



St. Joseph's College of Nursing  
at St. Joseph's Hospital Health  
Center Syracuse, New York

**SJCON: SEXUAL VIOLENCE PREVENTION AND RESPONSE,**  
**TITLE IX**

**PURPOSE:**

St. Joseph's College of Nursing (SJCON) is committed to maintaining a healthy and safe learning, living, educational, and working environment that is free from gender discrimination, harassment, and creates an environment that promotes responsibility, dignity, and respect in matters of sexual conduct.

This policy is designed to address conduct that falls within Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, the Campus Sexual Violence Elimination Act (SaVE Act), and NYS Education Law Sections 6432 and 6439-6449.

Title IX prohibits discrimination, harassment, and retaliation of any kind on the basis of sex. Title IX also prohibits Violence Against Women Act offenses ("Sexual and Interpersonal Offenses") such as sexual assault, sexual misconduct, sexual violence, domestic violence, dating violence, and stalking. Any person, regardless of gender, can be a victim/survivor of a Title IX violation.

This Policy applies to conduct that occurs and actions committed by students, faculty, staff, or third parties against a person in the United States, whenever the conduct or action occurs:

1. On SJCON campus property. St. Joseph's College of Nursing's Campus is defined as any property owned and operated by the governing organization, St. Joseph's Health; or
2. Off SJCON campus property. If the conduct was in connection with SJCON or a SJCON recognized program or activity which includes locations, events, or circumstances over which SJCON exercised substantial control over both the person accused of the conduct and the context in which the sexual harassment occurred.

## **I. CONTACTS:**

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The Title IX Coordinator/Investigator handles matters related to Title IX, and will help students

- access medical and mental health treatment;
- report the sexual or interpersonal offense internally and/or to local authorities;
- access support resources; and
- assist the victim/survivor in obtaining a SJCON no-contact order, a court-issued restraining order, or other lawful order of protection.

### **The St. Joseph's College of Nursing Title IX Coordinator/Investigator is:**

Ann M. Noel  
315-448-5043  
[Ann.noel@sjhcon.edu](mailto:Ann.noel@sjhcon.edu)

## **II. NEW YORK STATE (NYS) CONSOLIDATED LAWS, EDUCATION LAW – STUDENTS' BILL OF RIGHTS**

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### ***All students have the right to:***

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

### III. PROHIBITED CONDUCT DEFINITIONS

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**A. Acquaintance rape:** Rape by a person who is known to the victim.

**B. Domestic Violence:** Under New York law domestic violence is an act which would constitute a violation of the penal law including, but not limited to (and is committed by an intimate partner or family member):

- disorderly conduct
- harassment
- aggravated harassment
- sexual misconduct
- forcible touching
- sexual abuse
- stalking
- criminal mischief
- menacing
- reckless endangerment
- kidnapping
- assault
- attempted murder
- criminal obstruction or breaching of blood circulation
- strangulation
- creates a substantial risk of physical or emotional harm to a person or a person's child

**C. Dating Violence:** is not specifically defined in NYS law. However, intimate relationships are covered by the definition of domestic violence when the act constitutes a listed crime and is committed by a person in an "intimate relationship" with the victim.

The victim can be anyone over the age of sixteen, any married person, or parent accompanied by the minor child or children in situations in which such person or such person's child is a victim of the act.

**D. Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will when the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.

**E. Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**F. Rape:** Rape is nonconsensual sexual intercourse perpetrated by coercion, intimidation, or physical force either threatened or actual. Rape also occurs when the victim is incapable of giving legal consent because the victim is less than 17 years of age, mentally incapacitated or incompetent, physically helpless including by drug or alcohol consumption or due to being asleep.

**G. Sexual activity:** The same meaning as “sexual act” and “sexual contact.” Current definition used by the federal government. 18 U.S.C. 2246(2)-(3) states that:

**Sexual Act:**

- Contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
- Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- The intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

**Sexual Contact:**

- The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Individuals must obtain affirmative consent\* prior to engaging in any of the activity referenced above.

\*See Other Definitions

**H. Sexual harassment:** Conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., *quid pro quo* \*);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, *and* objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity; or
- Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

\***Quid pro quo** - A favor or advantage granted or expected in return for something.

