

# Policy Manual Volume VIII: Sexual and Gender-Based Misconduct Policy

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## Volume VIII

### Sexual and Gender-Based Misconduct

<b>SEXUAL MISCONDUCT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING POLICY</b>	
<b>Effective Date:</b>	May 8, 2017
<b>Policy Number:</b>	VIII – 8
<b>Supersedes:</b>	Not Applicable.
<b>Issuing Authority:</b>	Board of Trustees
<b>Responsible Officer:</b>	Title IX Coordinator
<b>Applicability:</b>	All Canisius College community members, including students, employees, volunteers, visitors, and contractors.
<b>History:</b>	

## PURPOSE

The purpose of this policy is to address the college's responsibilities under Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX"), the Violence Against Women Reauthorization Act of 2013 ("VAWA"), and New York Education Law Article 129-B (commonly referred to as the "Enough is Enough" law) by providing the Canisius College community with a clearly articulated set of behavioral standards, common understandings of definitions and key concepts, and descriptions of Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking. [1]

## POLICY

Canisius College will not tolerate any form of Sexual Misconduct (which includes Sexual or Gender-Based Discrimination or Harassment, Sexual Assault, and Sexual Exploitation), Domestic Violence, Dating Violence, or Stalking (hereinafter "Sexual and Gender-Misconduct"). These forms of conduct are prohibited by the college and may also violate federal and state law. In addition, the college strictly prohibits retaliation against anyone who files a complaint, serves as a witness, or otherwise participates in the enforcement of college policy. Filing a formal report of a violation of college policy will not affect a student's grades, class selection, residence life status or any other matter pertaining to student status and, in the case of employees, an individual's employment status, compensation, or work assignments.

The college also seeks to prevent Sexual and Gender-Based Misconduct by providing:

- Educational programs and campaigns to promote the awareness and prevention of Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking, including primary prevention and awareness programs for all incoming students and new employees, as well as ongoing prevention and awareness campaigns for students and employees;
- Assistance and support, including procedures sensitive to individuals who have been reported to be the victim of a Sexual Misconduct, Domestic Violence, Dating Violence, or Stalking offense;
- Amnesty from violations of the college's alcohol and/or drug use policies occurring at or near the time of the commission of an incident of Sexual Misconduct, Domestic Violence, Dating Violence, or Stalking for bystanders or individuals acting in good faith that disclose such an incident to college officials or law enforcement; and
- A process for the prompt and equitable investigation and resolution of incidents of Sexual Misconduct, Domestic Violence, Dating Violence, or Stalking that includes appropriate disciplinary sanctions for those who commit such offenses, as well as the imposition of remedial actions to address and remedy the effects of such offenses.

Canisius College is committed to stopping incidents of Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking, preventing their recurrence, and addressing and remedying its effects within the college community. It makes this policy and accompanying information readily available to all students, employees, and other members of the college community.

Violations of college policy may result in the imposition of sanctions up to and including termination or expulsion (see Sanctions).

The college maintains a corresponding Anti-Discrimination and Anti-Harassment policy to address reports of discrimination or harassment unrelated to sexual or gender-based misconduct. This Anti-Discrimination/Harassment Policy may be accessed here ([click here](#)).

## DEFINITIONS

All forms of **Sexual and Gender-Based Misconduct** are prohibited by college policy. For purposes of college policy, **Sexual and Gender-Based Misconduct** is defined to include the following:

*Sexual Harassment* - unwelcome sexual advances, requests for sexual favors, other verbal, visual or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence or other offensive behavior directed toward an individual because of or on account of the individual's sex, whether by a person of the opposite or same gender, when either:

- Submission to, rejection, or toleration of such conduct is made explicitly or implicitly a term or condition of an individual's employment, education, living environment, or participation in a Canisius College program or activity; or
- Submission to, rejection, or toleration of such conduct is used as a basis for or a factor in decisions affecting that individual's employment, education, living environment or participation in a Canisius College program or activity; or
- Such conduct creates a Hostile Environment (see Hostile Environment Harassment).

*Gender-Based Hostile Environment Harassment* - the unlawful harassment against an individual on the basis of his or her gender, sex, sexual orientation, sexual identity, gender identity, or gender expression when the conduct is either:

- Sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit the individual's ability to participate in or benefit from the college's programs or activities; or
- The conduct has the purpose or effect of unreasonably interfering with an individual's employment or education.

The determination of whether an environment is "hostile" must be based on all of the circumstances, giving consideration to whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

- The degree to which the conduct affected one or more students' education or individual's employment;
- The nature, scope, frequency, duration, severity, and location of incident or incidents;
- The intent, purpose or objective(s) of the participants involved in the conduct; and
- The identity, number, and relationships of persons involved.

A single or isolated incident of Gender-Based Hostile Environment Harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to provide a hostile environment, particularly

if the harassment is physical in nature. While the intent of the actors involved in the conduct will be considered as part of the overall assessment of whether a "hostile" environment has been created, maintained or promoted, the absence of an intent to offend, demean, injure or harass will not be determinative of the issue.

The foregoing definitions of harassment must be interpreted in light of one of the fundamental purposes of a Canisius College education which is to teach students to think, write and express themselves critically. This is a demanding skill and students must confront in stark and sometimes painful ways the comfortable assumptions that they bring to the college experience. Instruction in critical thinking very well may involve saying or presenting materials that are felt by individuals to be offensive or embarrassing. In such cases, students should communicate directly with the faculty member involved, the department chair or the associate dean of the applicable school. See Section regarding Academic Freedom. Nor is this policy intended to address normal differences of opinion that arise but are not based on a person's protected status. In the case of students, those matters can be addressed through the procedures set forth in the Community Standards. In the case of employees, those matters can be addressed through procedures set forth in the Faculty Handbook, and *Volume III of the Canisius College Policy Manual* or through the Human Resources Office.

**Forms of Sexual Harassment or Gender-Based Hostile Environment Harassment:** Sexual Harassment or Hostile Environment Harassment based on one's sex or gender-related status may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or gender-related status, even if the acts do not involve conduct of a sexual nature. In either type of harassment, the conduct (and the impact of that conduct) will be evaluated based on the standard of a reasonable person in the position of the Reported Victim.

Sexual Harassment or Gender-Based Hostile Environment Harassment can take many forms:

- It may be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- It does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- It may be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships (e.g., supervisor to subordinate, faculty member to student, coach to student-athlete, student leader to first year student), harassment can occur in any context and between persons of equal power status (e.g., student to student, staff to staff, faculty member to faculty member, visitor/contracted employee to staff).
- It may be committed by a stranger, an acquaintance, or someone with whom the Reporting Individual has an intimate or sexual relationship.
- It may be committed by or against an individual or may be a result of the actions of an organization or group.
- It may occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.
- It may occur in the classroom, in the workplace, in residential settings, over electronic media (including the internet, telephone, and text), or in any other setting.
- It may be a direct proposition of a sexual nature.
- It may be a one-time event or part of a pattern of behavior.
- It may be committed in the presence of others or when the parties are alone.
- It may affect the Reporting Individual and/or third parties who witness or observe harassment.

Examples of Sexual Harassment or Gender-Based Hostile Environment Harassment include but are not limited to the following situations, whether or not there is the presence of a relationship that puts one person in a position of authority:

- unwelcome sexual propositions, invitations, solicitations, and flirtations; leering;
- unwelcome and inappropriate touching, patting, fondling, pinching, or obscene gestures;
- seeking sexual favors or relationships in return for the promise of a favorable grade, favorable employment action, or other academic or employment benefit or opportunity;
- conditioning an employment-related action (such as hiring, promotion, salary increase, performance appraisal, or refraining from discipline or termination) on a sexual favor or relationship;
- conditioning an academic-related action (such as a grade, assignment, or refraining from discipline) on a sexual favor or relationship;
- unwelcome communications of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, jokes or innuendos; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls, text messages or social media postings;
- sexually suggestive objects, pictures, videotapes, audio recordings or literature, or electronic transmissions placed in the work or study area, that may embarrass or offend individuals, subject to general principles of academic freedom discussed herein (click here or see below); or
- in the case of co-workers or individuals in positions of authority, conduct of the nature set forth above when the effect is to unreasonably interfere with the ability of a person to perform his or her employment or academic responsibilities, or when the effect is to create an offensive, intimidating and/or hostile working or learning environment for that person.

Unwelcome sexual behavior toward another employee or student, which is sufficiently severe or pervasive to alter the conditions of the victim's employment or academic surroundings and results in a work or educational environment that a reasonable person would find abusive or offensive creates a "hostile environment."

Isolated instances (e.g., a single sexual overture, comment, invitation or joke) ordinarily will not constitute Sexual Harassment or Gender-Based Hostile Environment Harassment unless there is repetition or the circumstances are particularly severe or egregious. In this regard, occasional compliments also generally will not constitute Sexual Harassment or Gender-Based Hostile Environment Harassment. Sexual behavior that is welcomed and consensual may not constitute Sexual or Gender-Based Harassment as well.

