

# **TITLE IX, CLERY, VAWA, ENOUGH IS ENOUGH**

**UNDERSTANDING GENDER-BASED  
DISCRIMINATION AND SEXUAL  
MISCONDUCT ON COLLEGE CAMPUSES**

**OVERVIEW OF  
TITLE IX AND  
CLERY ACT:  
LAWS AND  
REGULATIONS**

# **TO WHOM DOES TITLE IX APPLY?**

- **Any institution receiving programs authorized under Title IV of the Higher Education Act (HEA)**
  
- **Every student, employee, contracted entity, guest/visitor of the institution**

# **INSTITUTION'S RESPONSIBILITIES TO ADDRESS GENDER-BASED HARASSMENT UNDER TITLE IX**

**When a responsible employee knows or reasonably should know of a report of gender-based harassment, the institution has an obligation to:**

- 1. Investigate** – required, even if just preliminary fact finding
- 2. End Harassment** – immediate steps to intervene and end the behavior
- 3. Remedy the effects of the harassment**
- 4. Prevent its future recurrence**

# **ROLE OF OFFICE OF CIVIL RIGHTS (OCR) IN ENFORCING TITLE IX**

- **OCR is under the Department of Education (federal)**
- **Provides standards and guidance for investigation and enforcement of Title IX by institutions**
- **Enforces standards:**
  - Fields complaints
  - Conducts investigations of institutions
  - Engages in voluntary compliance investigations with institutions

# **CLERY ACT AND VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT (VAWA SEC. 304) AKA CAMPUS SAVE ACT**

- 1. Campus crime reporting – expanded to include Dating Violence, Domestic Violence and Stalking**
- 2. Added gender identity and nation of origin to list of actual or perceived bias for bias and hate-crime reporting**
- 3. Sex offenses have historically been a part of crime reporting obligations under Clery Act**
- 4. New policy, procedure, training, prevention and education requirements for Sexual Assault, Stalking, Dating Violence, Domestic Violence**

# SEXUAL HARASSMENT: 2001 TITLE IX GUIDANCE

- Any unwelcome conduct of a sexual nature
- Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal or physical conduct of a sexual nature
- Sexual harassment of a student can deny or limit, on the basis of sex the student's ability to participate in or to receive benefits, services, or opportunities in the school's program
- Sexual harassment of students is, therefore, a form of **sex discrimination** prohibited by Title IX under the circumstances described in this guidance.

# THREE TYPES OF SEXUAL HARASSMENT

Sexual Harassment is unwelcome conduct of a sexual nature or that is sex or gender-based

1. **Hostile environment** – when harassment is sufficiently severe, persistent or pervasive, and objectively offensive that it unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the University's educational (and/or employment), social, and/or residential program.
2. **Quid Pro Quo** – based on power differentials, when submission to conduct is explicitly or implicitly a term or condition of rating or evaluation of an individual's educational or employment progress, development or performance, including access to receiving benefits
3. **Retaliatory Harassment** - any adverse action taken against a person participating in a protected activity because of their participation in that protected activity



# **HOSTILE ENVIRONMENT**

**Totality of circumstances to subjectively and objectively evaluate:**

- **Frequency, nature, severity of conduct**
- **Threatening**
- **Humiliating**
- **Relationship between alleged harasser and subject(s) of harassment**
- **Size of school, location, context**
- **Effect on alleged victim**
- **Interference with performance**
- **Assessment of First Amendment Freedoms, academic freedom, and weigh against offensive language**

# **SEXUAL ASSAULT**

- **2011 Dear Colleague Letter defines sexual violence as a form of sexual harassment**
- **Includes non-consensual sexual intercourse and non-consensual sexual contact**
- **“ ‘Sexual Assault’ means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the FBI.”**
- **Forcible Sex Offense – defined as any sexual act directed against another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent.**
- **Non-forcible Sex Offense – defined as unlawful, non-forcible sexual intercourse (sex with a minor or incest)**

