



## **SEXUAL VIOLENCE POLICY**

Members of the Bay State College community are expected to behave in ways that demonstrate their care and respect for others. Bay State College students are expected to live within a set of community expectations that insure the health, safety and quality of life of all. Sexual violence in any form constitutes one of the most serious violations of respect for others and will not be tolerated within our community. Some forms of sexual violence, often referred to as sexual assault or rape, are punishable by both civil and criminal legal action.

When an allegation of sexual violence is brought to the administration, and a respondent is found to have violated this policy, serious sanctions will be used to ensure that such actions are never repeated. All members of the community are expected to conduct themselves in a manner that does not infringe on the rights of others. The College's Sexual Violence Policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. Students are responsible for being familiar with and abiding by the standards of conduct set forth herein.

### **TITLE IX**

#### **WHAT IS TITLE IX?**

Title IX of the Education Amendments of 1972 protects individuals from sex discrimination in educational programs and activities at institutions that receive federal financial assistance.

Bay State College is committed to providing an environment free from discrimination on the basis of sex. The College provides many resources to students, faculty, and staff to address concerns relating to discrimination on the basis of sex, which includes sexual misconduct and assault. Kate O'Hara, Dean of Students, serves as the College's Title IX Coordinator, and oversees and provides leadership for the activities of the Title IX deputies, compliance-related responsibilities, and Title IX training.

Kate O'Hara is located on the third floor of 35 Commonwealth Avenue and can be reached at [kohara@baystate.edu](mailto:kohara@baystate.edu) or (617) 217-9225.

#### **TITLE IX RESPONSIBILITIES**

In addition to the Title IX Coordinator, the College has appointed Title IX deputies to assist in developing an efficient and effective college response to each complaint and, where appropriate, assist with investigations of particular situations.

The Title IX deputies are:

- Jeremy Shepard, Assistant Dean of Students; 35 Commonwealth Avenue, First Floor; (617) 217-9218; [jshpard@baystate.edu](mailto:jshpard@baystate.edu)
- Dustin Martin, Assistant Director of Residence Life; 35 Commonwealth Avenue, First Floor; (617) 217-9231; [dmartin@baystate.edu](mailto:dmartin@baystate.edu)

## **WHEN SHOULD YOU CONTACT THE TITLE IX COORDINATORS OR DEPUTIES?**

Any student, faculty or staff member, or applicant for admission who has concerns about sex discrimination or sexual violence is encouraged to seek the assistance of the Title IX Coordinator or a deputy. Contact the coordinator or deputy if you:

- Wish to understand your options if you think you may have encountered sex discrimination or sexual violence;
- Learn of a situation that you believe may warrant a College investigation;
- Have questions about the College's policies and procedures.

## **SEXUAL VIOLENCE**

### **TYPES OF SEXUAL VIOLENCE OFFENSES**

Bay State College prohibits all types of sexual violence, whether perpetrated by a stranger or acquaintance, whether occurring between individuals of the same sex or the opposite sex, whether occurring on or off campus, and whether directed against a member of the College community or someone outside of the College community. Sexual violence offenses include, but are not limited to the following:

#### ***Sexual Assault***

Sexual assault is any sexual penetration (anal, oral, or vaginal), however slight, with any object or sexual intercourse by a man or woman upon a man or woman without effective consent.\* Sexual penetration includes vaginal or anal penetration by a penis, object, tongue, or finger and oral copulation by mouth to genital contact or genital to mouth contact.

#### ***Sexual Misconduct***

Sexual misconduct is any intentional sexual touching, however slight, with any object by a man or woman upon a man or woman without effective consent.\* Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another or any other bodily contact in a sexual manner. Any disrobing of another or exposure to another by a man or woman without effective consent is considered a violation of this policy.

#### ***Sexual Harassment***

Sexual harassment consists of any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. This includes, but is not limited to: submission to, or rejection of, such conduct that is made either implicitly or explicitly a term or condition of employment or participation in an education program; submission to, or rejection of, such conduct that is used as the basis for employment or academic decisions affecting a student; such conduct that has the purpose or effect of interfering with a student's work or academic performance; or such conduct that creates a hostile or intimidating work or academic environment.