**Sexual Assault**—physical sexual acts perpetrated against a person's will or where a person is incapable of giving or manifesting consent due to the victim's use of drugs or alcohol or other incapacity, such as being a minor or having an intellectual or other disability. This includes the following:

**Sex Offenses-Forcible[2]**—Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the subject is incapable of giving consent.

Forcible Rape - The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the subject is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

Forcible Sodomy - Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the subject is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault With An Object - The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the subject is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible Fondling - The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the subject is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

*Sex Offenses-Nonforcible*—Unlawful, nonforcible sexual intercourse.

Incest - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape - Nonforcible sexual intercourse with a person who is under the statutory age of consent.

*Note: The above definitions will be utilized in determining whether an incident of Sexual Assault in violation of college policy by the preponderance of the evidence standard has occurred (and not to determine whether a crime has been committed). The above definitions will also be utilized by the college for Clery Act Reporting purposes.*

*Dating Violence*—violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the subject. 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. 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 subject; By a person with whom the subject 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 subject under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; By any other person against an adult or youth subject 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.

Stalking— means 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. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

Note: The above definitions will be utilized in determining whether an incident of Dating Violence, Domestic Violence or Stalking in violation of college policy by the preponderance of the evidence standard has occurred (and not to determine whether a crime has been committed). The above definition will also be utilized by the college for Clery Act Reporting purposes.

Sexual Exploitation - an act or omission to act that involves a member of the Canisius College community taking non-consensual, unjust, humiliating, or abusive sexual advantage of another, either for the individual's own advantage or to benefit anyone other than the one being exploited. Examples of sexual exploitation include but are not limited to the following:

- Creating pictures, movies, web cam, tape recording, graphic written narrative or other means of memorializing sexual behavior or a state of undress of another person without the other's knowledge and consent;
- Sharing items described in paragraph (1) above, beyond the boundaries of consent where consent was given. For example, showing a picture to friends where consent to view it was given for oneself only;
- Observing or facilitating observation by others of sexual behavior or a state of undress of another person without the knowledge and/or consent of that person;
- "Peeping Tom"/Voyeuristic behaviors;
- Engaging in sexual behavior with knowledge of an illness or disease (HIV or STD) that could be transmitted by the behavior;
- Encourage others to engage in sexual behavior in exchange for money;
- Surreptitiously providing drugs (including so-called "date-rape" drugs such as Rohypnol or GHB), or alcohol to a person for the purpose of sexual exploitation; and
- Causing another person to be exposed to pornographic material without the person's advance knowledge or consent.

*Sexual and Gender-Based Misconduct* - an umbrella term that includes sexual assault, sexual harassment, hostile environment harassment, domestic violence, dating violence, stalking, and, sexual exploitation.

*Retaliation* - taking adverse action against an individual making a report under college policy or against any person cooperating or participating in the investigation of a report or the enforcement of any protections, accommodations, Interim Measures, sanctions, or remedial actions under college policy. Retaliation includes intimidation, threats, harassment, and other adverse action including adverse job action and adverse academic action against any Reporting Individual or Reporting Party.

*Intimidation* - implied threats or acts that cause an unreasonable fear of harm in another.

*Aiding or Facilitating Sexual or Gender-Based Misconduct* - promoting, aiding, facilitating or encouraging the commission of any behavior prohibited under college policy is also prohibited by this Policy.

## **Other Definitions**

*Accused* - a person accused of a violation of college policy who has not yet entered one of the college's judicial or disciplinary conduct process.

*Awareness Programs* - community-wide or audience specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent Sexual Misconduct, promote safety, and reduce perpetration.

*Bystander* - person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of the college, but is not directly impacted by the conduct or the incident.

*Bystander Intervention* - safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes: a.) recognizing situations of potential harm; b.) understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking actions to intervene.

*Coercion* - coercion is the improper use of pressure to compel another person to initiate or continue sexual activity against his/her will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and extortion. Examples of coercion include threatening to disclose personal information such as one's sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

*College Community or Campus Community* - broad terms that refers to all employees, students, visitors, volunteers, contractors and others in connection with college-sanctioned activities, programs on - or off-campus, including study/travel abroad, internship programs.

*College Representatives* - the Title IX Coordinator; Public Safety Staff; Student Affairs professionals; Resident Assistants and Hall Directors; Coaches, trainers and athletic staff; Club and organization advisors; Individuals designated as Campus Security Authorities for Clery Act compliance purposes; and any other Individuals designated as Responsible Employees for Title IX compliance purposes.

*Consent* - Individuals must have affirmative consent before engaging in any Sexual Activity. 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.

While not required by state or federal law, Canisius strongly recommends that individuals ask for and receive verbal consent before engaging in sexual activity.

In addition,

- 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 (including all Sexual Contact) must stop.

*Sexual Activity*— shall mean a "Sexual Act" and "Sexual Contact" as provided in 18 U.S.C. 2246(2) AND 18 U.S.C. 2246(3):

*Sexual Act*—means (a) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (c) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (d) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

*Sexual Contact*—means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

*Day* - a "day" is a business day, unless otherwise specified.

*Disclosure* - information provided by a victim about an incident of Sexual and Gender-Based Misconduct to a confidential on or off-campus resource.

*Employee* - any member of the faculty, administration, or staff employed by the college on either a full or part-time basis at the time that a Report of a violation of this Policy is made. Solely for purposes of this definition, the term "employee of the college" does not include students who are employed by the college through a work-study, graduate assistantship, or similar program.

*Enough is Enough Legislation* - means New York Education Law Article 129-B, N.Y. Educ. L. §§ 6439-6449.

*FERPA (Family Educational Rights and Privacy Act)* - the privacy and confidentiality of all student records shall be preserved in accordance with the Family Educational Rights and Privacy Act of 1974 as amended.

*Interim Measures* - Counseling, health, mental health, victim advocacy, legal assistance, visa and immigration status, student financial aid and other services available for Reported Victims within the college and in the community and the availability of changes to academic, living, transportation, and working situations or protective measures, regardless of whether the Reporting Individual reports to an external law enforcement agency or submits a formal complaint to the college.

*Investigator* - the person tasked with investigating a report. All Investigators shall receive annual training regarding such issues as the laws governing Discrimination, Harassment and Retaliation; Title IX, VAWA/Campus SaVE Act (as defined below), and Enough is Enough; as well as other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on Gender or Sex, including Sex Discrimination, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and Stalking; Student and witness privacy rights; and the Family Educational Rights and Privacy Act of 1974 (FERPA). The Investigator shall not be within the administrative control or authority of any Responding Individual who is a college Employee, or otherwise has (or creates the appearance of having) a conflict of interest.

*Ongoing Prevention & Awareness Campaigns* - programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution.

*Personally Identifiable Information* - "Personally Identifiable Information" (as that term is defined by FERPA) includes, but is not limited to: a student's name; the name of a student's parent(s) or other family members; the address of a student or a student's family; a personal identifier, such as a student's social security number, student number, or biometric record; other indirect identifiers, such as a student's date of birth, place of birth, or mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student and that would allow a reasonable person in the college community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person whom the college reasonably believes knows the identity of the student to whom the Education Record relates.

*Policy*—this Sexual and Gender-Based Misconduct Policy.

*Preponderance of Evidence* - the required standard for determining a violation under this Policy. Those individuals charged with rendering a decision of a policy violation must be convinced, based on the information provided, that a policy violation was more likely to have occurred than to not have occurred in order to find a Responding Party responsible for violating this Policy.

*Primary Prevention Programs* - programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe direction.

*Proceeding* - all activities related to a non-criminal resolution of an institutional disciplinary report, including, but not limited to, fact finding investigations, formal or informal meeting, and hearings. Proceeding does not include communications and meetings between officials and Reporting Individuals concerning accommodations or protective measures to be provided to a Reporting Individual.

*Report*—a formal complaint made by a Reporting Individual to a non-confidential college official or responsible employee.

*Reporting Individual*—an individual who reports to a non-confidential college official or Responsible Employee a concern regarding possible Sexual and Gender-Based Misconduct, or a person who claims to have experienced an incident of Sexual and Gender-Based Misconduct, and who has not yet filed a formal Report with the college under this Policy.

*Reporting Party*—an individual who reports to a non-confidential college official or Responsible Employee a concern regarding possible Sexual and Gender-Based Misconduct, and who thereafter elects to pursue a complaint against a Responding Individual or a Responding Party under this Policy.

*Responding Individual*—an individual who is the subject of a Report to a non-confidential college official or Responsible Employee regarding possible Sexual and Gender-Based Misconduct.

*Responding Party* - a person who is the subject of a complaint of a violation of this Policy who has entered the college's judicial or disciplinary conduct process.

*Responsible Employee*—any college employee that has the authority to take action to redress Sexual and Gender-Based Misconduct, has the duty to report such misconduct to appropriate college officials, or is someone a student could reasonably believe has this authority or responsibility.

*Result*—any initial, interim and final decision by any official or entity authorized to resolve disciplinary matters within the college. The Result must include a description of sanctions imposed by the college, if any. Notwithstanding any provision of the Family Educational Rights and Privacy Act (FERPA), the Result reported under this Policy must also include the rationale for the Result and the sanctions, if any.