**I. Sexual Assault:** The term “sexual assault” is not a term used in the NYS penal code. Instead, NYS law uses the terms “rape,” “fondling,” “incest,” and “statutory rape,” which meet the federal definition of sexual assault as used in the Federal Bureau of Investigation’s Uniform Crime Reporting program.

**J. Stalking:** Occurs when one person engages in a course of conduct which is directed at a specific person and that course of conduct causes that person to be in fear of harm to themselves, property, a member of their immediate family, or an acquaintance. Cyber stalking is a form of stalking which can include the use of the Internet or other electronic means to stalk or harass an individual.

**K. Statutory Rape:** Non-forcible sexual intercourse with a person who is under the age of consent.

## IV. OTHER DEFINITIONS

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- A. Affirmative Consent:** Affirmative consent is a knowing, voluntary, and mutual decision between all participants to engage in sexual activity. Consent may be given by words or actions as long as those words or actions create clear permission regarding an individual's willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.
- Consent to any sexual act or prior sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
  - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol at the time.
  - Consent may be initially given and withdrawn at any time.
  - Consent cannot be given when a person is incapacitated such that the individual lacks the ability to choose knowingly to participate in sexual activity. Incapacitation may be caused by a lack of consciousness or by being asleep, being involuntarily restrained, or in other circumstances such as being under the influence of drugs and/or alcohol to the extent that the individual is unable to consent.
  - Consent cannot be given when it is the result of coercion, intimidation, force, or threat of harm.
  - When consent is withdrawn or can no longer be given, sexual activity must stop.
- B. Bystander:** A person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.
- C. Code of Conduct:** The written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.
- D. Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment, irrespective of whether a formal complaint has been filed.
- E. Institution:** Any college or university chartered by the regents or incorporated by special act of the legislature that maintains a campus in New York.
- F. Preponderance of the Evidence:** The standard of proof in sexual and interpersonal violence cases, which asks whether it is "more likely than not" that the violence occurred. If the evidence presented meets this standard, then the respondent should be found responsible.
- G. Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**H. Title IX Coordinator:** Individual who ensures the campus community is aware of legal rights under Title IX

- Ensures the campus community complies with Title IX policies, procedures, and regulations;
- Provides education, training, and programming to the campus community;
- Takes immediate action to all reports of sexual discrimination, sexual harassment, sexual assault, dating violence, domestic violence, and stalking that are reported to non-confidential resources;
- Ensures that both the complainant and respondent know their options and get help, resources, and services they need;
- Conducts fair, equitable, and unbiased investigations while serving as a neutral fact finder for both the complainant and the respondent; and
- Responsible under the law for tracking patterns and spotting systemic issues.

## V. CONFIDENTIALITY

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**A. Confidential Disclosure.** May be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to:

- Licensed mental health counselors
- Medical providers
- Pastoral counselors

In addition, there are publicly available services through which a confidential report may be made, See: <https://ovs.ny.gov/locate-program>. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence (many available in several languages). Please note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to SJCON.

**B. Private (Non-Confidential) Disclosure:** May be offered by an individual when such individual is unable to offer confidentiality under the law but shall not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with applicable laws, including informing appropriate institution officials. Incidents related to Title IX are to be reported to the Title IX Coordinator/Investigator and/or St. Joseph's Health Safety and Security who can offer privacy and assist in obtaining resources.

**Please contact:**

- St. Joseph's Health Campus Safety and Security: 315-448-5173 **or** 5555 and/or
- Title IX Coordinator/Investigator: Ann Noel 315-448-5043 [ann.noel@sjhcon.edu](mailto:ann.noel@sjhcon.edu)

**Responsibilities of Faculty, Staff and Other Non-Confidential SJCON Employees Following Receipt of a Report:** SJCON recognizes that complainants may be most comfortable disclosing sexual violence and other prohibited conduct to a SJCON member they know well, such as faculty or staff. These "non-confidential" employees will protect and respect a complainant's privacy to the greatest extent possible and share information only on a need-to-know basis; however, they cannot serve as a confidential resource.