#### ***Sexual Exploitation***

Sexual exploitation occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute sexual assault, sexual misconduct, or sexual harassment. Examples of sexual exploitation include, but are not limited to: making public sexual activity with another student without the other student's consent; prostituting another student; non-consensual video- or audio-taping of sexual activity; going

beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex); voyeurism; and/or knowingly transmitting a sexually transmitted infection (STI) or HIV to another student.

### ***Stalking***

Stalking is defined as any pattern of conduct that has the purpose or effect of producing fear and/or creating an intimidating, hostile, or offensive environment. A "pattern of conduct" is defined as two or more times and constitutes a repeated attempt to initiate unwanted, inappropriate, and/or threatening interactions against a particular person or group. Examples of stalking behavior include, but are not limited to: unwelcome communication that can be face-to-face, phone, text, email, voice messages, written messages, gifts, etc.; pursuing and/or following another person or group; surveillance; trespassing; gaining unauthorized access to personal, medical, financial, or any other identifying piece of information without explicit permission; and accessing email, phone, or other forms of personal communication in order to follow or monitor another's activity.

Cyberstalking is an extension of the physical form of stalking and is unacceptable at any level. Using electronic media such as the Internet, social networking sites, cell phones, or similar devices or mediums to pursue, track, harass, monitor, or make unwanted contact with another person is a violation of this policy.

### ***Relationship Violence***

Relationship violence is a pattern of coercive behaviors that serves to exercise control and power in an intimate relationship. The coercive and abusive behaviors can be physical, sexual, psychological, verbal and/or emotional. Relationship violence can occur between current or former intimate partners who have dated, lived together, currently reside together on or off campus, or who otherwise are connected through a past or existing relationship. It can occur in opposite-sex and same-sex relationships. Relationship violence is sometimes referred to as intimate partner violence, domestic violence, or dating violence.

Examples of relationship violence include, but are not limited to: attempting to cause or causing bodily injury by hitting, slapping, punching, hair-pulling, kicking, sexual assault and/or other forms of unwanted physical contact that can cause harm; knowingly restricting the movements of another person; isolating or confining a person for a period of time; controlling or monitoring behavior; being verbally and/or emotionally abusive; and exhibiting extreme possessiveness or jealousy.

### **\*CONSENT DEFINED**

In order for individuals to engage in sexual activity of any type with each other, there must be clear consent. Effective consent is defined as a freely and affirmatively communicated willingness to participate in sexual activity, expressed either by words or clear, unambiguous actions. Bay State College strongly encourages students who choose to engage in sexual behavior to verbally communicate their intentions and consent as clearly as possible.

It is the responsibility of the initiator of sexual activity to ensure that he or she has the other person's consent to engage in sexual activity. Do not make assumptions about consent, about someone's sexual availability, about whether they are attracted to you, about how far you go, or about whether they are physically and mentally able to consent to you. Clearly communicate your intentions to your sexual partner and give your partner a chance to clearly relate his/her intentions to you.

Mixed messages from your partner are a clear indication that you should step back, defuse the sexual tension, and communicate better. Realize that your potential partner could be intimidated by you or fearful. You may have a power advantage because of your size, strength, and/or standing or reputation at the College. Do not abuse that power. Consent may never be obtained through the use of force, intimidation, or coercion. When someone makes clear to

you that s/he does not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent cannot be assumed because of the existence of a dating relationship between the persons involved or due to the existence of a previous sexual relationship between the persons. Silence, in and of itself, cannot be interpreted as consent. Consent must be present throughout the sexual activity by all parties involved. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity. The perpetrator or victim's use of alcohol or other drugs does not diminish the perpetrator's responsibility.

Consent may never be given by minors (in Massachusetts, those not yet sixteen (16) years of age), those who are mentally disabled, or by one who is incapacitated as a result of alcohol or other drug consumption (voluntary and involuntary) or those who are unconscious, unaware, or otherwise physically helpless. **A person who knows or should reasonably have known that another person is incapacitated may not engage in sexual activity with that person.** Incapacitation means being in a state where a person lacks the capacity to appreciate the fact that the situation is sexual, or cannot appreciate (rationally and reasonably) the nature and/or extent of the situation.

A person's state of incapacity is a subjective determination that will be made after the incident in light of all of the facts available because people reach incapacitation at different points and as a result of different stimuli. They also exhibit incapacity in different ways. The following factors bear on incapacity: body weight, height, and size; tolerance for alcohol and other drugs; amount and type of alcohol or other drugs consumed, and the mixture taken; amount of food intake prior to consumption; voluntariness of consumption; vomiting; propensity for blacking out (mentally or physically); and genetics.