*Risk Reduction*—options designed to decrease perpetration and bystander inaction, and to increase empowerment for persons in order to promote safety and to help individuals and communities address conditions that facilitate violence.

*Student*—any individual who, at the time of the alleged Sexual or Gender-Based Misconduct and the making of a disclosure or report to the college is either: (1) admitted as a student to the college and has been moved to deposited status; (2) an enrolled student; (3) a student between academic terms or on a Leave of Absence (regarding whom the college has a reasonable expectation of their return); (4) a graduate awaiting a degree; (5) an individual who was enrolled as a student at the college at the time she or he was alleged to have violated this Policy or violated applicable Community Standards, or was charged with a violation of this Policy or a violation of the Community Standards, but who thereafter graduated from or transferred from the college prior to a final determination of responsibility with respect to said charge; or (6) a student who

withdraws from or otherwise leaves the college while a Community Standards matter or a charge of a violation of this Policy (including an investigation) is pending. A student ceases to be a student at Canisius or purposes of this Policy when she or he graduates, excepting a student who graduates under the circumstances set forth in subparagraph 5, above. Solely for purposes of this definition, the term "employee of the college" does not include students who are employed by the college through a work-study, graduate assistantship, or similar program

*Third Party*—any guest of the college; alumnus or alumna; volunteer; or contractor, consultant, or vendor doing business or providing services to the college.

*Title IX*—means Title IX of the Education Amendments of 1972 ("Title IX"), which is a federal law that prohibits sexual discrimination in federally funded education programs and activities.

*VAWA* - means the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Crimes Statistics Act, commonly known as the Clery Act) (20 U.S.C. 1092(f)), under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act).

## **PROCEDURES/GUIDELINES**

### **I. Scope and Jurisdiction**

#### **A. Scope of Policy**

This Policy applies to all Canisius College Students, Employees, volunteers, and visitors, as well as to contractors, consultants, and vendors doing business or providing services to the college ("Third Parties"), regardless of an individual's 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. The college will receive and address reports received from any individual, whether or not affiliated with Canisius, that a college community member has violated this Policy.

The college's prohibition against Sexual and Gender-Based Misconduct applies not only in the educational, student residential and working environment, but also to all other work-related, student residential, and educational life settings, such as business trips and business-related social functions, as well as educational field trips, athletic trips, study abroad trips, service immersion trips, and internship placements. Further, the prohibition applies whether or not the incident(s) occurs on the Canisius College campus and whether or not the incident(s) occurs during working/educational hours. In responding to off campus events, the college will consider the effects of the off-campus conduct on an individual's working, residential life, or educational experience, including the impact on the individual's ability to participate in college activities or programs. Finally, the college's prohibition applies not only to physical contact, but also oral, written and electronic and other technology-assisted communications, such e-mail, voice mail, Internet communications and searches.

#### **B. Period of Limitations**

There is no specific period of time after an incident of Sexual and Gender-Based Misconduct is alleged to have occurred during which a Report must be made. The college, however, strongly encourages timely reporting in order to preserve evidence for a potential legal or college resolution proceeding. Delays in reporting may limit the college's ability to respond fully to the Report.

If the Responding Individual is no longer a Student or Employee, the college may not be able to take disciplinary action against the individual, but it will still seek to meet its Title IX obligation by providing support for a Reporting Individual and taking steps to end the harassment, prevent its recurrence, and address its effects.

*Note:* The use of alcohol and/or drugs by a Responding Individual or a Responding Party is not an excuse for violation of this Policy and will not constitute a valid defense to the charge of a Policy or Community Standards violation determined hereunder.

#### **C. Coordination with the College's Discrimination and Harassment Policy**

Other forms of discrimination, including discrimination based on race, religion, disability, or any other non-gender related protected characteristics are addressed by the college's Anti-Discrimination/Harassment Policy ([click here](#)). When alleged misconduct relates to both a person's sex or gender related status and other protected characteristics, the college will coordinate the investigation and resolution efforts by following the process set forth in this policy to address any and all harassment and discrimination. Individuals with questions about which Policy applies in a specific instance can contact the college's Title IX Coordinator, who has sole discretion to determine the process that will be employed by the college in such circumstances.

#### **D. Academic Freedom**

The Board of Trustees of Canisius College has accepted and endorsed as its own a definition of academic freedom published by the AAUP and AAC as set forth in the Faculty Handbook. The Board will do its best to protect and uphold academic freedom in keeping with the AAUP academic freedom statement. That definition of academic freedom is incorporated herein by reference. Conduct claimed to constitute harassment and sexual harassment must be interpreted in light of the principle of academic freedom so as to protect a faculty member's right to teach, research and publish freely. The college does not intend that this Policy will be used to address the normal differences of opinion that may arise in the academic setting and are part of the normal process of teaching and learning.

## E. Student Bill of Rights

Under relevant provisions of New York law, 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 college;
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 college 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 reported to have been committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few college representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the college, any student, the Responding Individual or the Responding Party, and/or the Reporting Individual or Responding Party's friends, family and acquaintances within the jurisdiction of the college;
9. Have 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 Party, or a Responding Party, throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the college.

## II. Title IX Coordinator

The Title IX Coordinator is responsible for monitoring the overall Title IX implementation for Canisius College and coordinating compliance with all areas and departments covered under Title IX regulations. If a Complaint is filed, the Title IX Coordinator will attempt to meet with the Reporting Individual or Reporting Party to explain the available options, the process used to investigate the Report or Complaint, and any available support, resources, and protective measures.

The Title IX Coordinator shall be informed of all non-confidential reports and complaints raising Title IX and VAWA issues, even if the report or Complaint was initially filed with another individual or office.

The Canisius College Title IX Coordinator is:

Terri L. Mangione, Ph.D.

Vice President for Student Affairs

Old Main 102

716 888-2130

[mangiont@canisius.edu](mailto:mangiont@canisius.edu)

Concerns about the college's application of Title IX, the Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Clery Act; and the New York State Enough is Enough Law may be addressed to the college's Title IX Coordinator.

In addition, concerns may be raised with the United States Department of Education, Clery Act Compliance Division, or the United States Department of Education, Office for Civil Rights, at [OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481.

## III. Resources for Immediate Help

A member of the campus community who claims to have been sexually assaulted or claims to have been the victim of an incident of criminal sexual misconduct has the right to make a report to Public Safety, local law enforcement, and/or State Police or choose not to report; to report the incident to the college or choose not to report; to be protected by the college from retaliation for reporting an incident; and to receive assistance and resources from the college.

A member of the campus community who has been sexually assaulted or to have been the victim of an incident of sexual misconduct has the right to confidentiality, to the extent reasonably possible under the circumstances. Even Canisius employees who cannot promise or guarantee confidentiality will strive to maintain the privacy of the reporting individuals. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator and the college to investigate, to assure the safety and security of the Campus Community and/or seek a resolution of the matter.

### A. Immediate On Campus Help

(\*Denotes privileged communication, protected and confidential by law)

Title IX Coordinator:

Terri L. Mangione, Ph.D.  
Vice President for Student Affairs  
Old Main 102  
716 888-2130  
[mangiont@canisius.edu](mailto:mangiont@canisius.edu)

**\*Sexual Assault Liaison** (*Student Only Confidential Resource*):

**Eileen Niland, MS, LMHC, NCC**

Counseling Center, Bosch 105  
716 888-2620

**Department of Public Safety:**

Bosch Hall  
711 (on-campus)  
888-2330 (off-campus)

**\*Counseling Center** (*Student Only Confidential Resource*)

Bosch Hall  
Phone: 888-2620

**\*Canisius College Student Health Center** (*Student Only Confidential Resource*)

2001 Main Street  
Phone: (716) 888-2610

The above officials are available at any time, including upon the initial disclosure of an alleged Policy violation, to provide written information regarding available resources both on and off campus, reporting options, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic exam or other medical examination as soon as possible. -

## **B. Immediate Off Campus Help**

### **1. External Law Enforcement Authorities**

Any individual who has experienced an incident of Sexual and Gender-Based Misconduct involving potential criminal conduct has the option to report (or not report) the conduct to an external law enforcement authorities that has jurisdiction over the location where the incident occurred by calling 911. In addition, the Buffalo Police Sex Offence Unit at 716-851-4494 or the state police at 1-844-845-7269 may be contacted if the incident took place locally.

If a Student chooses to report an incident to an external law enforcement authority, she or he may request assistance from the college in notifying the external law enforcement authority of the incident. The following individuals may be contacted for assistance in contacting law enforcement: Public Safety officers, the college's Sexual Assault Liaison (Confidential), Counseling Center Staff (Confidential), or the Title IX Coordinator. The college will comply with any Student's request for assistance in notifying external law enforcement authorities

### **2. Medical Treatment**

The college encourages individuals who have experienced a recent sexual assault or act of physical violence to visit a hospital or clinic to assess and address their medical needs. A medical exam affords confidentiality and can assess an individual's injuries and provide necessary medical advice and medication. Medical facilities can also screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs), as well as take steps to preserve evidence.

