

**THE COLLEGE OF SAINT ROSE  
ALBANY, NEW YORK**

**SEXUAL HARASSMENT AND MISCONDUCT POLICY**

**I. Policy**

The College of Saint Rose (the “College”) is a private, independent, coeducational institution that reflects the values and heritage of our founders, the Sisters of St. Joseph of Carondelet. The values instilled by our founders include: creating an inclusive community, responding to the needs of the times, educating the whole person, and striving for excellence in all endeavors.

The College is committed to creating and maintaining a safe environment for all of its students and employees. All forms of sexual misconduct offenses and other non-consensual sexual contact by members of the Saint Rose community will not be tolerated by the College and represent a violation of College policy and the law. Violation of the College’s Policy on Sexual Harassment and Misconduct will result in the responsive action, as prescribed under Title IX including investigation of what occurred; action to stop the prohibited conduct; remedial support for the victim of the conduct and, as necessary, for the broader community; and action to reasonably prevent the re-occurrence of the behavior. This may result in possible suspension, dismissal or termination from the College.

This Policy applies regardless of race, color, religion, creed, ethnicity, national origin, gender, age, sexual orientation, gender identity or expression, familial status, veteran status, disability, predisposing genetic characteristics, domestic violence victim status or other basis identified in federal or state law.

**II. Scope of Policy**

This Policy applies to all concerns and complaints brought by the College’s students against any of the College’s students, employees, and campus visitors. This Policy applies on all property owned by the College, on all property at which the Colleges holds educational programs or activities, and on all airplanes, buses, or other vehicles used to transport the College’s students. This policy applies to all of the College’s educational programs and other activities whether they are held on or off campus.

Employees who have concerns or complaints about sexual harassment should follow the College’s Policy on Non-Discrimination and Unlawful Workplace Harassment for Employees. <http://assets.strose.edu/Hr/Nondiscrimination.pdf> .

**III. Definitions**

**A. 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.

1. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
3. Consent may be initially given but withdrawn at any time.
4. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
6. When consent is withdrawn or can no longer be given, sexual activity must stop.

### **B. Incapacitated Sex:**

To have sex with someone whom you know to be, or reasonably should know to be, incapable of making a rational, reasonable decision about a sexual situation is a violation of College's Code of Conduct and New York State Law. Incapacity to make rational decisions about a sexual decision might result from the taking of a date rape drug, other drugs, alcohol, or as a result of illness. Intoxication on the part of the initiator is not an excuse for the violation of this policy or the law.

### **C. No Contact Order:**

An interim protection measure where the College's Department of Safety and Security prohibits a student, employee or third party from contacting another student, employee or third party on campus when there is a behavior that represents a risk of violence, threat, pattern, or predation.

### **D. Order of Protection:**

An order of protection is issued by a court to limit the behavior of someone who harms or threatens to harm another person. It is used to address various types of safety issues, including, but not limited to situations involving domestic violence.

## **E. Relationship Violence:**

A pattern of abusive behavior that one person uses to obtain and maintain power and control over their intimate partner. Physical and/or sexual abuse may or may not be present. Coercive control is always present. Relationship Violence is purposeful and systematic, involves a fixed imbalance of power that has been created over time, and is driven by a sense of entitlement.

## **F. Responsible Employees:**

Responsible Employees are mandatory reporters and include all employees (faculty, administrators, and staff) as well as student employees such as Resident Assistants, unless exempted as outlined in the Confidential and Privileged Reporting section of this Policy below. As mandatory reporters, Responsible Employees are required to report all details of an incident of sexual misconduct, including the identity of the victim and the perpetrator, the date and location of the incident and details regarding the incident if known, to the appropriate office for purposes of initiation of an investigation and appropriate action. Responsible Employees are trained to provide information and support and appropriate referral to confidential or private reporting resources. Responsible Employees are also required to provide Clery Act statistical information and/or information for a Timely Warning as warranted. Any failure to report an incident of sexual misconduct may result in disciplinary action being brought against the Responsible Employee, up to and including termination of employment.