Alcohol-related incapacity results from a level of alcohol ingestion that is more severe than impairment, being under the influence, drunkenness, or intoxication. It is less severe than alcohol poisoning or overdose, which may lead to coma or death. Evidence of incapacity may be detected from context clues, such as: slurred speech, bloodshot eyes, the smell of alcohol on breath, shaky equilibrium, vomiting, outrageous or unusual behavior; and/or unconsciousness.

This policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called "date-rape" drug. Possession, use, and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc., is prohibited, and administering one of these drugs to another person for the purpose of inducing incapacity is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org>.

#### **ADDITIONAL CLARIFYING RULES:**

- A person who is the victim of sexual violence is not required to physically or otherwise resist a sexual aggressor.
- Intentional use of alcohol or other drugs does not excuse a violation of the Sexual Violence Policy.
- Attempts to commit acts of sexual violence are also prohibited under this policy, as is aiding the commission of sexual violence as an accomplice.
- Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly (because you cannot be expected to read the mind of your sexual partner(s)), and all sexual activity must cease.
- An "intent to rape" is not required under the Sexual Assault definition. Unlike murder, for which there must be an intent to kill, sexual assault is not an intent-based concept. The requisite intent for sexual assault is demonstrated by engaging in the act of intercourse intentionally.

#### **INSTITUTIONAL RESPONSE**

Sexual violence in all forms, including those offenses outlined above, constitutes one of the most serious violations of respect for others and will not be tolerated within our community. The College will make all reasonable efforts to preserve confidentiality, restricting information to those with a legitimate need for it, as explained in the section

below. If other policy violations have occurred in connection with an incident of sexual violence, the College generally will not pursue disciplinary action against the complainant or against student witnesses of the incident. The College will make every reasonable effort to resolve a complaint through the conduct system within 60 days.

Decisions made through the College's conduct system utilize a different threshold of responsibility than the criminal justice system. The College uses a standard of the "preponderance of the evidence" or "more likely than not" when determining whether or not a policy violation has occurred. On the other hand, the court system uses the standard of "beyond a reasonable doubt" given its access to expert testimony and criminal evidence.

If the complainant proceeds with both a complaint through the conduct system and a criminal complaint, the College's internal process will normally proceed while the criminal action is in process. However, in such cases, the Dean of Students or designee may elect to stay the conduct process if a student is summarily suspended and the criminal matter remains open.

Any student found responsible for violating the policy on Relationship Violence, Stalking, Sexual Misconduct (where no intercourse has occurred), Sexual Exploitation, or Sexual Harassment will likely receive a sanction ranging from Disciplinary Warning to Dismissal, depending on the severity of the incident, and taking into account any previous Code of Conduct violations.

Any student found responsible for violating the policy on Sexual Assault will likely face a recommended sanction of Suspension or Dismissal.

The College reserves the right to broaden or lessen any range of recommended sanctions in the complaint of serious mitigating circumstances or egregiously offensive behavior. The initial hearing officer, Administrative Hearing Board and/or any appeal officers will not deviate from the range of recommended sanctions unless compelling justification exists to do so.

## **CONFIDENTIALITY AND REPORTING POLICY**

Different people on campus have different reporting responsibilities, and different abilities to maintain your confidentiality, depending on their roles at the College. When consulting campus resources, victims should be aware of confidentiality and mandatory reporting, in order to make informed choices. On campus, some resources may maintain your complete confidentiality, offering you options and advice without any obligation to tell anyone, unless you want them to. Other resources are expressly there for you to report crimes and policy violations, and they will take action when you report your victimization to them. Most resources on campus fall in the middle of these two extremes. Neither the College nor the law requires them to divulge private information that you share with them, except in extremely rare circumstances, described below. You may seek assistance from them without starting a chain of events that takes things out of your control, or violates your privacy.

### ***To Report Confidentially***

If you desire that the details of the incident be kept confidential, you should speak with our School Counselor, Cheryl Raiche. Her office is located on the second floor of 35 Commonwealth Avenue and she can be reached at (617) 217-9212 or [craiche@baystate.edu](mailto:craiche@baystate.edu). Counseling Services are available free of charge to current students.

