

STUDENT SEXUAL MISCONDUCT POLICY

I. INTRODUCTION:

As a Catholic institution of higher education, Seton Hall University (“the University”) embraces Judeo-Christian values that proclaim the dignity and rights of all people. The University is committed to providing a working and learning environment that is free from violence, discrimination, harassment, retaliation and other unlawful conduct and that assures the fair and equitable treatment of all individuals. Sexual assault and sexual misconduct in any form will not be tolerated. Both sexual assault and sexual misconduct are serious crimes under the criminal laws of the state of New Jersey, and a conviction of these crimes could result in imprisonment. The disciplinary mechanism described below is not intended to replace or serve as an alternative to the reporting of any sex offense to appropriate police authorities. The University believes and encourages the victim of any sex misconduct should seek assistance and immediately contact the police.

II. SCOPE OF THE POLICY:

This policy applies to:

- All students of Seton Hall University regardless of sexual orientation or gender identity.
- All vendors and guests on and off campus
- All individuals interacting with students in extension programs, such as experiential learning opportunities, cooperative education, internships, clinical placements and student teaching.
- All campus locations, programs, and activities sponsored by the University.

III. CONFIDENTIALITY:

The University encourages victims of sexual assault or sexual misconduct to talk to somebody about what happened – so victims can get the support they need, and so the University can respond appropriately. If a victim reports the conduct to any professional staff member of Counseling and Psychological Services, Health Services, or to a member of the clergy, the communication is considered privileged and cannot be shared without the victim’s permission. If a victim reports the conduct to any other employee, that employee is required to notify the Title IX Coordinator or one of the Deputy Coordinators. A full description of the confidentiality and reporting options is explained in the University’s “Reporting and Confidentially Disclosing Sexual Violence” policy available here:

IV. ASSISTANCE AVAILABLE FOLLOWING AN INCIDENT OF SEXUAL MISCONDUCT:

For immediate assistance on-campus:

Public Safety & Security – 973-761-9300

Dean of Students & Deputy Title IX Coordinator, Karen Van Norman – 973-761-9076

Counseling & Psychological Services – 973-761-9500

Title IX Coordinator, Lori Brown – 973-313-6132

Senior Associate Athletics Director & Deputy Title IX Coordinator, Kimberly Keenan-Kirkpatrick – 973-761-9494

For immediate assistance off-campus:

Emergency - 911
South Orange Police Department – 973-763-3000
Newark Police Department – 973-733-6000
Essex County SAVE (designated Rape Care Center) – 877-733-2273

Health Care Assistance:

Treatment is available for injuries, preventative treatment for sexually transmitted diseases, and other health care the victim may need. Medical treatment is also available to assist in the preservation of evidence. This is done through a rape kit done by a Sexual Assault Nurse Examiner (SANE).

Victims are encouraged to take steps to preserve evidence in the event she/he wishes to pursue charges at any point. To help preserve evidence, victims should not wash or shower, should not change clothes, and should not use the toilet if possible. If clothes are changed, the clothing worn at the time of the incident should be placed into a bag, preferably paper, to preserve any evidence.

Essex County SAVE (877-733-2273) can provide the victim with an advocate who can accompany the victim to the hospital for a medical exam and/or rape kit by a SANE.

The victim may also go to Health Services for care; however, a rape kit cannot be done there.

The victim may contact Public Safety & Security (973-761-9300) or the Dean of Students (973-761-9076) for assistance in transportation to the hospital and in contacting Essex County SAVE.

Ongoing Assistance:

Counseling is available for victims on campus at Counseling & Psychological Services (973-761-9500). This support is available whether or not a victim chooses to file a complaint on campus or criminal complaint with the police.

For assistance in filing a complaint with the University’s Student Conduct system and support through that process, victims should contact the Dean of Students Office (973-761-9076).

For assistance in filing a criminal complaint with the police and support through that process, victims should contact the Dean of Students Office (973-761-9076) or Essex County SAVE (877-733-2273).

Accommodations and Interim Measures:

The University can also provide the victim with interim measures or other appropriate accommodations. These include, but are not limited to, a change in residence hall location, change in class schedules, change in work schedule, academic support and/or no contact orders. Victims should contact the Dean of Students Office (973-761-9076) to explore further these options.