Any SJCON employee who receives a report about conduct prohibited by this policy involving a student is required to inform the Title IX Coordinator/Investigator about the incident. Information about sexual harassment that a student includes in a classroom assignment is considered a report and must be shared with the Title IX Coordinator/Investigator. These reporting requirements aim to ensure that all potential complainants are provided with appropriate resources and supportive measures, even if they do not wish to pursue a formal complaint.

Notwithstanding this requirement, SJCON encourages all members of the campus community to report conduct prohibited by this policy directly to a Title IX Coordinator/Investigator.

### **C. Family Educational Rights and Privacy Act (FERPA):**

**Disciplinary Records:** While student disciplinary records are protected as education records under *FERPA*, there are certain circumstances in which disciplinary records may be disclosed without the student's consent. A postsecondary institution may disclose to an alleged victim of any crime of violence or non-forcible sex offense the final results of a disciplinary proceeding conducted by the institution against the alleged perpetrator of that crime, regardless of whether the institution concluded a violation was committed. An institution may disclose to anyone—not just the victim—the final results of a disciplinary proceeding, if it determines that the student is an alleged perpetrator of a crime of violence or non-forcible sex offense, and with respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.

**The Clery Act:** the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* requires postsecondary institutions to provide timely warnings of crimes that represent a threat to the safety of students or employees and to make public their campus security policies. It also requires that crime data be collected, reported, and disseminated to the campus community via the SJCON website and to the New York State Department of Education (NYSED) annually. The *Clery Act* is intended to provide students and their families with accurate, complete, and timely information about safety on campuses so that they can make informed decisions. Such disclosures are permitted under *FERPA*.

## **VI. REPORTING**

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**A. Criminal complaints:** To file a criminal complaint:

- **St. Joseph's Health Campus Safety and Security:** 315-448-5175 or 5555
- **City of Syracuse local law enforcement:** 911
- **Onondaga County Sheriff's Department:** 315-435-2962
- **New York State Police:** 1-844-845-7269 (to report a sexual assault on a New York college campus)

**B. Title IX Coordinator/Investigator:**

- Ann Noel 315-448-5043 [ann.noel@sjhcon.edu](mailto:ann.noel@sjhcon.edu)

- C. Anonymous Reporting:** Individuals wishing to file an anonymous report of sexual assault, domestic violence, dating violence, and/or stalking may use the link provided. The Title IX Coordinator/Investigator will review the report and proceed with an investigation accordingly.

<https://www.surveymonkey.com/r/sjcontitleix>

**To best preserve evidence:**

- Avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical examination has been completed.
- Within 96 hours of an assault, the complainant can receive a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services.
- Complainants are encouraged to notify hospital personnel during the medical visit if they do not want their insurance policyholder to be notified about access to these services.

- D. Public Awareness/Advocacy Events:** If a victim of a Title IX crime discloses a situation through a public awareness event such as “Take Back the Night,” candlelight vigils, protests, or other public events, SJCON is not obligated to begin an investigation. However, SJCON may review the information provided and use it to offer additional education and/or prevention to the campus community.

## **VII. SUPPORT MEASURES**

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- A.** Students may request support services by contacting the Title IX Coordinator/Investigator who is available during regular business hours throughout the academic year to provide information or guidance about Title IX violations. No police report, disciplinary complaint or investigation needs to occur before this option is available. The Title IX Coordinator/Investigator will exercise discretion and sensitivity about sharing the identity of the victim/survivor when arranging for interim support services. A victim/survivor can access these services any time, even if the student initially declined the services.
- B.** All students will be provided equitable and accessible ways to report violations of the policy.
- C.** Services are provided to either the complainant or the respondent and kept confidential unless disclosure is necessary to provide the service.
- D.** A suspension, even pending a disciplinary proceeding, is a disciplinary sanction that can only be applied after a finding of responsibility. However, if a respondent poses an immediate threat to the physical health or safety of the complainant or anyone involved in the investigation, the respondent will be immediately removed from the premises prior to the conclusion of the hearing process (or even where no hearing process is pending) and allows the SJCON to place a non-student employee respondent on administrative leave while a hearing is pending.

**E. Services, which may be offered as appropriate, include:**

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus, and other similar measures

**F. Medical and Counseling Resources (may have a fee):**

- St. Joseph's Health Hospital 301 Prospect Ave Syracuse, NY, 315-448-5000.