The following local medical facilities are confidential resources and information provided during a medical exam will not be released or shared without the patient's consent. Disclosure to these resources does not provide any information to the college.

#### **Erie County Medical Center**

462 Grider St., Buffalo  
(716) 898-3161

#### **Buffalo General Hospital**

100 High St., Buffalo

(716) 859-7100

### **Sisters of Charity Hospital**

2157 Main St., Buffalo

(716) 862-1800

### **Women & Children's Hospital**

219 Bryant St., Buffalo

(716) 878-7408

All persons may also request that an advocate accompany them to the hospital. This may be a friend or other support person. -

If the incident is a crime, these providers will report it without any identifying information to Public Safety for inclusion in the daily crime log and annual statistical report and for issuance of any required timely warning as required by the Clery Act.

### **3. Counseling/Victim Advocacy Resources**

An individual reporting an act of Sexual and Gender-Based Misconduct also has the option to confidentially disclose the incident and obtain services from the following off-campus counseling/victim advocacy resources and hotlines. Disclosure to these resources does not provide any information to the college.

#### **Crisis Services**

<http://crisiservices.org/>

(716) 834-3131

Crisis Services is staffed 24 hours a day by trained volunteers who are able to connect with professional counselors for emergency outreach. Crisis services will send a counselor to meet individuals in the emergency room.

#### **New York State Office for the Prevention of Domestic Violence**

[www.opdv.ny.gov/help/dvhotlines.html](http://www.opdv.ny.gov/help/dvhotlines.html)

1-800-942-6906

#### **National Sexual Assault Hotline**

<http://www.rainn.org/>

1-800-656-4673

#### **Pandora's Project**

<http://www.pandys.org/lgbtsurvivors.html>;

#### **GLBTQ Domestic Violence Project**

<http://www.glbtdvp.org/>;

#### **Safe Horizons**

<http://www.safehorizon.org/>.

## **C. Preservation of Evidence and Forensic Examination**

### **1. Preservation of Evidence**

Evidence of a sexual assault and the perpetrator's identity may be left on an assault victim's body, clothing and belongings. In order to best preserve evidence, it is important that, if possible, persons believing that they have been the victim of a sexual assault do not shower, bathe, wash, comb their hair, use the toilet, smoke, brush their teeth, eat or drink, and wash clothes, sheets, blankets or other items. Anything of evidentiary value should be placed in a paper bag (plastic bags are discouraged). Also, individuals are urged to photograph visible injuries. Pictures of injuries should be taken in both close-up and wide-angle. A credit card, coin, or dollar bill should be used in the pictures for reference of size. Collecting evidence does not obligate an individual to any particular course of action but can assist an external law enforcement agency should criminal charges ultimately be pursued.

### **2. Forensic Examination**

Within 96 hours\* of a sexual assault, the assault victim has the option to undergo a Sexual Assault Forensic Exam at a local hospital for purposes of evidence collection. This option is available even if the assault victim has not decided whether she or he wishes to pursue any action against the alleged perpetrator. The exam is performed by a skilled clinician and includes assessment for and treatment of injury, addressing concerns of pregnancy and sexually transmitted infections, and collection of evidence.

- Choosing to undergo a Sexual Assault Forensic Exam (commonly referred to as a "Rape Kit") does not require the individual to report the incident to an external law enforcement agency or to the college. Undergoing the exam, however, will help to ensure that the victim receives proper care and preserves her or his opportunity to support a disciplinary or criminal action if she or he decides later to prosecute, seek a protective order or report the incident to the college.
- 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. Individuals are 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 individuals for health care and counseling services, including emergency funds. More information may be found [here](#) or by calling 1-800-247-8035. Options are explained [here](#).

\*Even if 96 hours have elapsed, the exam is still recommended, although its utility may be diminished. Therefore, persons believing that they have been the subject of a sexual assault are advised to seek and secure a Sexual Assault Forensic Exam at the earliest possible opportunity.

## IV. Reporting Options

The college urges persons who believe they have been victims of Sexual or Gender-Based Misconduct to address their situation by reporting to the College or to local law enforcement. Individuals are strongly encouraged to speak with someone on campus or off campus, regardless of their choices to report or not to report the alleged violation to the college or law enforcement, so as to ensure they receive all necessary support. Persons who believe they have been victims of Sexual or Gender-Based Misconduct 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 Canisius or not to report; and to receive assistance and resources from the college. Retaliation against an individual who brings a good faith report, participates in an investigation, or pursues a criminal charge is prohibited, and will not be tolerated by the college.

### A. Reporting to the College

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected Sexual and Gender-based Misconduct to appropriate college officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist to report crimes and policy violations and these resources will take action when victimization is reported to them.

The college respects an individual's decision in regards to reporting. If an individual chooses not to report or otherwise participate in the college review of an incident, the college may pursue the matter without the individual's participation in accordance with Title IX requirements. Moreover, if information about an incident of Sexual and Gender-Based Misconduct or associated incidents of Retaliation comes to the attention of the college, the matter will be referred to the Title IX Coordinator, who will review the facts and make an immediate assessment of any risk of harm to the individual who chose not to report, and/or to the broader college community, and will take steps necessary to address those risks. If warranted, these steps may include protection measures, accommodations, and/or Interim Measures to provide for the safety of the individual at issue and the college community. Canisius may also notify appropriate external law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

The following describe the two reporting options at the college:

#### 1. Confidential Reporting

If a Reporting Party would like the details of an incident to be kept confidential, the Reporting Party may speak with the following resources:

- The licensed professional counselors at the Counselor Center (*students only resource*);
- The college's Sexual Assault Liaison (Eileen Niland, MS, LMHC, NCC) (*students only resource*); and
- The campus health service providers at the Canisius College Student Health Center (*students only resource*).

All of the above employees will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors are available to help free of charge and can be seen on an emergency basis during normal business hours. They will listen and help access additional on and/or off-campus assistance and explain options for obtaining additional protections and support from the college and others. Such protection and support may include, for example, victim advocacy services, academic support or accommodations, health or mental health services, and changes to living, working, or course schedules. These employees will also explain protections against Retaliation, and that the Title IX Coordinator will not only take steps to prevent Retaliation, but also take strong responsive action should it occur. These employees will also submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

In addition or in lieu of the speaking to the college's confidential resources, the Reporting Party may opt to speak with the following confidential off-campus resources:

#### Crisis Services

<http://crisisservices.org/>

(716) 834-3131

## New York State Office for the Prevention of Domestic Violence

1-800-942-6906

[www.opdv.ny.gov/help/dvhotlines.html](http://www.opdv.ny.gov/help/dvhotlines.html)

## National Sexual Assault Hotline

1-800-656-4673

<http://www.rainn.org/>

## Pandora's Project

<http://www.pandys.org/lgbtsurvivors.html>;

## GLBTQ Domestic Violence Project

<http://www.glbtdv.org/>

## Safe Horizons

<http://www.safehorizon.org/>

All college employees are also eligible to receive free of charge confidential consultation and counseling via Child and Family Services, 2495 Main Street, Suite 357, Buffalo, NY 14214.

## 2. Formal Reporting to the College

All college employees, including student resident advisors and resident directors, have a duty to report claims or incidents of sexual misconduct and sexual violence, unless they fall under the "Confidential Reporting" section above. Reporting Individuals may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator.

If a Reporting Individual does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the Reporting Individual may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, plan, premeditation, threat, weapons and/or violence, the college will likely be unable to honor a request. In cases where the Reporting Individual requests privacy and the circumstances allow the college to honor that request, the college will offer interim supports and remedies to the Reporting Individual and the community, but will not otherwise pursue formal action. When a Reporting Individual makes a non-confidential report to the college, she or he has the right to expect the college to institute proceedings to resolve the matter promptly, fairly, and impartially from the initial investigation to the final result. Retaliation will not be tolerated.

College offices and employees who receive a report or disclosure under circumstances that cannot guarantee confidentiality nonetheless still will strive to maintain a Reporting Individual's privacy by limiting the scope of disclosure of the reported information only to the extent reasonably necessary for the Title IX Coordinator to investigate and/or seek a resolution.

The following college representatives listed below have been designated to receive formal Reports and can offer information about remedies, accommodations, evidence preservation, and how to obtain on and off campus resources:

**a. Title IX Coordinator:** Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Terri L. Mangione, Ph.D.

Vice President for Student Affairs

Old Main 102

[mangiont@canisius.edu](mailto:mangiont@canisius.edu)

**b. Public Safety Officers:** A Report may also be made to Public Safety, which is located at Bosch Hall (tunnel level). Public Safety personnel can be contacted at 888-2330, 24 hours a day or via one of the lighted outdoor emergency phones on the campus. Public Safety personnel will immediately report to the Title IX Coordinator all relevant details about the alleged incident that the college will need to determine what happened – including the names of the Reporting Party and person allegedly violating this Policy, any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

**c. Responsible Employees:** A "Responsible Employee" is a college employee who either has the authority to redress Sexual and Gender-Based Misconduct, has the duty to report incidents of Sexual and Gender-Based Misconduct or other student misconduct, or is an individual who a student could reasonably believe has this authority or duty. The following positions have been designated by the college to be Responsible Employees: board of trustees members; the president; the vice presidents; the deans; the directors; coordinators; supervisors; all athletic department coaches and staff; all admissions staff; all public safety staff; all student affairs staff; all resident assistants; resident directors; professional academic staff; and faculty. All responsible employees are notified of their status and provided Title IX training.

