SEXUAL MISCONDUCT POLICY

The College of Saint Rose is committed to creating and maintaining a safe environment for all of its students. All forms of sexual misconduct offenses and other non-consensual sexual contact will not be tolerated by the College. Violation of the College's policy on sexual misconduct will result in strict disciplinary action including possible dismissal or suspension from the College. This policy applies to an action taken by a student against another student. An action taken by an Administrator, Support Staff, or Faculty member is covered by the College's Freedom from Harassment Policy.

Definitions

Sexual Misconduct:

- 1. **Non-Consensual Sexual Contact:** Any intentional sexual touching without effective consent. This includes any contact with the breasts, buttocks, groin, genitals, mouth or other bodily orifice of a person upon another person, as well as the touching of another with any of these body parts, , without effective consent.
- 2. **Non-Consensual Sexual Intercourse:** Any sexual intercourse (anal, oral, or vaginal) however slight, with any object or body part, by a person upon another person without effective consent.
- 3. **Forced Sexual Intercourse:** Any sexual intercourse (anal, oral or vaginal), by any object or body part, by a person upon another person, that occurs as a result of physical force.
- 4. **Sexual Exploitation:** Sexual exploitation occurs when an individual takes non-consensual, unfair, or abusive advantage of another for his/her own advantage or benefit, even though that behavior does not constitute one of the other sexual misconduct offenses. Examples include, but are not limited to:
 - a. Non-consensual video or audio taping of sexual activity.
 - b. Stalking with a sexual component. Stalking may take many forms, including persistent calling, texting, or posting on a social networking site as well as physical stalking. When the content of the messages or the nature of the physical stalking is of a sexual nature sexual misconduct has occurred.
 - c. Voyeurism is a form of sexual exploitation in which one individual engages in secretive observation of another for personal sexual pleasure or engages in non-consensual video or audio taping of sexual acts. Although the source for the secretive viewing or taping may be unaware of the observation, this behavior is a form of sexual misconduct and violates the integrity of the unaware student.
 - d. The disrobing or exposure of another person without their consent.
 - e. Inter-personal or intimate partner violence (relationship violence)
- 5. **Sexual Harassment:** Sexual harassment is defined under this policy as severe, pervasive and objectively offensive unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct or communication of a sexual nature that limits or denies a student's ability to participate in or benefit from the college's educational programs or activities. when:

- a. Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's academic or other advancement (quid pro quo harassment);
- b. Submission to, or rejection of, the conduct is used as the basis for academic decisions affecting the individual (quid pro quo harassment); or
- c. The conduct has the purpose or effect of unreasonably interfering with a student's work, professional or educational performance, productivity, physical security, participation in living arrangements; or extracurricular activities, academic or career opportunities, services or benefits—or of creating an intimidating, hostile, or offensive learning environment.

Relationship Violence

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

Incapacitated Sex

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

Stalking

Stalking is an unwanted pursuit. It is an effective tactic of control used by relationship violence abusers. It is a crime that can cause tremendous fear without the slightest physical injury as it has no real identified beginning and seemingly no end. Often includes the use of technology such as phones, texting, cameras, social networking sites, and email.

Verbal Assault

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

Effective Consent

Informed, freely and actively given, mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent is not effective if it results from the use of physical force, threats, intimidation or coercion, or if the non-initiating partner is incapacitated. Consent for one sexual act is not consent for another act of sex.

Consent can be established if the following four conditions are present (Berkowitz, 2002):

- 1. Both participants are fully conscious;
- 2. Both participants are equally free to act;
- 3. Both parties have clearly communicated their willingness/permission; and
- 4. Both parties are positive and sincere in their desires.

What Do I Do If I Am a Victim of Sexual Misconduct?