### ***Quasi-Confidential Reporting***

You can seek advice from certain resources that are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These resources include those without supervisory responsibility or remedial authority to address incidents of Sexual Violence, such as Faculty members, Advisors, Student Success Coordinators, and many others. You can also talk with your Resident Assistant

(RA), but note that your RA will call the Assistant Dean of Students and reveal your name. The Assistant Dean of Students is also a quasi-confidential reporting resource. The Assistant Dean will not file an official report if you do not wish to do so, but can offer you various options to keep you safe. If you are unsure of someone's duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can help you best. If your personally identifiable information is shared, it will be shared with as few people as possible, and all efforts will be made to protect your confidentiality to the greatest extent.

### ***Non-Confidential Reporting Options***

You are encouraged to speak to College officials to make formal reports of incidents (Dean of Students, Vice Presidents, Administration, Human Resources). You have the right and can expect to have incidents of sexual violence be taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting does not mean that your report will not be confidential, but it does mean that people who need to know will be told, and information will be shared as necessary with investigators, witnesses, and the accused. The circle of people will be kept as tight as possible, to preserve your rights and privacy.

### ***Federal Statistical Reporting Obligations***

Certain campus officials have a duty to report incidents of sexual assault for federal statistical reporting purposes. All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on- or off-campus, in the surrounding area, but no addresses are given), for publication in the annual Campus Security Report. This Report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: Residence Life staff, Student Activities staff, Security, Advisors to student organizations, Student Success Coordinators, Human Resources staff, Student Affairs staff, and any other official with significant responsibility for student and campus activities.

### ***Federal Timely Warning Reporting Obligations***

Victims of sexual assault should also be aware that the College must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safe decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

## **RETALIATION POLICY**

It is a violation of the Code of Conduct for any individual, whether by his or her self or through agents acting on his or her behalf, to engage in any form of retaliation or intimidation in connection with complaints of sexual violence. Any such acts of retaliation or intimidation by a member of the College community should be reported to the Dean of Students' Office.

## **QUESTIONS AND ANSWERS**

Here are some of the most commonly asked questions regarding Bay State College's Sexual Violence Policy and Procedures.

**Q:** ***Does the complaint remain confidential?***

**A:** The privacy of all parties to a complaint of sexual violence must be strictly observed, except insofar as it interferes with the College's obligation to fully investigate allegations of sexual violence. Where privacy is not

strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the complainant or the accused student may lead to action through the conduct system. In all complaints of sexual violence, the complainant will be informed of the outcome. In some instances, the College also may choose to make a brief announcement of the nature of the violation and the action taken, using no names. Certain College administrators are informed on a confidential basis (e.g. President, Vice President of Enrollment & Marketing, Dean of Students). If you report an act of alleged sexual violence to a conduct officer of the College and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that the victim must speak with the police, but the College is legally required to notify law enforcement authorities. The College must also statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

**Q: *Will my parent/guardian/spouse be told?***

**A:** No, not unless you tell them. Whether you are the complainant or the accused, the College's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. College officials will directly inform parents/guardians/spouses when requested to do so by a student, or in a life-threatening situation. The College also reserves the right to notify a parent/guardian/spouse in the event that your status as a student or your housing status has either changed or is in serious jeopardy of changing.

**Q: *Will I have to confront the perpetrator?***

**A:** Yes, if you file a formal complaint. Sexual violence is a serious offense and the accused has the right to confront the accuser. However, the College does provide options for allowing confrontation without direct contact, including the use of a room divider or separate hearing rooms.

**Q: *Do I have to name the perpetrator?***

**A:** Yes, if you want formal disciplinary action to be taken against the alleged perpetrator. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy in this document to better understand the College's legal obligations depending on what information you share with different College officials).

**Q: *What do I do if I am accused of Sexual Violence?***

**A:** DO NOT contact the alleged victim. You may immediately want to contact someone in the campus community who can act as your advisor. You may also contact the Assistant Dean of Students or Dean of Students, who can explain the College's procedures for dealing with sexual violence complaints. You may also want to talk confidentially to the School Counselor. If a formal complaint is filed against you through the conduct system, the Assistant Dean of Students or designee will contact you directly, ask you to complete a voluntary statement (if you have not already done so), and review the conduct process with you. If a criminal complaint is filed against you (separate or in addition to a complaint through the conduct system), you may be subject to arrest. An accused student may also be placed on "Summary Suspension" if the information presented suggests that an alleged perpetrator represents a possible risk to any member of the College community or if the alleged incident is serious enough that an immediate separation from the College is necessary. Being placed on "Summary Suspension" is not an assumption of responsibility. Accused students will be informed of their rights as a student and will be subject to a fair process through the Code of Conduct.