## **G. Sexual Misconduct:**

1. **Non-Consensual Sexual Contact:** Any intentional sexual touching without effective consent. This includes any contact with the breasts, buttocks, groin, genitals, mouth or other bodily orifice of a person upon another person, as well as the touching of another with any of these body parts, without effective consent; or other intentional contact of a sexual nature without consent or after consent is withdrawn.
2. **Non-Consensual Sexual Intercourse:** Any sexual intercourse or penetration (anal, oral, or vaginal) however slight, with any object or body part, by a person upon another person without effective consent or after consent is withdrawn.
3. **Forced Sexual Intercourse:** Any sexual intercourse (anal, oral or vaginal), by any object or body part, by a person upon another person, that occurs as a result of force. The prohibited force may be physical in nature, or represented by threats, intimidation or coercion. Intercourse obtained by any form of force impacts the free will of the victim and thus removes the opportunity for effective consent
4. **Sexual Exploitation:** Sexual exploitation occurs when an individual takes non-consensual, unfair, or abusive advantage of another for his/her own advantage or benefit, even though that behavior does not constitute one of the other sexual misconduct offenses. Examples include, but are not limited to:
  - a. Non-consensual photo-taking, video or audio taping of sexual activity.

- b. Stalking with a sexual component. Stalking may take many forms, including persistent calling, texting, or posting on a social networking site as well as physical stalking. When the content of the messages or the nature of the physical stalking is of a sexual nature sexual misconduct has occurred.
  - c. Voyeurism is a form of sexual exploitation in which one individual engages in secretive observation of another for personal sexual pleasure or engages in non-consensual photo-taking, video or audio taping of sexual acts. Although the source for the secretive viewing or taping may be unaware of the observation, this behavior is a form of sexual misconduct and violates the integrity of the unaware student.
  - d. The disrobing or exposure of another person without their consent.
  - e. Inter-personal or intimate partner violence (relationship violence)
5. **Sexual Harassment:** Sexual harassment is defined under this policy as severe or persistent or pervasive and objectively offensive unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct or communication of a sexual nature that limits or denies a student's ability to participate in or benefit from the college's educational programs or activities, or creates a hostile working environment. when:
- a. Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's academic or other advancement (quid pro quo harassment);
  - b. Submission to, or rejection of, the conduct is used as the basis for academic decisions affecting the individual (quid pro quo harassment); or
  - c. The conduct has the effect of unreasonably interfering with a person's work, professional or educational performance, productivity, physical security, participation in living arrangements; or extracurricular activities, academic or career opportunities, services or benefits—or of creating an intimidating, hostile, or offensive learning environment.

## **H. Sexual Violence:**

The term used to include all sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking.

## **I. Stalking:**

Stalking is an unwelcome pursuit. It is an effective tactic of control exerted by one party upon another. When gender is the basis for the stalking behavior, it would be a violation of the Saint Rose Sexual Harassment and Misconduct Policy. It is also a crime that can cause fear without physical injury as it has no real identified beginning and seemingly no end. Stalking often leads to physical contact and is generally on a trajectory toward violence. Stalking often includes the use of technology such as phones, texting, cameras, social networking sites, and email.

**J. Preponderance of the Evidence:**

This standard of evidence means that there must be a determination of whether the alleged sexual misconduct “more likely than not” to have occurred or 51% likely to have occurred.

**K. Title IX Coordinator**

1. The Title IX Coordinator manages the College’s response to reports of gender inequity and discrimination, which includes reports of sexual violence including, but not limited to, sexual assault, sexual harassment, dating violence, domestic violence, and stalking. Informed by current federal and state law and guidance, the Title IX Coordinator aims to ensure that the College’s responses promptly and effectively stop problem behavior, prevent its recurrence, and remedy its effects.
2. The Title IX Coordinator’s responsibilities include:
  - a. Overseeing the College’s response to gender discrimination, which includes all forms of sexual violence, to ensure prompt and equitable resolution of all complaints.
  - b. Providing a central place to report an incident and overseeing the reporting process.
  - c. Providing information about College policies and procedures.
  - d. Providing referrals to campus and community resources and victim advocates.
  - e. Facilitating accommodations to address safety concerns and to support victims and complainants so that academic and professional pursuits may continue unimpeded.
  - f. Collaborating with community partners to assist with a resolution that balances the needs of the individuals involved with those of the larger community.
  - g. Keeping records to ensure patterns of behavior are identified.
  - h. Overseeing investigations of misconduct to ensure fairness, impartiality, and equity.
  - i. Coordinating and providing training, education, and prevention programs for the entire College community.
3. The Title IX Coordinator receives and responds to gender equity and sexual violence concerns. In addition to the Title IX Coordinator, the Deputy Title IX Coordinators have the responsibility for either coordinating the College’s Title IX compliance efforts and/or assisting in sexual misconduct investigations in collaboration with the Title IX Coordinator. Collectively, the Title IX Coordinator, Deputy Title IX Coordinators, and Trained Investigators serve as the College’s Title IX team. The Title IX Team is charged with handling known instances of gender based misconduct or sexual violence with fair and efficient processes that are intended to support the entire College community.

