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Owner Faculty Organization  
Policy Area College of Nursing CNG  
Applicability MVHS

## Discrimination, Harassment and Sexual Misconduct (Title IX, 129A & B), CNG-100.28

### PURPOSE

The St. Elizabeth College of Nursing ("SECON" or "College") Discrimination, Harassment and Sexual Misconduct Policy ensures that all students, faculty, staff and guests may work, study, and enjoy the benefits of the College community without being subjected to discrimination, harassment or any form of non-consensual sexual activity. SECON does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.

### SCOPE

This policy sets forth expectations for all members of the SECON community: students, faculty and staff. SECON will not tolerate harassment or discrimination in the workplace, classroom, College facilities, and in other College-related settings, including off-campus programs and College-sponsored social functions and events. Non-community members (guests, alumni, vendors, parents, etc.) visiting the campus are also expected to abide by the expectations set forth here. Conduct that occurs off-campus and not in connection with College programs may violate this policy if the conduct creates a threatening or hostile work or learning environment on campus or within a College program, or if the incident causes concern for the safety or security of the College's campus.

### REFERENCES

Article 129 A & B of New York State Education Law

State University of New York. (2015, October 28). *A plain language explanation of distinction between the New York State penal law and the college disciplinary*

process. <https://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/>

Title IX of the Education Amendments of 1972; Final Rule 2020

U.S. Department of Education Office for Civil Rights. (2024, September 14). *Title VI of the Civil Rights Act of 1964*. <https://www.justice.gov/crt/fcs/TitleVI>

Violence Against Women Act of 1994; reauthorized 2013

YWCA Mohawk Valley 2023 Memorandum of Understanding

## DEFINITIONS / ABBREVIATIONS

**Advisor:** may be a friend, a family member, an attorney, a neighbor, or other individual of the party's choosing.

**Affirmative consent:** 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.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, 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.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

**Bystander:** shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.

**Confidentiality:** can be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a).

**Dean for Student and Faculty Development:** DSFD

**Discrimination:** SECON defines discrimination as an educational or employment-related decision that

disadvantages a person and that occurs because of the affected individual's race, color, religion, ethnic or national origin, gender, age, disability, predisposing genetic characteristics, sex stereotypes, sexual orientation, gender identity, gender expression, pregnancy or related conditions, military or veteran's status, status as a victim of domestic violence, marital status or any other characteristic protected by applicable law. A person who believes that they have been discriminated against with respect to an academic or employment decision based on one of the foregoing characteristics is generally entitled to bring a complaint pursuant to this policy in addition to any other College process or procedure that may be available (such as a grade appeal policy or appeal procedures for work performance or promotion). However, the role of this policy is not to modify or displace another's legitimate decision as to competency or performance; the only function of this policy is to ensure that the decision was not biased.

This policy does not apply to decisions relating to requests for reasonable accommodations due to a disability. The Disabilities Coordinator handles academic disability accommodations.

**Education Program:** SECON concludes that any education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus. SECON may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

**Formal complaint:** oral or written request to SECON that objectively can be understood as a reasonable request for the recipient to investigate and make a determination about alleged misconduct under Title IX or its regulations.

**Harassment:** SECON defines harassment as conduct that offends on the basis of race, color, religion, ethnic or national origin, gender, age, disability, predisposing genetic characteristics, sexual orientation, gender identity, gender expression, military or veteran's status, status as a victim of domestic violence, marital status or any other characteristic protected by applicable law.

Harassment is any form of offensive conduct or communication and may be verbal, written, electronic, visual or physical. Merely by way of illustration, harassing acts may include racial, ethnic or religious slurs; name-calling that demeans on the basis of gender, age, disability, sexual orientation or gender identity; unwanted touching of a person's legs or shoulders; physically harming or threatening another due to racial or religious animosity; vulgar pictures or ethnically offensive symbols or graffiti; or gestures that mimic or mock a person's gender, sexual orientation, disability, race or religion. Sexual harassment is one form of harassment.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation of this policy. The determination is based on a "reasonable person" standard and takes into account the totality of the circumstances. SECON considers the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness or severity of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the learning community.

In all instances, a determination shall be made if the behavior in question is regulated by provisions of this policy.

**Privacy:** offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials.

Reporting individual shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term by SECON to reference an individual who brings forth a report of a violation.

**Respondent:** shall mean a person accused of a violation under Title IX or its regulations

**Sex-based harassment/misconduct:** defined broadly to include: any of the three types of, misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, or stalking as defined in the Violence Against Women Act (VAWA).

(i) **Sexual assault:** an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

(ii) **Dating violence:** violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(1) The length of the relationship;

(2) The type of relationship; and

(3) The frequency of interaction between the persons involved in the relationship;

(iii) **Domestic violence:** felony or misdemeanor crimes committed by a person who:

(A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;

(B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(C) Shares a child in common with the victim; or

(D) Commits acts against a youth or adult victim who is protected from those acts

under the family or domestic violence laws of the jurisdiction; or

(iv) **Stalking:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

## Sex Offenses

- A. **Non-consensual Sexual Contact:** Any intentional sexual contact, however slight, with an object or bodily part, by a person upon another person that is without consent. This includes any bodily contact with the breasts, groin, genitals, mouth or other bodily contact in a sexual manner. Examples of non-consensual sexual contact include but are not limited to touching the private body parts of another person for the purpose of sexual gratification forcibly or without consent or where the victim is incapable of consent due to incapacity or age. Non-consensual sexual contact also includes kissing, causing another to touch one's intimate bodily areas, or disrobing another without permission.
- B. **Sexual Assault:** sexual penetration without consent and is further sub-defined by the following:
1. **Rape:** the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, forcibly or without consent or where the victim is incapable of consent due to mental or physical incapacity.
  2. **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent.
- C. **Sexual Exploitation:** When one takes non-consensual sexual advantage of another. Examples of sexual exploitation include but are not limited to observing or recording others engaged in sexual or private activity (such as undressing or showering) without the consent of all involved; or taking intimate pictures of another but then distributing the pictures to others without the photographed person's consent; or exposing one's genitals in non-consensual circumstances; or engaging in sexual activity with another while knowingly infected with a sexually transmitted disease (STD) without informing the other person of such infection..

