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## Discrimination, Harassment and Sexual Misconduct, CNG-100.28

### PURPOSE

The St. Elizabeth College of Nursing (“SECON” or “College”) Discrimination, Harassment and Sexual Misconduct Policy has been adopted to ensure that all students, faculty, staff and guests may work, study, and enjoy the benefits of the CON community without being subjected to discrimination, harassment or any form of non-consensual sexual activity.

### SCOPE

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

### REFERENCES

- Article 129 A & B of New York State Education Law
- Title IX of the Education Amendments of 1972
- Violence Against Women Act of 1994; reauthorized 2013

### DEFINITIONS / ABBREVIATIONS

**Discrimination:** SECON defines discrimination as an educational or employment-related decision that disadvantages a person and that occurs because of the affected individual’s race, color, religion, ethnic or national origin, gender, age, disability, predisposing genetic characteristics, sexual orientation, gender identity, gender expression, military or veteran’s status, status as a victim of domestic violence, marital status or any other characteristic protected by applicable law. A person who believes that he/she has been discriminated against with respect to an academic or employment decision based on one of the foregoing characteristics is generally entitled to bring a complaint pursuant to this policy in addition to any other College process or

procedure that may be available (such as a grade appeal policy or appeal procedures for work performance or promotion). However, the role of this policy is not to modify or displace another's legitimate decision as to competency or performance; the only function of this policy is to ensure that the decision was not biased.

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

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

Harassment is any form of offensive conduct or communication and may be verbal, written, electronic, visual or physical. Merely by way of illustration, harassing acts may include racial, ethnic or religious slurs; name-calling that demeans on the basis of gender, age, disability, sexual orientation or gender identity; unwanted touching of a person's legs or shoulders; physically harming or threatening another due to racial or religious animosity; vulgar pictures or ethnically offensive symbols or graffiti; or gestures that mimic or mock a person's gender, sexual orientation, disability, race or religion. Sexual harassment is one form of harassment. Sexual harassment may consist of sexually-charged comments or conduct, including sexually lewd conversation or pictures, repeated, unwelcome requests for dates or romantic interaction; conditioning a benefit (such as a grade or promotion) on sexual activity; or unwelcome physical affection (such as hugs or kisses).

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

In all instances, a key factor is whether the complained-of behavior occurred because of one of the protected characteristics listed here. If it did not, the behavior is not regulated by this policy. Nevertheless, SECON reserves the right to discipline conduct that offends based on a protected characteristic even if the situation does not rise to the level of severity or pervasiveness to violate applicable law.

### **Affirmative Consent**

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the

ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

The following examples of prohibited conduct under this policy are illustrations only, and do not constitute an exhaustive listing:

### 1. Sex Offenses

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

**2. Dating Violence:** Dating violence refers to physical violence (hitting, punching, kicking, etc.), threats of violence or other abusive, intimidating behavior committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

**3. Domestic Violence:** Domestic violence refers to physical violence, threats of violence or other abusive, intimidating behavior between spouses or former spouses, cohabiting romantic partners or individuals who were formerly cohabiting romantic partners, individuals who share a child in common, or others in a family relationship.

**4. Stalking:** Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress. Stalking behavior may include but is not limited to repeated, intentional following or observing another; or using

“spyware” or other electronic means to gain impermissible access to a person’s private information.

**5. Sexual Misconduct:** The term Sexual Misconduct is a term used by this policy to more conveniently refer to any form of sex or gender-based discrimination; sexual or gender-based harassment; non-consensual sexual activity or sexual offense; dating violence, or domestic violence if between current or former spouses or romantic partners; or stalking, if the circumstances of the stalking suggest gender-based animosity, hostility or occurs in the context of a romantic or sexual pursuit. Sexual misconduct may occur between members of the same or opposite sex and in heterosexual and homosexual relationships.

**6. Complainant:** The term complainant refers to the person making the complaint or report. That person is usually the person who experienced the Sexual Misconduct.

**7. Respondent:** The term respondent refers to the person alleged to have committed the alleged Sexual Misconduct

(SECON expects that any sexual activity or contact will be based on mutual consent to the specific sexual activity.)