V. TITLE IX COORDINATOR:

The University has identified the following individuals as the Title IX Coordinator and Deputy Coordinators:

Lori Brown
Director of Compliance & Risk Management
Title IX Coordinator
973-313-6132

Kim Keenan-Kirkpatrick
Senior Associate Athletics Director
Deputy Title IX Coordinator
973-761-9494

Karen Van Norman
Associate Vice President & Dean of Students
Deputy Title IX Coordinator
973-761-9076

The Title IX Coordinator's responsibilities are to:

- Oversee all Title IX complaints
- Identify and address any patterns or systemic problems that arise during the review of such complaints
- Support Deputy Title IX Coordinators
- Ensure prompt and equitable resolutions
- Establish a centralized reporting process for all sexual harassment/misconduct allegations on campus
- Oversee on-going and annual climate checks and maintain tracking/monitoring of sexual harassment/misconduct allegations on campus
- Coordinate and oversee all training, education and prevention efforts

VI. DEFINITIONS:

This policy applies to all forms of sexual misconduct as defined below.

Sexual Harassment

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, or other unwelcome written, verbal or physical conduct of a sexual nature when: (i) Submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's education, employment or participation in a University activity; (ii) Submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting that individual's academic standing, employment status or participation in a University activity ; (iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or creating an intimidating, hostile or offensive environment for that individual's employment, education or participation in a University activity.

Sexual harassment may occur between members of the same or opposite sex. Further, harassment based on a person's sex is not limited to instances involving sexual behavior. That is, harassment on the basis of sex may occur without sexual advances or sexual overtones when conduct is directed at an individual or group because of their sex.

Sexual Assault

Sexual Assault, often referred to as rape, is legally defined differently in each state. In New Jersey, the law defines sexual assault as "the penetration, no matter how slight, in which physical force or coercion is used or in which the victim is physically or mentally incapacitated". For the full definition of sexual assault, refer to the New Jersey Criminal Code **NJSA 2C:14-1**. The law in New Jersey, which is gender neutral, does not specify male or female, but uses the words "actor" and "victim" to describe the persons involved.

Criminal Sexual Contact

Criminal Sexual Contact is legally defined as "intentional, non-consensual touching by the victim or actor, either directly or through clothing, of a victim's or actor's sexual organs, genital area, anal area, inner thigh, groin, buttock or breast, for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor." See New Jersey Criminal Code **NJSA 2C:14-3**.

Domestic Violence

Domestic Violence in the State of New Jersey is defined as the occurrence of one or more of the following criminal offenses upon a person who is protected under the Prevention of Domestic Violence Act of 1990: Homicide – Assault – Terroristic Threats - Kidnapping – Criminal Restraint – False Imprisonment --Sexual Assault – Criminal Sexual Contact – Lewdness – Criminal Mischief – Burglary – Criminal Trespass – Harassment – Stalking. See N.J. Criminal Code **NJSA 2C:25-17**.

The “Victim” of Domestic Violence is defined as a person protected by the Domestic Violence Act and includes any person: (1) who is 18 years or older **OR** (2) who is an emancipated minor **AND** who has been subjected to domestic violence by:

- (1). A spouse, former spouse, or any person who is a present or former household member **OR** who regardless of age has been subjected to domestic violence by a person:
- (2). with whom the victim has a child in common **OR** with whom the victim anticipates having a child in common, if one of the parties is pregnant. **OR**
- (3). who regardless of age, has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

A victim may be below the age of 18. The domestic violence actor must be 18 years of age or emancipated at the time of the offense.

A minor is considered emancipated from his or her parents when the minor:

- (1) has been married (2) has entered military service (3) has a child or is pregnant **OR** has been previously emancipated by the courts.

Dating Violence

There is no separate specific statute in New Jersey law to define “Dating Violence.” A “dating relationship” is included in the Domestic Violence Act and this part of the law has been liberally defined by the courts based on the specific facts of each case including, but not limited to: duration of the relationship, the nature and frequency of the relationship and/or the ongoing expectations between the parties.

Any criminal charges arising from a “dating relationship” in New Jersey, therefore, are part of a domestic violence complaint or are treated as a separate criminal complaint for a specific offense if the relationship does not meet the liberal interpretation as applied by the courts.

Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's personal safety or the safety of others or suffer substantial emotional distress.

