

# 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>	Revised August 14, 2020 and October 13, 2020

**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"), its implementing regulations at 34 CFR Part 106<sup>[1]</sup>, 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 Assault, Sexual Harassment, Domestic Violence, Dating Violence, and Stalking. <sup>[1]</sup>

## 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 or Gender-Based Misconduct"). These forms of misconduct 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 this Policy or other College conduct-related policies. Reporting or filing a Formal Complaint of a violation of College policy, or participating in the investigation and resolution of such a complaint, cannot be retaliated against by affecting a student's grades, class selection, residence life status or any other matter pertaining to student status or, in the case of employees, an individual's employment status, compensation, or work assignments.

The College also seeks to prevent Sexual or Gender-Based Misconduct by providing:

1. Educational programs and campaigns to promote the awareness and prevention of Sexual or Gender-Based Misconduct, including primary prevention, bystander education, and awareness programs for all incoming students and new employees, as well as ongoing prevention and awareness campaigns for students and employees;
2. Assistance and support, including procedures sensitive to individuals who have reported or been the subject of reports alleging Sexual or Gender-Based Misconduct;
3. 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 alleged to constitute Sexual or Gender-Based Misconduct for bystanders or individuals acting in good faith who disclose such an incident to College officials or law enforcement; and
4. A process for the prompt and equitable investigation and resolution of Formal Complaints of Sexual or Gender-Based Misconduct, which includes appropriate disciplinary sanctions for those found to have committed 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 or Gender-Based Misconduct, preventing their recurrence, and addressing and remedying the effects of such misconduct 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 this Policy may result in the imposition of sanctions, up to and including termination of employment in the case of employees, or expulsion in the case of students (see Sanctions).

### **How does the Sexual or Gender-Based Misconduct Policy impact other campus disciplinary policies?**

In recent years, Title IX cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, the College must narrow both the geographic scope of its authority to act under Title IX, and the types of sexual harassment that it must investigate and adjudicate pursuant to its Title IX process. **Only** incidents falling within the Final Rule's definition of sexual harassment (see Definitions section) and only those allegedly arising within the United States will be investigated and, if appropriate, brought to a live hearing through the grievance process defined below. *Note:* other College policies may authorize investigations into, and sanctions for, misconduct falling within the scope of those other policies.

In this regard, Canisius College remains committed to addressing any violations of its policies, even those alleged acts of misconduct falling outside the scope of this Policy of the Title IX Final Rule. Specifically, the College also maintains a corresponding Anti-Discrimination and Anti-Harassment Policy to address reports of unlawful discrimination or harassment that fall outside the scope of the Title IX Final Rule. This Anti-Discrimination/Harassment Policy may be accessed here ([click here](#)). Moreover, in compliance with New York State law, the College also has adopted a Sexual Harassment Prevention Policy ([click here](#)) that specifically addresses sexual harassment against employees, applicants for employment, interns, and non-employees providing services in the workplace pursuant to a contract with the College or any of their employees, regardless of immigration status. Finally, the College reserves the right to proceed under the Student Community Standards ([click here](#)) or applicable faculty and staff disciplinary policies in all instances where such proceedings, in its sole discretion, are deemed appropriate.

The elements established in this Policy are not transferable to any other policy of the College for any violation of the Community Standards, employment policies, or any other alleged policy violation, except misconduct violations as defined in this Policy. This Policy also does not set a precedent for proceedings or enforcement actions under other policies or processes of the College, and may not be relied upon to establish or expand any right or procedural benefit under any other policy or process.

### **General Rules of Application**

#### *Effective Date*

This Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to: (a) Formal Complaints of sexual harassment as defined in this Policy brought on or after August 14, 2020; and (b) Complaints brought prior to August 14, 2020, *if* the hearing of that case is not complete by that date. <sup>[2]</sup>

#### *Revocation by Operation of Law*

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law in a ruling governing this jurisdiction, or should the Title IX Final Rule be withdrawn or modified, this Policy, or the invalidated elements of this Policy, will be deemed revoked as of the publication date of the opinion or order, for any aspect of the process not complete by the date of that opinion or order. Should this Policy be revoked in this manner, any proceedings not concluded under this Policy shall be investigated and adjudicated under the College's existing Student Community Standards, the Anti-Discrimination/Harassment Policy, the Sexual Harassment Prevention Policy, or other College disciplinary policies as may be applicable and in the manner deemed, in the College's sole discretion, to be most appropriate.

## DEFINITIONS/APPLICATION OF DEFINED TERMS

All forms of **Sexual or Gender-Based Misconduct** are prohibited by College policy. For purposes of this Policy, **Sexual or Gender-Based Misconduct** is defined to include the following (as well as including attempts to commit, or aiding or inciting others to commit, one or more of these prohibited acts):

*Sexual or Gender-Based Misconduct (occasionally referenced also as Misconduct)* - an umbrella term that includes sexual harassment, sexual assault, domestic violence, dating violence, stalking, sexual exploitation and coercion.

*Sexual Harassment* means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
3. "Sexual assault," "dating violence," "domestic violence," and "stalking," as those offenses are defined in 20 U.S.C. § 1092(f)(6)(A)(v), 34 U.S.C. § 12291(a)(10), 34 U.S.C. § 12291(a)(8), and 34 U.S.C. § 12291(a)(30), respectively.

*Note:* acts of misconduct that do not meet one or more of these criteria may still be prohibited under the Student Community Standards, the Anti-Discrimination/Harassment Policy, the Sexual Harassment Prevention Policy, or other College disciplinary policies as may be applicable.

*Sexual Assault* means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

*Sex Offenses – Forcible:* Any sexual act directed against another person, forcibly and/or against that persons will; or not forcibly or against the persons will where the victim is incapable of giving consent.

1. *Forcible Rape* - The carnal knowledge of a person, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity (including but not limited to incapacitation caused by excessive intoxication due to drug or alcohol consumption).
2. *Forcible Sodomy*- Oral or anal sexual intercourse with another person, forcibly and/or against that persons will; or not forcibly against that persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
3. *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 persons will; or not forcibly against the persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
4. *Forcible Fondling* - The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary mental incapacity.

*Sex Offenses - Non forcible Unlawful, non-forcible sexual intercourse.*

1. *Incest*- Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
2. *Statutory Rape*- Non-forcible sexual intercourse with a person who is under the statutory age of consent.

*Domestic Violence* - felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

*Dating Violence* - violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

*Stalking* - engaging in a course of conduct (e.g., repeatedly following, harassing, threatening or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method) directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer other emotional distress.

*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 or gender-based 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 or posting it to a social media site where consent to view that image 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;
- Encouraging 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.

*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.

*Note: The above definitions will be utilized in determining whether an incident of Sexual Assault, Dating Violence, Domestic Violence, Stalking, Sexual Exploitation or Coercion 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. Note: Nothing in this Policy will preclude persons believing themselves to be the victims of a crime from reporting that alleged crime to law enforcement, or from pursuing criminal charges.*

*Aiding or Facilitating Sexual or Gender-Based Misconduct* – acts promoting, aiding, facilitating or encouraging the commission of any sexual or gender-based misbehavior prohibited under this Policy or any other College policy are also prohibited by and sanctionable under this Policy.

*Intimidation* – acts which include explicit or implicit threats to commit one or more acts that constitute sexual harassment, sexual assault, domestic violence, dating violence, stalking, sexual exploitation or coercion. Acts of Intimidation are prohibited by and sanctionable under this Policy.

*Retaliation* - No member of the College community or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Policy, Title IX, or its implementing regulations at 34 CFR Part 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by this Policy, Title IX, or 34 CFR Part 106, will also be considered retaliation by the College.

Special Circumstances:

1. The exercise of rights protected under the First Amendment, or in the legitimate exercise of academic freedom in pursuit of *bona fide* scholarly activities, does not constitute retaliation.
2. The College's charging an individual with an alleged conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility or the absence of responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

#### **Other Definitions and Application of Additional Defined Terms Under this Policy**

*Actual Knowledge*- written or oral notice of allegations of Sexual or Gender-Based Misconduct, as defined in this Policy, given to the College's Title IX Coordinator, or to the College's President, Vice President for Academic Affairs, Vice President for Student Affairs, Vice President for Business and Finance Associate Vice President for Human Resources and Compliance, Director of Athletics or Director of Public Safety, constituting the officials of the College who have the authority to institute corrective measures on behalf of the College, shall constitute actual knowledge of the College with respect to the facts reported to them. No report of Sexual or Gender-Based Misconduct made to any other College employee shall constitute notice to the College, even if those other employees have an obligation to report Sexual or Gender-Based Misconduct, or to inform a student about how to report Sexual or Gender-Based Misconduct. Even if those other employees have been trained to make such reports or advise students as to how to report, that training also does not qualify the individual as one who has authority to institute corrective measures on behalf of the College, or receive actual notice on behalf of the College.

*Awareness Programs* - community-wide or audience specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent sexual or gender-based misconduct, promote safety, and reduce potential injuries due to alleged Policy violations.

