



SEXUAL MISCONDUCT POLICY

2021-2022

This Policy addresses the reporting of sexual assault and may contain content or subject matter that is sensitive or upsetting. The College can direct students, faculty, and staff to on- and off-campus resources to provide assistance and support.

This Policy is one of several Nazareth policies that prohibits a variety of forms of sex discrimination. Other policies that address sex and gender-based discrimination include the Title IX Sex Discrimination Policy and the Non-Discrimination Policy contained in the Nazareth College Staff Handbook.

Non-Title IX Sexual Misconduct Policy

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, Nazareth College must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. **Only** incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined in the Title IX Policy.

Nazareth College remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, Nazareth College has a **Code of Conduct** that defines certain behavior as a violation of campus policy, and a separate **Non-Title IX Sexual Misconduct Policy** that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses. *[Note: Any Sexual Misconduct Policy that runs parallel to the Title IX Grievance Policy, such as a policy implementing New York Education Law 129-B or other state laws or policies, can only fully govern how the institution responds to violations falling outside their Title IX jurisdiction]*

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Student Code of Conduct and Non-Title IX Sexual Misconduct Policy through a separate grievance proceeding.

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full in this Non-Title IX Sexual Misconduct Policy and in the Title IX Policy.

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SEXUAL MISCONDUCT POLICY

Nazareth College prohibits and will not tolerate sex discrimination and harassment, sexual harassment, sexual violence, stalking, domestic violence, dating violence, and sex- and gender-based harassment that does not involve conduct of a sexual nature, in every setting and in every program organized, sponsored, and hosted by the College. Such conduct is detrimental to the College community and the productive, harassment-free living and working environment that the College wishes to foster and maintain.

This Sexual Misconduct Policy (“Policy”) has been developed to:

- reaffirm the College’s institutional values,
- define community expectations,
- provide recourse for those individuals whose rights have been violated, and
- provide for fair and equitable procedures for determining when this Policy has been violated.

The College is committed to fostering a climate free from sex discrimination and harassment, sexual harassment, sexual violence, stalking, intimate partner violence, and sex- and gender-based harassment that does not involve conduct of a sexual nature through:

- clear and effective policies;
- a coordinated education and prevention program; and
- prompt and equitable procedures for resolving complaints.

Nazareth College strongly encourages all community members to report information regarding any incident of sexual harassment, sexual violence, domestic violence, dating violence, and/or stalking directly to the Title IX Coordinator, the designated Deputy Title IX Coordinators or any other “responsible employee” (defined further below).

The College expects all community members to participate in creating a safe, welcoming, and respectful environment on campus. In particular, the College encourages all Nazareth community members to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement or seeking assistance from a person in authority. Community members who choose to positively intervene will be supported by the College and protected from retaliation.

Retaliation, as defined in Section VI.K, against any person or group who makes a complaint, cooperates with an investigation, or participates in a grievance procedure is a violation of this Policy. Retaliation should be reported promptly to the Title IX Coordinator for investigation, which may result in disciplinary action independent of any sanction or interim measures imposed in response to the underlying allegations of discrimination and/or harassment.

All members of the Nazareth community are expected to conduct themselves in a manner that does not infringe upon the rights of others. Any individual who is found to have violated this Policy may face disciplinary sanctions up to and including expulsion or termination of employment.

The College will review this Policy on an annual basis in order to capture evolving legal requirements and incorporate improvements based on practical experience.

SECTION I. NOTICE OF NON-DISCRIMINATION

The College does not permit discrimination or harassment in its programs and activities on the basis of race, color, national origin, ancestry, sex, gender, gender identity, gender expression, sexual orientation, disability, age, religion, physical and/or mental disability, medical condition, veteran status, marital status or any other characteristic protected by institutional policy or state, local or federal law. The College does not discriminate on the basis of sex or gender in its educational, extracurricular, athletic or other programs or in the context of employment.

The College, as an educational community, will respond promptly and equitably to reports of sex discrimination and harassment, sexual harassment, sexual violence, stalking, intimate partner violence, and sex- or gender-based harassment that does not involve conduct of a sexual nature in order to eliminate the harassment, prevent its recurrence, and address its effects on any individual or the community.

All Nazareth students, faculty, staff, visitors, and guests are expected to comply with federal, state, and local laws.