- 1. Get to a safe place—a friend's house or any place where people can give you emotional support. Call the Rape Crisis Hot Line.
- 2. If you are the victim of sexual violence, seek medical help immediately for the treatment of any injuries and for tests to check the possibility of pregnancy or sexually transmitted diseases. If you do plan to report the incident to authorities, there is an additional reason to seek medical attention. Medical evidence can be collected. Don't douche, bathe, shower or change your clothes before seeking medical attention.
- 3. Report the incident to a campus counselor or victim advocate if you feel comfortable doing so. Seek counseling, whether or not you decide to report the crime or participate in legal action. Professional counseling is available through the Counseling and Psychological Services Center at Saint Rose. Counseling can be beneficial as you work through your reaction to sexual assault.

You may also choose to file a report with campus security or the Albany Police Department. This is your decision. (See "Procedures for Dealing with Sexual Offenses" Section)

- 4. If you wish, file a complaint with the Student Conduct Office, if the perpetrator is part of the Saint Rose community. An investigation for appropriate disciplinary action under the College's prohibition against sexual misconduct will occur with the Student Conduct Office.
- 5. Tell your story soon to avoid forgetting details. Alternatively, write out the details for yourself or use a tape recorder.
- 6. Take whatever steps are necessary to work through the assault. This might include talking to your partner, friend or counselor about your feelings. Resume your normal routine as much as possible.
- 8. Go with your instincts. Whatever you decide to do is a decision you must feel comfortable with. Your goal is to survive and escape safely. You will react to the crime in the way that makes the most sense to you at the time.

Ways to Protect Yourself

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

- Express your expectations and limits clearly before you get into a sexual situation.
- Limit alcohol and drug use. They make it more difficult for you to be in control. Never ride with someone who has used alcohol or drugs.

- Avoid meeting in secluded places and walking alone. If you are concerned, ask campus security to escort you.
- Try to be aware of attitudes that your date expresses concerning women or men: hostility, unrealistic views of women or men and/or viewing people as "sex objects."
- Use assertive language such as, "I feel uncomfortable when you don't listen to me or when you touch me like that."
- Scream "fire" (rather than "rape" or "help"), if you need assistance.
- Be alert to what is happening around you.

These suggestions may help you to reduce your risk for being accused of sexual misconduct:

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

Confidentiality and Reporting Policy

Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles at the college and upon college policy. All parties should be aware of confidentiality, privacy and mandatory reporting, when consulting campus resources, in order to make informed choices. On campus, some people can offer you confidentiality, sharing options and advice without any obligation to tell anyone unless you want them to. Other people are expressly there for you to report crimes and policy violations and they will take action when you report your victimization to them. The following explains each of these types of reporting.

Confidential Reporting

Confidential reporting resources are those individuals who, by law and/or professional ethics, maintain confidentiality of the disclosure of sexual misconduct. These individuals are not required to re-disclose information **shared** with them other than in very extreme and unusual circumstances involving evidence of a serious and imminent threat to identifiable individuals, or by subpoena. Confidential reporting resources include:

- Counseling Center, Madison Hall, 947 Madison Ave., (518)454-5200, http://www.strose.edu/officesandresources/academic_and_student_support_services
 s/counseling_services
- Health Services, 1 Lima Circle, (518) 454-5244,
 http://www.strose.edu/officesandresources/academic_and_student_support_services/health-services
- Spiritual Life, Hubbard Interfaith Sanctuary, (518) 454-5250, http://www.strose.edu/officesandresources/spiritual_life
- Equinox, 95 Central Ave., Albany, (518) 432-7865 [Domestic Violence Hotline],
- Albany County Crime Victims and Sexual Violence Center, 112 State St., Albany, (518) 447-7716 (hotline), www.albanycounty.com/cvsvc/