**G. Confidential Counseling Resources:**

- Vera House
  - Off Campus Support
  - 723 James Street, Syracuse, NY
  - 315-425-0818
  - <https://www.verahouse.org/contact-us>
- EAP (Employee Assistance Program) services through Carebridge
  - 1-800-437-0911
  - You may also send an email to [clientservice@carebridge.com](mailto:clientservice@carebridge.com).
- The New York State Office of Victim Services
  - May be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds.
  - More information may be found here:  
[http://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf)
  - Or by calling 1-800-247-8035. Options are explained here:  
<http://www.ovs.ny.gov/helpforcrimevictims.html>

**H. Legal Assistance:**

- The New York State Office of Victim Services
  - May be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds.
  - More information may be found here:  
[http://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf)
  - Or by calling 1-800-247-8035. Options are explained here:  
<http://www.ovs.ny.gov/helpforcrimevictims.html>

**I. Protection Orders:** St. Joseph's Health Security Department, the Syracuse City Police Department, and the Title IX Coordinator/Investigator are available to assist the complainant or respondent in obtaining a SJCON no-contact order or a court-issued restraining order, or other lawful order of protection.

After a protection order is issued, the Title IX Coordinator/Investigator will provide a copy of the court order to the Dean of Student Services, St. Joseph's Hospital Security Department and/or the Syracuse City Police Department. Any violation of the court order should be promptly reported to local law enforcement.

**J.** A no contact order requested by either the complainant or respondent would have to be disclosed to the other party in order to be implemented.

**K.** Interim suspension or expulsion of a respondent is not included in the list of supportive measures.

## **VIII. ALCOHOL AND/OR OTHER DRUG USE AMNESTY IN SEXUAL AND INTERPERSONAL VIOLENCE CASES**

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The health and safety of every student at SJCON is of utmost importance. SJCON recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. SJCON students will be afforded amnesty if they report an incident of sexual assault, domestic violence, dating violence or stalking even if they have been drinking or using drugs.

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

## **IX. TRANSCRIPT NOTATION**

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If the respondent is a student and found responsible for conduct which constitutes a crime of violence that must be reported under the Clery Act (including aggravated assault and/or sexual violence) and is suspended or dismissed as a result, their transcript will note that they were suspended or dismissed. The transcript will note a code of conduct violation. Any student who withdraws with such charges pending and does not participate through completion in the St. Joseph's College of Nursing process will have noted on their transcript that they withdrew with charges pending. The College reserves the right to process to completion a report filed against a student, and impose a sanction, notwithstanding their withdrawal. A student who has been suspended may be eligible to seek to have the notation removed, but not sooner than one year following completion of the suspension.

## **X. CRIME ALERTS/EMERGENCY NOTIFICATIONS**

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If a report of a sexual or interpersonal offense reveals there is an immediate threat to the health or safety of students or employees on campus or that an on-going serious or continuing threat to the campus community exists, SJCON will issue an Emergency Notification or a Campus Crime Alert through SJCON's Emergency Notification System. The purpose of a Campus Crime Alert is to enable persons to protect themselves, heighten safety awareness, and seek information that will lead to an arrest and conviction of the perpetrator.

**The victim's/survivor's name and other personally identifying information WILL NOT be included in any Emergency Notification or Crime Alert.**

## **XI. PREVENTION EDUCATION AND AWARENESS**

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SJCON maintains educational programs to promote prevention, intervention, and reporting of rape, acquaintance rape, dating violence, domestic violence, sexual assault, and stalking, among other topics. These education programs include primary prevention and awareness programs for all incoming students and employees designed to reduce risk, encourage reporting, and engage bystanders in prevention and may be found on the College's website: [www.sjhcon.edu/titleIX](http://www.sjhcon.edu/titleIX)

## **XII. TITLE IX INVESTIGATION AND HEARING PROCEDURES**

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### **Title IX Coordinator Investigation:**

As a student of St. Joseph's College of Nursing, you have the right to:

- Make a report to campus security, local law enforcement, and/or state police;
- Report the incident to SJCON's Title IX Coordinator;
- Receive assistance and resources from SJCON's Title IX Coordinator;
- Be protected from retaliation for reporting an incident; and
- Alternatively, choose not to report.