## PROCEDURE / DIRECTIVE

### 1. SUPPORTS FOR COMPLAINANTS

#### Confidential Resources

##### A. Campus Resources

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

- **St. Elizabeth Medical Center Emergency Department: 315-801-8111**

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

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

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

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#### Responsible Administrator

The following individuals receive and respond to and investigate allegations of violations of this policy:

- **The President of the College of Nursing**
- **Dean of Student and Faculty Development for Freshmen Level**
- **Dean of Student and Faculty Development for Seniors Level**
- **Title IX Coordinator**

- A. If a report is made to anyone other than the Responsible Administrators listed above, the complainant risks the possibility that the information will not come to the attention of the proper College officials and may, therefore, not be acted upon.
- B. Faculty members are neither Responsible Administrators nor Confidential Resources under this policy and if an incident is reported to a Faculty member, one cannot be assured that it will be reported to the College for action, nor that it will be kept confidential.
- C. Upon receiving a report, the Responsible Administrator to whom the report was made will discuss with the complainant available avenues and options. Options may include reports to local law enforcement, initiating a disciplinary proceeding against the respondent and/or remedial actions to ameliorate or correct the effects of the discrimination, harassment, or other sexual misconduct. Other options may include interim changes in housing assignment, class assignment, and different work assignment and so on to allow the complainant to avoid interacting with the respondent. The College will review the facts and circumstances of each case, as well the complainant's wishes, in deciding whether and what steps are reasonable and appropriate.
- D. There is no time limit for making a report. However, the passage of time may make effective responsive action difficult. Further, if the respondent is no longer a member of the College community, the College's ability to respond may be limited. It is at the discretion of the Title IX Coordinator to determine the action the College will take concerning complaints, which are filed after a substantial amount of time has passed. Individuals are encouraged to bring complaints forward in a timely manner.
- E. The College may impose interim suspension or other restrictions in order to protect the physical or emotional safety of any member of the College community or ensure orderly operations. The Title IX Coordinator will determine the imposition of interim restrictions, if any.
- F. A Responsible Administrator is not a confidential resource. A Responsible Administrator will share all information reported to him/her with the Title IX Coordinator. However, this sharing of information may not necessarily lead to an investigation or disciplinary action if the complaining party requests confidentiality and that request is granted. (See *Choices of Action to Take* section for further explanation as to the response to a report.) A report to a Responsible Administrator may be made anonymously, but the College's ability to respond to an anonymous complaint may be limited, or by a third party. Contacting a Responsible Administrator does not preclude anyone from also contacting a Confidential Resource. In all cases, an individual may contact law enforcement.
- G. For more information about this policy and SECON procedures to respond to acts of Sexual Misconduct, please contact a Responsible Administrator. One may do so whether or not one wishes to disclose information concerning a particular incident.

## **2. LAW ENFORCEMENT**

- A. A victim of a crime is encouraged to, but is not required to, report the incident to local law enforcement and pursue criminal charges.
- B. The criminal process and the College's disciplinary processes are not mutually exclusive or dependent on

each other, meaning that a person may pursue a criminal complaint, a College complaint, or both. In some cases, the College may delay temporarily its internal processes while a law enforcement investigation is ongoing.

- C. In criminal cases, the preservation of evidence is critical and must be done properly and promptly. If you are the victim of a crime, you are encouraged to **call 911** immediately. To preserve evidence, it is best that you not change your clothes, shower or even brush your hair, as physical evidence may be lost. The Utica Police Department (**315-735-3301 or 911**) can assist in filing a criminal complaint and in securing appropriate examination, including by a Sexual Assault Nurse Examiner. Additionally, orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence by a College community member or other person. In appropriate circumstances, an order of protection may be available that restricts the offender's right to enter the College's property, and the College will abide by a lawfully issued order of protection.
- D. If an act of alleged assault or violence is reported to a Responsible Administrator, the victim will be encouraged to report the incident to local law enforcement. The College also must also report statistics concerning the occurrence on campus of certain violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This report does not include any personally identifiable information concerning the victim or the accused.
- E. For educational purposes, the New York State provisions defining criminal sexual offenses are provided as an addendum to this policy.