SECTION II. THE COLLEGE'S TITLE IX COORDINATORS

Title IX Coordinator	Acting Title IX Coordinator	Deputy Title IX Coordinator
Heather Sourwine Title IX Coordinator hsourwi8@naz.edu 585.389.2877 Shults Center 100A	Vicky Gebel Acting Title IX Coordinator vgebel4@naz.edu 585.389.2480 Kearney Hall	Phil Steckley Assistant Athletic Trainer psteck14@naz.edu 585.389.2838 Stadium 106

The Title IX Coordinator oversees the College's centralized review, investigation, and resolution of reports of sexual assault and harassment. The Coordinator also coordinates the College's compliance with Title IX, including equitable, timely, and effective processing of complaints regarding violations of rights protected by Title IX. The Title IX Coordinator is:

- responsible for oversight of the investigation and resolution of all reports of sexual misconduct, including sexual violence and sexual harassment;
- knowledgeable and trained in relevant state and federal laws and College's Policy and procedure;
- available to advise any individual, including a Complainant, a Respondent or a third party, about the courses of action available at the College, both informally and formally, and the courses of action available externally, including reports to law enforcement;
- available to provide assistance to any Nazareth College community member regarding how to respond appropriately to reports of sexual assault and harassment;
- responsible for monitoring full compliance with all requirements and timelines specified in the complaint procedures; and
- responsible for compiling required reports.

The Deputy Coordinators support the Title IX Coordinator in fulfilling their role and responsibilities and may serve as the Title IX Coordinator's designee to carry out any response, action, initiative, project or other responsibility outlined in this Policy.

The Title IX Coordinator and Deputy Coordinators can be reached using the contact information listed above Monday through Friday from 8:30 a.m. to 4:30 p.m. **An individual requiring emergency support or response should contact Campus Safety at extension 3333 or 585.389.2850** or another appropriate Emergency Support Resource detailed in Section IV below.

Prompt reporting to the Title IX Coordinator, Deputy Title IX Coordinators or other “responsible employee” (defined further below) will result in the College taking appropriate action.

SECTION III. SCOPE OF THIS POLICY

WHO: This Policy applies to all members of the Nazareth community—including students, faculty, staff, and administrators—as well as visitors, third parties, employees and non-employees (defined as contractors, subcontractors, vendors, consultants, independent contractors, and others providing services to the College), involved in an incident of sexual misconduct affecting or involving a member of the College community and/or non-employees (this can also be someone who witnessed an incident or who wishes to report an incident on behalf of another). The Policy applies to these individuals regardless of sexual orientation or gender identity.

When used in this Policy, **Complainant** refers to the individual who identifies as being a victim or survivor of sex discrimination and harassment, sexual harassment, sexual violence, stalking, intimate partner violence or sex- or gender-based harassment that does not involve conduct of a sexual nature, whether or not the individual decides to proceed with the complaint resolution process. A **Respondent** refers to the individual who has been accused of prohibited conduct under this Policy. A **third party** refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.

WHAT: This Policy prohibits and addresses all forms of sex discrimination and harassment, sexual harassment, sexual violence, stalking, domestic violence, dating violence, and sex- or gender-based harassment that does not involve conduct of a sexual nature against Nazareth community members of any sex, gender, gender identity, gender expression or sexual orientation not covered by the Title IX Sex Discrimination Policy. Please refer to the [Prohibited Conduct](#) and [Related Definitions](#) sections for a complete list of terms and prohibited acts.

WHERE: **This Policy covers conduct that takes place on Nazareth’s campus.** This includes any building or property owned or controlled by the College and used in direct support of, or in a manner related to, the school’s educational purposes, including residence halls, dining halls, and public property within or immediately adjacent to and accessible from campus. This also includes any building or property owned or controlled by a student organization that is officially recognized by the College and any building or property not within the same reasonably contiguous geographic area of the College that supports or relates to the school’s educational purposes and is frequently used by students. **This Policy also covers conduct that takes place off campus that may have a nexus to the College community, such as during a study abroad program or an off-campus program or activity.**

PROGRAMS: This Policy covers all educational, extracurricular, athletic or other campus programs, including but not limited to study abroad programs.

ACTIVITIES: This Policy covers all campus and school-related activities, including, but not limited to, student organizations (academic, multicultural, religious, service, social and support, sports and recreational), community organizations with student, staff, and/or faculty participation, and all other educational or extracurricular events hosted by or at Nazareth.

RELATIONSHIPS: This Policy covers sexual misconduct occurring between individuals in various types of relationships. These include, but are not limited to, student to student, staff to staff, faculty member to faculty member, non-employee/visitor to faculty/staff/student/non-employee, faculty member to student, staff to student, supervisor to subordinate, and coach to student athlete. Sexual misconduct may be acts committed by an individual or collective actions committed by members of a group or organization. These acts may be committed against an individual or against a group or organization. These acts may be committed by a stranger, an acquaintance or someone with whom

the Complainant has a social, romantic or intimate relationship. These acts may be committed by or against any individual, regardless of sexual orientation or gender identity or expression.