The Title IX Coordinator/Investigator encourages students who have been the victim/survivor of Sexual or Interpersonal Offenses to pursue criminal charges against the person or persons they believe committed the crime. A criminal charge and a SJCON investigation or disciplinary complaint may be pursued at the same time. Students may file a disciplinary complaint with or without pursuing criminal charges. Victim/survivor support and resources are available regardless of criminal charges or SJCON disciplinary action.

- A.** A Formal Complaint can only be initiated by the Complainant. However, there may be instances where the Title IX Coordinator/Investigator may open an investigation on behalf of the Complainant under certain circumstances.
- B.** The Title IX Coordinator/Investigator will seek consent from Complainant prior to conducting an investigation. The Title IX Coordinator/Investigator will attempt to honor a Complainant's desire not to investigate. In certain instances, if a Complainant does not wish to make a Formal Complaint, The Title IX Coordinator/Investigator may determine a Formal Complaint is necessary, and will file such a formal complaint and inform the Complainant. In such instances, the Title IX Coordinator/Investigator is not a party to the matter, and, if known, identities of the Complainant will be made known in any subsequent notice of allegations to the Respondent. Factors used to determine whether to honor such a request include, but are not limited to:
  - i. Whether the Respondent has a history of violent behavior or is a repeat offender;
  - ii. Whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
  - iii. The increased risk that the Respondent will commit additional acts of violence;
  - iv. Whether the (Respondent) used a weapon or force;
  - v. Whether the (Complainant) is a minor; and

- vi. Whether the institution possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.
- C. A Complainant may request that Title IX violations be filed against a Respondent and may be applied to any incident with a reasonable connection to the campus.
- D. If the Title IX Coordinator/Investigator determines that an investigation is required, they shall notify the Complainant and Respondent simultaneously and take immediate action as necessary to protect and assist them.
- E. The Title IX Coordinator/Investigator will conduct a timely review of all complaints filed pursuant to this policy.
- After conducting the review of all complaints and the Title IX Coordinator/Investigator deems a hearing is necessary, a date and time will be determined. The complainant, respondent, and hearing board will receive simultaneous notification of the hearing date and time.
  - Ten days prior to the date of the hearing, the complainant, respondent, and hearing board will receive the report for their review.
  - Complainant and respondent may share the report with their respective advisors.

**Live Hearing Participants:**

**A. Hearing Facilitator.** The Hearing Facilitator will preside over the hearing or appeal and will:

- adopt rules controlling the conduct of participants to ensure that questioning is done in a respectful manner;
- adopt rules that instruct party advisors to conduct questioning in a respectful, non-abusive manner;
- decide whether the parties may offer opening or closing statements;
- specify a process for making objections to the relevance of questions and evidence;
- place reasonable time limitations on a hearing; and
- be familiar with any technology which may be used during a hearing.

**B. Decision-maker.** The live hearing must be overseen by a decision-maker who:

- is not the Title IX coordinator or the investigator;
- is free from conflict of interest or bias, including bias for or against complainants or respondents; and
- has completed required education on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants. Rape shield protections are procedural rules that limit that ability of the Respondent to introduce the Complainant's sexual history as evidence and prevents the Complainant from being discredited by information that is not relevant to guilt or innocence involved in the current investigation/hearing;

**Role of the Decision-maker:** In determining whether a question is relevant, the decision-maker must focus on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.

**C. Advisor of Choice.** The advisor may be any person of the complainant or respondent's choosing. If an advisor is not chosen, SJCON will select an individual to serve in this role for the limited purpose of conducting the cross-examination during the hearing. There should be no prohibition of conflict of interest or bias for such advisors. All SJCON advisors will be educated and certified to conduct cross-examination.

**Role of Advisors:** Advisors are allowed to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility and must be conducted directly, orally, and in real time by the advisor and *never* by the parties.

**D. Participation of complainant and respondent.** To protect every individual's right to a live hearing, SJCON will also protect the individual's right to choose whether to participate in the hearing or answer cross-examination questions. SJCON recognizes that:

- Cross-examination may be emotionally difficult for parties and witnesses, especially when the facts at issue concern sensitive, distressing incidents involving sexual conduct;
- Not every party or witness will wish to participate. SJCON has no ability to compel a party or witness to participate; and
- In the event that any party declines to participate, the Decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

**E. Witnesses.** Witnesses are not required to participate in the live hearing process, but without their live testimony the decision-maker cannot rely on their statements. No person should coerce or intimidate any witness into participating in a Title IX proceeding, and should be able to participate in the live hearing free from retaliation.