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

#### **A. Filing a Report without Taking Action**

1. A complainant may make a report of Sexual Misconduct to a Responsible Administrator (see list above) and request that the College take no investigatory or disciplinary action. The College endeavors to comply with complainants' wishes with respect to whether responsive action is taken. However, that is not always possible.
2. If a complainant requests that no action be taken against the accused, the Responsible Administrator will consult with the Title IX Coordinator, who will make that decision. The College's decision will depend on the seriousness of the offense, whether there was a single accused or multiple, whether there is reason to believe that the accused has engaged in this or similar conduct previously, whether the circumstances suggest an ongoing or future risk to the campus community or the complainant, and similar considerations. A decision will be made and shared with the complainant. The College retains the right to act upon any information that comes to its attention.
3. Similarly, a complainant may desire to have investigatory and/or disciplinary action taken, but may wish to have his/her identity as the complainant kept confidential. Depending on the circumstances, this may or may not be possible. If any number of people could have reported the incident, it may be possible for the complainant's identity to remain confidential and not shared with the respondent. However, in other cases, it may not be possible to proceed with investigatory or disciplinary action without revealing the identity of the complainant. If a complainant requests that his/her name be kept confidential, the College's ability to respond to the complaint may be limited. The Responsible Administrator will consult with the Title IX Coordinator. A decision will be made by the Title IX Coordinator and shared with the complainant. The College retains the right to act upon any information that comes to its attention.
4. Even if no investigation or other internal disciplinary action is pursued, a complainant may request other remedial or supportive relief, such as changes in housing assignment, class assignment, and



different work assignment and so on to allow the complainant to avoid interacting with the respondent. The College will review the facts and circumstances of each case, as well the complainant's wishes, in deciding whether and what steps are reasonable and appropriate.

#### B. Mediation

1. In some cases, a mediated resolution may be appropriate. This may be the case in instances of more minor acts of insensitivity or misunderstandings. Serious sanctions, such as suspension, expulsion or termination, are not possible as a result of the mediation process, but lesser sanctions may be agreed to. Mediation is not available in cases of alleged sexual assault and/or violence.
2. A person who desires mediation should contact a Responsible Administrator. Both parties must agree upon mediation, and the Title IX Coordinator must agree that mediation is appropriate. Mediation is not appropriate in cases of sexual assault or violence of any kind. The Title IX Coordinator will select a mediator. The mediation must be conducted by a third-party; mediation between just the complainant and respondent is not acceptable. A campus mediator will begin mediation efforts promptly and will report to the Title IX Coordinator that the mediation occurred. At any time during the mediation process the complainant or the respondent has the right to terminate the process and proceed to an investigation.
3. The Title IX Coordinator must agree that the parties' mediated resolution is appropriate under the circumstances. If the parties reach agreement and this agreement is deemed appropriate, the mediation is considered successful. Both parties will sign a statement agreeing that the mediation was successful, and the matter will be considered resolved. If the mediation is unsuccessful, the complainant can proceed with a formal complaint. A copy of the signed statement will constitute the record of the mediation. If a party with obligations pursuant to a mediated resolution fails in his/her obligations, the other party may ask the College to enforce the terms of the resolution or may proceed with a formal complaint process.

#### 4. FILING A FORMAL COMPLAINT FOR POTENTIAL DISCIPLINARY ACTION

- A. Any individual may initiate a complaint by reporting to a Responsible Administrator, identified above.
- B. Withdrawal or Resignation while charges are pending:
  1. **Student:** The College has the right to complete the investigation, disciplinary and appeal process if deemed necessary by the Title IX Coordinator. A respondent student may decline to participate in the investigation or hearing process, but this will not deprive the College of the right to proceed with its usual investigatory and appeal procedures if the College deems appropriate.
  2. **Employee:** The College has the right to complete the investigation, disciplinary and appeal process if deemed necessary by the Title IX Coordinator. A respondent employee may decline to participate in the investigation or hearing process, but this will not deprive the College of the right to proceed with its usual investigatory and appeal procedures if the College deems appropriate.