# SEXUAL VIOLENCE

- Includes sexual assault, rape, domestic violence, dating violence and stalking

- *Differences between harassment, assault and violence?*

*Sexual violence is a form of sexual harassment(broad umbrella), and sexual assault is a form of sexual violence.*

# **DIFFERENCES BETWEEN CRIMINAL AND TITLE IX INVESTIGATIONS**

- 1. Criminal investigation – law enforcement, District Attorney’s office, external, laws/regulations**
- 2. Title IX Investigation – Internal process through the University, separate and independent of law enforcement investigation, university policies and procedures**
- 3. The two can/will happen simultaneously**
- 4. University will not wait on pending criminal proceedings to proceed with its own investigation and complete process**

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# **SEXUAL HARASSMENT**

**Sexual harassment is unwelcome, gender-, sexual orientation- 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.**

# **SEXUAL HARASSMENT CONT'D**

**It constitutes sexual harassment when:**

- **Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education opportunities or activities,**
- **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**
- **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.**

# BEHAVIOR

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

- **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);**
- **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**
- **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 unwanted 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.**

# **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 (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.**

# **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.**

# **OFF-CAMPUS COMPLAINTS**

- 1. University will investigate complaints, even if they occur off-campus**
- 2. Geographic and temporal limitations**

# RETALIATION

Reporting parties have the right to continue their 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 of discrimination, or gender-based or sexual misconduct, or their support of someone involved in such an investigation. 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. Sanctions will be imposed on any faculty, staff or student found engaging in retaliation. 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.

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# **DISCIPLINARY PROCEDURES - STUDENT**

**Report of alleged violation**

**Preliminary Investigation**

**Title IX Coordinator Review**

**Formal Title IX Investigation**

**Finding**

**Title IX Coordinator Review**

**Notification**

**Judicial Sanctioning Board**

**Appeal**

# **DISCIPLINARY PROCEDURES - EMPLOYEE**

**Report of alleged violation**

**Preliminary Investigation**

**Title IX Coordinator/CODAH Chair Review**

**Formal Title IX Investigation**

**Finding**

**Title IX Coordinator/CODAH Chair Review**

**Notification of finding**

**Sanctions administered in conjunction with employee's  
executive officer**

# **BRINGING FORWARD COMPLAINT**

- 1. Anyone can bring forward a complaint**
- 2. Any responsible employee is required to report**
- 3. A responsible employee is any employee whom has not be designated as exempt**
- 4. Should report to Safety and Security Services, Residential Staff (RAs and RDs), reporting party's supervisor, CODAH Advocacy Officer, or directly to the Title IX Coordinator (Vice President for Student Affairs)**
- 5. Report to law enforcement – New York State Police – 1-844-845-7269 – 24 hotline dedicated to NYS Campus Sexual Assault reporting**

# **PREPONDERANCE OF THE EVIDENCE STANDARD**

- **Per Title IX and Dear Colleague, universities are to use “preponderance of the evidence” standard, or “more likely than not”, or just more than 50%**
- **This is one significant difference between external legal proceedings and internal process and procedure**
- **For internal Title IX investigations, evidence will be collected, and investigators will conduct interviews with any individual that 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 (collateral misconduct).**
- **Investigators evaluate all evidence, and also engage in credibility assessment, to determine whether a violation “more likely than not” occurred.**

# **DETERMINATION OF UNWELCOMED CONDUCT**

## **Consent Construct (from ATIXA)**

- 1. Was physical force used? If yes, stop here, violation. If no, move on to question 2.**
- 2. Was the complainant incapacitated as defined by the University? Did the accused individual know or should he/she have known of the incapacitation? If yes, stop here, violation. If no, move on to question 3.**
- 3. What clear words or actions were used by the reporting party to convey clear permission to participate in the activity?**

**For sexual harassment, the investigators will weigh the totality of circumstances to determine if behavior was unwanted.**