*Bystander* - person who observes conflict, potentially violent or violent behavior, or conduct that is or may be in violation of rules or policies of the College, but is not an Impacted Party or otherwise 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 sexual harassment, dating violence, domestic violence, sexual assault, stalking or sexual exploitation. Bystander intervention includes:

1. Recognizing situations of potential harm; and
2. Understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking actions to intervene.

*College Community or Campus Community* - broad terms that refer 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* - Public Safety staff; Student Affairs professionals; Resident Assistants and Hall Directors; coaches, trainers and Athletics staff; Club and organization advisors; individuals designated as Campus Security Authorities for Clery Act compliance purposes; faculty and staff who are not Confidential Resources. All College Representatives are required to promptly report to the Title IX Coordinator upon receipt of any information regarding an alleged act of Sexual or Gender-Based Misconduct. However, information regarding Sexual or Gender-Based Misconduct shared with College Representatives who are not one of the specified employees in the *Actual Knowledge* provision, above, shall not constitute notice to the College.

*Complainant* means an individual who is alleged to have been the subject of or impacted by Misconduct that could constitute Sexual or Gender-Based Misconduct, and who has filed a Formal Complaint seeking to have that Misconduct investigated under this Policy. At the time of filing a Formal Complaint, the complainant must be participating in or attempting to participate in the College's education programs or activities.

*Confidential Resources* – these persons include the College’s Sexual Assault Liaison at the Student Health Center, other Student Health Center professionals, members of the College’s mental health counseling staff, priests or members of religious orders employed or affiliated with the College and acting in their role as clergy, external crisis counselors, external victim support services and external healthcare providers. These persons may not communicate reports of Sexual or Gender-Based Misconduct except in extreme cases where there is an immediate threat of serious physical harm or death, or serious risk of abuse of a minor. These Confidential Resources therefore can be consulted by Reporters with reasonable assurance that the discussions will be maintained in confidence, absent explicit authorization from the Reporter to release confidential information disclosed by that Reporter.

*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 and signal 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 also 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 explicitly ask for and receive verbal consent before engaging in sexual activity, because this Policy requires that the party claiming affirmative consent must be able to establish such consent by a preponderance of the credible evidence in any subsequent proceedings.

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. In this regard, a state of inebriation, intoxication or being “buzzed” will not vitiate consent unless the person, due to extreme intoxication, is incapable of knowingly choosing to participate in sexual activity—*i.e.*, *incapacitated* by drug or alcohol use.
- 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.

*Definitions of Corollary Terms Relevant to Consent:*

*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), respectively. Specific definitions of those terms are:

*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” under this Policy is a business day, unless otherwise specified.

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

*Educational Program or Activity* - includes locations, events, or circumstances over which the College exercised substantial control over both the Subject of a Report, and the context in which the sexual harassment occurs. The locations at which Educational Activities occur will include any building owned or controlled by a student organization that is officially recognized by the College.

*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, grant in aid or similar program.

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

*FERPA (Family Educational Rights and Privacy Act)* – a federal law, entitled the Family Educational Rights and Privacy Act of 1974, which as amended dictates the privacy and confidentiality to be afforded to student education records.

*Formal Complaint* - means a document filed by a Complainant with the Title IX Office at the College, or signed by the Title IX Coordinator, alleging acts of Sexual or Gender-Based Misconduct against a Respondent, and requesting that the College investigate such allegations. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the College (*i.e.*, be a current student or employee [including current students or employees on leave] at the College, a person who has applied to become a student or employee at the College, or a person otherwise participating in or attempting to participate in the education program or activity of the College. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in this Policy and by any additional method designated by the College. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the College) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

*Impacted Party* is a person allegedly impacted by an alleged act of Sexual or Gender-Based Misconduct. This term can represent, as an example, the person on whose behalf a third-person Reporter has made a report, or about whom the third-person Reporter is referring when describing an alleged victim of Misconduct.

*Investigator(s)* - the person(s) tasked with investigating a report. All Investigators shall receive annual training regarding such issues as the laws governing Discrimination, Harassment and Retaliation; Title IX and its implementing regulations at 34 CFR Part 106; the VAWA/Campus SaVE Act (as defined below); Enough is Enough; as well as other related state and federal laws prohibiting Discrimination, Harassment and Retaliation based on gender or sex, including Sexual or Gender-Based Misconduct as defined in this Policy; student and witness privacy rights; and FERPA. The Investigator shall not be within the administrative control or authority of any Respondent 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 Sexual or Gender-Based Misconduct, using a range of strategies with audiences throughout the institution.

*Party* means a Reporter, Complainant, Subject or Respondent. *Parties* mean a Reporter and Subject, or a Complainant and Respondent.

*Personally Identifiable Information or "PII"* - That term, defined in FERPA, will for purposes of this Policy include a student's name, the name of a student's parent(s) or other family member(s); the address of a student or a student's family; a student's social security number, student number, biometric record or other direct identifiers; 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. Personally Identifiable Information also will be deemed to include information requested by a person whom the College reasonably believes knows the identity of the student to whom the education record relates, as well as any other types or sorts of information that may be deemed by the College to constitute PII.

*Policy*—this Sexual or Gender-Based Misconduct (Title IX) Policy.

*Preponderance of Evidence* - the required standard for determining a violation under this Policy, with respect to all Respondents. Those individuals charged with rendering a decision of a Policy violation must be convinced, based on the entirety of the credible information provided, that a Policy violation was more likely to have occurred than to not have occurred in order to find a Respondent 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 meetings or mediation sessions, and hearings. The term Proceeding does not include communications and meetings between officials and Reporters or Subjects concerning accommodations or supportive measures to be provided to a person.

*Relevant Evidence and Questions* - refers to any questions and evidence that tends to make an allegation of sexual or gender-based misconduct more or less likely to be true. "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Policy Proceedings:

1. Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless:
  - a. They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - b. They concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent, as authorized by 34 C.F.R. § 106.45(6)(i).
2. Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege such as attorney-client, priest-penitent or physician-patient.
3. Any party's medical, psychological, and similar records unless the party has given voluntary, written consent, as provided in 85 Fed. Reg. 30026, 30294 (May 19, 2020).

*Report*—information about an alleged incident of sexual harassment provided by a Reporter to the Title IX Coordinator, or a non-confidential College employee. *Note:* a Report is not a Formal Complaint, and does not in and of itself, trigger an investigation or any adjudicatory process under this Policy. The Reporter providing a Report also may ask that his/her identity not be disclosed, may decline to disclose the identity of the Subject allegedly committing a Policy violation, or any factual details of the alleged violation.

*Reporter*—an individual who makes a Report concerning regarding possible Sexual or Gender-Based Misconduct, or a person who claims to have experienced an incident of Sexual or Gender-Based Misconduct but who has not yet filed a Formal Complaint with the College under this Policy. *Note:* a Reporter need not be an *Impacted Party* (e.g., a person who claims to have personally experienced the incident of Sexual or Gender-Based Misconduct being reported).

*Respondent*—an individual who is alleged in a Formal Complaint to be responsible for behavior constituting Sexual or Gender-Based Misconduct.

*Result*—any initial, interim or final decision by any official, panel or entity authorized to resolve disciplinary matters within the College. The Result must include, where appropriate, a description of sanctions imposed by the College, if any. Notwithstanding any provision of FERPA, the Result reported under this Policy must also include the rationale for the Result and for the sanctions assessed, if any.

*Risk Reduction*—options designed to decrease occurrences of Sexual or Gender-based Misconduct, encourage bystander intervention and action, and increase empowerment for persons in order to promote safety and to help individuals and communities address conditions that may facilitate misconduct.

*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: (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); and/or (4) a graduate awaiting a degree. 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. *Note:* the limitations imposed on the ability to pursue Proceedings under this Policy based upon the definition of a Student does not necessarily impact the availability of disciplinary proceedings under other College policies.

*Subject*—an individual about whom a Report concerning regarding possible Sexual or Gender-Based Misconduct has been made, but who is not a Respondent named in a Formal Complaint that has been filed with the College under this Policy.

*Supportive Measures*—means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to a Reporter, a Complainant, a Subject or a Respondent. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The College will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

*Third Party*—any guest of or visitor to the College; an alumnus or alumna at the time a Formal Complaint first is filed; a volunteer; or a 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"), 20 U.S.C. § 1681 *et seq.*, which is a federal law that prohibits sex 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). VAWA is codified in pertinent part at 20 U.S.C. 1092(f), under its Campus Sexual Violence Elimination Act (Campus SaVE Act) provisions.

## PROCEDURES APPLICABLE TO THE CANISIUS COLLEGE SEXUAL AND GENDER-BASED MISCONDUCT POLICY

### I. Scope and Jurisdiction

#### A. Scope of Policy

The College's Sexual and Gender-Based Misconduct Policy applies to all Canisius College Students<sup>[3]</sup>, Employees and "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, criminal conviction, or any other status protected by law. *Upon receiving Actual Knowledge of an incident of Sexual or Gender-Based Misconduct*, the College will respond promptly and in a manner that is not deliberately indifferent to Reports or Formal Complaints received from any individual, whether or not affiliated with Canisius, that a College Student, Employee, or Third Party has violated this Policy.