Administrative (Mandatory) Reporting

Individuals who by law (Title IX), are "Responsible Employees" who have remedial authority to address sexual misconduct complaints on behalf of the institution. Administrative (mandatory) reporting resources are required to report all details of an incident of sexual misconduct, including the identity of the victim and the perpetrator, if known, to the appropriate office for purposes of initiation of an investigation and appropriate action. Administrative reporting resources are trained to provide information and support and appropriate referral to confidential or private reporting resources. Administrative reporting resources are also required to provide Clery Act statistical information and/or information for a Timely Warning if the circumstances warrant. The college has designated the following as Administrative reporting resources: Members of President's cabinet, School Deans, Faculty Members, Residence Life Professional Staff, Human Resources Staff, Assistant Vice Presidents of Student Affairs, Resident Assistants (RA), student club advisors, admissions staff, career center staff, and student activities personnel. All other employees are identified as "Mandated Reporters" with the role of reporting all details of an incident of sexual misconduct to the Title IX Coordinator or a Deputy Title IX Coordinator.

Designated Officials

For the purpose of this policy, specific administrative officials are designated to receive sexual misconduct complaints and, if appropriate, to investigate those complaints.

- Jeffrey Knapp, Assistant Vice President for Human Resources (458-5374). Office: 366 Western Ave.
- Rita McLaughlin, Assistant Vice President for Student Affairs (454-5117). Office: Events and Athletic Center
- Dennis McDonald, Vice President for Student Affairs/Title IX Coordinator (454-5126) will ensure that they are investigated per Title IX policy, should they meet the criteria of a Title IX infraction. Office: Events and Athletic Center

Trained Investigators

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

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

Immunity from Campus Conduct Process

The College strongly encourages the reporting of incidents of sexual misconduct. Students may be hesitant to seek help in such matters because of fear of potential conduct and disciplinary consequences for themselves, the person in need of attention or the organization hosting the event where the incident occurred. A student who seeks assistance on behalf of heror him-self, another student or individual in distress will not be subject to disciplinary action.

To encourage reporting incidents of sexual misconduct, The College of Saint Rose offers victims immunity from being charged with college policy violations related to the sexual misconduct incident.

Procedures for Dealing with Sexual Offenses

On-Campus

All incidents of sexual misconduct, as outlined above, should be reported as provided in the section titled, **CONFIDENTIALITY AND REPORTING POLICY.** To initiate a formal investigation into an alleged violation of this policy, complainants file a sexual misconduct complaint, in writing with ANY OF THE designated officials.

Complaints should be filed promptly after an incident of alleged sexual misconduct. To ensure the prompt and thorough investigation of a complaint, the complainant should provide as much of the following information as possible:

- the name of the person or persons allegedly responsible for the action; if a college employee the department and position of said person(s); if a student the address of that person, if known.
- a description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
- the alleged effect of the incident(s) on the complainant's position, academic standing or other conditions of enrollment (student status);
- the names of other individuals who might have been subject to the same or similar action;
- the steps the complainant has taken to try to stop the behavior; and
- any other information the complainant believes to be relevant to the complaint.

1. **Investigation**: The Title IX Coordinator is responsible for ensuring that an impartial investigation begins within a reasonable time (the goal is two working days) after a complaint has been filed. The College of Saint Rose attempts to complete investigations within twenty working days. In certain circumstances the investigation time frames may need to be extended and the Title IX Coordinator has full authority to extend or modify all time frames set forth in this Policy. In such instances, all parties to the complaint will be notified.

Upon receipt of a complaint the Office of Student Conduct will open a formal case file and assign a designated officer who will direct the investigation and confer with the Title IX Coordinator on interim action, accommodations for the alleged victim, or other necessary remedial short-term actions.

In most cases, one of the designated officials conducts the investigation. However, the designated official might work cooperatively with another designated official. In any case, a second person - possibly an individual from the Human Resources Department or Office of Residence Life - should accompany the primary investigator during all interviews with the complainant, respondent and witnesses so that information obtained during the interviews can be corroborated. In certain cases, the College may appoint a third party to conduct the investigation. Witnesses will be directed not to disclose the fact that they have been interviewed or the nature of the inquiry to others. Violation of this directive shall be a basis for disciplinary action or other sanctions as may be determined by the College. The investigator contacts the respondent, gives him or her a copy of the complaint, solicits the respondent's account of the alleged incident(s) and informs the respondent that a report will be prepared at the end of the investigation.