# **DISCIPLINARY PROCEDURES**

- 1. All employees and students are subject to the University Gender-Based Discrimination and Sexual Misconduct Policy.**
- 2. All employees and students are subject to the Title IX Investigation Procedures outlined in the policy.**
- 3. Investigators determine a finding in the case of Responsible or Not Responsible.**
- 4. If a student is found responsible, the case goes to Judicial Sanctioning Board.**
- 5. If an employee is found responsible, the Title IX Coordinator and the Chair of the CODAH determine the proper person to implement corrective action in consultation with the CODAH Policy and Procedures.**

# **JUDICIAL SANCTIONING BOARD - STUDENTS**

- 1. Consists of Chief Judicial Officer, one faculty member and one staff member**
- 2. All Title IX - trained investigators**
- 3. Not a re-hearing of the case**
- 4. Both reporting party and responding party have a right to review all materials and be present for any testimony in front of the Board**
- 5. Both reporting party and responding party have a right to advisor of choice present at the Board**
- 6. Board will hear impact statements, and may interview anyone they deem important to making the sanction decision.**

# **SANCTIONING - STUDENTS**

- 1. Board has full range of sanctioning power, up to and including expulsion.**
- 2. Board shall take into consideration the following guidelines:**
  - a. Any person found responsible 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.**
  - b. Any person found responsible for Non-Consensual Sexual Intercourse, Domestic Violence or Dating Violence will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).**
  - c. Any person found responsible for Sexual Exploitation or Sexual Harassment will likely receive a recommended sanction ranging from warning to expulsion/termination, depending on the severity of the incident, and taking into account any previous violations/issues.**



# APPEALS - STUDENTS

- 1. Both the reporting party and responding party have equal rights to appeals**
- 2. Appealing party files in writing, electronically, to the VPSA within five class days of the later of notification of outcome of investigation, or sanction notification.**
- 3. Appeal of investigative finding, or appeal for review of sanction.**
- 4. Appeals Board consists of VPSA or his designee, one faculty or staff member, one student (all trained in Title IX)**
- 5. Board can decide either:**
  - 1. Finding/sanction stands**
  - 2. Appeal granted**

# **WEIGHING EVIDENCE IN AN IMPARTIAL MANNER**

- 1. Burden of proof is on University to thoroughly investigate to determine if a violation has occurred, not to build a case against an accused party.**
- 2. Burden of proof is NOT on reporting party, and it is not on the responding party.**
- 3. Assumption that the reporting party is being truthful, and the responding party is not responsible until investigation shows otherwise.**
- 4. A finding of “not responsible” does not mean the reporting party should not be believed, but that there is not enough evidence to support a finding of responsibility.**
- 5. Investigator is a neutral fact finder.**

# **TYPES OF EVIDENCE**

- **Direct evidence**
- **Circumstantial evidence**
- **Documentary evidence**
- **Second hand “hearsay” evidence**

# **REPORTING AND CONFIDENTIALITY**

# WHO IS TITLE IX COORDINATOR?

- **Title IX Coordinator – Richard Trietley, Vice President for Student Affairs, [rtrietle@sbu.edu](mailto:rtrietle@sbu.edu), 716-375-2513**
- **Responsibilities of Title IX Coordinator**
  - Point person for all title IX complaints
  - Coordinator of all steps in complaint process, ensuring proper protocol is implemented, including response to victim, interim accommodations, investigative action, notification of parties, etc.
  - Communicate with law enforcement when appropriate
  - Establish a reporting structure
  - Gatekeeper of information
  - Contact person for outside entities, such as OCR, DOJ, etc.
  - Oversees campus prevention, education and training efforts
  - Maintains campus policies relating to Gender-Based Discrimination and Sexual Misconduct

# **MANDATORY REPORTERS**

- **All employees not designated as confidential resources**
- **Exempt employees are health care professionals in health services, counselors in the counseling center, and any religious (friar, priest, sister) serving in their role as a religious. Note that religious serving in other roles, such as faculty or club advisors, are not exempt from reporting obligations.**
- **Responsible employees must report *all* information of an alleged incident of sexual assault, sexual harassment, domestic violence, dating violence or stalking, to the Title IX Coordinator or the Director of Safety and Security Services.**