The College's prohibition against Sexual or Gender-Based Misconduct applies to incidents of any such alleged Misconduct, and any retaliation associated with it, occurring within a Canisius College Educational Program or Activity against a person in the United States.

If the College determines that a Formal Complaint of Sexual or Gender-Based Misconduct does not meet the definition of that term under this Policy, or did not occur in a College education program or activity against a person in the United States, the Title IX Coordinator will dismiss the Formal Complaint. The College, however, reserves the right to address any alleged misbehavior under its Community Standards, the *Faculty Handbook*, staff disciplinary policies, or other College policy as may be applicable.

#### B. Period of Limitations

There is no specific period of time, after an incident of Sexual or Gender-Based Misconduct is alleged to have occurred, within which a Report or Formal Complaint must be made. The College, however, strongly encourages timely reporting and the filing of a Formal Complaint in order to trigger a prompt investigation that can preserve evidence for a potential Proceeding under this Policy, or any alternate process the Complainant may seek to pursue. Delays in reporting or filing a Formal Complaint may limit the College's ability to investigate or respond fully or comprehensively.

If the Respondent is no longer a Student or Employee at the time the Formal Complaint is first filed, the College may be limited in its ability to take disciplinary action against the Respondent if such action ultimately would be deemed appropriate, but it will still seek to provide Supportive Measures for the Complainant, and will evaluate whether the misconduct alleged may be investigated and evaluated under other College policies.

#### 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](#)). Moreover, in compliance with New York State law, the College has adopted a Sexual Harassment Prevention Policy that specifically addresses sexual harassment against employees, applicants for employment, interns and non-employees providing services in the workplace pursuant to a contract with the College or any of their employees, regardless of immigration status. Formal Complaints filed under this Policy not alleging misconduct constituting Sexual or Gender-based Misconduct may be investigated and addressed, where appropriate, pursuant to the College's Anti-Discrimination/Harassment Policy, its Sexual Harassment Prevention Policy, or other applicable College policies.

Individuals with questions about which College policy applies in a specific instance may 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*. That definition of academic freedom is incorporated herein by reference. Conduct claimed to constitute acts of Sexual or Gender-based Misconduct in violation of this Policy must be interpreted in light of relevant academic freedom principles, 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 *bona fide* pedagogical activity.

## 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 via a Formal Complaint, and participate in an investigation or grievance hearing, and/or a 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 Complainant is at fault when violations are reported to have been committed, or from the suggestion that the Complainant should have acted in a different manner to avoid such 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. If the Complainant, to be protected from retaliation by the College, any student, the Respondent, and/or the Respondent's friends, family and acquaintances within the jurisdiction of the College, and if the Respondent, to be protected from retaliation by the College, any student, the Complainant, and/or the Complainant'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 Complainant, or a Respondent, throughout the investigation or grievance hearing 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 or grievance hearing process of the College, or of the criminal justice process.

## 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 Report is received by the Title IX Office, the Title IX Coordinator will attempt to meet with the Complainant (if known) or Reporter to explain the available options, the process used to investigate if a Formal Complaint is filed, and any available Supportive Measures.

The Title IX Coordinator shall be informed promptly of all non-confidential Reports made to any College Representative, as well as all Formal Complaints raising claims of Sexual or Gender-based Misconduct.

The Canisius College Title IX Coordinator is:

Kathleen Brucato

Associate Dean of Students and Title IX Coordinator

Frisch Hall 006

716-888-3781  
[farleyk@canisius.edu](mailto:farleyk@canisius.edu)

Concerns or questions 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 Sexual or Gender-based Misconduct has the right to make a report to the Title IX Coordinator, to Canisius Public Safety, to other College Representatives, to local law enforcement, and/or to State Police, as well as the right to choose not to report the incident; 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 claims to have been sexually assaulted or to have been the victim of an incident of Sexual or Gender-based Misconduct has the right to confidentiality, to the extent reasonably possible under the circumstances, and the right to receive support from Confidential Resources. Even Canisius Representatives—who are obliged to report the disclosure of allegations of Sexual or Gender-based Misconduct to the Title IX Coordinator and thus cannot promise or guarantee confidentiality—will strive to maintain the privacy of the Reporter and other related information when requested to do so. The information provided to a College Representative will be relayed as necessary for the Title IX Coordinator to be in a position to take appropriate steps to assure the safety and security of the Campus Community and, where requested, to seek a resolution of the matter.

## A. Immediate on-Campus Help

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

**Title IX Coordinator (*Non-Confidential Resource*):**

Kathleen Brucato

Associate Dean of Students and Title IX Coordinator

Frisch Hall 006  
716-888-3781

[farleyk@canisius.edu](mailto:farleyk@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 (*Non-Confidential Resource*):**

Bosch Hall

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

Public Safety personnel can be contacted 24 hours a day, or via one of the lighted outdoor emergency phones on the 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 or Gender-Based Misconduct involving potential criminal conduct has the option to report (or not report) the conduct to an external law enforcement authorities which have jurisdiction over the location where the incident occurred by calling 911. In addition, the Buffalo Police Sex Offense Unit at 716-851-4494, or the New York 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, the Student may request assistance from the College in providing such a report. The following individuals may be contacted for assistance in contacting law enforcement:

- Canisius Public Safety officers;
- the College's Sexual Assault Liaison (Confidential Resource);
- the College's Counseling Center Staff (Confidential); or
- the College's 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 efforts of these providers will be of most benefit to you, as a patient, *if visited immediately after the assault*.

The following local medical facilities are all Confidential Resources, and information provided during a medical exam at one of these facilities will not be released or shared without the patient's consent. Disclosure to these Confidential Resources also will not result in the communication of confidential 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 one of these hospitals. This may be a friend or other support person; the College will, upon request, facilitate the transportation of the advocate as well as the injured party to the hospital.

If the incident reported to the hospital is considered to be a crime, these providers will report it, without any Personal Identifying Information, to Public Safety for inclusion in the daily crime log and the College's annual statistical report, and for issuance of any required timely warning pursuant to relevant provisions of the Clery Act.

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

An individual reporting an act of Sexual or 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 external resources also does not provide any information to the College.

**Crisis Services**

<http://crisisservices.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/>

**Neighborhood Legal Services**

<http://www.nls.org>

(716) 847-0650

**Volunteer Lawyer Project**

<http://www.ecbavlp.com>

(716) 847-0662

## C. Preservation of Evidence and Forensic Examination

### 1. Preservation of Evidence

Evidence of a sexual assault, and of any assailant'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, nor should they wash clothes, sheets, blankets or other items where bodily fluids may remain.

Anything of evidentiary value (clothing, sheets, blankets, other relevant physical evidence) 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 view. A credit card, coin, dollar bill or other object of known size should be used in the pictures to provide a point of reference with respect to size. Collecting evidence does not commit an individual to any particular course of action, but can preserve and provide invaluable assistance to 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 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 the opportunity to support a disciplinary or criminal action if the decision is made 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 (often a parent or guardian) 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 SAFE 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 promptly report the events to the College, and /or to local law enforcement. Individuals who believe they have been victims of Sexual or Gender-Based Misconduct also are strongly encouraged to speak with support resources 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 Supportive Measures.

Persons who believe they have been victims of Sexual or Gender-Based Misconduct have the right to:

1. Make a report to College Public Safety, local law enforcement, and/or state police, or choose not to report;
2. Make a report the incident to the Canisius Title IX Coordinator or a College Representative, or choose not to report; and
3. Receive assistance (*g.*, Supportive Measures) and appropriate support resources from the College.

### A. Reporting to Persons at the College—Confidential and Non-Confidential Reports

**1. Confidential Resources**—on campus, persons may make reports of incidents involving alleged Sexual or Gender-based Misconduct to various persons identified as Confidential Resources. Confidential Resources are expected to maintain confidentiality – meaning they are not required or permitted to report actual or suspected Sexual or Gender-Based Misconduct to the College's Title IX Coordinator or other College officials, unless the Reporter authorizes such disclosure or persons are at risk of imminent harm, as discussed below. Confidential Resources afford Reporters the opportunity to receive advice and support from persons who have no obligation to inform other College officials, or any outside agency or individual, unless the Reporter expressly requests that information be shared. A narrow exception to the obligation Confidential Resources have to maintain confidentiality exists in cases where there is a serious risk of immediate and significant harm or death, or where there is a significant threat of harm to or abuse of a minor.

Campus counselors are Confidential Resources who are available to help free of charge, and can be seen on an emergency basis during normal business hours. They will listen and help Reporters 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 counselors may also submit anonymous statistical information for Clery Act purposes, unless they believe such deidentified submissions would be harmful to their client or patient.

In addition to the on-campus Confidential Resources (who are defined by title in the Sexual and Gender-Based Misconduct Policy), or in lieu of speaking to those on-campus Confidential Resources, Reporters 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.gbtqdv.org/>

## Safe Horizons

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

There may be other off-campus resources available to the College community; before disclosing detailed information to such other resources, Reporters should confirm the understanding that those persons deem themselves to be confidential resources.

In addition, 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.