The investigator will then take the following steps:

- In coordination with the campus Title IX Coordinator, initiate any necessary remedial actions:
- Determine the identity and contact information of the complainant (whether that be the, the alleged victim, the person who filed the College Incident Report, or a <u>College</u> representative);
- Identify the policies allegedly violated;
- Conduct a preliminary initial investigation to determine if there is reasonable cause to charge the accused individual, and what policy violations should be alleged as part of the complaint;
- If there is insufficient evidence to support reasonable cause, the complaint should be closed with no further action;
- Meet with the complainant to finalize the complaint and
- Prepare the notice of charges on the basis of the initial investigation;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the accused individual, who may be given notice prior to or at the time of the interview;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;

- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
- Present the findings to the accused individual, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
- Share the findings and update the complainant on the status of the investigation and the outcome.

Report: The designated official or designated investigator prepares a written report following the completion of the investigation. Except in certain circumstances, the report should be completed within twenty working days after the completion of the investigation.

The report, at a minimum, must include:

- a. a summary of the complaint;
- b. a summary of the response by the individual charged with the harassment;
- c. a summary of the statements and evidence obtained during the investigation;
- d. a recommendation on whether a violation of this policy occurred and an explanation to support the finding. If a violation occurred, the recommendation must include a statement about the severity of the violation;
- e. a summary of prior settlements or substantiated complaints against the respondent;
- f. a recommendation as to the disciplinary action to be taken, if appropriate.

The finding will be forwarded to the Title IX Coordinator who will issue a decision on the finding.

Where the accused individual is found not responsible for the alleged violation(s), the investigation should be closed. Where the accused individual accepts the finding that s/he violated college policy, the Office of Student Conduct will impose appropriate sanctions for the violation, after consultation with the Title IX Coordinator. The College will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the college community.

Privacy: All inquiries, complaints and investigations are treated with privacy. Information is revealed strictly on a need-to-know basis. Information contained in a formal complaint is kept confidential. However, the identity of the complainant and respondent usually is revealed to the respondent and witnesses. The College prohibits retaliation of any form toward complainants or witnesses.

A copy of the investigation report and the final decision is included in the student file of the respondent only if the investigation concludes that the respondent engaged in prohibited conduct. All information pertaining to a harassment complaint or investigation is maintained by the Title IX Coordinator and the Assistant Vice President for Human Resources in secure files. These secure files will be kept separate from all other human resources or student files maintained by the College.

Where the respondent is found not responsible for the alleged violation(s), the investigation should be closed.

No record of a complaint is kept in the complainant's human resources or student file unless the investigation concludes that the complaint was reckless or frivolous. The college prohibits retaliation in any form for complainants and witnesses.

3. Hearing:

In the event that the <u>accused individual rejects the findings in part or entirely, the Office of Student Conduct will convene a hearing under its respective procedures to determine whether the accused individual is in violation of the contested aspects of the complaint. At the hearing, the findings of the investigation will be admitted, but are not binding on the decider(s) of fact. The case officer(s) may give evidence. The hearing will determine whether it is more likely than not that the accused individual violated the policies forming the basis of the charge. The goal of the hearing is to provide an equitable resolution via an equitable process, respecting the civil and legal rights of all participants.</u>

The Office of Student Conduct has final decision making authority with regard to formal complaints, subject to appeal. Where an accused individual is found in violation, the Office of Student Conduct will impose appropriate sanctions for the violation, after consultation with the Title IX Coordinator. The college will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the college community. Appeal proceedings as described in this *Code* will apply to all parties to the complaint.

4. Appeal Process

In the event that an accused individual accepts the findings of the investigation, those findings cannot be appealed. Sanctions imposed by the Office of Student Conduct post-investigation can be appealed by any party according to the grounds, below. Post-hearing, any party may appeal the findings and/or sanctions only under the grounds described, below.