# WHAT IS “ACTUAL NOTICE”

“An institution has notice if a **responsible employee** knew, or in the exercise of reasonable care, should have known about the sexual harassment or violence.” – ATIXA

Many ways to receive notice:

- Employee witnesses incident or behavior
- Alleged victim report
- 2<sup>nd</sup> or 3<sup>rd</sup> party reports

**When in doubt, report out.**

# **RESPONDING TO A COMPLAINT**

- **Responsible employees should be prepared to inform others of limits of confidentiality.**
- **Treat reporting parties with care and concern. Our main priority is to give those reporting access to resources, especially for physical and emotional healing.**
- **Know where to access resource information, and to whom you should be reporting.**
- **Engage active listening skills.**
- **Do not doubt or question legitimacy of reporting party story.**
- **Encourage formal reporting and reporting to law enforcement as much as possible.**



# WHAT NOT TO SAY

Be mindful of your own biases and possible judgmental language!

## **AVOID:**

“What did you expect would happen?”

“What were you wearing?”

“Were you drunk?”

“Why didn’t you \_\_\_\_\_?” (yell, fight back, say no, stay with your friends)

# EFFECTS OF TRAUMA

- **There is no one way a victim of trauma “should” act**
- **Responses can range from substance abuse and other high risk behaviors, to continued contact with abuser.**
- **Victims often feel “paralysis” during an incident, preventing them from speaking, moving, fleeing, etc.**
- **Memory can be impaired due to release of hormones into the system**

# **SENSITIVITY WITH ALL PARTIES**

- **Expanded Title IX legislation was designed to provide an equitable process for reporting and responding parties**
- **Thus, provide both parties what they need.**
- **Important to provide access to support for BOTH parties, and this should not be neglected with responding parties.**
- **Understand and act out of care for each individual involved in the process. It is a stressful process for all parties, those on the outside of the incident (witnesses, roommates, friends, family, reporting employees, etc.)**
- **Engage in activities that will help you identify and overcome biases.**

# **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.**

**New York State Police: 24 hour hotline dedicated to receiving reports of sexual assault on New York State College Campuses - 1-844-845-7269**

**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**

# **PHYSICAL EXAMINATION**

**For one's safety and well-being, immediate medical attention is encouraged. Further, being examined as soon as possible, ideally within 120 hours, is important in the case of rape or sexual assault. Physical evidence should also be collected through a medical examination. Olean General Hospital has a Sexual Assault Forensic Examiner program, designed specifically to conduct physical examinations after an incident of sexual violence, and evidence is collected during this examination. Having this examination does not commit a person to pursuing legal charges against an individual. However, failure to have an accurate examination to collect physical evidence in a timely manner may negatively affect a person's ability to pursue legal charges in the future. Victim Advocates from Cattaraugus Count Community Action Victim Services will explain options for victims to be reimbursed for medical examinations.**

# PROTECTING CONFIDENTIALITY

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 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.

# **PROTECTING CONFIDENTIALITY, CONT'D**

- **Both the reporting party and responding party have a right to review the results of internal investigations.**
- **Both the reporting and responding parties have a right to review all evidence brought forward in the investigation, including testimony of witnesses, physical evidence, etc. The University will redact any information that violates a student or employee HIPPA or FERPA rights.**
- **Information is only shared with those involved in the specific Title IX process (investigators, Title IX Coordinator/Deputy Coordinator, etc.).**
- **Information will be secured by the Title IX Coordinator and/or the Chair of CODAH upon completion of a case.**
- **Be aware that all information gathered is subject to subpoena and could be utilized in external legal cases.**

# **NON-CONFIDENTIAL REPORTING**

**Anyone wishing to report incidents of gender-based or sexual misconduct should do so through Safety and Security Services, Residential Staff (RAs or RDs), reporting party's supervisor, a CODAH Advocacy Officer, or directly with the Title IX Coordinator (Vice President for Student Affairs).**