**Non-Confidential Resources**—with the exception of College Employees who are Confidential Resources, all College Representatives (including faculty members, Public Safety staff, Student Affairs staff, resident advisors, resident directors, athletics staff and coaches, among others), are non-confidential resources. Non-confidential resources are obligated to report Policy violations to the Title IX Coordinator, who in turn will take appropriate action, which could include investigation into reported acts of Sexual or Gender-based Misconduct. Generally, Reporters will be consulted prior to the filing of any Formal Complaint that would trigger an investigation into the reported misconduct.

Non-confidential Resources who receive a report or disclosure, even though they cannot promise not to further report what they have been told and cannot guarantee confidentiality, nonetheless still will strive to maintain a Reporter's privacy (or the privacy of the Impacted Party) by limiting the scope of disclosure of the reported information only to the extent reasonably necessary for the Title IX Coordinator to discharge the Coordinator's obligations under this Policy and applicable law.

**Choice as to a Report**—the College respects the right of choice persons have with respect to reporting, and with respect to whether, after making a Report, the Reporter wishes to file a Formal Complaint and thus trigger an investigation and a potential adjudicatory proceeding. As noted, absent a Formal Complaint (discussed below), no investigation of the Report will occur, except in certain limited circumstances where the Title IX Coordinator believes particular risk to the safety and security of the campus is raised. In all events, the Title IX Coordinator will alert the Reporter to the availability of Supportive Measures to support the Reporter and, if appropriate, the Subject disclosed in any report.

## 2. Reporting to the College

Any person may report sex discrimination, including Sexual or Gender-Based Misconduct. This includes situations where the person reporting is not the person alleged to be the victim of conduct that could constitute misconduct prohibited by this Policy. Reports to the College may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator in Section III of these Procedures. Reports may also come to the Title IX Coordinator through other means, such as disclosure to a Non-Confidential Resource as discussed above.

Such a Report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

If a Reporter does not wish for their name to be shared (or in the case of third-person Reporters, that the name of the Impacted Party not be shared), or if the Impacted Party does not wish to file a Formal Complaint, the Reporter may decline to provide such information, or make such a request to the Title IX Coordinator. As noted, the Coordinator will generally honor such requests absent specific and serious concerns as to the safety of the Reporter or other members of the College community. Informing that assessment by the Coordinator will be factors such as the presence or absence of premeditation, threat, violence, use or threatened use of weapons, pattern or plan.

In cases where the Reporter or Impacted Party requests privacy and does not wish to file a Formal Complaint, the College nonetheless will offer Supportive Measures, and will be informed that acts of Retaliation will not be tolerated. Formal Complaints filed by Complainants will be handled in accordance with the procedures specified in Section V, below.

**Anonymous Reports.** Anonymous reporting is 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 the Title IX Coordinator to contact the Reporter. The purpose of an anonymous report is to comply with the Reporter's wish to keep the matter confidential, while taking steps to ensure the future safety of the Reporter, and others. Anonymous and confidential reports are counted and disclosed in the annual Clery Act statistics for the College.

## 3. Additional and Related Information Relevant to Reports Made to the College

- 1. Amnesty:** The health and safety of every student at Canisius College is of great 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 acts of Sexual or Gender-Based Misconduct promptly to College officials, including the Title IX Coordinator. A Bystander acting in good faith or a Reporter acting in good faith who discloses any incident of Sexual or Gender-Based Misconduct 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 reported incident or incidents.
- 2. Disclosures at Public Awareness Events:** Public awareness events such as candlelight vigils, protests or other forums in which students might disclose incidents of Sexual or Gender-Based Misconduct, are not considered, and will not constitute, notice to the College or Actual Knowledge 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 Awareness Programs or Educational Activities at the discretion of the Title IX Coordinator, and the College may provide information about Title IX rights at these events.
- 3. 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 acts that may constitute 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.
- 4. Timely Warning Notifications:** If a report of Sexual or 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 Reporter's name (if known) and other Personally Identifiable Information will not be included in any Timely Warning notification, or public safety advisory.

5. **Assistance Initiating Legal Proceedings:** Reporters and Complainants have the right to receive assistance from appropriate College Representatives in initiating legal proceedings in family court or civil court. This assistance with the initiation of proceedings does not include selection or retention of counsel, or assumption of any financial obligation with respect to retained counsel or the related family court or civil court proceedings.
6. **Withdrawal:** Complainants have the right to withdraw a Formal Complaint or involvement from the process at any time.

## **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. On-campus incidents may be reported to local law enforcement by calling 911, by contacting the Buffalo Police Sex Offense Unit at 716-851-4494, or by calling the New York State Police at 1-844-845-7269. Victim support and resources, including appropriate Supportive Measures, 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 Non-confidential Resources of their reporting duties under this Policy.

The College and the external law enforcement authorities and judicial system work independently from one another. Individuals can file reports or Formal Complaints 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 also may still be addressed through this Policy and the investigatory and grievance hearing processes available at the College. 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 into an alleged violation once a Formal Complaint is filed with the College. The College may, however, 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 Supportive Measures, including Measures which may limit contact between a Reporter or Formal Complainant and the Subject or Respondent. Supportive 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, in all events, delay its investigatory process until the ultimate outcome of the external criminal investigation or the filing of any charges absent compelling reason and specific request by law enforcement authorities.

### ***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 FERPA, including the health and safety emergency exception under FERPA, 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 things such as 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 for Civil Rights of the federal Education Department**

Members of the College 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 Formal Complaint to the College, although as noted 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 Response to Sexual or Gender-Based Misconduct Reports

Upon obtaining Actual Knowledge of an incident of Sexual or Gender-Based Misconduct, the Title IX Coordinator will respond promptly in a manner that is not deliberately indifferent. The College will treat both Reporters/Complainants and Subjects/Respondents equitably by offering appropriate Supportive Measures and, if a Formal Complaint is filed, by following the investigation and grievance process before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent.

The Title IX Coordinator is responsible for overseeing and coordinating the College's response to Formal Complaints and, where a response is appropriate, to Reports of Policy violations.

### A. Initial Meetings

Upon obtaining Actual Knowledge of an incident of Sexual or Gender-Based Misconduct, the Title IX Coordinator will promptly seek to meet independently with both the Reporter (if known) and the Subject (if known and if appropriate).

#### **1. Meeting with the Reporter**

Upon receiving a Report of an incident of Misconduct, the Title IX Coordinator will promptly contact the Impacted Party (if known), in order to:

1. Discuss the availability of Supportive Measures, and make plain that Supportive Measures are available with or without the filing of a Formal Complaint or, if applicable, the filing of a report of a crime to law enforcement authorities;
2. Consider any expressed wishes with respect to Supportive measures;
3. Explain the process for filing a Formal Complaint;
4. Discuss protection from, and reporting of, incidents of Retaliation.

In addition, when a Student or Employee reports an incident of Sexual or Gender-Based Misconduct, whether the offense occurred on or off campus, the Title IX Coordinator will also:

1. Provide the Student or Employee with a copy of the Student Bill of Rights (if applicable), including a review of applicable rights and options;
2. Provide written notification of the counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services that may be available for Students and Employees, both within the College and in the community;
3. Discuss the importance of preserving relevant evidence or documentation in the case (g., texts, emails, notes, photographs and other physical or electronic information relevant to the reported incident(s)).

The Title IX Coordinator will consider the Student or Employee wishes with regard to Supportive Measures. If Supportive Measures are not provided to a reporting Student or Employee, the Title IX Coordinator will document why Supportive Measures were not provided, and why not providing such Measures is not an act of deliberate indifference.

#### **2. Meeting with the Subject**

If requested by the Reporter, the Title IX Coordinator may contact the Subject, who will also be offered Supportive Measures and be provided with a copy of the Student Bill of Rights (if applicable).

#### **3. Timely Warning**

In addition, the Title IX Coordinator will assess the reported conduct for any Clery Act obligations, including entry in the crime log or issuance of a Timely Warning. The assessment will usually be completed within seven (7) days of obtaining actual knowledge of an incident of Sexual or Gender-Based Misconduct.

#### **4. Campus Threat Assessment**

The Title IX Coordinator may remove a Respondent Student from the College's Educational Program or Activity on an emergent basis, provided that the Title IX Coordinator (or the Coordinator's designee):

1. Undertakes an individualized safety and risk analysis;
2. Determines that an immediate threat to the physical health or safety of any Student or other individual arising from the allegations of Sexual or Gender-Based Misconduct justifies removal; and
3. Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

In making this determination, the Title IX Coordinator may consult with other such college officials whose input may, in the Coordinator's discretion, be necessary to properly inform the determination. This provision with respect to emergency removal may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

An emergency removal does not supplant the regular grievance hearing process or grievance Proceedings, which shall proceed on the otherwise applicable timelines, up to and through a hearing, if required.

#### **How to Challenge an Emergency Removal Decision**

Challenges by Students subject to an emergency removal decision are resolved by the Reviewing Official, who shall be the Associate Vice President in the President's Office. The challenge must be submitted in writing by the Respondent directly to the Reviewing Official, with a copy to the Title IX Coordinator, within five (5) business days after the receipt of the Title IX Coordinator's emergency removal decision.