Retaliation

Retaliation is defined as an adverse action against an individual who has made a good faith report or complaint, or who has participated in the investigation of a report or complaint or otherwise exercised his/her rights under this policy or the law. Such action is strictly prohibited and will result in referral for disciplinary action.

Additional Definitions:

Consent – clear, unambiguous and voluntary agreement between the participants to engage in specific sexual activity.

Past consent between the participants does not imply future consent. Silence or the absence of resistance does not imply consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Coercion, force, or threat of either invalidates consent.

Someone who is incapacitated cannot give consent. Incapacitation may be due to the use of alcohol and/or other drugs, may be if a person is asleep or unconscious, or may be due to an intellectual or other disability that prevents the student from having the capacity to give consent.

VII. REPORTING POLICIES AND PROTOCOLS:

Formal Reporting:

A victim may choose to file a criminal complaint and/or a student conduct complaint. A victim may file both, either or neither. If a victim chooses to file a criminal complaint, the University usually will also proceed with its investigation and adjudication simultaneously.

Criminal Complaint – A victim may file a criminal complaint by informing the local police department where the incident occurred (for example, South Orange Police Department – 973-763-3000; Newark Police Department – 973-763-6000). Given the seriousness of sexual misconduct, especially sexual assault, the University encourages victims to file a criminal complaint and will support the victim in doing so. Once the criminal complaint is filed, it is the responsibility of law enforcement to investigate. The local prosecutor's office will determine if charges will be filed. The University will support the victim through this process. The nature of the assistance and accommodations are outlined above (see Section IV).

Student Conduct Complaint – A victim may file a Student Conduct Complaint by informing Public Safety & Security (973-761-9300) or the Dean of Students Office (973-761-9076). Given the seriousness of sexual misconduct, especially sexual assault, the University encourages victims to file a Student Conduct complaint and will support the victim in doing so. Once the Student Conduct complaint is filed, it is the responsibility of Public Safety & Security to investigate. Adjudication of the complaint will follow the process outlined in the Student Code of Conduct (see <http://www.shu.edu/offices/community-development/community-standards/introduction.cfm>).

Confidential Reporting – A victim may confidentially report the incident to any professional staff member of Counseling and Psychological Services, Health Services, or to a member of the clergy who is acting in his/her role as a counselor, health care provider, or member of the clergy. The communication is considered privileged and may not be shared without the victim’s permission. The counselor or member of the clergy will assist the victim with information about resources on and off-campus, reporting options, and other types of support.

Responsible Employee Reporting – A victim may report the incident to any employee or office other than those listed in Confidential Reporting above. While a victim’s privacy will be respected, all employees (other than those listed in Confidential Reporting), including Resident Assistants and Peer Advisors, are required to notify the Title IX Coordinator or Deputy Coordinator. The employee is required to report all information relevant to the misconduct or assault provided by the victim. The employee will also encourage the victim to speak directly with the Coordinator.

When the Title IX Coordinator or Deputy Coordinator is notified, he/she will ask the victim to meet with her/him to directly report the incident. The Coordinator will provide the victim with detailed information about resources, assistance, accommodations, and reporting options that are available. If the victim does not wish to pursue a criminal complaint or student conduct complaint, the Coordinator is still required to make the following notifications to:

- Public Safety & Security for purposes of Clery reporting. At the victim’s request, this report may exclude identifying information.
- The University’s insurance carrier. This report does not include any identifying information.

Third Party or Anonymous Reporting – Any person with information about sexual misconduct or sexual assault may report it to the University through the “Anonymous Witness” report (see - <http://www.shu.edu/offices/public-safety/anonymous-witness.cfm>).

Non-Retaliation Policy – Retaliation against any individual for reporting an incident of sexual misconduct or for participating in the investigation, review and/or hearing. The University will take very seriously any action claimed as retaliation against an individual for reporting sexual misconduct or any individual(s) who may participate in a review or hearing. A student accused of retaliation will be referred to the Student Conduct system for adjudication.

In addition, the University will not issue any conduct sanctions for any reporting student for other violations of University policy (i.e. alcohol policy) related to the reported sexual misconduct. For example, if the victim reports that he/she was assaulted while he/she was intoxicated, and he/she consumed alcohol underage, the University will not charge the individual with a violation of the alcohol policy.