**Supportive Measures:** Individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designated to ensure equal educational access, protect safety, or deter sexual harassment.

# PROCEDURE / DIRECTIVE

## 1. NON DISCRIMINATION POLICY

St. Elizabeth College of Nursing does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.

## 2. SUPPORT FOR COMPLAINANTS

## Confidential Resources

A victim is encouraged to seek support for their emotional and physical needs. A person seeking confidential emotional support or healthcare may contact the following college-affiliated confidential resources:

- **The Wynn Hospital Emergency Department: 315-917-7111**
- **Mohawk Valley Health Services Behavior Health Counselor: 315-801-8205**

Healthcare and counseling professionals associated with the above are confidential resources as a matter of law. This means that while these resources may provide you with health and counseling services, when you make a report to them, you are NOT making a report to the College and action by the College, such as an investigation and/or disciplinary action against an accused and/or providing interim relief (i.e. academic accommodations, housing accommodations, etc.) will not be taken. If you wish action to be taken by the College, you should report to the Responsible Administrators listed later in this document.

In addition to the previously mentioned campus-affiliated confidential resources, there are off-campus, community-based, confidential resources:

- **New York State Domestic Violence Hotline – 1.800.942.6906**
- **National Domestic Violence Hotline – 1.800.799.7233**
- **YWCA Domestic Violence and Sexual Violence Hotline-315-797-7740**

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## Responsible Administrator

The following are the College's Responsible Administrators and receive, respond to and investigate allegations of violations of this policy:

- **Kimberly Panko, President**
  - **Julie Wells-Tsiatsos, DSFD, Title IX Coordinator**
- A. If a report is made to anyone other than the Responsible Administrators listed above, the complainant risks the possibility that the information will not come to the attention of the proper College officials and may, therefore, not be acted upon.
  - B. Faculty and staff members are neither Responsible Administrators nor Confidential Resources under this policy and if an incident is reported to a faculty or staff member, one can be assured that it will be reported to the Responsible Administrator within the College for action, and it will not be kept confidential.
  - C. Notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient's behalf, charges a school with actual knowledge and triggers the school's response obligations.
  - D. Upon receiving a report, the Responsible Administrator to whom the report was made will discuss with the complainant available avenues and options. Options may include reports to local law enforcement, initiating a disciplinary proceeding against the respondent and/or remedial actions to ameliorate or correct the effects of the discrimination, harassment, or



other sexual misconduct. Other options may include interim changes in academic assignment or a different work environment to allow the complainant to avoid interacting with the respondent. The College will review the facts and circumstances of each case, as well the complainant's wishes, in deciding whether and what steps are reasonable and appropriate.

- E. There is no time limit for making a report. However, the passage of time may make effective responsive action difficult. Further, if the respondent is no longer a member of the College community, the College's ability to respond may be limited. It is at the discretion of the Title IX Coordinator to determine the action the College will take concerning complaints, which are filed after a substantial amount of time has passed. Individuals are encouraged to bring complaints forward in a timely manner.
- F. The College may impose interim suspension or other restrictions in order to protect the physical or emotional safety of any member of the College community or ensure orderly operations. The Title IX Coordinator will determine the imposition of interim restrictions, if any.
- G. A Responsible Administrator is not a confidential resource. A Responsible Administrator will share all information reported to them with the Title IX Coordinator. However, this sharing of information may not necessarily lead to an investigation or disciplinary action if the complaining party requests confidentiality and that request is granted. (See Section 4: *Choices of Action to Take* section for further explanation as to the response to a report.) A report to a Responsible Administrator may be made anonymously, but the College's ability to respond to an anonymous complaint may be limited, or by a third party. Contacting a Responsible Administrator does not preclude anyone from also contacting a Confidential Resource. In all cases, an individual may contact law enforcement.
- H. For more information about this policy and SECON procedures to respond to acts of Discrimination, Harassment or Sexual Misconduct, please contact a Responsible Administrator. One may do so whether or not one wishes to disclose information concerning a particular incident.
- I. Inquiries about Title IX may be referred to SECON's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both. SECON's Title IX Coordinator is: Julie Wells-Tsiatsos MSN, RN, Dean for Student and Faculty Development, 2215 Genesee Street, Utica, NY 13501, Office 109, 315-801-3078, [jwells-tsiatsos@secon.edu](mailto:jwells-tsiatsos@secon.edu).

### 3. LAW ENFORCEMENT

- A. A victim of a crime is encouraged to, but is not required to, report the incident to local law enforcement and pursue criminal charges.
- B. The criminal process and the College's disciplinary processes are not mutually exclusive or dependent on each other, meaning that a person may pursue a criminal complaint, a College complaint, or both. In some cases, the College may delay temporarily its internal processes while a law enforcement investigation is ongoing.
- C. In criminal cases, the preservation of evidence is critical and must be done properly and promptly. When a person is the victim of a crime, they are encouraged to **call 911** immediately. To preserve evidence, it is best not to change clothes, shower or even brush the hair, as physical evidence may be lost. The Utica Police Department (**315-735-3301 or 911**) can assist in filing a criminal complaint and in securing an appropriate examination, including by a Sexual Assault Nurse Examiner. Additionally, orders of protection and other forms of legal protection

may be available to individuals who have experienced or are threatened with violence by a College community member or other person. In appropriate circumstances, an order of protection may be available that restricts the offender's right to enter the College's property, and the College will abide by a lawfully issued order of protection.

- D. If an act of alleged assault or violence is reported to a Responsible Administrator, the victim will be encouraged to report the incident to local law enforcement. The College must report statistics concerning the occurrence on campus of certain violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This report does not include any personally identifiable information concerning the victim or the accused.
- E. For educational purposes, the New York State provisions defining criminal sexual offenses are provided in Addendum A. Addendum B provides information about the differences between New York State Penal Law and the College Disciplinary Process.

