

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

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, 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 the use of pressure to compel someone to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they deprive another individual of the ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity or gender expression, and threatening to harm oneself if the other party does not engage in the sexual activity. Coercing an individual into engaging in sexual activity violates this Policy in the same way as physically forcing someone into engaging in sexual activity

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.