- Witnesses do not have the right to demand to testify in a separate room. The Hearing Facilitator has the discretion to permit any participant to appear remotely. Witnesses also are not required to testify and may simply choose not to testify because the determination of responsibility usually does not directly impact, implicate, or affect them. With respect to a witness who claims to also have been sexually assaulted by the respondent, the institution has discretion to permit the witness to testify remotely, or to hold the entire live hearing through virtual electronic means.

### **Live Hearing Procedures:**

**A.** Live hearings may be conducted with all parties physically present in the same geographic location or, at hearing facilitator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. The hearing facilitator will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to both parties for inspection and review.

- B. At the request of either the complainant or respondent, the hearing facilitator must provide for the live hearing to occur with the complainant or respondent located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the complainant, respondent, or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness.
- C. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant, thus implying that the college may require that questions be submitted in advance.
- D. If the respondent or the complainant does not have an advisor, the Title IX Coordinator/Investigator must provide an advisor without fee or charge. The advisor may be, but is not required to be, an attorney. The purpose of the Advisor is to conduct cross-examination on behalf of the Complainant or Respondent.
- E. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- F. If the complainant, respondent, or witness do not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- G. The standard of review in all cases arising under this policy is a "preponderance of the evidence" – whether it is "more likely than not" that a prohibited act occurred and the Respondent committed that act. If the totality of the evidence presented meets this standard, then the Respondent must be found responsible.

### **XIII. DETERMINATIONS REGARDING RESPONSIBILITY**

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With the guidance of the decision-maker, the hearing board will reach its determination of responsibility or non-responsibility. Both the complainant and respondent will receive written determination of the hearing.

- A. **Procedural Steps Taken:** The Title IX Coordinator/Investigator will provide an administrative and investigative history of the case, beginning with the filing of the formal complaint, which will indicate when the respondent received the notice of allegations; who performed the investigation; which witnesses and parties were interviewed and when; what locations, if any, were visited during the investigation; and what type of evidence was reviewed. The written determination should also describe the process undertaken to inspect and review the evidence and disseminate the investigative report, including the adherence to mandated procedural timelines.

## **B. Written determination requirements:**

### **The written determination will include the following:**

- Identification of the allegations potentially constituting sexual harassment;
- Findings of fact supporting the determination;
  - A statement and rationale for the result to each allegation, including a determination regarding responsibility or no responsibility;
- If found responsible, any disciplinary sanctions recommended and imposed on the respondent;
- Conclusions regarding the application of the respondent's code of conduct to the facts;
- Whether remedies have been designed to restore or preserve equal access to the educational program or activity to both the complainant and the respondent if respondent is not found responsible; and
- The hearing board's procedures and permissible bases for the complainant and respondent to appeal.

**C. Notice of Outcome:** Requires parties receive simultaneous notification of the outcome. Determination will be sent electronically to the parties' institutional e-mail accounts; this will ensure the "simultaneous" delivery and receipt of the determination and generates metadata affirming compliance with this requirement.

**D. Findings of Fact Supporting the Determination:** Requires an analysis of what findings of fact support the determination of responsibility or non-responsibility.

**E. Conclusions Regarding the Code of Conduct:** SJCON "exercises its discretion" to apply policies and procedures not otherwise required under Title IX and will be indicated in the written determination.

**F. Rationale and Sanction:** The decision-maker must make a finding of responsibility or non-responsibility for each allegation, and describe the rationale for the finding based on an "objective" evaluation of the evidence presented at the hearing. The decision-maker is obligated to objectively evaluate all relevant evidence, including inculpatory\* and exculpatory\* evidence (and to avoid credibility inferences based on a person's status as a complainant, respondent, or witness). The written determination must also indicate what disciplinary sanctions, if any, will be applied to the respondent if that party is found responsible for the allegations. The decision-maker has discretion in applying sanctions and will make disciplinary decisions believed to be in the best interest of SJCON's educational environment.