**Q: *Will I (as a victim) have to pay for counseling or medical care?***

**A:** The School Counselor is available for support free-of-charge and can be seen during normal business hours. The Counselor can also work with you to find outside resources for long-term support if needed. If you choose to go to the hospital, the College will cover transportation to and from the hospital upon request (a report

does not need to be filed). The College does not cover any medical or mental health expenses outside of that which is provided through the Counseling Office. If you choose to seek medical attention, the College recommends that you go to Beth Israel Deaconess Medical Center Emergency Department (West Campus, 190 Pilgrim Road, Boston, MA 02215). Beth Israel Deaconess Medical Center is a SANE- (Sexual Assault Nurse Examiner) certified site. SANE-certified nurses are specifically trained to perform exams and collect forensic evidence from sexual assault survivors. You can seek medical care whether or not you report the assault to the police. You may receive free care and do not have to use your insurance.

**Q: *What do I do about legal advice?***

**A:** Victims of criminal sexual assault need not retain a private attorney because legal issues will be handled through a representative from the District Attorney's office. You may want to retain an attorney if you are the accused or are considering filing a civil action against the alleged perpetrator.

**Q: *What about changing residence hall rooms?***

**A:** If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is the College's policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused to move, and believe that you have been the victim of sexual violence, you must be willing to pursue formal action through the conduct system. If the information is clear and convincing, the College will place the alleged perpetrator on "Summary Suspension," which would require him/her to leave campus. If the information is unclear, the College will move forward with action through the conduct system, but may not force the perpetrator to move simply based on the accusing student's request.

Other accommodations available to you might include:

- Assistance from support staff in completing the relocation;
- Arranging a Housing Waiver and pro-rating a refund;
- Exam (paper, assignment) rescheduling;
- Taking an incomplete in a class;
- Transferring class sections;
- Relocating class sessions to alternate rooms on campus;
- Temporary withdrawal;
- Medical leave;
- Alternative course completion options.

**Q: *What do I do about preserving evidence of a sexual assault?***

**A:** Physical evidence of a criminal sexual assault must be collected within 72 hours. If you believe you have been a victim of a criminal sexual assault, you should go to Beth Israel Deaconess Medical Center Emergency Department (West Campus, 190 Pilgrim Road, Boston, MA 02215), before washing yourself or your clothing. Beth Israel Deaconess Medical Center is a SANE- (Sexual Assault Nurse Examiner) certified site. SANE-certified nurses are specifically trained to perform exams and collect forensic evidence from sexual assault survivors. You can seek medical care whether or not you report the assault to the police. You may receive free care and do not have to use your insurance. A representative from the College can also accompany you to the hospital. If you go to the hospital, local police will be called, but you are not obligated to talk to the police or to prosecute. The exam will help to keep that option open for you, should you decide later to exercise it. The hospital staff will collect evidence, check for injuries, and address the possibility of exposure to sexually-transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a Student Affairs staff member or other support person



with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene – leave all sheets, towels, etc. that may bear evidence for the police to collect.

**Q:** *Will a student be sanctioned when reporting a sexual violence policy violation if he or she has illegally used drugs or alcohol?*

**A:** No. The severity of the infraction will determine the nature of the College's response, but whenever possible, the College will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual violence is a major concern and the College does not want any of the circumstances (e.g. drug or alcohol use) to inhibit the reporting of such incidents.

**Q:** *Will the use of drugs or alcohol affect the outcome of a sexual violence complaint through the conduct system?*

**A:** The use of alcohol and/or drugs by either party will not diminish the accused student's responsibility. On the other hand, alcohol and/or drug use is likely to affect the complainant's memory and, therefore, may affect the outcome of the complaint. A person bringing complaints of sexual violence must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his or her complaint. If the complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the accused without further corroborating information. Please be aware, however, that decisions made through the College's conduct system use a different threshold than a criminal court. The College utilizes a standard of the "preponderance of the evidence" or "more likely than not" when determining whether a violation has occurred. Criminal courts use the standard of "beyond a reasonable doubt" given their access to expert testimony and criminal evidence.