The challenge statement must specify the grounds for the challenge and include any evidence in support of the grounds. The grounds for an appeal to the Reviewing Official are limited to:

1. Procedural error(s) affecting the decision;

2. Factual error(s) affecting the decision; or
3. Additional information relevant to the assessment that was not available at the time of the initial safety and risk analysis.

During the challenge, the emergency removal decision will remain in place. A written response to the appeal will be provided by the Reviewing Official to the Respondent by mail and email (if both addresses are known) within five (5) business days of receiving the written challenge. The Reviewing Official's determination is final.

## B. Supportive Measures

Supportive Measures, as noted, are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge. Supportive Measures can be available before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

Supportive Measures may include, but are not limited to, the following:

1. Counseling;
2. Extensions of deadlines or other course-related adjustments;
3. Modifications of work or class schedules;
4. Campus escort services;
5. Restrictions on contact between the parties (including "No Contact Orders"):
  - a. When the Subject or Respondent is a Student, the College issue a "No Contact Order." When a No Contact Order is in effect, continued contact between the Parties may constitute a violation of Community Standards and may result in additional conduct charges. If the Parties observe one other in a public place, it is the responsibility of the Subject/Respondent to leave the area immediately, and without directly contacting the Reporter/Complainant. The Reporter/Complainant also should take reasonable steps to avoid or minimize contact with the Subject/Respondent. In circumstances deemed appropriate by the Title IX Coordinator, No Contact Orders may be mutual. Both Parties may request a prompt review by the Title IX Coordinator of the need for and terms of a No Contact Order, the continuation or modification of an existing Order, or the termination of an existing Order. Parties may submit evidence in support of their request.
6. Changes in work or housing locations;
7. Leaves of absence;
8. Transportation accommodations, such as shuttle service, cab voucher, or parking arrangements to ensure safety and access to other services;
9. Increased security and monitoring of certain areas of the campus; and
10. Other Supportive Measures deemed appropriate by the Title IX Coordinator.

For international Students or Employees, Supportive Measure may also include assistance with immigration and visa issues.

The College will seek to maintain as confidential any Supportive Measures provided to the Parties, to the extent that maintaining such confidentiality will not impair the ability of the College to provide the Supportive Measures. The Title IX Coordinator will determine when it is necessary to share Personally Identifiable Information with other College personnel in order to provide or enhance the effectiveness of a Supportive Measure. Before doing so, however, the Title IX Coordinator will take reasonable measures to attempt to inform the Impacted Party or his or her advocate which information will be shared, with whom it will be shared, and why.

In addition to appropriate Supportive Measures, because the College is under a continuing obligation to address the issue of Sexual or Gender-Based Misconduct, Reports of Sexual or 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 or 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. These steps may be taken whether a Formal Complaint is pursued (see Section VI), or whether optional informal resolution measures are requested where available (see Section VII), or whether the Reporter or Impacted Party has requested confidentiality and/or anonymity.

## VI. Initiating a Formal Complaint with the College

The filing a Formal Complaint with the Title IX Coordinator triggers the College's investigation and grievance hearing process under this Policy. The timeframe for the Title IX grievance process begins with the filing of a Formal Complaint. The grievance process will be concluded within a reasonably prompt manner, and generally no longer than 60 days after the filing of the Formal Complaint, provided that the process and Proceedings may be extended for a good reason, including but not limited to the absence of a Party or a Party's advisor; the absence of a key witness; concurrent law enforcement activity; the College's academic calendar, or the need for language assistance or accommodation of disabilities. The procedure for applying for or communicating about extensions is described below.

A Formal Complaint of Sexual or Gender-Based Misconduct is a document or electronic submission filed by or on behalf of a Complainant and signed /electronically endorsed by the Complainant, or signed by the Title IX Coordinator alleging Sexual or Gender-Based Misconduct against a Respondent and requesting that the College investigate the allegation(s). A Complainant's signature or electronic endorsement on a Formal Complaint shall constitute a representation that the facts and circumstances alleged are true and correct, or believed to be true and correct. The Formal Complaint may be filed with the in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator in Section III of this Policy.

At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the College, including as a Student or an Employee. For persons who do not meet these criteria, the College may assess the allegations under other existing policies, such as the College's *Community Standards*, its *Anti-Discrimination/Harassment Policy*, its *Sexual Harassment Prevention Policy*, or other applicable College policies.

If a Party does not wish to make a Formal Complaint, as noted the Title IX Coordinator may nonetheless determine that a Formal Complaint is appropriate under the circumstances reported. When the Title IX Coordinator does sign a Formal Complaint, the Title IX Coordinator is not a Complainant in the subsequent Proceedings, or otherwise a Party under this Policy. In deciding whether to a Formal Complaint, the Title IX Coordinator will consider the facts of the specific case and the following factors:

1. The involvement of violence or weapons in the Misconduct reported;
2. The seriousness of the alleged Misconduct;
3. The age of the Impacted Party;
4. Whether there have been other complaints or reports of Misconduct involving the Respondent, or whether the Misconduct reported suggests a pattern of misbehavior by the Respondent; and

5. Other factors that in the discretion of the Title IX Coordinator constitute sufficient reason to override a Reporter or Impacted Party's desire not to pursue a Formal Complaint.

If the Title IX Coordinator does commence a Formal Complaint and the Impacted Party is known, the Coordinator will inform the Impacted Party of this decision in writing. The Impacted Party need not participate in the process further. The Title IX Coordinator will provide the Impacted Party all notices and opportunities to respond to evidence under this Policy, even if the Impacted Party is not actively involved in the Proceedings.

Nothing in this Policy prevents a Reporter or an Impacted Party from seeking the assistance of state or local law enforcement whether or not the on-campus process described in the Policy is pursued.

#### **A. Determining Jurisdiction**

The Title IX Coordinator will determine if this Policy and its corresponding investigation and grievance hearing process should apply to a Formal Complaint. A Formal Complaint will trigger an investigation under this Policy when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The reported Misconduct is alleged to have occurred on or after August 14, 2020;
2. The reported Misconduct is alleged to have occurred in the United States;
3. The reported Misconduct is alleged to have occurred in a College Educational Program or Activity; and
4. The alleged Misconduct, if true, would constitute covered Sexual or Gender-Based Misconduct, as defined in this Policy.

If all of the elements are met, the College will investigate the allegations.

If the alleged conduct, if true, includes conduct that would constitute covered Sexual or Gender-Based Misconduct prohibited by this Policy and conduct that would not constitute covered Sexual or Gender-Based Misconduct, the Title IX investigation and grievance hearing process will be applied in the investigation and adjudication of all of the allegations.

#### **B. Dismissal of a Formal Complaint**

The Title IX Coordinator will review the allegations in the Formal Complaint. If the conduct alleged does not constitute Sexual or Gender-Based Misconduct as defined in this Policy even if: (1) assumed proved as alleged; (2) did not occur in a College Education Program or Activity; or (3) did not occur against a person in the United States, then the Title IX Coordinator will dismiss the Formal Complaint with regard to that conduct for purposes of sexual harassment under Title IX. *Such a dismissal, however, does not preclude disciplinary action pursuant to the College's Community Standards, the Anti-Discrimination /Harassment Policy, the Sexual Harassment Prevention Policy, or other applicable College policies.*

The Title IX Coordinator may, in the Coordinator's sole discretion, dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or grievance hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
2. The Respondent is or employed by the College; or
3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon such a dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the Parties, as well as notice of the right to appeal the dismissal.

#### **C. Notice of Allegation(s) to the Parties**

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the following written notice to the Parties who are known:

1. Notice of the applicable College's grievance process, including information regarding the informal resolution process (see Section VII, Informal Resolution Options).
2. Notice of the allegations potentially constituting Sexual or Gender-Based Misconduct, including sufficient details known at the time. This Notice also must be furnished so as to permit sufficient time to prepare a response before any initial interview with the Investigator(s). Sufficient details include:
  - a. The identities of the parties involved in the incident(s), if known;
  - b. The conduct allegedly constituting Sexual or Gender-Based Misconduct; and
  - c. The date and location of the alleged incident(s), if known.
3. A statement that the Respondent is presumed not responsible for the alleged Misconduct, and that a determination regarding responsibility is only made at the conclusion of the applicable grievance Proceedings.
4. A statement informing the Parties that they may have an advisor of their choice during the grievance hearing, who may be, but is not required to be, an attorney, and that they may inspect and review evidence during the College's investigation process.
5. A statement informing the Parties that knowingly making false statements or knowingly submitting false information during the investigation and grievance Proceedings is prohibited, and subject to disciplinary action.

If, in the course of an investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide supplemental notice of the additional allegations to the Parties whose identities are known.

#### **D. Consolidation of Formal Complaints**

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual or Gender-Based Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, where the allegations of Sexual or Gender-Based Misconduct arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this Policy to the singular "Party," "Complainant," or "Respondent" will include the plural, as applicable.