#### 5. INVESTIGATION AND HEARING

##### A. Investigation of Complaint

1. Upon receipt of a complaint and a desire by the complainant to move forward, or a determination by the College to move forward in the absence of a participating complainant, the investigation process will begin. The Title IX Coordinator will contact the complainant(s) and the respondent(s) to meet and review the investigation procedures, and outline the basis for the complaint. In extenuating circumstances the College may utilize an external team solely or in conjunction with an internal

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

2. The Title IX Coordinator will normally coordinate the investigation. The investigation process generally includes separately interviewing the persons involved, including witnesses, and gathering and considering relevant evidence. The College has the right to consult with legal counsel during the investigation. In unusual cases, it may be apparent that an investigation should not proceed. This may be the case if the complaint is not of a nature covered by this policy; where another policy or procedure is more appropriate; or where there is indisputable proof that the allegations are not true. The Title IX Coordinator in conjunction with the President of the College will make this determination. If an investigation is not to proceed, the complainant and respondent will be so informed.
3. In appropriate cases, one or both parties may be issued an interim physical restriction not to have any contact or communication with one another (in some cases, with an exception where contact is required by the nature of their jobs or their academic activities).
4. At the conclusion of the investigation, the investigator(s) will issue a written report of the evidence and findings and a recommended sanction to the person identified below for a decision.
  - a. **Student Respondent:** when a student is alleged to have violated this policy, the President of the College will review the investigatory report, findings and recommended sanctions.
  - b. **Faculty and Employee Respondent:** when a faculty member or employee is alleged to have violated this policy, the President of the College will review the investigatory report, findings and recommended sanctions.
  - c. **Vendor, visitor or other non-student, non-employee Respondent:** When a vendor, visitor or other non-student/non-employee is alleged to have violated this policy, the investigatory report, findings and recommended sanction will be reviewed by the President of the College for action.
5. In all instances, the preponderance of the evidence standard (i.e. it is more likely than not that a fact is true and/or that a violation of this policy occurred), both parties will be notified of the decision and provided a rationale in writing. Investigation and decision on a formal complaint will normally be concluded within 30 days.
  - a. **Sanctions:** The sanction(s) for a violation of this policy will be based on a consideration of all of the circumstances, including the severity of the conduct and the respondent's disciplinary history. The sanction(s) imposed may be any one or more of the following: Written Warning, Additional Educational Requirements and/or Community Service, Probation, Suspension, Expulsion or Termination (employee) or any combination of the aforementioned.
6. If the conclusion reached is that there has been no violation of this policy but other inappropriate conduct has occurred, the College retains the right to address that inappropriate behavior through other applicable College personnel and student life policies and procedures.

## 6. APPEALS: FINDING/SANCTIONS



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

## 7. RIGHTS OF THE COMPLAINANT AND THE RESPONDENT

- A. **Rights of the Complainant:** When a member of the College has become the victim of an alleged act of misconduct which violates this policy, the victim should expect that the conduct system/investigators shall respond in a caring, sensitive manner which allows the victim to utilize the policy's process unimpeded, while still maintaining the rights of the respondent person. The following rights shall be provided to victims of alleged offenses:
1. The right to be fully informed of the applicable conduct codes and policies.
  2. The right to have complaints be responded to quickly and with sensitivity.
  3. The right to preservation of confidentiality, to the extent possible under the circumstances.
  4. The right to be notified of available counseling, mental health or student services for victims, both on campus and in the community.
  5. The right to be treated with dignity and respect by all persons involved in the investigatory and appeal process.
  6. The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus security and local police.
  7. The right NOT to be discouraged by College officials from reporting a crime, especially crimes of sexual assault/violence, to both on and off campus authorities.