Title IX Coordinator	Dennis McDonald Vice President for Student Affairs
----------------------	---

	<p>Events and Athletic Center, Room 210  420 Western Ave.  Albany, New York 12203  <u><a href="mailto:mcdonald@strose.edu">mcdonald@strose.edu</a></u>  (518) 454-5170</p>
<p>Deputy Title IX  Coordinators</p>	<p>Rita McLaughlin  Assistant Vice President for Student Affairs  Events and Athletic Center, Room 210  420 Western Ave.  Albany, New York 12203  <u><a href="mailto:mclaughr@strose.edu">mclaughr@strose.edu</a></u>  (518) 454-5170</p>
	<p>Jeff Knapp  Associate Vice President for Human Resources  Cabrini Hall  399 Western Ave.  Albany, New York 12203  <u><a href="mailto:knappj@strose.edu">knappj@strose.edu</a></u>  (518) 454-5138</p>

**L. Trained Investigators:**

The College has identified members of the Administration who have gone through extensive training to serve as investigators of Sexual Misconduct complaints. The investigators receive annual training on issues related to:

1. The four types of cases: domestic violence, dating violence, sexual assault, and stalking, as well as other forms of sexual misconduct as outlined in this policy.
2. How to conduct an investigation “that protects the safety of victims and promotes accountability”.
3. How to conduct an investigation (hearing) “process that protects the safety of the victim and promotes accountability”.

**M. Verbal Harassment/Assault:**

Verbal Harassment/Assault, without accompanying physical contact, is not sexual assault, but may fit the criteria for sexual harassment. Sexual harassment is also prohibited by the College’s Code of Conduct.

**IV. Information and Resources for Victims of Sexual Violence**

**A. If you are the victim of sexual violence:**

1. Get to a safe place - a friend’s house or any place where people can give you emotional support and physical care. Call the Rape Crisis Hot Line.

2. Do not clean up. It may be difficult to keep from cleaning yourself up, but if you do you may destroy evidence that could be useful should you decide to report the assault to the police. Don't wash up, douche, change clothes, eat, brush your teeth, go to the bathroom or brush your hair. Even if you are not sure about reporting the assault, it makes sense to preserve the option of reporting until you make a final decision.
3. Seek medical help immediately for the treatment of any injuries and for tests to check the possibility of pregnancy or sexually transmitted diseases. If you do plan to report the incident to authorities, there is an additional reason to seek medical attention. Medical evidence can be collected. Don't douche, bathe, shower or change your clothes before seeking medical attention
4. Report the incident to a campus counselor or victim advocate if you feel comfortable doing so.
5. Seek counseling, whether or not you decide to report the crime or participate in legal action. Professional counseling is available through the Counseling and Psychological Services Center at The College of Saint Rose. Counseling can be beneficial as you work through your reaction to sexual misconduct
6. You may also choose to file a report with campus security, the Albany Police Department, or the NYS Police. This is your decision. (See "Procedures for Dealing with Sexual Offenses" Section).
7. If you wish, file a complaint with the Student Conduct Office, if the accused person is part of The College of Saint Rose community. An investigation for appropriate disciplinary action under the College's prohibition against sexual misconduct will occur with the Student Conduct Office.
8. Tell your story soon to avoid forgetting details. Alternatively, write out the details for yourself or use a tape recorder.
9. Take whatever steps are necessary to work through the incident/assault. This might include talking to your partner, friend or counselor about your feelings. Resume your normal routine as much as possible.
10. Go with your instincts. Whatever you decide to do is a decision you must feel comfortable with. Your goal is to survive and escape safely. You will react to the crime in the way that makes the most sense to you at the time.

## **B. Students' Bill of Rights:**

All students have the right to:

1. Make a report to local law enforcement and/or state police;

2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
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 institution 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 institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

### **C. Ways to Protect Yourself:**

There are some practical steps you can take that may decrease the risk of sexual assault.

1. Express your expectations and limits clearly before you get into a sexual situation.
2. Limit alcohol and drug use. They make it more difficult for you to be in control. Never ride with someone who has used alcohol or drugs.
3. Avoid meeting in secluded places and walking alone. If you are concerned, ask campus security to escort you.



4. Try to be aware of attitudes that your date expresses concerning women or men: hostility, unrealistic views of women or men and/or viewing people as "sex objects."
5. Use assertive language such as, "I feel uncomfortable when you don't listen to me or when you touch me like that."
6. Scream "fire" (rather than "rape" or "help"), if you need assistance.
7. Be alert to what is happening around you.