**\*Inculpatory Evidence:** Evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt.

**\*Exculpatory Evidence:** Evidence favorable to the defendant that exonerates or tends to exonerate the defendant of guilt.

## **G. Procedure for Appeals**

The decision-maker must offer the complainant and respondent an appeal from a determination regarding responsibility of initially being notified, and the respondent's dismissal of a formal complaint or any allegations therein.

The decision to appeal must be made within five school days from the date the complainant and respondent were notified of the final decision.

Appeals made on the basis of:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX Coordinator/Investigator or decision-maker had a conflict of interest or bias for or against the complainant or respondent that affected the outcome of the matter.

### **The Appeal Hearing:**

- When an appeal is filed, both the complainant and respondent will be notified in writing, and the notification sent simultaneously via the student's SJCON e-mail account.
- The appeal decision-maker and appeals board members must be different from anyone who made the determination regarding responsibility or dismissal and must not be the Title IX Coordinator/Investigator.
- The decision-maker must be free from conflict of interest and bias, and receive appropriate training (including anti-bias training).
- Both the complainant and respondent must be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the responsibility determination or dismissal.
- The outcome of the appeal must be in writing, and must include the rationale. The written decision must be simultaneously sent to the complainant and respondent via the student's SJCON e-mail account.

## **H. When the Determination Becomes "Final"**

- The date when the complainant and respondent receive written notification of the results of any appeal, or
- If no appeal is filed, at the discretion the Title IX Coordinator/Investigator, the date on which the appeal would no longer be considered timely.

#### **XIV. INFORMAL RESOLUTIONS**

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The Title IX Coordinator/Investigator may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.

##### **Informal resolution process:**

- Obtain both the complainant and respondent's voluntary, written consent to the informal resolution process.
- Provide the complainant and respondent written notice disclosing the:
  - Allegations;
  - Requirements of the informal resolution process including the circumstances under which it precludes the complainant and respondent from resuming a formal complaint arising from the same allegations; and
  - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- Gives the complainant and respondent the right to withdraw from the informal resolution process and resume the hearing process with respect to the formal complaint; and
- Does not apply to allegations where an employee is accused of sexual harassment of a student.

#### **XV. RECORD OF HEARING**

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The Title IX Coordinator/Investigator will be responsible for the security of all recorded and transcribed records for a period of seven years, which may include any actions including supportive measures taken in response to a report or formal complaint of sexual harassment, as well as document the basis for its conclusions and that it has taken measures designed to preserve access to the institution's educational program or activity.

##### ***Records of:***

- A. Any sexual harassment investigation, including any responsibility determination, and any required recording or transcript, as well as any sanctions imposed on the respondent, and any remedies provided to the complainant;
- B. Any appeal and its result;
- C. Any informal resolution and its results; and
- D. All materials used to train investigators, adjudicators, and Title IX coordinators with regard to sexual harassment are available on the SJCON website or upon request for inspection by members of the public.

**DOCUMENT CONTROL TRACKING FILE**

Title: SJCON: Sexual Violence and Prevention, Title IX	
Standard: NIAHO: _____ CMS _____ ISO _____	
Document Owner: Vice President/Dean for SJCON	Forms #:
Reviewed by the following:	
Administration Committee	Date: 3/19 11/20
Faculty Staff Organization	Date: 12/20
	Date:
	Date:
	Date:
	Date:
Administrative Approvals:	
Marianne Markowitz, Ed.D., RN, CNE Vice President/Dean	AnneMarie Walker-Czyz, RN, Ed.D Chief Nursing Officer
Additional Approvals:	
Education:	
Monthly policy/procedure update: 4/19	
12/20Additional:	
Revisions: 4/19 Policy placed online 12/20 Updated all processes and standards according the state and federal regulations.	
References: New York State NYS Consolidated Laws, Education Law (EDN § 6443). Students' Bill of Rights  Definition of Sexual Activity: Current definition used by the federal government. 18 U.S.C. 2246(2)-(3)  Family Educational Rights and Privacy Act (FERPA): See 34 CFR §§ 99.31(a)(13) and (14).	
Original Date:	Reviewed/Revision Dates: 3/19 12/20

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