VIII. INVESTIGATION PROCEDURES AND PROTOCOLS

The Title IX Coordinator or Deputy or his/her designee, is charged with investigating any report of sexual misconduct.

If the victim decides not to file a criminal complaint and/or a student conduct complaint, it is important that he/she understand the following:

- The University may still investigate and pursue the matter if any of the following conditions apply:
 - If the actor has been accused of similar misconduct previously.
 - If the actor is not known or cannot be located.
 - If there were multiple actors.
 - If a weapon was used in the incident.
 - If drugs were used to incapacitate the victim in the incident.
 - If, in the judgment of the University, it is appropriate to do so.
 If any of these conditions apply, the University will also notify appropriate law enforcement.
- A victim's decision not to file a complaint or not to cooperate with the investigation may severely limit the action the University can take to address the matter.
- A record of the report will remain on file in the Coordinator's Office(s).

If the victim decides not to file a complaint, the University may still take action without initiating formal action against the actor. Such actions may include, but are not limited to: increased security at certain locations, training and education for specific groups and increased publicizing of the University's policies on sexual misconduct.

The extent of the University's investigation will depend upon the information provided by the victim, the willingness of the victim to cooperate and/or pursue a complaint, and any additional information developed as a result of the investigation. The investigation may include:

- Interviews with the victim.
- Interviews with the actor.
- Interviews with any witness(es).
- Examination of any available evidence.

The victim is encouraged to preserve any physical evidence in the event that she/he may decide to pursue a criminal complaint at any point. To preserve evidence, the victim is advised:

- Not to shower, bathe, or wash any part of the body.
- Not to use the toilet if possible.
- Not to change clothes, wash sheets, or dispose of any evidence.
- If clothes are changed, place the clothes worn at the time of the incident into a bag, preferably a paper bag.
- Have a rape kit done at the local hospital by a Sexual Assault Nurse Examiner. The University (Public Safety & Security or Dean of Students Office) or Essex County SAVE can assist the victim in getting to the hospital.

The University cooperates with appropriate law enforcement in any investigation by them into alleged sexual misconduct or sexual assault.

The University may take interim action to protect or assist the victim pending the outcome of an investigation or complaint. This interim action and appropriate accommodations are described above (see Section IV).

IX. GRIEVANCE/ADJUDICATION PROCEDURES:

For adjudication of Student Conduct complaints, the University's Student Conduct system is explained at <http://www.shu.edu/offices/community-development/community-standards/introduction.cfm>).

Key points relative to complaints of sexual misconduct in the University's process include:

1. Mediation between the parties is not appropriate in sexual misconduct cases.
2. The victim is identified as the complainant. The actor is identified as the respondent.
3. If the respondent accepts responsibility for violation of the Student Code, the hearing officer will issue the appropriate sanction and no hearing will be held before the Community Standards Review Board.
4. The standard for determining responsibility is the preponderance of the evidence (i.e. more likely than not).
5. The Community Standards Review Board members have been trained for their responsibility, including training for adjudication of sexual misconduct complaints. Either the complainant or the respondent may object to any member of the Board based on bias.
6. All rights throughout the process, including notice of hearing, opportunity to present witnesses or other relevant evidence, having an advisor present, etc. are provided equally to both the complainant and respondent.
7. Questions for either party may only be asked by members of the Review Board. Cross examination of a party by a party is not permitted. Either party may submit a question for consideration to the Review Board. There will be no questions about the complainant's prior sexual conduct with anyone other than the respondent.
8. Evidence of a prior consensual relationship between the parties does not by itself imply consent or preclude a finding of responsibility for sexual misconduct.
9. Upon request of the complainant or the respondent, arrangements will be made to allow the hearing to continue without both parties present in the same room. The use of closed circuit TV or similar technology may be used.

If the respondent is found to be responsible for sexual misconduct, the extent of the misconduct, as well as the respondent's prior disciplinary history if any, will determine the resulting sanction. The sanction imposed will range from University Suspension to University Expulsion.

Appropriate accommodations for the complainant are outlined above (see Section IV).

The University may also undertake additional actions, including but not limited to increased security in certain areas, education and training for specific groups and increased publicizing of the University's policies on sexual misconduct. .

Both the complainant and the respondent will be notified in writing of the outcome of the case at the same time. The University will not require either party to agree to a nondisclosure agreement regarding the outcome of the case.