**D. To reduce your risk for being accused of sexual misconduct:**

1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
2. Understand and respect personal boundaries.
3. DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
5. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

**E. Resources:**

There are trained on- and off- campus advocates and counselors who can provide an immediate confidential response in a crisis situation:

1. On-Campus:

On Campus Health Provider and Contact Information:	Sandra Frese Health Services 190 Partridge St., Albany, NY 12203 (518)454-5244 Hours: 8 am – 5 pm
On Campus Mental Health Care Provider and Contact Information:	Dr. Jay Hamer 947 Madison Ave, Albany, NY 12203 (518) 454-5200
On Campus Pastoral Counselor and Contact Information:	Joan Horgan Hubbard Interfaith Sanctuary 959 Madison Ave. Albany, NY 12203 (518) 454-5250

2. Off-Campus:

Off Campus Resource for Mental Health and Advocacy:	Albany County Crime Victims and Sexual Violence Center 112 State St., Albany, NY 12207 24-Hour Sexual Assault Hotline: (518) 447-7716
Off-Campus Domestic Violence Services:	Equinox – Domestic Violence Services 95 Central Ave., Albany, NY 12206 24 Hour Hotline – (518) 432-7865
Health Care Providers, Sexual Assault Nurse Examiners (SANE), Rape Kits:	St. Peter’s Hospital Manning Blvd., Albany, NY 12208 (SANE Exams are free)
	Albany Medical Center New Scotland Ave., Albany, NY 12208 (SANE Exams are free)

**F. Memoranda of Understanding:**

The College of Saint Rose has entered into a memoranda of understanding (MOU) with the following agencies, in order to provide additional support services:

- Albany County Crime Victim and Sexual Violence Center
- Albany Medical Center Sexual Assault Forensic Examiner (SAFE) Program
- Albany Police Department
- Equinox, Inc.
- The Legal Project
- St. Peter’s Health Partners Sexual Assault Nurse Examiner (SANE) Program

- University at Albany Police Department, The State University of New York

**V. Criminal Complaints:**

In addition to filing an internal complaint, students may file a – criminal complaint with local law enforcement officials. The College is not involved in that process, but will assist a student in filing a complaint if they so desire. Criminal complaints can be filed with the following agencies:

Albany Police Dept., Western Ave., Albany, NY 12203  
(518) 438-4000

University at Albany Police Department, 1400 Washington Ave., Albany, NY  
(518) 442-3130

NYS Police 24 hour hotline  
1 (844) 845-7269

**VI. College Complaint Process:**

**A. Filing an Institutional Complaint:**

1. Once the College is in receipt of a complaint, the College will initiate an investigation in accordance with this Policy. Every effort will be made to maintain the privacy of the individuals involved in a complaint under this Policy and will only be shared with others who need to know in order to investigate a complaint and/or seek a resolution.
2. Students who wish to file an internal complaint under this Policy should contact one of the following:

Title IX Coordinator	Dennis McDonald EAC, Room 210 420 Western Ave., Albany, NY 12203 (518) 454-5170
Student Affairs	Student Affairs, EAC, Room 210 420 Western Ave., Albany, NY 12203 (518) 454-5170
Campus Safety & Security	Campus Safety & Security 340 Western Ave., Albany, NY 12203 (518) 454-5187

3. Student Reports to Responsible Employees – Responsible Employees are mandatory reporters by law and policy. Accordingly, reports made to Responsible Employees will be relayed to the College’s Title IX Coordinator who will initiate an investigation by the College in accordance with this Policy. Even if a student does not want the College to initiate an investigation, once it is reported to a Responsible Employee, the College,

through the Title IX Coordinator, will weigh any request for confidentiality against the College's obligations to provide a safe, non-discriminatory environment for all members of the College's campus and community.

4. **Privileged and Confidential Reporting** – Either as an alternative to the reporting options listed above or in lieu of reporting sexual misconduct to the individuals or offices listed above, students may make privileged and confidential reports of sexual misconduct to certain health or mental health providers or pastoral counselors. While criminal complaints, institutional complaints, and reports to Responsible Employees likely will result in the initiation of an investigation, reports to health or mental health providers or to certain pastoral counselors are privileged and will remain confidential so long as the student filing the report does not represent a threat to his or her self or to other, or there is a continuing threat to the health and safety of the College community. (see Page 6 for list of confidential resources)
5. **Anonymous Reporting** - Anonymously disclose a crime or violation to the Safety and Security through the anonymous tip line (518) 454-5275. The College may have a duty to investigate anonymous disclosures to the extent possible, based on the information disclosed.