**Q:** *Will either party's prior use or history of drugs and/or alcohol be a factor when reporting sexual violence?*

**A:** No.

**Q:** *What should I do if I am uncertain about what happened?*

**A:** If you believe that you have experienced non-consensual sexual contact, but are unsure of whether it was a violation of the College's Sexual Violence Policy, you can contact the following individuals:

- Assistant Dean of Students: (617) 217-9218
- Dean of Students: (617) 217-9225
- School Counselor: (617) 217-9212
- Professional On Call (24/7 Emergency Number): (617) 217-9211

## **SPECIAL PROVISIONS**

### ***Attempted Violations***

In most circumstances, the College will treat attempts to commit any of the violations listed in the Code of Conduct as if those attempts had been completed.

### ***College as Complainant***

As necessary, the College reserves the right to initiate a complaint, to serve as a complainant, and to initiate conduct proceedings without a formal complaint by the victim of sexual violence.

### ***False Reports***

The College will not tolerate intentional false reporting of incidents. It is a violation of the Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

### ***Immunity for Victims***

The College community encourages the reporting of Code of Conduct violations, especially sexual violence. Sometimes, victims are hesitant to report to college officials because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many victims as possible choose to report to college officials. To encourage reporting, the College pursues a policy of offering victims of sexual violence limited immunity from being charged for policy violations related to the sexual violence incident. While violations cannot be completely overlooked, the College will provide educational options rather than punishment in such cases.

### ***Prosocial Bystander***

The welfare of students in our community is of the utmost importance. At times, students on and off campus may need assistance. The College encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual violence victim to a Resident Assistant). The College pursues a policy of limited immunity for students who offer help to others in need. While policy violations cannot be overlooked, the College will provide educational options, rather than punishment, to those who offer their assistance to others in need.

### ***Family Notification***

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under the age of 21 of alcohol and/or drug violations. Where a student is a non-dependent, the College will contact parents/guardians to inform them of situations in which there is a health and/or safety risk. The College also reserves the right to designate which college officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act (FERPA).

### ***Notification of Outcomes***

The outcome of a campus hearing is part of the education record of the accused student and is protected from release under the Family Educational Rights and Privacy Act (FERPA). However, the College observes the legal exceptions as follows:

- Complainants in non-consensual Sexual Assault, Sexual Misconduct, Sexual Exploitation, Sexual Harassment, Stalking, and Relationship Violence incidents have an absolute right to be informed of the outcome and sanctions of the hearing, in writing, without condition or limitation.
- The College may release publicly the name, nature of the violation, and the sanction for any student who is found in violation of a college policy that is a "crime of violence," including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. The College will release this information to the complainant in any of these offenses regardless of the outcome.

### ***Alternative Hearing Options***

For sexual violence complaints, and other complaints of a sensitive nature, whether the alleged victim is serving as the complainant or as a witness, alternative hearing options will be given, such as placing a room divider or privacy screen in the hearing room. While these options are intended to help make the alleged victim more comfortable, they are not intended to work to the disadvantage of the accused student.

### ***Past Sexual History/Character***

The past sexual history or sexual character of a party will not be admissible by the other party in hearings unless such information is determined to be highly relevant by the hearing officer or Chair of the Administrative Hearing Board. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request, and must be reviewed in advance of the hearing by the hearing officer or Chair of the Administrative Hearing Board. In addition, while previous conduct violations by the accused student are not admissible during the initial hearing, the hearing officer or Administrative Hearing Board will be informed of all past incidents and sanctions of the accused student if he or she is found responsible. This information becomes relevant to sanctioning and is only admissible at this point in the hearing.

### **RIGHTS OF THE ALLEGED VICTIM**

- The right to investigation and appropriate resolution of all credible complaints of sexual violence made in good faith to the College;
- The right to be treated with respect by college officials;
- The right of both accuser and accused to have the same opportunity to have others present (in support or advisory roles) during a campus disciplinary hearing;
- The right to not be discouraged by college officials from reporting an assault to both on-campus and off-campus authorities;
- The right to simultaneously file a criminal complaint and a Title IX complaint;
- The right to be informed of the outcome and sanction of any disciplinary hearing involving sexual assault, usually immediately after the hearing itself;
- The right to be informed by college officials of options to notify proper law enforcement authorities and the option to be assisted by college officials in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire;
- The right to be notified of available counseling, mental health, or student services for victims of sexual violence, both on campus and in the community;
- The right to notification of, options for, and available assistance in changing academic and living situations after an alleged sexual violence incident, if so requested by the victim and if such changes are reasonably available (no formal complaint or investigation, campus or criminal, need occur before this option is available).