#### **4. CHOICES OF ACTION TO TAKE**

##### **Accessible Reporting to Title IX Coordinator**

- A. A complainant may make a report of Sexual Misconduct to a Responsible Administrator (see list above) and request that the College take no investigatory or disciplinary action. The College endeavors to comply with complainants' wishes with respect to whether responsive action is taken. However, that is not always possible.
- B. If a complainant requests that no action be taken against the accused, the Responsible Administrator will consult with the Title IX Coordinator, who will make that decision. The College's decision will depend on the seriousness of the offense, whether there was a single accused or multiple, whether there is reason to believe that the accused has engaged in this or similar conduct previously, whether the circumstances suggest an ongoing or future risk to the campus community or the complainant, and similar considerations.
- C. A decision will be made and shared with the complainant. The College retains the right to act upon any information that comes to its attention.
- D. Similarly, a complainant may desire to have investigatory and/or disciplinary action taken, but may wish to have their identity as the complainant kept confidential. Depending on the circumstances, this may or may not be possible. If any number of people could have reported the incident, it may be possible for the complainant's identity to remain confidential and not shared with the respondent. However, in other cases, it may not be possible to proceed with investigatory or disciplinary action without revealing the identity of the complainant. If a complainant requests that their name be kept confidential, the College's ability to respond to the complaint may be limited. The Responsible Administrator will consult with the Title IX Coordinator. A decision will be made by the Title IX Coordinator and shared with the complainant. The College retains the right to act upon any information that comes to its attention.
- E. Even if no investigation or other internal disciplinary action is pursued, a complainant may receive supportive measures, such as changes in academic assignment or a different work environment to allow the complainant to avoid interacting with the respondent. The College will review the facts and circumstances of each case, as well the complainant's wishes, in deciding whether and what steps are reasonable and appropriate.
- F. All complainants will be treated equitably by providing remedies any time a respondent is



found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process.

- G. Remedies, which are required to be provided to a complainant when a respondent is found responsible, will be designed to maintain the complainant's equal access to education and may include supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- H. All investigations will include objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
- I. All investigations will be conducted free from conflicts of interest or bias for or against complainants or respondents.

### **Informal Resolution/Mediation**

- A. In some cases, a mediated resolution may be appropriate. Informal resolution may occur only if a formal complaint alleging sexual harassment has been filed. This may be the case in instances of minor acts of insensitivity or misunderstandings. Serious sanctions, such as suspension, expulsion or termination, are not possible as a result of the mediation process, but lesser sanctions may be agreed to. Mediation is not available in some cases.
- B. A person who desires mediation should contact a Responsible Administrator. Both parties must agree upon mediation, and the Title IX Coordinator must agree that mediation is appropriate. Mediation is not appropriate in cases of sexual assault or violence of any kind.
- D. The Title IX Coordinator will select a mediator. The mediation must be conducted by a third-party; mediation between just the complainant and respondent is not acceptable. A campus mediator will begin mediation efforts promptly and will report to the Title IX Coordinator that the mediation occurred. At any time during the mediation process the complainant or the respondent has the right to terminate the process and proceed to an investigation.

### **5. FILING A FORMAL COMPLAINT FOR POTENTIAL DISCIPLINARY ACTION**

- A. An individual may initiate a complaint by reporting to a Responsible Administrator (see above). Any person may report sex discrimination, including sexual harassment, (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment). The complaint can be made in person, by mail, by telephone, or by email, using the contact information for the Title IX Coordinator, Julie Wells-Tsiatsos, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made anytime, including during nonbusiness hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator listed below.
  - 1. Julie Wells-Tsiatsos
  - 2. Office: St. Elizabeth College of Nursing, 2215 Genesee St., Utica NY 13501; Room 109
  - 3. Phone: 315-801-3078 (office)
  - 4. Email: [jwells-tsiatsos@secon.edu](mailto:jwells-tsiatsos@secon.edu)

- B. The Title IX Coordinator will contact the complainant within 48 hours of the initial complaint to discuss the filed complaint. The Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. SECON will offer supportive measures to the person alleged to be the victim (referred to as the "complainant"), as deemed appropriate by the Title IX coordinator and SECON President. The formal complaint is a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- C. SECON will follow a grievance process that complies with federal regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. SECON will not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX. The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator. SECON affirms that a complainant's wishes with respect to whether the school investigates will be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.
- D. If the allegations in a formal complaint do not meet the definition of sexual harassment/sex-based hostile environment, or did not occur in the school's education program or activity against a person in the United States, SECON will dismiss such allegations for purposes of Title IX but may still address the allegations in any manner the school deems appropriate under the SECON code of conduct.
- E. Withdrawal or Resignation while charges are pending:
  - 1. **Student:** The College has the right to complete the investigation, disciplinary and appeal process if deemed necessary by the Title IX Coordinator. A respondent student may decline to participate in the investigation or hearing process, but this will not deprive the College of the right to proceed with its usual investigatory and appeal procedures if the College deems appropriate.
  - 2. **Employee:** The College has the right to complete the investigation, disciplinary and appeal process if deemed necessary by the Title IX Coordinator. A respondent employee may decline to participate in the investigation or hearing process, but this will not deprive the College of the right to proceed with its usual investigatory and appeal procedures if the College deems appropriate.

## 6. INVESTIGATION AND HEARING

### Investigation of Complaint

- A. Upon receipt of a complaint and a desire by the complainant to move forward, or a determination by the College to move forward in the absence of a participating complainant, the investigation process will begin. The Title IX Coordinator will contact the complainant(s)

and the respondent(s) to meet and review the investigation procedures, and outline the basis for the complaint. In extenuating circumstances the College may utilize an external team solely or in conjunction with an internal investigation team. In cases alleging nonconsensual sexual contact, domestic violence, dating violence or stalking, the complainant and respondent will be permitted to have an advisor of choice attend any meeting with their (at their expense). In any other case, an advisor must be an active member of the College community. An advisor's role is to consult with and support the party and may do so only in writing so as not to disrupt or distract from the meeting; the advisor is not permitted to participate or to speak or make direct statements of any kind to the investigators. Any advisor who fails to comply will be required to leave the meeting, and the meeting will proceed in the advisor's absence.