#### **E. Administrative Leave**

The College may, upon recommendation of the Title IX Coordinator, place a non-student Employee Respondent on administrative leave, with or without pay, during the pendency of a formal grievance process. Appeals of such leave determinations may be pursued, on the timeline and grounds identified in subsection E with respect to Students. The Reviewing Official in the case of faculty members shall be the Vice President for Academic Affairs, and in the case of all other Employees or others the Director of Human Resources. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

#### **F. False Complaints**

A charge of Sexual or Gender-Based Misconduct may have severe consequences. Any individual who knowingly files false and malicious Formal Complaint, who knowingly provides false information to College officials, or who intentionally misleads College officials who are involved in the investigation or resolution of a Formal Complaint of Sexual or 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 Formal Complaints made in good faith, even if the facts alleged in the report are not substantiated by an investigation.

#### **G. 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. Except where explicitly stated by this Policy, advisors shall not participate directly in the process. For example, during the investigative phase, advisors may not address campus officials, investigators, in a meeting, interview or hearing unless invited to by the investigator(s). During the grievance hearing phase, the parties' respective advisor *will be required* to conduct cross-examination directly, orally, and in real time.

If a Party does not have or does not select an advisor, the College will provide a trained advisor to the party free of charge in order to conduct any necessary cross-examination during the grievance hearing, because the Parties may not directly confront or question one another. However, if appointed by the College that advisor may not be an attorney, and may be selected by the College in its sole discretion.

Advisors may confer quietly with their advisees as necessary, as long as they do not disrupt the Proceedings. If the advisor causes disruption to the Proceedings or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the pertinent interview, meeting or hearing. When an advisor is removed from an interview, meeting or hearing, that interview, 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 of their choice 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.

The College will not intentionally schedule interviews, meetings or hearings on dates where the advisors for all Parties are not available, provided that the advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The College's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other College policies apply to matters governed under this Policy, and the College cannot agree to extensive delays solely to accommodate the schedule of an advisor. The determination of what is reasonable shall be made by the Title IX Coordinator or designee, in the Coordinator or designee's sole discretion. The College will not be obligated to delay a meeting or hearing under this process more than five (5) calendar days due to the unavailability of an advisor, and may offer the party the opportunity to obtain a different advisor or utilize one provided by the College.

## **VII. Optional Informal Resolution**

Informal Resolution such as mediation, restorative justice, or other methods may be an alternative to the Formal Complaint process. The Title IX Coordinator will determine if Informal Resolution is appropriate, based on the willingness of the parties and the nature of the conduct at issue. *Informal Resolution may not be used as the primary resolution mechanism to address allegations that a Canisius College Employee sexually harassed (as that term is defined in governing Title IX guidance from the United States Department of Education) a Student.*

Before starting the informal resolution process, the Title IX Coordinator will notify the Parties in writing that participation is strictly voluntary and is not offered as a condition of enrollment/continuing enrollment, employment/continuing employment, or a waiver of the right to a formal investigation. Moreover, the written notification will state that the Parties have the right to withdraw from the informal resolution process at any time and resume the grievance process with respect to the Formal Complaint. The notice will also state that the parties have the right to be accompanied by an advisor.

If, after receiving written notification of the above rights, the Parties both voluntarily consent in writing to pursue informal resolution, the Title IX Coordinator will assign a trained administrator or third-party external to the College to facilitate the informal resolution process.

If both Parties are satisfied with a proposed resolution after participating in the informal resolution process and the Title IX Coordinator believes the resolution satisfies the College's obligation to provide a safe and non-discriminatory environment, the proposed resolution will be implemented, the investigation and grievance hearing process will be concluded, the matter will be closed, and both Parties will be provided with written notice of the resolution.

If, however, informal resolution efforts are unsuccessful, or the Title IX Coordinator believes the resolution fails to satisfy the College's obligation to provide a safe and non-discriminatory environment, the proposed resolution will not be implemented, and the investigation and/or grievance hearing phase will continue.

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 Complainant and the Respondent will be notified in writing regarding the delay and anticipated completion date.

The Title IX Coordinator will maintain records of all reports and conduct complaints resolved through informal resolution, as well as the accompanying resolution agreements, for a period of seven (7) years.

## VIII. Formal Investigation and Grievance Hearing Phases

### A. Investigation Phase

For all Formal Complaints that proceed to investigation, the Title IX Coordinator will designate a specially trained impartial Investigator (or team of Investigators), either internal or external to the College, to interview and gather relevant evidence from the Parties and any witnesses. The Investigator(s) will also work with the Public Safety and other campus offices to gather pertinent documentary materials (if any), and other relevant information.

#### *General Rules of Investigations*

When investigating a Formal Complaint and throughout the grievance process, the College, under the supervision of the Title IX Coordinator, will:

1. Ensure that the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the College and not on the Parties, provided that Canisius cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the College obtains that Party's voluntary, written consent to do so for the grievance process;
2. Provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
3. Not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence (*g.*, no "gag orders");
4. Provide the Parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, as discussed in Section VI (H), above, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, unless inconsistent with the processes discussed herein the College may establish restrictions regarding the extent to which the advisor may participate in the Proceedings, as long as the restrictions apply equally to both Parties;
5. Provide, to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate;
6. Provide both Parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a Party or other source, so that each may meaningfully respond to the evidence prior to conclusion of the investigation.

The Title IX Coordinator will communicate with the Investigator(s) regularly throughout the investigation to ensure that the investigation is thorough, impartial, and fair and that the above guidelines are adhered to.

#### **The Investigation**

The College's formal investigation may include, but is not limited to:

1. Conducting interviews of the Complainant, the Respondent(s), and any witnesses (witnesses must have observed the acts in question or have information relevant to the acts in question, any related incident(s), or any relevant circumstances or conduct, and cannot be interviewed solely to speak about an individual's character):
  - a. The Investigator(s) will provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with that Party, with sufficient time for the Party to prepare to participate;
  - b. A copy of the Formal Complaint, sufficient time for the Party to prepare to discuss the allegations made in that Formal Complaint;
  - c. The investigator(s) will take handwritten or typed notes of all interviews and based on those notes will prepare written statements for each interviewee. The Parties and witnesses will have the opportunity to review their own statement and provide the Investigator(s) with corrections or revisions prior to the conclusion of the investigation;
2. Reviewing law enforcement investigation documents, if applicable;
3. Reviewing relevant materials from student and personnel files; and
4. Gathering, examining, and preserving other relevant documents and physical, written (including medical records), and electronic evidence (including social media, security camera footage, etc.).

Both Parties may have an advisor accompany and advise them, but not actively participate, throughout the investigation process.

#### **The Investigative Report**

At the conclusion of the investigation, the Investigators will issue an investigative report (the "Investigative Report") to the parties that fairly summarizes relevant evidence. The Parties will have at least 10 calendar days to submit a written response. Written responses from the Parties also will be appended to the investigative report. In the event a supplemental written submission is made by a Party after the Investigative Report is prepared and circulated, the Title IX Coordinator, in the Coordinator's sole discretion, will determine whether that supplemental written submission is to be included with the Report, whether and on what terms any response or reply shall be allowed, and whether fairness requires modification of any scheduled hearing or grievance Proceedings.

The Investigative Report is not intended to catalog all evidence obtained by the Investigator(s), but only to provide a fair summary of that evidence. Only relevant evidence (including both inculpatory and exculpatory evidence tending to prove and disprove the allegations) will be referenced in the Investigative Report. Moreover, the Investigator(s) may redact irrelevant information from the Investigative Report when that information is contained in otherwise relevant documents or evidence.

Following the opportunity for review and comment with respect to the Investigative Report, the Title IX Coordinator will forward the case to a specially trained impartial Title IX Hearing Panel to the College for formal resolution via a grievance hearing.

Hearing Panel members may not have a conflict of interest and cannot have participated in the investigative process.

## 1. Notice of Grievance Hearing

The Title IX Coordinator will send a written notice of the hearing to the parties within ten business days prior to the hearing date. The written notice will include the following information:

1. The date, time, location and factual allegations concerning the alleged Policy violation;
2. The specific provision of this Policy, and if applicable other College policies, allegedly violated;
3. Possible sanctions;
4. The time, date, and location of the hearing and the contact information of the Hearing Panel Chair and panel members assigned to hear the matter;
5. Information about requesting reasonable accommodations for the hearing;
6. A copy of the College's hearing rules and procedures;
7. Notice of the requirement that an advisor must conduct cross examinations directly, orally, and in real time at the hearing and that if , as well as a deadline for Parties to identify an advisor if one has not already been identified;
8. The process for requesting witness appearances at the hearing;
9. Notice of the right to request that the Parties be separated using appropriate technology to enable the Parties to see and hear one another;
10. Notice of the right to file a protest the appointment of a Hearing Panel member by identifying a possible conflict of interest in writing to the Title IX Coordinator (see Conflicts of Interest provision, below), and a deadline for Parties to make such written protests.

In addition to the above, the Respondent's written notice will further contain the option to acknowledge full, partial, or no responsibility for the alleged violations prior to the hearing. At any time prior to the date of the hearing, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged misconduct. In such a situation, the assigned Hearing Panel may propose sanction(s) for the Respondent and, if the Complainant and the Respondent agree to such proposed sanction(s), then the Formal Complaint may be resolved without a hearing and without any further rights of appeal by any party. If either the Complainant or the Respondent objects to such proposed sanction(s), then the Hearing Panel will convene a hearing for the exclusive purpose of determining a sanction.