In the event that an Employee of the college is the subject of a complaint, the Reporting Individual has the right to disclose the incident to the college's human resources authority or, alternatively, the Reporting Individual has the right to request confidential or private employee assistance in reporting to the appropriate human resources authority.

Additionally, anonymous reporting is also available via the college's Bias hotline at 716 888-BIAS (2427). The system notifies the user that giving Personally Identifying Information may serve as notice to the college for the purpose of triggering a Title IX investigation. The purpose of an anonymous report is to comply with the Reporting Individual's wish to keep the matter confidential, while taking steps to ensure the future safety of the Reporting Individual and others. Anonymous and confidential reports are counted and disclosed in the annual crime statistics for the college.

### 3. Additional Reporting Information

**a. Amnesty:** The health and safety of every student at Canisius College is of utmost importance. Canisius 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. Canisius strongly encourages Students to report domestic violence, dating violence, stalking, or sexual assault to college officials. A Bystander acting in good faith or a Reporting Individual acting in good faith who discloses any incident of domestic violence, dating violence, stalking, or sexual assault to college officials or law enforcement will not be subject to Canisius Community Standards sanctions 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 incident.

**b. False Reports:** A charge of Sexual and Gender-Based Misconduct may have severe consequences. Any individual who knowingly files false and malicious accusations of Sexual and Gender-Based Misconduct or Retaliation, who knowingly provides false information to college officials, or who intentionally misleads college officials who are involved in the investigation or resolution of a report of Sexual and Gender-Based Misconduct or Retaliation may be subject to disciplinary action or other sanctions, up to and including suspension, expulsion, termination of employment or dismissal. This provision does not apply to Reports made in good faith, even if the facts alleged in the report are not substantiated by an investigation.

**c. Disclosures at Public Awareness Events:** Public awareness events such as candlelight vigils, protests or other forums in which students might disclose incidents of Sexual and Gender-Based Misconduct, are not considered notice to the college of Sexual or Gender-Based Misconduct for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts at the discretion of the Title IX Coordinator, and the college will provide information about Title IX rights at these events.

**d. Statistical Reporting:** The Clery Act is a federal law requiring institutions of higher education to collect and report statistics on certain crimes in an Annual Security Report. Campus Security Authorities at the college have a duty to provide Public Safety with information regarding certain crimes when they are reported. All personally identifiable information is kept confidential, but statistical information regarding Clery reportable crimes must be shared, including the date and location of the incident (but not the specific address) and information about the reported crime, to allow for proper classification. This report provides the college community with information about the extent and nature of crime on the college's campus and helps ensure greater community safety.

**e. Timely Warning Notifications:** If a report of Sexual and Gender-Based Misconduct reveals that there is an immediate threat to the health or safety of students or employees on campus, or that an ongoing serious or continuing threat to the campus community exists, an emergency Timely Warning notification will be issued by the college. The purpose of the Timely Warning notification is to enable individuals to protect themselves and to increase safety awareness, as well as seek information that will lead to eradication of the threat. The Reporting Individual's names and other personally identifiable information will not be included in any Timely Warning notification or public safety advisory.

**f. Assistance Initiating Legal Proceedings:** Reporting Individuals have the right to receive assistance from appropriate college representatives in initiating legal proceedings in family court or civil court.

**g. Withdrawal:** Reporting Individuals have the right to withdraw a complaint or involvement from the process at any time.

**h. Consent Prior to Investigation:** The college generally will seek consent from Reporting Individuals prior to conducting an investigation. Declining to consent to an investigation generally will be honored unless the college determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the Reporting Individual or other members of the community. Honoring such a request may limit the college's ability to meaningfully investigate and pursue conduct action against the individual who is the subject of the Report. Factors used to determine whether to honor such a request include, but are not limited to:

- Whether the subject of the Report has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the subject from previously noted behavior;
- The increased risk that the subject will commit additional acts of violence;
- Whether the subject used a weapon or force;
- Whether the Reporting Individual is a minor; and
- Whether the college possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

## B. Reporting to an External Law Enforcement Authority

Any member of the college community who has experienced an incident of Sexual Misconduct and Gender-Based Misconduct involving potential criminal conduct has the option to report (or not report) the conduct to the external law enforcement authority that has jurisdiction over the location where the incident occurred by calling 911 or by contacting the Buffalo Police Sex Offense Unit at 716-851-4494 or the state police at 1-844-845-7269. Victim support and resources are available even if a Student, Employee, or Third Party elects not to pursue criminal charges or file a report with the college. Any member of the college community who has experienced or witnessed an incident of Sexual Misconduct and

Gender-Based Misconduct may also decide to report the alleged incident anonymously to an external law enforcement authority. Anonymous reports to an external law enforcement authority do not relieve Responsible Employees of their reporting duties under Title IX.

The college and the external police/legal system work independently from one another. Individuals can file reports with the college, with external law enforcement authorities, with both systems, or with neither. Because the standards for finding a violation of criminal law are different from the standards in this Policy, neither the results of a criminal investigation nor the decision of law enforcement to investigate, or decline to investigate a matter, is determinative of whether a violation of any college policy has occurred. Conduct that may not be subject to criminal action may still be addressed through the college's investigatory and disciplinary processes. Moreover, a finding of "not guilty" in a criminal matter does not preclude a finding of responsibility for violating college policy.

It is also important to know that the college will not wait for the conclusion of an external criminal investigation or proceeding to begin its own investigation and resolution of an alleged violation. The college may, however, need to temporarily delay its fact-finding portion of the investigatory process while the external law enforcement authority is gathering initial evidence. This delay typically takes three to ten calendar days, although it may take longer in certain instances, depending upon the circumstances and the assessment of those circumstances by law enforcement professionals. If a delay in the college's Title IX investigatory process occurs, it will consider the implementation of appropriate Interim Measures to protect the Reporting Party in the educational or work setting as applicable. Interim Measures are designed to limit contact between the Reporting Party and the Responding Party, and help ensure appropriate campus security. Interim Measures shall not be considered in connection with the resolution of the underlying allegations of a violation of this Policy and/or Canisius Community Standards, or as a finding in favor of or against any Party. Moreover, the Title IX Coordinator will continue to update the parties on the status of the investigation and inform them when the college's Title IX investigatory process resumes, which will occur promptly after the external law enforcement authority notifies the college that it has completed the evidence-gathering stage of its criminal investigation. The college will not, however, delay its investigatory process until the ultimate outcome of the external criminal investigation or the filing of any charges.

*Sharing Records with External Law Enforcement Authorities:*

The college will share with external law enforcement authorities, as necessary and appropriate, information or records permitted to be released under any relevant exception to the privacy protections of the Family Educational Rights and Privacy Act (FERPA), including the Health and Safety Emergency exception and/or records/information otherwise protected by any other state laws or local ordinances. It should be noted that FERPA applies only to records created by the college and to information derived from tangible records. FERPA does not protect the confidentiality of information in general and, therefore, does not apply to the disclosure of information derived from a source other than an education record, even if education records exist which contain that information. As a general rule, information that is obtained through personal knowledge or observation and not from an education record is not protected from disclosure under FERPA. Thus, for example, a non-confidential verbal report of an offense of violence or sexual assault can be reported to the appropriate external law enforcement authority.

## **C. Reporting to the Office of Civil Rights**

Members of the campus community may also file reports with the United States Department of Education, Clery Act Compliance Division, or the United States Department of Education, Office for Civil Rights, at [OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481.

The OCR National Headquarters is located at:

**United States Department of Education, Office for Civil Rights**

U.S. Department of Education, Office for Civil Rights

Lyndon Baines Johnson Department of Education Bldg

400 Maryland Avenue, SW

Washington, DC 20202-1100

Telephone: 800-421-3481

FAX: 202-453-6012;

TDD: 800-877-8339

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Complaints with the Office for Civil Rights must be filed within one hundred eighty (180) days of the last act that the complainant believes was discriminatory. There is no time limit for making a report to the college, although both effective investigation or remedial action under this Policy may be hampered, restricted or rendered unavailable as a result of a delay in reporting, based upon things like the ability to gather relevant evidence and the matriculation status of the subject(s) of the report or witnesses to the events. Therefore, prompt reporting of suspected violations of this Policy or of the college's Community Standards is strongly encouraged.

## **V. Canisius College's Initial Response and Assessment of Reports**

Canisius College is committed to conducting adequate, reliable, and impartial investigations of reports and complaints of Sexual and Gender-Based Misconduct, and to doing so in a timely manner. The Title IX Coordinator is responsible for overseeing and coordinating the college's response.