- B. The Title IX Coordinator will normally coordinate the investigation. The investigation process generally includes separately interviewing the persons involved, including witnesses, and gathering and considering relevant evidence. The College has the right to consult with legal counsel during the investigation. In unusual cases, it may be apparent that an investigation should not proceed. This may be the case if the complaint is not of a nature covered by this policy; where another policy or procedure is more appropriate; or where there is indisputable proof that the allegations are not true. The Title IX Coordinator in conjunction with the President of the College will make this determination. If an investigation is not to proceed, the complainant and respondent will be so informed.
- C. In appropriate cases, one or both parties may be issued an interim physical restriction not to have any contact or communication with one another (in some cases, with an exception where contact is required by the nature of their jobs or their academic activities).
- D. For each investigation a live hearing will be held and the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
  - 1. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
  - 2. At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
  - 3. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
  - 4. If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
  - 5. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or

refusal to answer cross-examination or other questions.

6. Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
7. Schools must create an audio or audiovisual recording, or transcript, of any live hearing.
8. Rape shield protections are in place for all complainants, deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
9. At the conclusion of the investigation, the investigator(s) will issue a written report of the evidence and findings and a recommended sanction to the person identified below for a decision.
  - a. Student Respondent: when a student is alleged to have violated this policy, the President of the College for will review the investigatory report, findings and recommended sanctions.
  - b. Faculty and Employee Respondent: when a faculty member or employee is alleged to have violated this policy, the President of the College will review the investigatory report, findings and recommended sanctions.
  - c. Vendor, visitor or other non-student, non-employee Respondent: When a vendor, visitor or other non-student/non-employee is alleged to have violated this policy, the investigatory report, findings and recommended sanction will be reviewed by the President of the College for action.
- E. In all instances, the preponderance of the evidence standard (i.e. it is more likely than not that a fact is true and/or that a violation of this policy occurred), both parties will be notified of the decision and provided a rationale in writing. Investigation and decision on a formal complaint will normally be concluded within 30 days.
  1. Sanctions: The sanction(s) for a violation of this policy will be based on a consideration of all of the circumstances, including the severity of the conduct and the respondent's disciplinary history. The sanction(s) imposed may be any one or more of the following: Written Warning, Additional Educational Requirements and/or Community Service, Probation, Suspension, Expulsion or Termination (employee) or any combination of the aforementioned.
- F. If the conclusion reached is that there has been no violation of this policy but other inappropriate conduct has occurred, the College retains the right to address that inappropriate behavior through other applicable College personnel and student life policies and procedures.

## **7. APPEALS: FINDING/SANCTIONS**

- A. Following issuance of a decision, the complainant and the respondent, if a student, faculty member, or employee, must be offered the opportunity to appeal if they are dissatisfied with the outcome. The complainant or the respondent may file a written appeal based on dissatisfaction with the finding of responsibility for a violation (or the lack of such a finding), or with the sanction imposed, or both. The grounds of appeal may include:

1. A procedural error (including the adequacy of the investigation) occurred during the process that had a direct impact on the outcome;
  2. New evidence has come to light that has a direct impact on the outcome and which could not have been discovered by a properly diligent person before or during the original proceeding;
  3. The sanction is too severe (appeal from respondent); or the sanction is too lenient (appeal from complainant); and/or
  4. Any Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.
- B. The ground(s) for appeal must be set forth in full and the reason(s) for the appeal and all supporting information must be provided in the appeal submission. Sanctions remain in place pending the outcome of the appeal, unless the Title IX Coordinator decides otherwise.
1. **Student Respondent:** the appeal and any accompanying documentation must be completed and submitted, electronically or in person, within five (5) business days to the President of SECON
  2. **Faculty or Employee Respondent:** the appeal and any accompanying documentation must be completed and submitted, electronically or in person, within five (5) business days to the President of SECON
    - a. In each case, the other party will be notified that an appeal has been filed. The person considering the appeal may communicate with the investigation team, the decision-maker and/or any party or witness directly as part of the appeal process.
- C. A preponderance of the evidence standard will be applied on appeal. Each party will be notified in writing of the decision on the appeal with a rationale.

## 8. RIGHTS OF THE COMPLAINANT AND THE RESPONDENT

- A. **Rights of the Complainant:** When a member of the College has become the victim of an alleged act of misconduct which violates this policy, the victim should expect that the conduct system/investigators shall respond in a caring, sensitive manner which allows the victim to utilize the policy's process unimpeded, while still maintaining the rights of the respondent person. The following rights shall be provided to victims of alleged offenses:
1. The right to be fully informed of the applicable conduct codes and policies.
  2. The right to have complaints be responded to quickly and with sensitivity.
  3. The right to preservation of confidentiality, to the extent possible under the circumstances.
  4. The right to be notified of available counseling, mental health or student services for victims, both on campus and in the community.
  5. The right to be treated with dignity and respect by all persons involved in the investigatory and appeal process.
  6. The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus security and local police.

7. The right NOT to be discouraged by College officials from reporting a crime, especially crimes of sexual assault/violence, to both on and off campus authorities.
8. The right to select an advisor (subject to the limitations of the policy). Except in nonconsensual sexual contact, stalking, domestic violence and relationship violence cases, this advisor must be an active member of the College Community.
9. The right to notification of options for and available assistance in changing academic or working situations or supportive measures after an alleged incident, if so requested by the victim and if such changes are reasonably available (no charges or investigation, campus or criminal, need occur before this option is available).
10. The right to request a campus physical restriction or "keep-away" order against the respondent.
11. The right to NOT be subject to any type of retaliation. Violation of such instructions would constitute grounds for the College to take immediate and further action.
12. The right to submit an appeal and receive a written response in the prescribed time frame.
13. The right to participate in any investigatory or other meetings by means other than being in the same room with the respondent.
14. The right to object to any investigation or decision maker for bias.
15. The right to request relevant witnesses and evidence be interviewed by the investigators.
16. The right to make a victim-impact statement and to have that statement considered in determining any sanction.
17. The right to be informed in a timely manner of the outcome and any sanctions resulting from the complaint provided to victims of alleged offenses

**B. Rights of the Respondent:** When a member of the College has become the respondent of an alleged act of misconduct which violates this policy, the respondent should expect that the conduct system shall respond in a caring, sensitive manner which allows the respondent to utilize the policy's process unimpeded, while still maintaining the rights of the complainant. The following rights shall be provided to respondent of the alleged offenses:

1. The right to be fully informed of the applicable conduct codes and policies.
2. The right to be advised of the nature of the complaint against them.
3. The right to have complaints of the Sexual Misconduct be responded to quickly and with sensitivity.
4. The right to preservation of confidentiality, to the extent possible under the circumstances.
5. The right to be notified of available counseling and mental health services available on campus or off campus.
6. The right to be treated with dignity and respect by all persons involved in the investigatory and appeal process.
7. The right to select an advisor (subject to the limitations of this policy). Except in



cases of nonconsensual sexual contact, stalking, domestic violence and relationship violence cases, this advisor must be an active member of this College Community.