Both parties have the opportunity to appeal the decision. The appeal process is described in detail here - <http://www.shu.edu/offices/community-development/community-standards/review.cfm>.

X. PREVENTION AND EDUCATION

The University provides sexual misconduct and bystander intervention education and prevention programming for all students throughout the year. The University has also formed a cross-departmental Sexual Assault Prevention Committee to provide increased coordination of education, outreach, and compliance efforts. This programming takes the form of live presentations, workshops, printed materials, and the use of social media. Some programs are open to all students and other programs are for specific groups or organizations. While some programming is repeated each year, new programs are also introduced. Examples of programs that have been held include:

- The Clothesline Project - A display of tee shirts designed by survivors of violence to increase awareness about the impact of violence to encourage others to break the cycle of abuse.
- Welcome to the Party - A powerful film and discussion about drug and alcohol usage and sexual assault issues.
- Take Back The Night - An organized march by members of the University community to protest sexual assault.
- Law Society of New Jersey - A University sponsored discussion of domestic violence and healthy relationships provided by members of the legal community.
- Students Challenging Realities and Educating Against Myths (SCREAM) - An improvisational theater program created at Rutgers University to address issues of sexual, dating, and domestic violence.
- A Call To Men - A program designed as part of a month long men's campaign to educate male members of the University community about the impact of contemporary social issues.
- Can I Kiss You? - An awareness program about healthy relationships and sexual violence.
- Printed Publications - Prepared by the Office of Student Life to provide resource information for victims of sexual assault, dating or domestic violence and stalking. Other information is provided for issues related to Title IX including sexual harassment and sexual violence.
- Stalking Awareness – Information from the National Center for Victims of Crime providing about the issues surrounding Stalking are provided to community members in pamphlets and poster form.
- Bystander Intervention – A workshop designed to encourage and empower students to take action, intervene, and/or report any matters of concern.
- Alcohol Use and Sexual Assault – A program that helps students understand the link between alcohol use and sexual assault.

In addition, at several points during the year, the University offers RAD (Rape Aggression Defense) Training for female students and employees. The Training is offered on campus and is free for participants. This realistic course teaches self-defense tactics and techniques.

XI. TRAINING

Faculty and Staff:

Faculty and staff are trained throughout the year on:

- University policy with regards to sexual misconduct and sexual harassment.
- Definition(s) related to matters of sexual misconduct and sexual harassment.
- How and where to refer reports or complaints.

Title IX Coordinator must ensure:

- Employees designated to serve as Title IX coordinators and deputy coordinators have adequate training on what constitutes sexual harassment, including sexual violence and misconduct and understand how the complaint/grievance procedures operates.
- Public Safety & Security employees have adequate training on the University's Title IX complaint/grievance procedures and any other procedures used for investigating reports of sexual violence and misconduct.
- Ensure that all employees should receive a copy of the University's Title IX policies and information on reporting incidents of sexual violence and misconduct.
- Ensure appropriate training for employees in investigating and adjudicating complaints of sexual violence and misconduct.

Public Safety & Security

Public Safety & Security administration charged with investigation of sexual misconduct complaints are trained annually on:

- Victim-centered response.
- Investigation protocol.
- Proper documentation.
- Clery reporting.

Responsible Employees

Responsible employees are trained each year on:

- Obligation to notify the Title IX Coordinator or Deputy Coordinator of any report of sexual misconduct.
- Definition(s) related to matters of sexual misconduct and sexual harassment
- University policy with regards to sexual misconduct and sexual harassment
- Resources for victim reporting and assistance

Community Standards Review Board

Members of the Community Standards Review Board receive ongoing training regarding their responsibilities. With specific regards to sexual misconduct, Board members are trained on:

- Definition of sexual misconduct.
- Effects of sexual assault upon the victim, including but not limited to short-term and long-term effects, variation of victim responses, etc.
- Guidance on appropriate questioning for complainant and respondent, and instruction about questions that may not be asked.
- Understanding of accommodations that may be made for a hearing about sexual misconduct (i.e. allowing complainant and respondent to be in separate rooms).
- Understanding the standard of preponderance of the evidence for determining responsibility.

Responsible Offices:

Student Services
Title IX Coordinator

Related Policies:

Sexual Misconduct and Harassment Policy

Approved: A. Gabriel Esteban, Ph.D.

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