When the Title IX Coordinator receives a report alleging actual or suspected Sexual and Gender-Misconduct or otherwise is put on notice of such an incident, he or she will take immediate and appropriate steps to investigate or otherwise determine what happened and work to resolve the matter promptly and equitably.

Note: A Reporting Party has the right to withdraw from the college processes at any time. Such a withdrawal may not, however, terminate any ongoing process under this Policy.

## A. Initial Assessment

Upon receipt of a report or being placed on notice of an incident of Sexual or Gender-Based Misconduct, the Title IX Coordinator (or a trained designee) will conduct an initial assessment to determine whether the allegations in the initial report(s), if true, would constitute prohibited Sexual and Gender-Based Misconduct in accordance with this Policy. This preliminary review will include meetings with both the Reporting Party and the Responding Party, as well as any other necessary interviews.

During the meetings with the Parties, this Policy and the Student Bill of Rights ([click here](#)), if applicable, will be reviewed and provided. Moreover, written notification about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services available for one or both Parties, both within the college and in the community. The Title IX Coordinator will also provide written information about options for, available assistance in, and how to request changes to academic, living, transportation and working situations or protective measures.

During the initial assessment phase, the Title IX Coordinator will also address the immediate physical safety and emotional well-being needs of the Reporting Party and the Responding Party, and implement any necessary protections, accommodations, and Interim measures (see **Protective Orders, Accommodations, and Interim Measures** below). In addition, the Title IX Coordinator will assess for pattern evidence or other similar conduct by the Responding Party and assess the reported conduct for any Clery Act obligations, including entry in the crime log or issuance of a Timely Warning. The initial assessment will usually be completed within seven (7) days of receipt of the Report or the college being placed on notice of the incident.

## B. Protections, Accommodations, and Interim Measures

Reporting Parties disclosing or reporting Sexual and Gender-Misconduct and Responding Parties are entitled to the following protections and accommodations:

- When the Responding Party is a student, to have the college issue a "No Contact Order." When a No Contact order is in effect, continued contact between the Parties is a violation of Community Standards and may result in additional conduct charges. If the Responding Party and the Reporting Party observe each other in a public place, it is the responsibility of the Responding Party to leave the area immediately and without directly contacting the Reporting Party. The Reporting Party also should take reasonable steps to avoid or minimize contact with the Responding Party. Both the Responding Party and the Reporting Party may request a prompt review by the Title IX Coordinator of the need for and terms of a No Contact Order. Parties may submit evidence in support of their request.
- To have assistance from Public Safety 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.
- To receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with a college official who can explain the order and answer questions about it including information from the order about the Responding Party's responsibility to stay away from the Reporting Party.
- To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- To have assistance from Public Safety 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 Public Safety or, if outside of the jurisdiction to call on and assist local law enforcement in effecting an arrest for violating such an order.
- When the Responding Party is a student and presents a continuing threat to the health and safety of the community, to have the Responding Party subject to interim suspension pending the outcome of the Community Standard judicial process. Parties may request a prompt review of the need for and terms of an interim suspension in accordance with the procedures set forth in Community Standards.
- When the Responding Party 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 Responding Party to Interim Measures (see Interim Measures below), as well as interim suspension in accordance with procedures set forth in applicable employee disciplinary procedures.
- When the Responding Party is not a member of the college community, to have assistance from Public Safety or other college officials in obtaining a *persona non grata* letter, subject to legal requirements.
- To obtain reasonable and available Interim Measures that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment.

Every Canisius student shall be afforded the following rights in this process:

- The right to request that student conduct charges be filed against a Responding Party in proceedings governed by this article and the procedures established by the college's rules.
- The right to a process in all student judicial or conduct cases, where a student is accused of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the college's code of conduct, that includes, at a minimum: (i) notice to a Responding Party describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions; (ii) an opportunity to offer evidence during an investigation, and to present evidence and testimony at a hearing, where appropriate, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five years from such a hearing and may include a transcript, recording or other appropriate record; and (iii) access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest. In order to effectuate an appeal, a

Responding Party and Reporting Party in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a Reporting Party must be similarly provided to a Responding Party, and any rights provided to a Responding Party must be similarly provided to a Reporting Party.

- Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the college's code of conduct, the right:
  - i. For the Responding Party and the Reporting Party to be accompanied by an advisor of their choice who may assist and advise them throughout the judicial or conduct process, including during all meetings and hearings related to such process. Rules for participation of such advisor shall be established by the college.
  - ii. To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the Responding Party, including the right to a presumption that the Responding Party is "not responsible" until a finding of responsibility is made pursuant to the provisions of this article and the college's policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault.
  - iii. To an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest.
  - iv. To have the college's judicial or conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence.
  - v. To review and present available evidence in the case file, or otherwise in the possession or control of the college, and relevant to the conduct case, consistent with college policies and procedures.
  - vi. To exclude their own prior sexual history with persons other than the other Party in the judicial or conduct process, or their own mental health diagnosis and/or treatment, from admittance in the college disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
  - vii. To receive written or electronic notice, provided in advance pursuant to the college or university policy and reasonable under the circumstances, of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.
  - viii. To make an impact statement during the point of the proceeding where the decision-maker is deliberating on appropriate sanctions.
  - ix. To simultaneous (among the Parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.
  - x. To be informed of the sanction or sanctions that may be imposed on the Responding Party based upon the outcome of the judicial or conduct process and the rationale for the actual sanction imposed.
  - xi. To choose whether to disclose or discuss the outcome of a conduct or judicial process.
  - xii. To have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination, unless otherwise required by law or applicable college policy or protocol.

Upon learning of an incident of Sexual and Gender-Based Misconduct involving a member of the college community, the Title IX Coordinator will take immediate steps to ensure the safety and well-being of the Reporting Party and implement any of the above appropriate protections, accommodations and Interim Measures as determined necessary by the facts of the case. The college will implement such appropriate and reasonable protections, accommodations, and Interim Measures regardless of whether a report has been filed (with either campus officials or law enforcement agencies) or whether an investigatory or resolution process has commenced.

In addition, the Reporting Party, or her or his professional counselor or advocate, may request the Title IX Coordinator to implement appropriate and reasonable protections, accommodations, and Interim Measures on the Reporting Party's behalf. The college is obligated to comply with a student's reasonable request for a living and/or academic change following an alleged sexual offense. Factors that will be considered by the Title IX Coordinator include, but are not limited to the following: the specific need expressed by the Reporting Party; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the Reporting Party; whether the Reporting Party and the Responding Party share the same residence hall, dining hall, class, transportation or job location; and whether other judicial measures have been taken to protect the complainant (e.g., civil protection orders).

The college will maintain as confidential any accommodations or protective measures provided to the Reporting Party, to the extent that maintaining such confidentiality will not impair the college's ability to provide the accommodations or protective measures. The Title IX Coordinator will determine when it is necessary to share personally identifiable information with other college representatives in order to provide an accommodation or protective measure. Before doing so, however, the Title IX Coordinator will take reasonable measures to attempt to inform the Reporting Party or his or her advocate which information will be shared, with whom it will be shared, and why.

In addition to appropriate protections, accommodations, and Interim Measures, because the college is under a continuing obligation to address the issue of Sexual and Gender-Based Misconduct, reports of Sexual and Gender-Based Misconduct (including non-identifying reports) will prompt the college to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported Sexual and Gender-Based Misconduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

## C. Right to An advisor

All parties are entitled to an advisor of their choosing to guide and accompany them throughout the campus resolution processes. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them. The parties are entitled to be accompanied by their advisor in all meetings, interviews, hearings, etc. at which the party is entitled to be present, including intake, interviews, hearings and appeals. Advisors should help their advisees prepare for each proceeding, and are expected to advise ethically, with integrity and in good faith. The college cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the college is not obligated to provide one.

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials, investigators, hearing panel members, etc. in a meeting, interview or hearing unless invited to. Advisors may confer quietly with their advisees as necessary, as long as they do not disrupt the process. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting or hearing. When an advisor is removed from a meeting or hearing, that meeting or hearing will typically continue without the advisor present. Subsequently, the Title IX Coordinator (or designee) will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

## VI. Informal Resolution

Informal Resolution is often used for less serious, yet inappropriate, behaviors and may be an alternative to the Formal Investigation and disciplinary processes. The Title IX Coordinator will determine if Informal Resolution is appropriate, based on the willingness of the Complainant and the nature of the conduct at issue. *Informal Resolution, however, will never be used as the primary resolution mechanism to address a report involving sexual assault, an act of physical violence, or other serious violations of this policy.*

While Informal Resolution measures will not be used as the primary resolution mechanism for cases involving sexual assault, an act of physical violence, or other serious violations of this policy, it may be used as appropriate in the judgment of the Title IX Coordinator: (1) to determine Remedial Actions when the Title IX Coordinator determines there are no reasonable grounds for believing that a report constitutes Sexual and Gender-Based Discrimination as defined by this policy; (2) to determine Disciplinary Sanctions and/or Remedial Actions when the Responding Party has admitted that she or he has violated this Policy; or (3) to determine appropriate Remedial Actions whenever a Reporting Party does not wish to start or continue a formal investigatory process, and no pattern, predation, threat, violence or weapon presents the college with the obligation to proceed formally despite the request.