## 2. Hearing Rules

The grievance hearing is to be conducted in a fair and equitable manner, using a preponderance of the credible evidence standard, for the purpose of determining whether it is more likely than not that the Respondent committed an act of Sexual or Gender-Based Misconduct in violation of this Policy.

The following rules and regulations apply to all grievance hearings:

1. Both Parties will be treated fairly and equitably throughout the live hearing process;
2. Hearings will be private and closed to everyone except the involved persons;
3. The live hearing may be conducted in person, or virtually, at the discretion of the Hearing Panel;
4. At the request of either Party, or as the Hearing Panel may direct, the Parties will be separated, with the aid of technology to enable the Parties to see and hear one another at all times while the hearing is underway.
  - a. The use of such technology must enable the Hearing Panel and Parties to see and hear the witnesses testify;
  - b. Training in the usage of such technology will occur before the hearing to ensure proper execution;
5. Both parties will be provided an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
6. The Respondent is presumed not responsible until determined responsible for the alleged violation(s) at the end of the grievance process;
7. During the hearing, the Parties' respective advisors are required to conduct cross-examination directly, orally, and in real time:
  - a. Cross-examination *may not* be conducted directly by a Party;
  - b. If a Party does not have an advisor, the College in its sole discretion will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the Party;
  - c. The advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the particular case;
  - d. The advisor is not prohibited from being a witness in the matter- in such circumstances the adjudicator may make such procedural accommodations as necessary in order to ensure fair process to all parties;
  - e. If a Party does not attend the live hearing, the Party's advisor may appear and conduct cross- examination on their behalf;
  - f. If neither a Party nor their advisor appear at the hearing, the College will proceed with the grievance hearing, if the Hearing Panel determines that proper and adequate notice was provided to both that Party and that Party's advisor. In such circumstances, the College will appoint an advisor for the non-appearing Party, for the sole purpose of conducting cross-examination of the appearing Party. The non-appearing Party will not be deemed to have submitted to cross-examination, and the non-appearing Party's statements in such circumstances cannot be used in the assessment of responsibility by the Hearing Panel.
  - g. No presumption or conclusion shall be drawn, in favor of or against a non-appearing Party, based upon such non-appearance.
  - h. The Hearing Panel may retain its own advisor, who shall not be entitled either to examine any Party or witness, or to vote on the issue of responsibility for the Policy violation(s) alleged.
8. During the hearing, the Hearing Panel will have the right to determine the relevancy of any questions asked on cross-examination and may exclude any irrelevant questioning.
  - a. The Hearing Panel must provide an explanation to the Parties for excluding a question on the basis of irrelevancy.
  - b. Questions about the predisposition or prior sexual behavior of the Complainant are deemed not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove someone other than the Respondent committed the alleged conduct, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent;
  - c. Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation;
  - d. If a party or witness elects not to participate in cross-examination, the final decision will not rely on any statement of that Party or witness in reaching a determination regarding responsibility;
  - e. The Hearing Panel may not draw any inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions;
  - f. The Hearing Panel will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege;
9. An audio recording of the hearing will be created by the College, which shall remain the property of the College, but made available to the Parties;
10. Cell phones and recording devices may not be used in the hearing room(s) (unless approved by the Hearing Panel in advance), and must be turned off before the hearing convenes;
11. Formal rules of evidence shall not be applicable;

12. The Hearing Panel may call any relevant witness to participate in a proceeding. Admission of any person to the hearing will be at the discretion of the Hearing Panel;
13. Pertinent records, video-surveillance images, relevant exhibits, and written statements may be accepted as information for consideration by the Hearing Panel. The applicability and weight of such evidence is determined at the sole discretion of the Hearing Panel;
14. The Hearing Panel will objectively review all relevant evidence—including both inculpatory and exculpatory evidence—and ensure that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness;
15. The Hearing Panel may temporarily delay the grievance hearing or extend time frames for good cause, with written notice to the Complainant and the Respondent (or notice to both Parties on the record during hearing Proceedings) setting forth the extent of the delay or extension, and the reasons for the action. Good cause to delay or extend the process may include considerations such as:
  - a. The absence of a Party, a Party's advisor, or a witness;
  - b. The need to appoint a new advisor for a Party not appearing at the hearing;
  - c. Concurrent law enforcement activity; or
  - d. The need for language assistance or accommodation of disabilities;
  - e. Other circumstances that warrant a delay or extension to provide a fundamentally fair process.

### **3. Hearing Procedures**

The following is a general description of procedures for the live grievance hearing. These procedures may vary as appropriate for specific hearings at the discretion of the assigned Hearing Panel.

1. The Hearing Panel Chair will open and establish rules and expectations for the hearing;
2. Presentation of the Investigation Report by the Investigator, followed by questions to the Investigator by the Hearing Panel and then cross examination by the Parties' advisors;
3. Complainant opening statement, followed by questions to the Complainant by the Hearing Panel and then cross examination by the Respondent's advisor;
4. Respondent opening statement, followed by questions to the Respondent by the Hearing Panel and then cross examination by the Complainant's advisor;
5. Fact and expert witness questioning by the Hearing Panel, followed by cross examination by the Parties' advisors;
6. Closing statement by Complainant;
7. Closing statement by Respondent.

#### *Additional Cross-Examination Rules:*

1. Before any cross-examination question is answered, the Hearing Panel will determine if the question is relevant;
2. Cross-examination questions that are duplicative of those already asked, including by the Hearing Panel, may be deemed irrelevant if they have been asked and answered, or previously disallowed;
3. During the Parties' cross-examination, the Hearing Panel will have the authority to pause cross-examination at any time for the purposes of asking its own follow up questions; and any time necessary in order to enforce rules of decorum.
4. Should a Party or the Party's advisor choose not to cross-examine a Party or witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Panel. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Panel to use statements made by the other Party.

### **4. Written Determination and Notification**

Following the hearing, the Hearing Panel will review all information presented through the investigation and live hearing processes and then issue a written determination regarding responsibility, which includes:

1. The allegations of Sexual or Gender-Based Misconduct;
2. A description of the key events in the procedural history of the matter;
3. Findings of fact;
4. Conclusions as to responsibility for Policy violation(s) charged, applying the Policy provisions to the facts found;
5. Any related rationale in arriving at the result with respect to each allegation, including where appropriate discussions about credibility and plausibility;
6. A listing of any imposed sanctions and any remedies provided; and
7. An explanation of the College's appeal process.

The written determination will be delivered simultaneously to both Parties (or in as simultaneous a fashion as reasonable) within ten (10) business days after the close of the hearing, unless the Hearing Panel determines additional time is needed to make a decision. In such instances, the Hearing Panel will notify the Parties of the date it anticipates that a determination will be issued.

## **C. Time Frame for Resolution**

The timeframe for the Title IX grievance process begins with the filing of a Formal Complaint. The process will be concluded within a reasonably prompt manner, and in general no longer than sixty (60) calendar days after the filing of the Formal Complaint, provided that the process may be extended for good cause, as specified above. The determination of good cause shall be in the sole discretion of the Title IX Coordinator.

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.

## **D. Use of the Preponderance of the Evidence Standard**

The preponderance of evidence standard is the standard that will be applied by the College in 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, based upon the credible evidence submitted, in order to find a Party responsible for any violation of this Policy.

## E. Available Disciplinary Sanctions

The Hearing Panel will determine the appropriate sanction in the event that the Respondent is found responsible by the preponderance of the credible evidence.

Any one or more sanctions listed below may be imposed by the Panel as applicable:

**Student Respondents:** Sanctions and/or responsive action for Students found responsible for Policy violations may include warnings, fines, restitution, requirement to seek or secure counseling, requirement to attend and complete conduct-focused education or training, other discretionary sanctions, assignment to complete an Educational Program or Activity on a different timeline or in a different format, loss of campus privileges, residence hall probation, administrative relocation, residence hall suspension, suspension or removal from a College team, club or activity, termination of recognized status as 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.

**Employee Respondents:** Sanctions and/or responsive action for Employees or volunteers may include work restrictions, requirement to seek or secure counseling, requirement to attend and complete conduct-focused education or training, other discretionary sanctions, 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.

**Other Parties:** While the College's ability to investigate and, where appropriate, adjudicate and/or impose sanctions under this Policy against a person who is neither a Student nor an Employee (*i.e.*, employees of contractors, visitors to campus, other third parties) may be limited, such actions will be considered and, if appropriate and reasonable, undertaken with respect to such persons. Sanctions that would potentially be available include restrictions on accessing campus or college events, no-contact orders, declarations of *persona non grata* status, notifying employers of acts of Misconduct, review a vendor's ability to continue a relationship with the College, and the like. This list is not exclusive, but is intended to be illustrative of the common forms of sanction that may be issued with respect to Other Parties.

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 Complainant and/or others.