#### **B. Protection and Accommodations for All Involved Parties:**

Individuals reporting sexual misconduct and individuals accused of or responding to allegations of sexual misconduct are afforded the following protections and accommodations:

1. When the accused or respondent is a student, to have the College issue a "no contact order" consistent with the College's policies and procedures, whereby continued intentional contact with the protected person would be a violation of College policy and result in additional conduct charges. If the accused and a protected individual observe each other in a public place, it shall be the responsibility of the accused to leave the area immediately and without directly contacting the protected person. Both the accused and the protected person may request a prompt review of the need for and terms of a No Contact Order, consistent with College policies and procedures, including potential modification. The requesting party may submit evidence in support of their request. The College may establish an appropriate schedule for the accused to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the protected person.
2. To be assisted by the College's security office in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order;
3. To receive a copy of the order of protection or equivalent when received by the College and have an opportunity to meet or speak with an College official who can explain the order and answer questions about it, including information from the order about the accused's responsibility to stay away from the protected person(s).

4. To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension;
5. To receive assistance from campus security in effecting an arrest when an individual violates an order of protection or, if campus security does not possess arresting powers, then to call on and assist local law enforcement in effecting an arrest for violating such an order, provided that nothing in this article shall limit current law enforcement jurisdiction and procedures.
6. When the accused is a student and presents a continuing threat to the health and safety of the community, to subject the accused to interim suspension pending the outcome of a conduct process. Parties may request a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, in accordance with procedures set forth in Student Responsibility and Social Conduct, and shall be allowed to submit evidence in support of their request;
7. When the accused is not a student but is a member of the College's community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable union contracts, employee handbooks, and rules and policies of the College;
8. To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation, immigration or visa assistance or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment, consistent with the College's policies and procedures. Parties may request and consistent with the institution's policies and procedures, be afforded a prompt review of the need for and terms of any interim measure and accommodation that directly affects them, and shall be allowed to submit evidence in support of their request.

### **C. Initial Remedial Actions:**

1. The College will implement initial remedial, responsive and/or protective actions upon notice of alleged harassment, misconduct, or retaliation. Such actions could include but are not limited to: no contact orders, providing counseling and/or medical services, academic support, living arrangement adjustments, transportation accommodations, visa and immigration assistance, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.
2. The College will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassment, misconduct or retaliation.

3. The College will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the College's ability to provide the accommodations or protective measures.

#### **D. Immunity from Campus Conduct Process:**

The College strongly encourages the reporting of incidents of sexual misconduct. The health and safety of every student at the Institution is of utmost importance. The College of Saint Rose recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution 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 Institution's officials or law enforcement will not be subject to the College'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.

#### **E. Handling Reports of Sexual Misconduct:**

1. Reports should be filed as soon as practicable after an incident of alleged sexual misconduct. The complainant is encouraged to provide as much of the following information as possible:
  - a) the name of the person or persons allegedly responsible for the action; if a College employee the department and position of said person(s); if a student the address of that person, if known.
  - b) a description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
  - c) the alleged effect of the incident(s) on the complainant's position, academic standing or other conditions of enrollment (student status);
  - d) the names of other individuals who might have been subject to the same or similar action;
  - e) the steps the complainant has taken to try to stop the behavior; and
  - f) any other information the complainant believes to be relevant to the complaint.
2. Investigation Process:
  - a) The Title IX Coordinator is responsible for ensuring that an impartial investigation begins within a reasonable time after a complaint has been filed. The College of Saint Rose attempts to complete investigations within sixty business days, which excludes weekends and holidays. In certain circumstances, the investigation time frames may need to be extended and the Title IX Coordinator has full authority to extend or modify all time frames set forth in this Policy. In such instances, all parties to the complaint will be notified.

- b) Upon receipt of a complaint, the Title IX Coordinator will open a formal case file and assign one of the Trained Investigators who will direct the investigation and confer with the Title IX Coordinator on interim accommodations for the alleged victim, or other necessary remedial short-term actions.

In most cases, two of the Trained Investigators conduct the investigation. However, the Trained Investigators might work cooperatively with another designated employee or individual external to the College, as determined by the Title IX Coordinator. Throughout the investigation, at least two College employees shall attend all interviews with the complainant, respondent and witnesses so that information obtained during the interviews can be corroborated. In certain cases, the College may appoint a third party to conduct the investigation. Witnesses will be strongly encouraged not to disclose the fact that they have been interviewed or the nature of the inquiry to others in order to maintain the integrity of the investigation.