When it is determined by the Title IX Coordinator that Informal Resolution proceedings are appropriate and the Reporting Party has consented, either the Title IX Coordinator or a designee with appropriate training will be assigned to lead the Informal Resolution process.

It is not necessary to pursue Informal Resolution first, and anyone participating in the process can stop it at any time. Participating parties must voluntarily elect to pursue an Informal Resolution process without pressure or compulsion from others. Moreover, when the Responding Party is a student, the Reporting Party has the right to request that student Community Standards charges be filed against the accused.

If a satisfactory resolution to the parties is reached, the matter will be considered completed. If these efforts are unsuccessful, the formal investigation and resolution process will commence if the Reporting Party agrees to proceed. If the Reporting Party does not agree to proceed to formal resolution, the Title IX Coordinator shall decide whether to proceed, and the Coordinator is afforded sole and exclusive discretion with respect to the determination whether to proceed to a formal investigation and resolution proceeding under those circumstances.

Any agreements reached in an Informal Resolution process must be approved by the Title IX Coordinator to ensure consistency with the college's Title IX obligations.

Informal resolution will typically be completed within thirty (30) days, or such other time as is reasonable and practicable. In circumstances when it is not reasonable and practicable to complete the informal process in a 30-day time frame, both the Reporting Part and the Responding Party will be notified in writing regarding the delay and anticipated completion date.

## VII. Formal Investigation and Resolution Proceedings

The specific investigation and resolution procedures for addressing reports of Sexual Misconduct, Domestic Violence, Dating Violence or Stalking are determined by the status of the Responding Party:

**Student Responding Parties:** When the Responding Party is a student, the Reporting Party has the right to request that Student Community standards charges be filed against the accused. If the Title IX Coordinator, as part of the initial assessment (see above), determines that the evidence merits doing so, the matter will be referred to the senior associate dean of students for formal investigation and resolution in accordance with the procedures set forth in the college's Community Standards. Similarly, when the Title IX Coordinator determines that a matter involving a student Responding Party is to be formally investigated and Community Standards charges should be pursued against a student, the matter will be referred to the senior associate dean of students in accordance with the college's Community Standards procedures. Typically, in cases involving an alleged sexual assault or incidents of sexual violence, a hearing before a hearing panel will be afforded to the Parties under the relevant Community Standard procedures. The college's Community Standards procedures can be accessed here: [Insert Link].

**Employee Responding Parties:** When the Title IX Coordinator determines that a matter involving an Employee Responding Party is to be formally investigated, the matter will be investigated and resolved pursuant to the procedures set forth in the college's Anti-Discrimination and Harassment Policy. The procedures set forth for investigations and hearings under the college's Anti-Discrimination and Harassment Policy can be accessed here: [Insert Link].

**Third Parties:** Reports Against Third Parties will be resolved in accordance with appropriate procedures identified by the Title IX Coordinator in consultation with the vice president for business and finance, based on the role of the Third Party and the nature of any contractual relationship with the college. When the Responding Party is an employee of an affiliated entity or vendor of the college, the Title IX Coordinator or designee will, at the request of the Reporting Party, 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 with respect to an individual, or a review of the advisability of any continued relationship with the third party vendor or organization employing said individual.

**Student Employees:** Where a Responding Party is both a Student and an Employee, the Community Standards procedures generally will apply if the Responding Party is a full-time Student but not a full-time Employee, and the Employee-Respondent procedures generally will apply if the Responding Party is a full-time Employee but not a full-time Student. In all events, the college's Title IX Coordinator has the sole and exclusive discretion to determine which of the procedures applies based on the facts and circumstances of the reported incident. Irrespective of which procedures apply, either of the sanctions applicable to Students or Employees may be imposed.

## A. Time Frame for Resolution

The investigation and resolution of all reports of Sexual and Gender-Based Misconduct will generally be completed within 60 days. Extenuating circumstances, including but not limited to the complexity and severity of a Complaint, may arise that require the complaint process to extend beyond 60 days. In general, the Reporting Party and the Responding Party can expect to receive periodic updates from the Title IX Coordinator and/or Investigator(s) as to the status of the review or investigation.

The timeframe for investigation and resolution may be extended by the Title IX Coordinator for good cause based on factors such as, but not limited to, criminal investigations, schedule and availability of witnesses, holidays or semester breaks, and complexity of the complaint. Moreover, any Party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes the basis for the request. If an investigation cannot be completed within sixty days, the Title IX Coordinator will notify the Parties of that fact, and provide a timeframe for completing the investigation.

## B. Use of the Preponderance of the Evidence Standard

The Preponderance of Evidence standard is the required standard for determining whether a Policy violation has occurred. Administrators and hearing panels charged with rendering a decision of Policy violations must be convinced, based on the information provided, that a Policy violation was more likely to have occurred than to not have occurred in order to find a Responding Party responsible for any violation of this Policy.

## C. Available Disciplinary Sanctions

Any one or more sanctions listed below may be imposed upon a Responding Party who is found responsible by the preponderance of the evidence for a Policy violation in accordance with the applicable investigation and resolution procedures referenced above.

**Student Respondents:** Sanctions and/or responsive action for Students may include warnings, fines, restitution, discretionary sanctions, assignment to complete an educational program or project, loss of privileges, residence hall probation, administrative relocation, residence hall suspension, suspension or removal from a college team, club or activity, termination of recognized status of a college team, club or activity, residence hall expulsion, college probation, college suspension, college expulsion, revocation of admission and/or degree, and/or withholding or revocation of a degree (whether or not that degree has been conferred. This list is not exclusive, but is intended to be illustrative of the common forms of sanction that may be issued upon a finding of Student responsibility. Reference to the college's Community Standards also can be made. [Insert Link]

**Employee Respondents:** Sanctions and/or responsive action for employees or volunteers may include work restrictions, requirement to attend training or other education, requirement to obtain counseling, salary reduction or limitation, loss or reduction of an employment-related benefit or privilege, an oral warning, a written reprimand, suspension from employment, and/or dismissal from or termination of employment. This list is not exclusive, but is intended to be illustrative of the common forms of sanction that may be issued upon a finding of Employee responsibility.

**Third Parties:** While the college's ability to impose sanctions against a person who is neither a student nor an employee may be limited, such sanctions will be considered and, if appropriate, imposed on such person (e.g., *persona non grata* status, notifying the respondent's employer of the misconduct, review of the employer's ability to continue a relationship with the college). In addition, where appropriate the college will take steps to prevent the recurrence of any discrimination, violence, harassment or other misconduct and to correct the effects on the Reporting Party and/or others.

## D. Remedial Action

The Title IX Coordinator may take remedial action to remedy a hostile environment. Such remedies may be imposed to protect the Reporting Party/Victim and the college community and are considered separate from, and in addition to, any disciplinary sanction or interim measure that may have been provided.

When the college is unable to conduct a full investigation into a particular incident (i.e., when the Reporting Party insists on confidentiality, when the college receives a general report of Sexual and Gender-Based Misconduct without any personally identifying information, etc.), the Title IX Coordinator will consider and, where warranted pursue, remedial action remedies for the broader college community in an effort to limit the effects of the conduct at issue and prevent its recurrence.

## **E. Result Notification**

In compliance with Title IX and VAWA, both Parties will receive simultaneous notification, in writing, of (1) the result, including any sanctions, of any college disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault or stalking, including the rationale for the result and sanction; (2) the college's procedures for the Reporting Party and/or the Responding Party to appeal the result of the college's disciplinary proceeding, if such procedures are available; (3) any change to the result; and (4) when such results become final.

In explaining the rationale for the result and sanctions, the college will explain how it weighted the evidence and information presented during the proceeding, and explain how the evidence and information support the result and sanctions. The college will also describe how the college's standard of evidence was applied.

These notifications will be provided as they occur, concurrently and in writing.

## **VIII. Education, Awareness, and Training Programs**

### **A. Education and Awareness Programs**

The college has developed Sexual Assault, Dating Violence, Domestic Violence and Stalking ("Sexual and Gender-based Misconduct") Primary Prevention and Awareness Programs for new Students and Employees, as well as On-going Prevention and Awareness Programs for students and faculty that:

- Review the college's Sexual and Gender-Based Misconduct Policy, which prohibits all forms of Sexual and Gender-Based Misconduct, including but not limited to Sexual Assault, Dating Violence, Domestic Violence and Stalking as those terms are defined in the Clery Act, identifies such conduct as illegal, and outlines how to report such incidents to the college and/or local law enforcement should they occur;
- Reviews the Clery Act and the State of New York respective definitions of Sexual Assault, Dating Violence, Domestic Violence and Stalking. New York criminal definitions are set forth below as well as in the college's Annual Security and Fire Safety Report;
- Describes what behavior and actions constitute Consent to sexual activity in the State of New York, as well as a description of the definition of Consent utilized in the college's Sexual and Gender-Based Misconduct Policy. The State of New York's definition of Consent is set forth in the Annual Security and Fire Safety Report and in this Policy;
- Provides a description of safe and positive options for Bystander Intervention, as that term is defined in this Policy. Safe and Positive Options for Bystander Intervention also are set forth in the Annual Security and Fire Safety Report; and
- Provides information on Risk Reduction, as that term is defined in this Policy. Risk Reduction means options designed to decrease perpetration and Bystander inaction and to increase empowerment for individuals (i.e., warning signs of abusive behavior and how to avoid potential attacks) in order to promote safety and to help individuals and communities address conditions that facilitate violence. Risk reduction tips are set forth in the Annual Security and Fire Safety Report.

