY & STAFF Bill of Rights**

All St. Bonaventure employees have the right to:

1. Make a report to local law enforcement and/or State Police;

2. Have disclosures of sex discrimination, sexual harassment, domestic violence, dating/intimate partner violence, stalking and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justices free from pressure by the University. *This applies only if the employee is the person the crime is against;*
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, courtesy, fairness and respect;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or that the reporting individual should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few University representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the University, any student, the responding party and/or their friends, family, and acquaintances within the jurisdiction of the University; and
9. Be accompanied by an advisor of choice who is an employee of the University (CODAH Advocacy Officers may be called upon) who may assist and advise a reporting individual, accused, or respondent throughout the investigatory process including all meetings and hearings related to such process.