All sanctions imposed as an outcome of the investigation will be in effect during the appeal. A request may be made to the Office of Student Conduct for special consideration in exigent circumstances, but the presumptive stance of the institution is that the sanctions will stand. Graduation, study abroad, internships/externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The decision may be appealed by petitioning the Student Conduct Office. Accused students or complainants must petition within 2 working days of receiving the written decision for a review of the decision or the sanctions imposed. Any party who files an appeal must do so in writing to the Student Conduct Office (SCO). The SCO will share the appeal with the other party (e.g., if the accused student appeals, the appeal is shared with the complainant, who may also wish to file a response), and then the SCO will draft a response memorandum (also shared with all parties). All appeals and responses are then forwarded to the Appeals Hearing Board for initial review to determine if the appeal meets the limited grounds and is timely. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the

decision is final. If the appeal has standing, the documentation is forwarded for consideration. The party requesting appeal must show error as the original finding and sanction are presumed to have been decided reasonably and appropriately. The ONLY grounds for appeal are as follows:

- 1. A procedural error occurred that significantly impacted the outcome of the hearing
- 2. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
- 3. The sanctions imposed are substantially disproportionate to the severity of the violation.

All appellate decisions are final.

Off-Campus Reporting

A student who is a victim of sexual assault has an independent right to file a complaint with the Albany Police Department. The College, by way of the Offices of Safety and Security or Student Affairs will support and assist the student's decision to pursue off-campus legal action.

Non-Retaliation

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

Campus Resources

The College of Saint Rose is concerned about a victim's physical and mental well-being, and will be ready to assist them in dealing with the aftermath of an act of sexual misconduct.

A victim may request a change to their academic or living arrangements through the Assistant Vice President for Student Affairs. The College will honor such a request as long as such other arrangements are reasonably available. Also, the Counseling Center is available if a student desires to process what has occurred and seek professional assistance in coping with the effects of an assault.

Reporting Agencies

Campus Security 518-454-5187 Albany Police 911 or 518-462-8000

Confidential Counseling, Assistance and Referral

Counseling and Psychological Services – (518) 454-5200/454-5298/458-5389 Campus Ministry – (518) 454-5250 Health Service – (518) 454-5244

Albany County Crime Victims & Sexual Violence Center Hotline – (518) 447-7716

Information and Workshops

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

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

New York State Law

Article 130 of the New York State Penal Code defines sexual offenses. It lists the sections and degrees of sex crimes. Sexual assault is a criminal act carrying a penalty of varying degrees.

<u>Sexual Misconduct</u>--Sexual misconduct is defined as engaging in sexual intercourse with another person without such person's consent or engaging in deviate sexual intercourse (sodomy) with another person without that person's consent. **Penalties**--The maximum penalty is a \$1,000 fine and/or one year in jail.

Rape and Sodomy--Rape is defined as engaging in sexual intercourse or deviate sexual intercourse (sodomy) by forcible compulsion or by engaging in such action with a person who is incapable of consent due to age, physical helplessness or mental handicap. **Penalties**--Rape and sodomy are classified as felonies with penalties of up to 25 years imprisonment and/or a fine of up to \$5,000.

<u>Sexual Abuse and Aggravated Sexual Abuse</u>--Sexual abuse and aggravated sexual abuse are defined as subjecting another person to sexual contact by forcible compulsion or subjecting another person who is incapable of consent due to age, physical helplessness or mental handicap to sexual contact. **Penalties**--The penalty for a sexual abuse offense may range from three months imprisonment and/or a \$500 fine to 25 years imprisonment and/or a \$5,000 fine. Some types of sexual abuse may be classified as felonies.

For more detailed information on this article of the New York State Penal Code, contact Campus Security at 518-454-5187.

N.B. Portions of this policy are attributed to the National Center for Higher Education Risk Management (NCHERM)