- c) Preliminary Review: The Trained Investigators will take the initial following steps:
  - 1) Determine the identity and contact information of the complainant (whether that is the alleged victim, the individual who filed a College Incident Report, or a College representative).
  - 2) In coordination with the campus Title IX Coordinator, initiate any necessary remedial actions.
  - 3) Meet with the complainant to obtain details of the incident and provide information regarding resources, academic accommodations, and interim measures that might be available.
  - 4) Identify the policies allegedly violated and other key issues (e.g. power differential, alcohol/drug involvement).
  - 5) Conduct a preliminary investigation to determine if there is reasonable cause to charge the accused individual, and what policy violations should be included as part of the complaint.
  - 6) If there is insufficient evidence to support reasonable cause, the complaint should be closed with no further action. If there is sufficient evidence to support reasonable cause, the investigation will proceed to step e) below.
- e) Full Investigation: Upon determining with the Title IX Coordinator that there is sufficient evidence for a full investigation, the Trained Investigators shall:
  - 1) Prepare the notice of charges and provide a copy to the complainant and respondent.
  - 2) Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan in consultation with the Title IX Coordinator, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses including the complainant and the respondent.
  - 3) Complete the investigation promptly, and without unreasonable deviation from the intended timeline.

- 4) At the conclusion of the investigation, draft and submit a detailed written report which includes the following components:
  - A summary of the complaint;
  - A summary of the response from the respondent;
  - A summary of the statements and evidence obtained during the investigation;
  - A recommendation on whether a violation of this Policy occurred based on a Preponderance of the Evidence standard and an explanation to support the finding;
  - If the recommendation is that the Policy was violated, the recommendation must include a statement about the severity of the violation;
  - A recommendation as to the disciplinary action(s) to be taken, if there was a Policy violation.
  
- f) Decision Process:
  - a) If the decision is that the respondent is found not responsible for the charges filed, the Trained Investigators share that outcome with both the complainant and the respondent without significant delay between each party's notification. Upon notification, either party has the right to appeal in accordance with the Appeal Process section of this Policy.
  
  - b) If the Trained Investigators find that the respondent violated this Policy, the process is as follows:
    - 1) If the respondent is a student:
      - a. The Trained Investigators will inform the complainant and respondent of the investigation outcome within five (5) business days of the determination and without significant delay between each party's notification.
        - Notification will be made in writing and may be delivered by one or more of the following methods:
          - i. In person.
          - ii. Mailed to the local or permanent address of the parties as indicated in official College records.
          - iii. Emailed to the parties' College-issued email account.
        - Once mailed, emailed and/or received in-person, notice will be presumptively delivered.
  
      - b. The notification will specify:
        - The finding on each alleged Policy violation.
        - Any possible sanctions that may result which the College is permitted to share according to state or federal law.



- The rationale supporting the essential findings to the extent the College is permitted to share that information under state or federal law.
  - The opportunity to write an impact statement explaining how the possible sanctions may affect each party and the date which the impact statements are due.
- c. The final decision will be sent by the methods outlined previously and will be sent without a significant delay between each party's notification. This will include:
- The finding on each alleged policy violation.
  - Any changes that occurred prior to finalization.
  - Sanction(s) to be applied.
  - Any appeal options that are available.

d. Transcript Notation

- If the respondent is found responsible for a crime of violence, as defined by the Clery Act, a notation will be made on the student's transcript indicating that the student has been "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation."
- If the respondent withdraws from the College while such conduct charges are pending, and declines to complete the disciplinary process, the College shall make a notation on his/her student transcript that the student "withdrew with conduct charges pending." If the finding of responsibility is vacated, the notation will be removed from the student's transcript.

2) If the respondent is an employee (faculty, administrator, or staff):

- a. The investigator will share the findings with the complainant and update the complainant on the status of the investigation and the outcome. The complainant will also have an opportunity to submit an impact statement before sanctions are determined.
- b. The investigator will determine the appropriate sanctions in conjunction with the Title IX Coordinator and the Associate Vice President for Human Resources. The investigator will present the findings and sanction to the respondent.
- c. If the sanction is termination of the respondent's employment, the College will follow the applicable employee handbook or union contract.