# **VICTIM'S RIGHT TO NOTIFY LAW ENFORCEMENT**

- **The University encourages all victims of sexual assault, domestic violence, dating violence, and stalking to report incidents to law enforcement.**
- **The victim has the choice to do so, and the University will provide support and assistance in connecting a reporting party with appropriate law enforcement officials.**
- **New York State Police: 24 hour hotline dedicated to receiving reports of sexual assault on New York State College Campuses - 1-844-845-7269**
- **The University will also support and assist in enforcement of any orders of protection obtained through legal proceedings.**

# EVIDENCE COLLECTION

- **To preserve evidence, it is recommended that you do not bathe, shower, douche, eat, drink, smoke, brush your teeth, urinate, defecate, or change clothes before receiving medical attention. Even if you have already taken any of these actions, you are still encouraged to have prompt medical care, and evidence may still be recoverable.**
- **Typically, if police are involved or will be involved, they will obtain evidence from the scene, and it is best to leave things undisturbed until their arrival. They will gather bedding, linens or unlaundered clothing, and any other pertinent articles that may be used for evidence. It is best to allow police to secure items in evidence containers, but if you are involved in transmission of items of evidence, such as to the hospital, secure them in a clean paper bag or clean sheet to avoid contamination.**
- **If you have physical injuries, photograph or have them photographed, with a date stamp on the photo.**
- **Record the names of any witnesses and their contact information. This information may be helpful as proof of a crime, to obtain an order of protection, or to offer proof of a campus policy violation.**
- **Try to memorize details (e.g., physical description, names, license plate number, car description, etc.), or even better, write notes to remind you of details, if you have time and the ability to do so.**

# **HOW TO CONTACT OFFICE OF CIVIL RIGHTS (OCR)**

**U.S. Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education Bldg  
400 Maryland Avenue, SW  
Washington, DC 20202-1100**

**Telephone: 800-421-3481  
FAX: 202-453-6012; TDD: 800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)**

**OCR New York Office:**

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

**Telephone: 646-428-3900  
FAX: 646-428-3843; TDD: 800-877-8339  
Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)**

# **ACCOMMODATIONS AND REMEDIES**

# **RIGHT TO INTERIM ACCOMMODATION AND REMEDIES**

**Certain accommodations and interim measures may be made by the Title IX Coordinator and/or Deputy, 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:**

- **changes in academic, living, transportation, and working situations if those changes are requested by the alleged victim and reasonably available;**
- **“No Contact” orders;**
- **Summary Suspension (see Code of Conduct, *Jurisdiction* Section E “University Right to Take Action”);**
- **attendant restrictions;**
- **all other restrictions outlined in the Code of Conduct under “Interim Sanctions”;**
- **any other interim restriction or sanction deemed appropriate by the Title IX Coordinator or Deputy, 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.**

# **NO CONTACT ORDERS**

**When no-contact orders, 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, or appropriate designee, to reconsider the need for and/or terms of the order, other interim measures and/or accommodations.**

# **ORDER OF PROTECTION**

- **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.**

# **COORDINATION WITH LAW ENFORCEMENT DURING CONCURRENT PROCEEDINGS**

- **The University views law enforcement as an invaluable resource, and seeks to assist law enforcement in any way possible during these investigations.**
- **The University will, when possible, stay it's own investigation for a short period of time (not more than ten days from time of report) while law enforcement conducts its own investigation. This determination will be made by the Title IX Coordinator, who will also communicate with appropriate agencies.**
- **The University shall not impede in any law enforcement investigation.**



# 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.**

# **ROLE OF ALCOHOL IN SEX-BASED HARASSMENT**

- **Alcohol is the #1 Date Rape Drug**
- **“Many are survivors of what’s called “incapacitated assault”: they are sexually abused while drugged, drunk, passed out, or otherwise incapacitated.” – from “Not Alone Report”, April 2014**
- **Incapacitation**

**CONSENT**

# **UNIVERSITY POLICY OF CONSENT**

## **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.**

# CONDITIONS OF CONSENT

- **Silence, lack of physical resistance, and/or the absence of a verbal “no” are not forms of consent.**
- **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.**
- **Consent can be initially given but withdrawn at any time.**
- **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.**
- **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.**
- **Consent to one sexual act does not indicate consent to other sexual acts.**
- **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 (by disability, sleep, involuntary restraint, or the taking of drugs or alcohol, unconsciousness or blackout) constitutes a violation of this policy.**
- **Consent cannot be given under coercion, force, or threat of physical harm or injury.**
- **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, COERCION**

## **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

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.