## F. Remedial Action

In addition to the imposition of disciplinary sanctions, the Title IX Coordinator may take remedial action(s) to protect the Complainant and the College community. Remedial actions are considered separate from, and in addition to, any disciplinary sanction or supportive measure that may have been provided.

When the College is unable to conduct a full investigation into a particular incident (*i.e.*, when a Formal Complaint is not filed), the Title IX Coordinator will consider and, where in the Coordinator's discretion deemed warranted will pursue, remedial action for the broader College community in an effort to limit the effects of the Misconduct at issue and prevent its recurrence

## IX. Appeals

Within five (5) business days of the delivery of the notice of the decision of responsibility and/or sanction, either Party may appeal the decision as to responsibility and/or sanction by submitting to the Title IX Coordinator a letter or other written statement stating why the Party requesting the appeal believes the determination of responsibility and/or sanctions was inappropriate.

A Party appealing under this section may only appeal on the following grounds:

1. **Procedural error** by the Investigator(s) or Hearing Panel that materially prejudiced the Party requesting review;
2. **Newly discovered material information** that was not known to the Party requesting review and not available to the Investigator(s) and Hearing Panel which likely would have changed the finding of responsibility or the sanction imposed, had it been available;
3. The **sanctions imposed were not reasonable in light of the Misconduct found** (typically, the sanctions were excessive in the context of a Respondent's appeal, or the sanctions were inadequate in the case of an appealing Complainant); and/or
4. The Title IX Coordinator, Investigator(s), or Hearing Panel had a **conflict of interest or bias** that affected the outcome.

The Party submitting the appeal must specify the ground or grounds pursuant to which they are appealing, and must set forth, in detail, the reasons the determination and/or the sanction should be modified or reversed on those grounds. Appealing parties also must attach all materials that they wish to have considered in the appeal process. If both the Complainant and Respondent appeal, the appeals will be considered concurrently. The Title IX Coordinator may dismiss the appeal for failing to state one of the grounds for appeal listed above.

Failure to submit a written appeal within five (5) business days will forfeit the right to appeal under this Policy, regardless of the outcome of the other Party's appeal (if submitted). Within the five (5) day window specified above, a Party may request an extension of the deadline for appeal, which may in the Title IX Coordinator's discretion be granted for good cause shown. Parties seeking such extensions *should not assume* that they will be granted, and should take all reasonable steps to preserve their appellate rights (such as submitting a timely appeal before the deadline if no response has been received with respect to the extension request). If either the Complainant or Respondent submits an appeal, the Title IX Coordinator will notify the other that an appeal has been filed and the grounds of the appeal, and shall furnish with said notification a copy of the appeal to the non-appealing Party. The non-appealing Party may thereafter submit a written response to the appeal submission, within five (5) days after receipt of the Party appeal. The Title IX Coordinator may, in the Coordinator's sole discretion, permit the appealing Party to respond to that submission, and in such event shall set the time within which said reply shall be submitted.

*The Appellate Panel:* A trained, impartial panel will be assigned to serve as an Appellate Panel. The Appellate Panel will decide the merits of any appeal and, in doing so, may consult with the Investigator(s), the Title IX Coordinator, the Hearing Panel and any other individual the Appellate Panel deems appropriate. Appeals are decided based on the objective evaluation of the record of the original Proceedings, and any relevant evidence submitted by the Parties.

The Appellate Panel shall not substitute the judgment for the decision of the Hearing Panel, or attempt to rehear the case. Credibility determinations will not at any point in the Proceedings, including on appeal, be based on a person's status as a Complainant, Respondent, or witness.

Sanctions of all types (including, but not limited to, any form of suspension, dismissal, or separation from the College) may be implemented, may continue in effect or may be stayed, in full or in part, while an appeal is pending. This decision shall be in the sole discretion of the Title IX Coordinator.

With respect to appeal decisions, the Appellate Panel may:

1. Deny the appeal and affirm all or part of the determination of responsibility or the determination of sanction; or
2. Refer the matter back to the Hearing Panel for further consideration, with specific instruction. In the event of a referral for further consideration, the Title IX Coordinator will be consulted and further proceedings may commence, as appropriate under the circumstances, consistent with this Policy.

Note: Cases should only be recommended for remand for a new hearing if the specified procedural errors or conflicts of interest were so substantial that they effectively denied the Respondent or Complainant a fair and impartial hearing, or where new evidence merits a new hearing.

The decision of the Appellate Panel regarding the appeal will be in writing, describing the result of the appeal and the rationale for the result, and is final. The Title IX Coordinator will inform the Parties simultaneously (or as simultaneously as is reasonably possible) and in writing of the outcome of the appeal.

Once the appeals process is completed, it shall be the responsibility of the Title IX Coordinator to oversee the implementation of any imposed sanctions, as applicable. The appeal is the final step in the grievance process under this Policy.

## XI. Transcript Notations

In accordance with New York Education Law 129-B, for crimes of violence, including but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), the College shall make a notation on the academic transcript of Students found responsible after a grievance or disciplinary process that they were "suspended after a finding of responsibility for a Sexual or Gender-Based Misconduct or Community Standards violation," or "expelled after a finding of responsibility for a Sexual or Gender-Based Misconduct or Community Standards violation," as the case may be.

For the Respondent who withdraws from the College while such charges are pending and declines to complete the grievance and/or disciplinary process, the College shall make a notation on the academic transcript of such students that they "withdrew with a Sexual or Gender-Based Misconduct or Community Standards charges pending."

Conduct charges are considered "pending" once a student is informed in writing that there are allegations that the student may have violated this Policy or the College's Community Standards.

### *Vacating a Finding of Responsibility*

If definitive proof a Student respondent's non-responsibility can be determined, any such academic transcript notification shall be removed. Only definitive proof can vacate a finding a responsibility. A not-guilty verdict in a criminal court is not, in itself, definitive proof of non-responsibility, nor is a failure to prosecute.

### *Modifications to Academic Transcript Notations*

A Student whose transcript states "Suspended after a finding of responsibility for a Sexual or Gender-Based Misconduct or Community Standards violation" may appeal, in writing to the Title IX Coordinator to have the notification removed. Appeals may be granted provided that:

1. One year has passed since the conclusion of the suspension;
2. The term of suspension has been completed and any conditions thereof; and
3. The Title IX Coordinator has determined that the Student is once again "in good standing" with all applicable institute and academic and non-academic standards.

A Student whose transcript states "Expelled after a finding of responsibility for a Sexual or Gender-Based Misconduct or Community Standards violation" or "Withdrew with Sexual or Gender-Based Misconduct or Community Standards charges pending" is ineligible to appeal to have the notation removed.

Those Students who were expelled or withdrew with such notifications on their transcripts will leave the College with the status "not in good standing" and will be ineligible for readmission to Canisius, absent any vacating of a finding of responsibility.

## XII. Education, Awareness, and Training Programs

### A. Education and Awareness Programs

The College has developed Sexual and Gender-Based Misconduct Primary Prevention and Awareness Programs for new Students and Employees, as well as ongoing Prevention and Awareness Programs for Students and Employees that:

- Review the College's Sexual or Gender-Based Misconduct Policy, which prohibits all forms of Sexual or 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 or 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 or 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 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 sexual harassment, including Domestic Violence, Dating Violence, Sexual Assault and Stalking and other Misconduct governed by this Policy. 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 or Gender-Based Misconduct, and promotes accountability for those acts.

All mandatory reporters receive training on reporting requirements and how to effectively serve as a first responder in cases of Sexual or Gender-Based Misconduct, including Dating Violence, Domestic Violence, Sexual Assault, and Stalking and other Misconduct governed by this Policy.

## C. State of New York Sexual or 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 or 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 or 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 processes 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 or 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:

#### **New York Penal Law § 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.

#### **New York Penal Law § 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.

#### **New York Penal Law § 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, slingshot, shiriken, "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.

#### **New York Penal Law § 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.

### XIII. 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.

### XIV. Record Keeping

The College will maintain the following records for seven (7) years:

1. Records pertaining to any investigation under this Policy, including the outcome determination, sanction(s), and remedy;
2. Records pertaining to any appeal submitted under this Policy; and
3. Records pertaining to the Informal Resolution process.

[1] On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 ("Final Rule") that, among other things:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how the College must respond to reports of misconduct falling within that

definition of sexual harassment, and

- Mandates a grievance process that the College must follow to comply with Title IX in specific covered cases, before issuing any disciplinary sanction against a person found responsible for acts constituting Sexual or Gender-Based Misconduct.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule, and its extensive Preamble, are available here: <http://bit.ly/TitleIXReg>.

[2] This specific provision may be subject to additional guidance from OCR, which if issued may govern the proceedings to be conducted in the investigation and adjudication of cases pending as of August 14, 2020.

[3] Unless otherwise indicated in these Procedures, capitalized terms will have the meanings ascribed to them in the related Sexual and Gender-Based Misconduct Policy.

The new regs note that where a Title IX Coordinator signs a formal complaint, the Coordinator does not become a complainant or other party to the dispute, but the rules provide little further as far as guidance on when a Title IX Coordinator might exercise the authority to sign a complaint.



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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.