- d. The complainant may appeal the finding and/or sanctions by following the Appeal Process section of this Policy. The respondent may file a grievance in accordance with the applicable employee handbook or union contract.
  - 3) If the respondent is a third party:
    - a. The investigator will share the findings with the complainant and update the complainant on the status of the investigation and the outcome.
    - b. The investigator will determine the appropriate sanctions in conjunction with the Title IX Coordinator and the Associate Vice President for Human Resources. The investigation will present the findings and sanction to the respondent. The sanctions may include a permanent no-contact order and barred from the College's campus, including any future employment and or educational opportunities.
    - c. If the respondent is employed by a contractor on campus, the College may require the contractor to terminate the respondent's employment in order to continue the contract.
    - d. The complainant may appeal the finding and/or sanctions by following the Appeal Process section of this Policy.
- g) Appeal Process: Complainants and/or respondents wishing to appeal decisions made during the handling of complaints under this Policy may submit a written petition to the Student Conduct Office (SCO) within two days of receipt of the decision. The SCO will share the appeal with the other party who may also wish to file a response. The SCO will draft a response memorandum (also shared with all parties). All appeals and responses are then forwarded to the Appeals Hearing Board for initial review to determine if the appeal meets one or more of the following grounds for appeal and is timely:
  - 1) A procedural error occurred that significantly impacted the outcome of the hearing
  - 2) To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
  - 3) The sanctions imposed are substantially disproportionate to the severity of the violation.

If the Appeals Hearing Board finds that the appeal is not timely or substantively eligible, the original finding and sanction will stand and the decision is final. If the appeal has standing, the documentation from the investigation is forwarded to the Appeals Hearing Board for consideration. The party requesting appeal must show error as the original finding and sanction are presumed to have been decided reasonably and appropriately.

6. Privacy:

- a) All inquiries, complaints and investigations are treated with respect and attention to the privacy of the complainant. Information is revealed strictly on a need-to-know basis. Although the identities of the complainant and respondent are usually revealed to the respondent and witnesses, the College prohibits retaliation of any form toward any party.
- b) A copy of the investigation report and the final decision is included in the student's or employee's file only if the investigation concludes that the respondent engaged in prohibited conduct.
- c) All information pertaining to a harassment complaint or investigation is maintained by the Title IX Coordinator and the Associate Vice President for Human Resources in secure files. These secure files will be kept separate from all other human resources or student files maintained by the College, except when the investigation concludes that the complaint was reckless or frivolous.
- d) Where the respondent is found not responsible for the alleged violation(s), the investigation should be closed. When facts obtained in the investigation do not support the allegation, the investigation will be closed. If subsequently there is additional information discovered related to the allegation the investigation will be re-opened.
- e) The College prohibits retaliation in any form for complainants and witnesses.

## **VII. Non-Retaliation**

Retaliation against the individual who initiates a sexual misconduct complaint, participates in an investigation, or pursues legal action, or any witness is prohibited. This includes behavior on the part of the respondent or other related persons, including acquaintances, friends, and family members. Although independent action will be taken against anyone engaging in retaliation for making a report of sexual misconduct, the respondent is responsible for discouraging such actions and will also be held responsible to the extent of his/her involvement in the retaliation.

## **VIII. Active Bystander**

Active Bystanders are individuals who decide to intervene when they observe a situation or see actions that might be harassment or sexual violence.

***Some simple steps to becoming an Active Bystander:***

- **Notice the situation:** Be aware of your surroundings.
- **Interpret it as a problem:** Do I recognize that someone needs help?
- **Feel responsible to act:** See yourself as being part of the solution to help.
- **Know what to do:** Educate yourself on what to do.
- **Intervene safely:** Take action but be sure to keep yourself safe.

***How to Intervene Safely using the three D's of Bystander Intervention:***

- **Direct** – Directly intervening, in the moment, to prevent a problem situation from happening
- **Delegate** – Seeking help from another individual, often someone who is authorized to represent others, such as a police officer or campus official.
- **Distract** – Interrupting the situation without directly confronting the offender.

**Other options:**

- Call the police (911) or Campus Security 24/7: (518) 454-5187 for support.
- Or call the National Sexual Assault Hotline at 1 (800) 656.HOPE.

**IX. Education**

The College offers a number of programs over the course of the academic year, addressing sexual assault, domestic/dating violence, stalking, and related topics. A specific program is presented to all new incoming students during orientation. Further programming is offered by various offices and student organizations including residence life, the counseling center, and campus safety and security.

Pursuant to federal law, students and employees will be educated and updated about security procedures, personal safety, crime prevention and sexual assault, domestic/dating violence, and stalking in all ways that are necessary and appropriate to alert the College community. This may include: posting appropriate flyers, mass e-mail messages, placing articles in the student newspaper, classroom announcements and emergency meetings.