8. The right to notification of options for and available assistance in changing academic or working situations or supportive measures after an alleged incident, if so requested and if such changes are reasonably available.
9. The right to NOT be subject to any type of retaliation. Violation of such instructions would constitute grounds for the College to take immediate and further action.
10. The right to submit an appeal and receive a written response in the proscribed time frame.
11. The right to participate in a campus hearing by means other than being in the same room with the complainant.
12. The right to object to any investigator or decision maker.
13. The right to request relevant witnesses and evidence be interviewed by the investigators.
14. The right to make a statement and to have that statement considered in determining the case.
15. The right to be informed in a timely manner of the outcome and any sanctions resulting from the complaint.
16. The right to a presumption that the respondent is “not responsible” until a finding of responsibility is made pursuant to the provisions of this article and the institution’s policies and procedures.

## **DISCRIMINATION OTHER THAN SEXUAL MISCONDUCT**

- A. Allegations of discrimination, which are not gender-based, should be brought to the attention of the Dean of SECON who will provide for a thorough and impartial investigation. A final determination with respect to those claims will be made by the Dean of the College in collaboration with the President of SECON.

## **10. POLICY AMENDMENT**

- A. This policy may be amended from time to time as necessary including to comply with changes in laws and/or in accordance with other applicable SECON Policies.

## **11. COORDINATION OF POLICIES**

- A. The procedures in this policy will be followed for all complaints covered by this policy, notwithstanding the provisions of otherwise applicable personnel (but subject to the requirements of any applicable collective bargaining agreement) and student life policies. In the discretion of the appropriate Title IX Coordinator, any alleged act of misconduct may be investigated and decided in conjunction with an allegation of a violation of this policy (e.g., if a person is accused of sexual assault and also property damage in conjunction with the assault, the allegation of property damage may be adjudicated in accordance with this policy).

## **12. RETALIATION**

- A. Retaliation against any person or persons who report a violation of this policy, who

participates in ending a harassing situation, and/or who participates as a witness in an investigation or appeal hearing, is strictly prohibited. The College views retaliatory harassment and other retaliatory actions to be a serious breach of College policy and values. Any person who believes they have been subject to retaliation should immediately report the situation to the Title IX Coordinator or Director of the College for further action. Title IX prohibits retaliation and the College will take responsive action. An allegation that retaliation has occurred in violation of this policy will be investigated and adjudicated in accordance with the procedures set forth in this policy.

### **13. TIME FRAMES**

- A. The College endeavors to investigate and complete the investigation and complaint process within a 60 calendar day period. The investigatory and initial decision stage should be completed within 30 days, and the appeal process, if any, should be completed 30 days thereafter. This may not always be possible, especially if there are multiple complaints and/or incidents involved and/or due to delays necessitated by College breaks or other reasons of unavailability. All parties to the process will be notified in writing if, during the process, it becomes necessary to extend the time frame for good cause including the reason for the delay to allow for a fair and complete examination and resolution of the issues.

### **14. TRAINING**

- A. The Title IX Coordinator is responsible for ensuring that the personnel involved in implementing this policy receive appropriate annual training and all the procedures and policies are followed.
- B. SECON will provide education and training to all students as part of the on-boarding process about domestic violence, dating violence, stalking and sexual assault and bias-related crimes. Education will then be provided on an annual basis. Such information shall include, but not be limited to:
  - 1. Applicable laws, ordinances, and regulations relating to such offenses;
  - 2. Penalties for the commission of a sex offense, a domestic violence incident and a stalking offense and the procedures in effect at the college for dealing with such offenses;
  - 3. Availability of counseling and other support services for the victims of such offenses;
  - 4. Nature of and common circumstances relating to sex offenses, incidents of domestic violence and stalking offenses on college campuses; and
  - 5. Methods the college employs to advise and to update students about security procedures.
  - 6. Prohibition of sexual and interpersonal violence and resources offered to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the institution;
  - 7. Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent;
  - 8. Equal application to all students regardless of sexual orientation, gender identity, or

gender expression;

9. Role of the Title IX Coordinator and MVHS security;
10. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact;
11. Bystander intervention and the importance of taking action to prevent violence when one can safely do so;
12. Applicable laws, ordinances, and regulations on bias-related crimes, including the provisions and coverage of the Hate Crimes Act of 2000;
  - a. Penalties for commission of these crimes;
  - b. Procedures in effect for dealing with these crimes;
  - c. Availability of counseling and other support services for victims of these crimes; and
  - d. nature of and common circumstances relating to these crimes on college campuses
13. Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and
14. Consequences and sanctions for individuals who commit these crimes and code of conduct violations.

- C. All student leaders are required to complete training on domestic violence, dating violence, stalking and sexual assault prevention.

## **15. DELEGATION OF AUTHORITY**

- A. Any references in this policy to a specific title should be read to include "their designee". Any person to whom this policy empowers to act may delegate their authority to any other appropriate College official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a College official named in this policy from fulfilling their designated role.

## **16. COUNSEL**

- A. College officials may consult with counsel at any point in this process.

## **17. RECORDS**

- A. Records will be maintained confidentially and protected in accordance with legal requirements and the College's Records Retention Policy.