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

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

1. The right to be fully informed of the applicable conduct codes and policies.
2. The right to be advised of the nature of the complaint against him/her.
3. The right to have complaints of the Sexual Misconduct be responded to quickly and with sensitivity.
4. The right to be presumed not in violation of College policies unless and until determined in violation.
5. The right to preservation of confidentiality, to the extent possible under the circumstances.
6. The right to be notified of available counseling, mental health services available on campus or off campus.
7. The right to be treated with dignity and respect by all persons involved in the investigatory and appeal process.
8. The right to select an advisor (subject to the limitations of this policy). Except in cases of nonconsensual sexual contact, stalking, domestic violence and relationship violence cases, this advisor must be an active member of this College Community.
9. The right to notification of options for and available assistance in changing academic working and living situations after an alleged incident, if so requested and if such changes are reasonably available.
10. The right to NOT be subject to any type of retaliation. Violation of such instructions would constitute

grounds for the College to take immediate and further action.

11. The right to submit an appeal and receive a written response in the proscribed time frame.
12. The right to participate in a campus hearing by means other than being in the same room with the complainant.
13. The right to object to any investigator or decision maker.
14. The right to request relevant witnesses and evidence be interviewed by the investigators.
15. The right to make a statement and to have that statement considered in determining the case.
16. The right to be informed in a timely manner of the outcome and any sanctions resulting from the complaint.

## **8. DISCRIMINATION OTHER THAN SEXUAL MISCONDUCT**

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

## **9. POLICY AMENDMENT**

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

## **10. COORDINATION OF POLICIES**

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

## **11. RETALIATION**

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

## **12. TIME FRAMES**

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

examination and resolution of the issues.

### **13. TRAINING**

- A. The Title IX Coordinator is responsible for ensuring that the personnel involved in implementing this policy receive appropriate annual training and all the procedures and policies are followed.
- B. All student leaders are required to complete training on domestic violence, dating violence, stalking and sexual assault prevention.
- C. All students will be offered training in domestic violence, dating violence, stalking and sexual assault prevention.

### **14. DELEGATION OF AUTHORITY**

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

### **15. COUNSEL**

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

### **16. RECORDS**

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

### **17. POLICY COMPLIANCE**

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

### **18. CLERY ACT COMPLIANCE**

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

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

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

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

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

The health and safety of every student at SECON is of utmost importance. SECON recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence occurs may be hesitant to report such incidents due to fear of potential consequences for their own

conduct. SECON strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to SECON officials or law enforcement will not be subject to their college's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## 2. Student Bill of Rights

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

All students have the right to:

- A. Make a report to local law enforcement and/or state police;
- B. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- C. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure from the institution;
- D. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- E. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- F. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- G. Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
- H. Be free from retaliation by the institution, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- I. Access to at least one level of appeal of a determination;
- J. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
- K. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

## 3. Sexual and interpersonal Violence Response

- A. Students have the right (**Reporting**):
  1. To disclose confidentially the incident to confidential college officials, who by law may maintain confidentiality, and can assist in obtaining services (more information on confidential report is available in the Options for Confidentially Disclosing Sexual Violence Policy). To disclose

confidentially the incident and obtain services from the New York State, New York City or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906), and assistance can also be obtained through and of the resources listed on the NYS Resources tab for your campus (note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases).

2. To disclose the incident to a college official who can offer privacy and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. Those officials will also provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution. These college officials will disclose that they are private and not confidential resources, and they may still be required by law and college policy to inform one or more college officials about the incident, including but not limited to the Title IX Coordinator. They will notify reporting individuals that the criminal justice process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or district attorney.
3. To file a criminal complaint with local law enforcement and/or state police. To contact the State police 24-hour hotline (not a confidential resource) to report sexual assault on a NY college campus: 1-844-845-7269.
4. To receive assistance from the campus in initiating legal proceedings in family court or civil court.
5. To file a report of sexual assault, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator for information and assistance. Reports will be investigated in accordance with campus policy and the reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, use a confidential resource listed for your campus.
6. When the accused is an employee, a reporting individual may also report the incident to Human Resources. You may request that one of the confidential or private employees assist in reporting to Human Resources. Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. When the accused is an employee of an affiliated entity or vendor of the college, college officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and college policy.
  - a. You may withdraw your complaint or involvement from the process at any time.