Accommodations may include:

- Change of an on-campus student's housing to a different on-campus location;
- Assistance from support staff in completing the relocation;
- Arranging a Housing Waiver and pro-rating a refund;
- Exam (paper, assignment, presentation) rescheduling;
- Taking an incomplete in a class;
- Transferring class sections;
- Relocating class sessions to alternate rooms on campus;
- Temporary withdrawal;
- Medical leave;
- Alternative course completion options.

- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right not to have any complaint of sexual assault mediated (as opposed to adjudicated);
- The right to make opening and closing statements at the conduct hearing and to have those statements considered in determining the sanction;
- The right to a campus no-contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing, or other improper behavior that presents a danger to the welfare of the complaining student or others;
- The right to have complaints of sexual violence responded to quickly and with sensitivity by college officials;
- The right to appeal the finding and sanction of the hearing officer or Administrative Hearing Board, in accordance with the standards for appeal established by the College;
- The right to review all information and reports available regarding the complaint, subject to the confidentiality limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to participate in the hearing, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);
- The right to preservation of confidentiality, to the extent possible and allowed by law;
- The right to a hearing closed to the public;
- The right to bring a victim advocate or advisor to all phases of the investigation and campus conduct proceedings;
- The right to give information in a campus hearing by means other than being in the same room with the accused student;
- The right to present relevant witnesses to the hearing officer or Administrative Hearing Board;
- The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;
- The right to have the College compel the presence of student, faculty and staff witnesses, as well as the right to ask questions, directly or indirectly, of witnesses (including the accused), and the right to challenge presented information.
- The right to be present for the entirety of the hearing, with the exception of confidential deliberations;
- The right to have complaints heard by hearing officers who have received annual sexual misconduct adjudication training;
- The right to request a hearing officer of a particular gender or to a hearing board comprised of representatives from different genders;
- The right to have college policies and procedures followed without material deviation;
- The right to be informed in advance of any public release of information regarding the complaint;
- The right not to have released to the public and personal information about the complainant without his or her consent;
- The right to an environment free from retaliation or intimidation in connection with the filed complaint.

## **THE RIGHTS OF THE ACCUSED**

- The right to investigation and appropriate resolution of all credible complaints of sexual violence made in good faith to college officials against the accused student;
- The right to be treated with respect by college officials;
- The right to be informed of and have access to campus resources for medical, counseling, and advisory services;
- The right to be fully informed of the nature, rules and procedures of the College's conduct system and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;
- The right to a hearing on the complaint, including timely notice of the hearing date and adequate time for preparation;
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;

- The right to make voluntary opening and closing statements at the conduct hearing and to have those statements considered in determining the sanction;
- The right to appeal the finding and sanction of the hearing officer or Administrative Hearing Board, in accordance with the standards for appeal established by the College;
- The right to review all information and reports available regarding the complaint, subject to the confidentiality limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);
- The right to a hearing closed to the public;
- The right to petition that a hearing officer or any member of the Administrative Hearing Board be removed on the basis of bias;
- The right to have the College compel the presence of student, faculty and staff witnesses, as well as the right to ask questions, directly or indirectly, of witnesses and the right to challenge information;
- The right to have complaints heard by hearing officers who have received annual sexual misconduct adjudication training;
- The right to have college policies and procedures followed without material deviation;
- The right to have an advisor or advocate to accompany and assist in the campus hearing process. This advisor must be a member of the College community but may not take part directly in the hearing itself, though they may communicate with the accused student as necessary;
- The right to a fundamentally fair hearing and fair practice, as explained in the *Student Handbook*;
- The right to a decision based solely on information presented during the conduct process. Such information shall be credible, relevant, based in fact, and without prejudice;
- The right to written notice of the outcome and sanction of the hearing;
- The right to a hearing board (where applicable) comprised of representatives from different genders;
- The right to be informed, in advance when possible, of any public release of information regarding the complaint.