## **18. POLICY COMPLIANCE**

- A. Any person with a concern about the College's handling of a particular matter should contact the Title IX Compliance Coordinator or contact the U.S. Department of Education; Office for Civil Rights is a federal agency responsible for ensuring compliance with Title IX. OCR may be contacted at 400 Maryland Avenue, SW, Washington, DC 20202-1100, (800) 421-3481.

## **19. CLERY ACT COMPLIANCE**

- A. The College is required to include for statistical reporting purposes the occurrence of certain incidents in its Annual Security Report (ASR). Names of individuals involved in incidents are not reported or disclosed in ASRs. In the case of an emergency or ongoing dangerous situation, the College will issue a timely warning to the campus. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the victim/complainant will not be disclosed.

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## **20. CAMPUS CLIMATE SURVEY**

- A. SECON will conduct, no less than every other year, a campus climate assessment to ascertain general awareness and knowledge of the provisions of this policy, including student experience with and knowledge of reporting and college adjudicatory processes, which shall be developed using standard and commonly recognized research methods.
- B. SECON will take steps to ensure that answers to the survey remain anonymous and that no individual is identified. SECON will publish results of the surveys on the website.
- C. Information discovered or produced as a result of complying with this section shall not be subject to discovery or admitted into evidence in any federal or state court proceeding or considered for other purposes in any action for damages brought by a private party against an institution, unless, in the discretion of the court, any such information is deemed to be material to the underlying claim or defense.

## **Appendices to Amend Discrimination and Sexual Assault Policy**

### **Complying with Education Law Article 129-B**

#### **New York State Education Department**

##### **1. Amnesty from Drug and Alcohol Use Conduct Charges**

The health and safety of every student at SECON is of utmost importance. SECON recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. SECON strongly encourages students to report incidents of 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 SECON officials or law enforcement will not be subject to their 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.

##### **2. Student Bill of Rights**

SECON is committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in College/University-wide and campus programs, activities, and employment. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All students have the right to:

- A. Make a report to local law enforcement and/or state police;
- B. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- C. 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 from the institution;
- D. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- E. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- F. 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;
- G. Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
- H. 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;
- I. Access to at least one level of appeal of a determination;
- J. 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;
- K. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

### **3. Sexual and Interpersonal Violence Response**

- A. Reporting individuals have the right (**Reporting**):
  - 1. At the first instance of disclosure to a SECON representative, to be told the following: "You have the right to make a report to campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution." To contact the State police 24-hour

hotline (not a confidential resource) to report sexual assault on a NY college campus: 1-844-845-7269.

2. To disclose confidentially the incident to confidential college officials, who by law may maintain confidentiality, and can assist in obtaining services (more information on confidential report is available in the Options for Confidentially Disclosing Sexual Violence section 4 of this policy). To disclose confidentially the incident and obtain services from the New York State, New York City or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options are cataloged by the Office for the Prevention of Domestic Violence and presented in several languages: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906), and assistance can also be obtained through and of the resources listed on the NYS Resources tab for your campus (note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases).
  3. To disclose the incident to a college official who can offer privacy and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. Those officials will also provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution. These college officials will disclose that they are private and not confidential resources, and they may still be required by law and college policy to inform one or more college officials about the incident, including but not limited to the Title IX Coordinator. They will notify reporting individuals that the criminal justice process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or district attorney.
  4. To receive assistance from the campus in initiating legal proceedings in family court or civil court.
  5. To file a report of sexual assault, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator for information and assistance. Reports will be investigated in accordance with campus policy and the reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, use a confidential resource listed for your campus.
- B. When the accused is an employee, a reporting individual may also report the incident to Human Resources. They may request that one of the confidential or private employees assist in reporting to Human Resources. Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. When the accused is an employee of an affiliated entity or vendor of the college, college officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and college policy.



C. Reporting individuals have the right (**Resources**):

1. To obtain effective intervention services.
  - a. Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Testing for STIs and emergency contraception is available in the area and the individual can find resources on and off campus.
  - b. Within 96 hours of an assault, an individual can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. The individual is encouraged to let hospital personnel know if they do not want their insurance policyholder to be notified about access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: [http://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf), or by calling 1-800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.
  - c. To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

D. Reporting individuals have the right (**Protection and Accommodations**):

1. When the accused is a student, to have the college issue a "No Contact Order," whereby continued intentional contact with the reporting individual would be a violation of SECON policy subject to additional conduct charges; if the accused or respondent and a reporting individual observe each other in a public place, it shall be the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual. Both the accused or respondent and the reporting individual shall, upon request and consistent with SECON policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of their request. SECON may establish an appropriate schedule for the accused and respondents to access applicable buildings and property at a time when such buildings and property are not being accessed by the reporting individual.
2. To have assistance from law enforcement or other college officials in initiating legal proceedings in family court or civil court, including but not limited to 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 and have an opportunity to meet or speak with a college official or member of law enforcement 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); that burden

does not rest on 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 have assistance from local law enforcement when an individual violates an order of protection to enact an arrest if indicated. If the order of protection is outside the jurisdiction of local law enforcement, the student has the right to be protected with an equivalent order of protection.
6. To have assistance from law enforcement in effecting an arrest when an individual violates an Order of Protection or, if outside of New York State, an equivalent protective or restraining order within the jurisdiction of local law enforcement or, if outside of the jurisdiction, or if Campus Security does not have arresting powers, to call on and assist local law enforcement in effecting an arrest for violating such an order.
7. When the accused is a student and presents a continuing threat to the health and safety of the community, to have the accused subject to interim suspension pending the outcome of a conduct process. Parties may request a prompt review of the need for and terms of an interim suspension.
8. When the accused is not a student but is a member of the college 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 collective bargaining agreements, employee handbooks, and campus policies and rules.
9. When the accused is not a member of the college community, to have assistance from local law enforcement or other college officials in obtaining a persona non grata letter, subject to legal requirements and college policy.
10. To obtain reasonable and available interim measures and accommodations that effect a change in academics, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Parties may request a prompt review of the need for and terms of any interim measures and accommodations that directly affect them. Reporting individuals may request accommodations through offices listed as On Campus resources for your campus.