Examples of Sexual and Gender-based Misconduct primary and ongoing awareness programs and campaigns scheduled annually by Canisius College include:

All new Canisius College students and employees are required to complete an on-line sexual violence prevention training program. In addition, the Title IX Coordinator and the Counseling Center staff conduct presentations on sexual violence prevention for all new students and parents during New Student Orientation. The Title IX Coordinator offers sexual assault prevention trainings for Campus Security Authorities. The Title IX Coordinator gives sexual assault prevention and consent presentations to student-athletes, student leaders, and student clubs and organizations. The Sexual Assault Prevention Team at Canisius has created sexual assault prevention materials and presentations which are widely distributed to students. All first year students participate in a Bystander Intervention Program, Step-Up Griffs, during the first 4 weeks of the fall semester. Other students participate in the Bystander Intervention program through presentations to clubs and organizations.

### **B. Employee Training**

Specialized training in understanding victim responses, trauma, and the dynamics of sexual harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking and other forms of Sexual and Gender-Based Misconduct are a high priority and are scheduled for selected professional staff and full-time faculty including but not limited to the Title IX Coordinator and Title IX Deputy Coordinators, student affairs staff, Public Safety, the Office of Student Life, the Counseling Center, and the Health Center. All professional employees designated as judicial and/or investigative staff receive annual training on methods and best practices related to Domestic Violence, Dating Violence, Sexual Assault and Stalking. These trainings focus on how investigations and the hearing process are to be conducted, in a manner that protects the safety of Reporting Individuals or others who believe they have been the subject of acts of Sexual Misconduct, and promotes accountability for those acts. All Responsible Employees receive training on reporting requirements and how to effectively serve as a first responder in cases of Dating Violence, Domestic Violence, Sexual Assault, and Stalking.

### **C. State of New York Sexual and Gender-Based Misconduct Laws**

It is important for members of the college community to be aware that there can be serious legal criminal consequences for engaging in certain types of Sexual and Gender-based Misconduct. Acts of Sexual Assault, Domestic Violence, Dating Violence, and Stalking are prosecuted criminally in New York State separately and apart from the resolution procedures set forth in the college Sexual and Gender-Based Misconduct Policy. There are significant differences between the two systems because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. The college disciplinary process seeks to determine whether an individual has violated college policy. In this process, a preponderance of the

evidence standard of proof is used to determine responsibility. A person who is found to have violated the college's Sexual and Gender-Based Misconduct Policy may be suspended, expelled, terminated, or otherwise restricted from full participation in the college community. For additional information regarding the differences between the criminal justice system and college disciplinary processes, click [here](#).

Below is a summary of applicable New York laws addressing acts of Sexual Assault, Domestic Violence, Dating Violence, and Stalking:

In general, sexual contact in New York state constitutes a crime if: (1) a person does not consent or is not capable of giving consent; (2) a person is under the age of 17 years; (3) a person is incapable of understanding the sexual act; or (4) a person is physically helpless or temporarily incapacitated. For someone who is able to give consent, a court may consider that anything less than "yes" means "no." Someone who has said "no" to sexual contact does not have to prove it by resisting or risking death or serious injury. Physical force and threats constitute forcible compulsion whether they are directed at the target of the sexual advances or at someone else in order to force submission. A person may be guilty of a sex crime by participating in the offense even if he or she was not the primary actor.

Sex offenses in New York include rape, sodomy, sexual abuse, and sexual misconduct. Penalties increase when there are aggravating circumstances such as the use of force or an attack on a child. For example, any type of non-consensual sexual contact constitutes sexual misconduct, which is punishable by up to one year in prison. Sexual contact means any touching of the intimate parts of another person's body for the purpose of gratifying sexual desire. It includes touching the victim or having the victim touch the actor, whether directly or through clothing. The following is a brief summary of the essential elements of the applicable laws.

**Rape** in the first, second or third degrees are felony crimes punishable with prison sentences up to 25 years. Rape in the first degree occurs when a person engages in non-consensual sexual intercourse with another by physical force, coercion or threat, or with a person who is incapable of consent by reason of being physically helpless or under age.

Under the law, the term "sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight. Rape is a crime whether the actor is a stranger, an acquaintance, or a date. It is first-degree rape if the victim is mentally incapacitated by the influence of drugs, or alcohol administered without consent.

**Sodomy** in its varying degrees is a felony or misdemeanor crime, punishable by up to 25 years imprisonment. Under New York law, sodomy occurs when a person engages in deviate sexual intercourse with another. "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of various contacts between the mouth, sexual organs and rectum.

**Sexual Abuse**, in its varying degrees, can be a felony crime, and involves sexual contact by forcible compulsion or when the other person is incapable of consent. Aggravated Sexual Abuse under New York law is a felony crime that occurs when sexual contact consists of the insertion of a finger or foreign object in the sexual organs or rectum of another person causing physical injury to such person.

**Sexual Misconduct** is a misdemeanor and occurs when a male engages in sexual intercourse with a female without her consent or engages in deviate sexual intercourse with another person without that person's consent.

Lack of **Consent** of the victim (with the exception of consensual sodomy) is an element of every sexual offense defined in New York state law. Lack of consent results from: (1) forcible compulsion; (2) incapacity to consent; or (3) where the offense charged is sexual abuse, in any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct. A person is deemed incapable of consent when one is (a) less than 17 years old; (b) mentally defective; (c) mentally incapacitated; or (d) physically helpless.

New York law provides the following definitions; (1) "mentally defective" means that a person suffers from a mental disorder or defect which renders one incapable of appraising the nature of one's conduct; (2) "mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling one's conduct owing to the influence of a narcotic or intoxicating substance administered without one's consent, or to any other act committed upon the person without consent; (3) "physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act; and (4) "forcible compulsion" means to compel by either: (a) use of physical force; or (b) a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.

Under New York law **Domestic Violence** is an act which would constitute a violation of the penal law, including, but not limited to: disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breaching of blood circulation, or strangulation; creates a substantial risk of physical or emotional harm to a person or a person's child; and, is committed by a family member. The victim can be anyone over the age of sixteen, any married person, or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of the act.

New York law does not specifically define **Dating Violence**. However, under New York Law, intimate relationships are covered by the definition of Domestic Violence when the act constitutes a listed crime and is committed by a person in an "intimate relationship" with the victim.

Instances of **Stalking** are also a violation of New York Penal Code:

**Penal Code § 120.45. Stalking in the fourth degree.**

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or

3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

Stalking in the fourth degree is a class B misdemeanor.

#### **Penal Code § 120.50. Stalking in the third degree.**

A person is guilty of stalking in the third degree when he or she:

1. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or
2. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or
4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

#### **NY CLS Penal § 120.55. Stalking in the second degree.**

A person is guilty of stalking in the second degree when he or she:

1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sand bag, sandclub, slingshot, shirken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or
4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death [fig 1] ; or
5. (Added, L 2003) Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

Stalking in the second degree is a class E felony.

#### **Penal Code § 120.60. Stalking in the first degree.**

A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:

1. intentionally or recklessly causes physical injury to the victim of such crime; or
2. commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.

## **IX. Campus Climate Surveys**

The college 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 Community Standards processes, which will be developed using standard and commonly recognized research methods. The assessment will include questions covering, but not be limited to, the following:

- The Title IX Coordinator's role;
- Campus policies and procedures addressing sexual assault;
- How and where to report domestic violence, dating violence, stalking or sexual assault as a victim, survivor or witness;
- The availability of resources on and off campus, such as counseling, health and academic assistance;
- The prevalence of victimization and perpetration of domestic violence, dating violence, stalking, or sexual assault on and off campus during a set time period;
- Bystander attitudes and behavior;

- Whether reporting individuals disclosed to the institution and/or law enforcement, experiences with reporting and institution processes, and reasons why they did or did not report;
- The general awareness of the difference, if any, between the institution's policies and the penal law; and
- General awareness of the definition of affirmative consent.

The college will take steps to ensure that answers to such assessments remain anonymous and that no individual is identified. The college will publish the results of the surveys on the college website. In posting the data, no personally identifiable information or information which can reasonably lead a reader to identify an individual will be shared.

Per New York law, information discovered or produced as a result of the assessment will 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 the college, unless, in the discretion of the court, any such information is deemed to be material to the underlying claim or defense.



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[1] Capitalized terms used herein are ascribed the meanings set forth in the Definitions section of this Policy.

[2] Sex Offenses Definitions From the National Incident Based Reporting System Edition of the Uniform Crime Reporting Program.