Program/ Activity	Description	Frequency
Orientation Presentation	Provided by Albany County Crime Victims and Sexual Violence Center and the Office of Student Affairs	Annual with first year students
HAVEN on-line program	An on-line program that addresses sexual assault,	Annual with new students, new athletes, new student club

	interpersonal violence, stalking and bystander intervention.	officers
Alliance for Sexual Assault Prevention (campus committee)	Provides programming on sexual assault, stalking, domestic violence, bystander intervention several times a semester including tabling, speakers, and passive programming	Throughout the academic year
Escalation	A program focused on interpersonal violence with a focus on bystander intervention developed by the One Love Foundation	Several times a year
It's On Us	Activities that are provided by the It's On Us organization	A week during the spring semester
New Employee Training	Title IX Coordinator and Director of Safety and Security train new employees on Title IX and Clery Act	As needed
Investigator Training	Campus investigators attend trainings that are offered in person or on-line.	At least one per semester

**X. Sanctions possible under Saint Rose Code of Conduct:**

- a. Censure
- b. Anger Management Program
- c. Attendance at Educational Programs
- d. Behavioral Contract
- e. Conflict Management Training
- f. Educational Service Hours
- g. Reflective Exercises
- h. Removal from College Housing
- i. Interim Suspension
- j. Restrictions
- k. Restitution
- l. Persona Non Grata
- m. Disciplinary Probation
- n. Disciplinary Suspension
- o. Disciplinary Dismissal

**XI. Criminal Penalties under New York State Law:**

Article 130 of the New York State Penal Code defines sexual offenses and provides information about the penalties associated with each crime.

**A. The following are excerpts from the NYS Penal Code:**

**Sexual Misconduct:**

A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person's consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or
3. He or she engages in sexual conduct with an animal or dead human body.

Sexual misconduct is a class A misdemeanor.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-20.html>.

**Rape:**

A person is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or
3. He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-25.html>

A person is guilty of rape in the second degree when:

1. Being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or
2. He or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-30.html>

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.  
<http://codes.findlaw.com/ny/penal-law/pen-sect-130-35.html>

**Criminal Sexual Act:**

A person is guilty of **criminal sexual act in the third degree** when:

1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or
3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Criminal sexual act in the third degree is a class E felony.  
<http://codes.findlaw.com/ny/penal-law/pen-sect-130-40.html>

A person is guilty of **criminal sexual act in the second degree** when:

1. Being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It shall be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Criminal sexual act in the second degree is a class D felony.  
<http://codes.findlaw.com/ny/penal-law/pen-sect-130-45.html>

A person is guilty of **criminal sexual act in the first degree** when he or she engages in oral sexual conduct or anal sexual conduct with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Criminal sexual act in the first degree is a class B felony.  
<http://codes.findlaw.com/ny/penal-law/pen-sect-130-50.html>

**Forcible Touching:**

A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire.

For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching is a class A misdemeanor.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-52.html>

**Sexual Abuse:**

A person is guilty of **persistent sexual abuse** when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

Persistent sexual abuse is a class E felony.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-53.html>

A person is guilty of **sexual abuse in the third degree** when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-55.html>

A person is guilty of **sexual abuse in the second degree** when he or she subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-60.html>

A person is guilty of **sexual abuse in the first degree** when he or she subjects another person to sexual contact:

1. By forcible compulsion;
2. When the other person is incapable of consent by reason of being physically helpless;
3. When the other person is less than eleven years old; or
4. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

Sexual abuse in the first degree is a class D felony.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-65.html>

1. A person is guilty of **aggravated sexual abuse in the fourth degree** when:



(a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or

(b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than seventeen years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the fourth degree is a class E felony.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-65-a.html>

1. A person is guilty of **aggravated sexual abuse in the third degree** when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

3. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the third degree is a class D felony.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-66.html>

1. A person is guilty of **aggravated sexual abuse in the second degree** when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the second degree is a class C felony.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-67.html>

1. A person is guilty of **aggravated sexual abuse in the first degree** when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the first degree is a class B felony.

<http://codes.findlaw.com/ny/penal-law/pen-sect-130-70.html>

## **B. Penalties:**

### **Class A Misdemeanor:**

- Imprisonment of up to one year and/or a fine of up to \$1,000

<http://codes.findlaw.com/ny/penal-law/pen-sect-70-15.html>,

<http://codes.findlaw.com/ny/penal-law/pen-sect-80-05.html>.

### **Felonies:**

- Class B felony - imprisonment of at least five years and no more than twenty-five years and/or a fine of up to \$30,000
- Class C felony - imprisonment of at least three and one-half years and no more than fifteen years and/or a fine of up to \$15,000
- Class D felony - imprisonment of at least two years and no more than seven years and/or a fine of up to \$5,000
- Class E felony - imprisonment of at least one and one-half years and no more than four years and/or a fine of \$5,000

<http://codes.findlaw.com/ny/penal-law/pen-sect-70-80.html>,

<http://codes.findlaw.com/ny/penal-law/pen-sect-80-00.html>.