#### **4. Option for Confidentially Disclosing Sexual Violence**

##### **A. Privileged and Confidential Resources:**

1. Individuals who are *confidential* resources will not report crimes to law enforcement or college officials without your permission, except for extreme circumstances, such as a health and/or safety emergency. On Campus and Off Campus resources with the Confidential badge can provide this service (note that Off Campus options do not provide any information to the campus). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.
2. Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including

emergency compensation. More information may be found here: [http://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf), or by calling 1-800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.

3. Even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.

**B. Non-Professional Counselors and Advocates:**

1. Non-professional counselors and advocates can also assist the individual without sharing information that could identify you. Campuses differ in availability, and more information can be found in the On Campus resource list for your campus. These individuals will report the nature, date, time, and general location of an incident to the Title IX Coordinator, but will consult with you to ensure no personally identifying details are shared without your consent. These individuals are not considered confidential resources as discussed above.

**C. Privacy versus Confidentiality:**

1. SECON offices and employees who cannot guarantee *confidentiality* will maintain *privacy* to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible under the law for tracking patterns and spotting systemic issues. The campus will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

**D. Requesting Confidentiality: How Your Campus Will Weigh the Request and Respond:**

1. If an individual discloses an incident to a SECON employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh the request against an obligation to provide a safe, non-discriminatory environment for all members of our community, including the reporting individual.
2. The College will assist the reporting individual with academic or employment, and other reasonable and available accommodations regardless of reporting choices. Reporting individuals may request accommodations through college offices located in the On Campus resource list. The campus also may take proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify the reporting individual or the situation disclosed.
3. The College may seek consent from the reporting individual prior to conducting an investigation. The individual may decline to consent to an investigation, and that determination will be honored unless the campus' failure to act does not adequately mitigate the risk of harm to a member or other members of the campus community. Honoring the request may limit the College's ability to meaningfully investigate and pursue conduct action against an accused individual. If the College determines that an investigation is required, a College employee will notify the individual and take

immediate action as necessary to protect and assist that person.

4. When a person discloses an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, the campus will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:
  - a. Whether the accused has a history of violent behavior or is a repeat offender;
  - b. Whether the incident represents escalation, such as a situation that previously involved sustained stalking, the increased risk that the accused will commit additional acts of violence;
  - c. Whether the accused used a weapon or force;
  - d. Whether the reporting individual is a minor; and
  - e. Whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.
5. If the campus determines that it must move forward with an investigation, the reporting individual or victim/survivor will be notified and the campus will take immediate action as necessary to protect and assist them.

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#### **Public Awareness/Advocacy Events:**

If an individual discloses a situation through a public awareness event such as “Take Back the Night,” candlelight vigils, protests, or other public event, the campus is not obligated to begin an investigation. The campus may use the information provided to inform the need for additional education and prevention efforts.

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#### **Institutional Crime Reporting**

Reports of certain crimes occurring in certain geographic locations will be included in the campus Clery Act Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the reporting individual or victim/survivor.

The campus is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual or victim/survivor). A reporting individual will never be identified in a timely warning.

The Family Educational Rights and Privacy Act allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parents’ prior year federal income tax return. Generally, campus will not share information about a report of sexual violence with parents without the permission of the reporting individual.

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## 5. Notation on Transcript Policy for Violent Crimes

To comply with Article 129-B §6444.6 of the New York State Education Law, if a student is found responsible through the College's conduct process for crime(s) of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. § 1092(f)(1)(F)(i)(I)-(VIII) ("Clery crimes of violence"), the President of the College will direct that a notation be placed on the student's transcript.

- Where the sanction is a suspension, the following notation will be listed: "SUSPENDED AFTER A FINDING OF RESPONSIBILITY FOR A CODE OF CONDUCT VIOLATION."
- Where the sanction is expulsion, the following notation will be listed: "EXPELLED AFTER A FINDING OF RESPONSIBILITY FOR A CODE OF CONDUCT VIOLATION."

If a student respondent withdraws from the College, while such College conduct charges are pending for allegation(s) related to Clery crimes of violence and the student declines to complete the student conduct process, the President will direct that the following notation be placed on the student's transcript: "WITHDREW WITH CONDUCT CHARGES PENDING."

- Those students who withdraw from SECON and decline to complete the student conduct process forfeit any right to resume the conduct proceedings at any point in the future.
- Conduct charges are considered "pending" once a student is informed in writing that there are allegations that the student may have violated SECON's Code of Conduct.

### **Vacating a Finding of Responsibility:**

If definitive proof a student respondent's non-responsibility can be determined, any such transcript notification shall be removed. Only definitive proof can vacate a finding a responsibility. A not-guilty verdict in a criminal court is not, in itself, definitive proof of non-responsibility, nor is a failure to prosecute. If there is a student complainant in the conduct process, SECON will notify the student complainant and the student complainant will have an opportunity to be heard if a respondent provides definitive proof resulting in vacating a responsibility determination.

### **Further Appeals**

A student whose transcript states "SUSPENDED AFTER A FINDING OF RESPONSIBILITY FOR A CODE OF CONDUCT VIOLATION" may appeal, in writing, to the appropriate Dean of Students to have the notation removed. Appeals may be granted provided that:

- (i) One year has passed since the conclusion of the suspension;
- (ii) The term of suspension has been completed and any conditions thereof; and
- (iii) The President has determined that the student is once again "in good standing" with all applicable College and academic and non-academic standards.

A student whose transcript states "EXPELLED AFTER A FINDING OF RESPONSIBILITY FOR A CODE OF CONDUCT VIOLATION" or "WITHDREW WITH CONDUCT CHARGES PENDING" is ineligible to appeal to have the notation removed.

Those students who were expelled or withdrew with such notifications on their transcripts will leave the

College with the status “not in good standing” and will be ineligible for readmission to SECON, absent any vacating of a finding of responsibility.