**Example:** Someone whom has “blacked out” could be considered incapacitated. This does not mean they were passed out, and the person could in fact be fully functioning but unable to effectively give 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.***

# **RIGHTS OF PARTIES**

**(COMPLAINT,  
INVESTIGATION,  
HEARING AND  
APPEAL)**



# STUDENTS' BILL OF RIGHTS

All students have the right to:

- **Make a report to local law enforcement and/or State Police**
- **Have disclosures of domestic violence, dating/intimate partner violence, stalking and sexual assault treated seriously;**
- **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;**
- **Participate in a process that is fair, impartial and provides adequate notice and a meaningful opportunity to be heard;**
- **Be treated with dignity and to receive from the University courteous, fair and respectful health care and counseling services, where available;**
- **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;**
- **Describe the incident to as few University representatives as practicable and not be required to unnecessarily repeat a description of the incident;**
- **Be protected from retaliation by the University, any student, the accused and/or the Respondent, and/or their friends, family, and acquaintances within the jurisdiction of the University;**
- **Access to at least one level of appeal of determination;**
- **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**
- **Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the University.**

# EMPLOYEE BILL OF RIGHTS

- All St. Bonaventure employees have the right to:
- Make a report to local law enforcement and/or State Police;
- Have disclosures of sex discrimination, sexual harassment, domestic violence, dating/intimate partner violence, stalking and sexual assault treated seriously;
- 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;*
- Participate in a process that is fair, impartial and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity, courtesy, fairness and respect;
- 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;
- Describe the incident to as few University representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the University, any student, the accused and/or the Respondent, and/or their friends, family, and acquaintances within the jurisdiction of the University; and
- 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.

# OTHER RIGHTS

- **Both parties have the same opportunities to provide evidence and be heard in a fair and equitable process**
- **Both parties have the right to be informed in writing of the outcome of any disciplinary proceeding arising from an allegation of Sexual Assault, Domestic Violence, Dating Violence or Stalking.**
- **Both parties have the same opportunities for appeal.**
- **Both parties will be notified of any changes in results, and will be notified in writing when results become final.**
- **Advisor of choice**
  - For students can be anyone
  - For employees, must be an employee of the University

**SANCTIONS  
AND  
CORRECTIVE  
ACTIONS**

# **ACCOUNTABILITY**

**Sanctions and other corrective actions are designed to help bring remedy to the victim and the community, and to ensure there is no future recurrence of the harassment.**

# POSSIBLE SANCTIONS

## EMPLOYEE CORRECTIVE ACTIONS

- **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**

## STUDENT SANCTIONS

- **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**

# **TRANSCRIPT NOTATION (STUDENTS)**

**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.”**

**Students may appeal to the University through the appeals process (See “Appeals Board” outlined in this policy) to have a suspension notation, and only a suspension notation, removed from the transcript. If granted, the notation will be removed no less than one year after the suspension is imposed. This appeal process does not apply to the expulsion notations or withdrawal notations.**

# **WITHDRAWAL OR RESIGNATION 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), will 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.**
- **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), will not be eligible for re-hire.**



# **WITHHOLDING OF DEGREE AND/OR COMMENCEMENT RESTRICTIONS**

**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.**

# **DISHONESTY (STUDENTS)**

**Dishonesty behavior is strictly prohibited, and is a violation of the Code of Conduct. Dishonesty in any capacity in any part of this process could be handled through the University judicial process.**

**QUESTIONS**