B. Students have the right (**Resources**):

1. To obtain effective intervention services. Resources are listed in the dropdown by campus.
  - a. Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Testing for STIs and emergency contraception is available in your area and you can find resources on and off campus by your campus.
  - b. Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. While there should be no charge for a rape kit, there may



be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: [http://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf), or by calling 1-800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.

- c. To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

C. Students have the right (**Protection and Accommodations**):

1. When the accused is a student, to have the college issue a “No Contact Order,” consistent with college policy and procedure, meaning that continuing to contact the protected individual is a violation of college policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person. Both the accused/respondent and reporting individual may request a prompt review of the need for and terms of a No Contact Order, consistent with campus policy. Parties may submit evidence in support of their request.
2. To have assistance from law enforcement or other college officials in initiating legal proceedings in family court or civil court, including but not limited to obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order.
3. To receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with a college official or member of law enforcement who can explain the order and answer questions about it, including information from the Order about the accused’s responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s).
4. To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
5. To have assistance from local law enforcement when an individual violates an order of protection to enact an arrest if indicated. If the order of protection is outside the jurisdiction of local law enforcement, the student has the right to be protected with an equivalent order of protection.
6. To have assistance from law enforcement in effecting an arrest when an individual violates an Order of Protection or, if outside of New York State, an equivalent protective or restraining order within the jurisdiction of local law enforcement or, if outside of the jurisdiction, or if Campus Security does not have arresting powers, to call on and assist local law enforcement in effecting an arrest for violating such an order.
7. When the accused is a student and presents a continuing threat to the health and safety of the community, to have the accused subject to interim suspension pending the outcome of a conduct process. Parties may request a prompt review of the need for and terms of an interim suspension.
8. When the accused is not a student but is a member of the college community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and campus policies and rules.
9. When the accused is not a member of the college community, to have assistance from local law

enforcement or other college officials in obtaining a persona non grata letter, subject to legal requirements and college policy.

10. To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Parties may request a prompt review of the need for and terms of any interim measures and accommodations that directly affect them. Reporting individuals may request accommodations through offices listed as On Campus resources for your campus.

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

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

1. Individuals who are *confidential* resources will not report crimes to law enforcement or college officials without your permission, except for extreme circumstances, such as a health and/or safety emergency. On Campus and Off Campus resources with the Confidential badge can provide this service (note that Off Campus options do not provide any information to the campus).
2. Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found here: [http://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf), or by calling 1-800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.
3. Even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.

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

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

##### **C. Privacy versus Confidentiality:**

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

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

1. If you disclose an incident to a SECON employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you.

2. We will assist you with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of your reporting choices. Reporting individuals may request accommodations through college offices located in the On Campus resource list. Your campus also may take proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify you or the situation you disclosed.
3. We may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless your campus' failure to act does not adequately mitigate the risk of harm to you or other members of the campus community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual. If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.
4. When you disclose an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, your campus will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:
  - a. Whether the accused has a history of violent behavior or is a repeat offender;
  - b. Whether the incident represents escalation, such as a situation that previously involved sustained stalking, the increased risk that the accused will commit additional acts of violence;
  - c. Whether the accused used a weapon or force;
  - d. Whether the reporting individual is a minor; and
  - e. Whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.
5. If your campus determines that it must move forward with an investigation, the reporting individual or victim/survivor will be notified and the campus will take immediate action as necessary to protect and assist them.

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

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

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#### **Institutional Crime Reporting**

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

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

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

## **5. Notation on Transcript Policy for Violent Crimes**

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

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

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

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

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

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

### **Further Appeals**

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

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

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

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

**CONTENT EXPERT(S) / RESEARCHER(S) / CONTRIBUTOR(S):**

**This Document Replaces:**

NSG-CNG-100.28

**Attachments:**

No Attachments

**Approval Signatures**

Step Description	Approver	Date
Owner	Faculty Organization	10/12/2017

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