## Addendum A

### New York State Crime Classifications and Definitions

#### Part I Offenses

##### Personal/Violent Crimes

- Aggravated assault: Unlawfully attacking another person to inflict severe or aggravated bodily injury, usually accompanied by the use of a weapon or by other means likely to produce death or grave bodily harm. Attempted aggravated assault that involves the use or threat of use of a gun, knife or other weapon is included in this crime category because serious personal injury likely would result.
- Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition -
  - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - Dating violence does not include acts covered under the definition of domestic violence.
- Domestic Violence: A felony or misdemeanor crime of violence committed -
  - By a current or former spouse or intimate partner of the victim;
  - By a person with whom the victim shares a child in common;
  - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- Forcible rape: The "carnal knowledge of a female/male forcibly and against his/her will." Includes assaults and attempts to commit rape by force or threat of force but excludes statutory rape (without force) and other sex offenses.
- Murder: Killing a human in a willful and non-negligent manner.
- Robbery: Taking or attempting to take anything of value from a person by force or threat of force or violence.
- Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to —



- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

## Property Crimes

- Arson: Willfully or maliciously burning or attempting to burn, with or without intent to defraud, a house, public building, motor vehicle, aircraft or personal property.
- Burglary: Unlawfully entering a structure to commit a felony or theft. Forcible entry need not have occurred.
- Larceny-theft: Unlawfully taking property from another (e.g., stealing a bicycle, stealing automobile parts, shoplifting, pickpocketing) without force, violence or fraud. Attempted larcenies are included.
- Motor vehicle theft: The theft or attempted theft of a motor vehicle.

## Part II Offenses

- Drug law violations: Violating any local, state or federal drug law that prohibits the possession or sale of specific drugs or drug paraphernalia.
- Liquor-law violations: Selling alcohol without a valid liquor-serving license or failing to check the identification of all people seeking to purchase alcohol on a premises.
- Sex offenses (e.g., statutory rape): An adult having sex with a child or teen who cannot legally consent to the act.
- Simple assault: Attempting to inflict physical harm on another person when that person is aware. Assault can be both a criminal and civil wrong, redressed by either criminal punishment or damages. Battery has generally been defined as the unlawful touching of another person. However, many jurisdictions no longer observe this distinction.
- Stolen property (mishandling of): Selling or purchasing goods stolen from another person or entity.
- Vandalism: Damaging or defacing public or private property without permission.
- Weapons (e.g., unlawful carrying of): Carrying a concealed weapon without the proper license or permit; fraudulently obtaining a gun, license or ammunition; or possessing a type of gun or assault weapon that the public is not authorized to own, carry or use.

## Addendum B

### A Plain Language Explanation of Distinctions Between the New York State Penal Law and the College Disciplinary Processes

	<b>Criminal Justice System</b>	<b>College/University Disciplinary System</b>
<b>Goals.</b>	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
<b>Governing</b>	New York State Penal Code; New	Title IX; The Clery Act as

<b>Law.</b>	York State Rules of Criminal Procedure (or another state's rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	amended by the Violence Against Women Act; NYS Education Law sections 129-A and 129-B. More specific rules govern particular colleges and universities.
<b>How to report and whether there must be action once a report is made?</b>	Crimes involving sexual violence may be reported to campus police (if the campus has police officers), the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	Victims may disclose sexual violence to various college employees who are designated confidential resources or to others who will try to ensure privacy to the extent consistent with the institution's obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Title IX Coordinator (TIXC) or another Non-Confidential resource, the TIXC will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.
<b>Who investigates?</b>	Police or other law enforcement officials.	Investigators employed or retained by the college or university; these individuals may work for different departments within the institution, including, but not limited to, the police/public safety department, student affairs and academic affairs.
<b>Procedures</b>	See Governing Law. Procedures established by police departments, prosecutors' offices, etc.	College/University policies and Bylaws, which generally incorporate requirements of Governing Law. Collective bargaining agreements may impact some procedures.

<b>Standard of Evidence.</b>	Crimes must be proven "Beyond a Reasonable Doubt"	A violation of disciplinary rules must be found by a "Preponderance of the Evidence" (more likely than not)
<b>Confidentiality.</b>	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	Colleges and universities offer confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved.
<b>Privacy.</b>	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the college, the parties, and pursuant to law.
<b>Who are the parties?</b>	The prosecution and defendant. The victim/survivor is <u>not</u> a party, but often the critical witness for the prosecution.	Varies by school—some consider the institution and the respondent to be parties, and confer on the reporting individual certain rights to participate, as the law provides. Otherwise, reporting individual and accused/respondent.
<b>Participation in the process.</b>	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual's participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Reporting students cannot be required to participate in the college process. However, a college will be limited in its ability to respond if a reporting individual does not participate.
<b>Who initiates the proceedings?</b>	A prosecutor, acting on behalf of the state (or the United States in federal cases).	The college or university initiates proceedings. While rules vary from school to school, they most provide an active role for the reporting individual.
<b>Testimony.</b>	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	The rules are established by individual colleges and universities, but some institutions provide for alternative

		approaches that permit students to testify without having other parties in the room and/or to ask cross-examination questions only through the disciplinary panel, investigator, or representative of the reporting individual and/or respondent.
<b>Role of attorneys.</b>	Both the state and the defendant are represented by counsel; counsel may question witnesses.	Varies by school. Many permit the parties to be advised by attorneys but some limit the attorney's' roles to quietly speaking with their clients or passing notes.
<b>Mental Health and Sexual History.</b>	In New York, a reporting individual's prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Generally not admissible, but subject to quite limited exceptions. Education Law 129-b permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact finding phase of the disciplinary process.
<b>Possible Results.</b>	<p>If a prosecution takes place, the defendant may</p> <ul style="list-style-type: none"> <li>• plead guilty or "no contest"</li> <li>• have the case dismissed by the judge (on legal grounds)</li> <li>• be found "guilty" or "not guilty" by a judge or jury</li> </ul>	In cases that do not involve sexual assault, some schools permit mediation or similar procedures if parties agree. If there is a formal proceeding, the respondent may be found "responsible" or "not responsible" for violations of the institution's rules. Respondents may also accept responsibility before a finding by an adjudicator.
<b>Sanctions.</b>	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An individual found responsible for violating college policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging

		from a warning to suspension or expulsion from the institution.
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**CONTENT EXPERT(S) / RESEARCHER(S) / CONTRIBUTOR(S):**

Approval Signatures

Step Description	Approver	Date
Owner	Faculty Organization	2/5/2025

Applicability

MVHS

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