This Policy explains the procedures by which complaints involving students will be processed and determined. Further, additional policies and processes applicable to faculty, staff, and non-employees are found in the Faculty Manual and Staff Personnel Policy Manual and additional procedures may apply when a report under this Policy is made by or against an employee of a vendor located on Nazareth's campus.

SECTION IV. EMERGENCY SUPPORT SERVICES

The College encourages all individuals to seek assistance from a medical provider and/or law enforcement as soon as possible after a sexual assault. This is the best option to secure physical safety, and to obtain emotional support and medical care; it is also the best option to ensure preservation of evidence and to begin a timely investigation and remedial response.

Individuals who have experienced sexual assault or other types of sexual misconduct can also avail themselves of the reporting options and resources below.

A. Campus Safety and Law Enforcement

The College's Campus Safety Department and local law enforcement will provide assistance 24 hours a day, 365 days a year.

Campus Safety can escort any community member to a safe place, provide transportation to the hospital, assist in coordination with law enforcement, and provide information about the College's resources and complaint processes. Any individual can request that Campus Safety and/or the Monroe County Sheriff's Office respond and take a report by calling:

- **Campus Safety** at extension 3333 or 585.389.2850
- **Monroe County Sheriff's Office** at 911
- **New York State Police** 24/7 hotline staffed by specially-trained responders at 1.844.845.7269

B. Emergency Health Care

Students who have experienced sexual violence can also call the College's Health and Counseling Services or any local medical provider¹ of their choice for confidential emergency care.

Health and Counseling Services offer students free, confidential health care services. This means that the Health and Counseling Services staff cannot disclose any information without your permission. Health and Counseling Services are located between Peckham Hall and the Wellness & Rehabilitation Institute. The phone number during normal business hours (8:30 a.m. to 4:30 p.m.) is 585.389.2500.

For emergencies that occur while Health and Counseling Services are closed, students should

- **call Campus Safety** or 585.389.2850; *or*

¹ Under certain circumstances, a health care provider may be required to notify law enforcement of a sexual assault committed against a minor as discussed in Section X(C) and below.

- use the individual’s **Security Escort Alarm**; *or*
- **call 911**; *or*
- **proceed directly to the Emergency Department at Strong Memorial Hospital** (601 Elmwood Avenue in Rochester / 585.275.4551), which has a Sexual Assault Forensic Examination (SAFE) Center; *or*
- call 585.922.4000 to access a Sexual Assault Forensic Examiner at **Rochester General Hospital** (1425 Portland Avenue in Rochester).

It is important for an individual considering campus and/or law enforcement options against a Respondent to visit a Sexual Assault Forensic Examiner Nurse (sometimes referred to as a Sexual Assault Nurse Examiner). SAFE nurses provide free medical care for victims of sexual assault, and are specially trained in conducting sexual assault exams and collecting and preserving forensic evidence of the assault for possible prosecution of the assailant.

SAFE Nurse: Strong Memorial Hospital
601 Elmwood Avenue
Rochester, New York
585.275.4551

Rochester General Hospital
1425 Portland Avenue
Rochester, New York
585.922.4000

This medical exam (commonly referred to as a “rape kit”) has two goals: (1) to diagnose and treat the full extent of any injury or physical effect and (2) to properly collect and preserve evidence. The exam may include testing and prophylactic treatment for HIV/AIDS, STIs, and pregnancy; a vaginal examination; collecting fingernail scrapings and/or clippings; examining for injuries; and drawing blood. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Gathering such evidence does ***not*** commit an individual to pursuing legal action against the assailant, but does preserve that option. Although it may be difficult following a sexual assault, individuals who are considering or may consider legal action should try not to shower, rinse mouth, brush teeth or change clothes to allow for the maximum possible collection of evidence by a SAFE nurse or other health care provider.

Hospitals are not required to report any non-identifying information to the College or to anyone else. However, hospitals providing care to individuals reporting sexual assault are required to:

- collect and maintain the chain of custody of sexual assault evidence for not less than 30 days ***unless*** the patient signs a statement directing the hospital not to collect it;
- advise the individual seeking medical treatment related to sexual assault of the availability of the services of a local rape crisis or victim assistance organization to accompany the individual through the sexual offense examination;
- contact a rape crisis or victim assistance organization providing assistance to the geographic area served by that hospital to establish the coordination of non-medical services to individuals reporting sexual assault who request such coordination and services; and
- provide emergency contraception upon the patient’s request.

Even if an individual who has experienced sexual violence does not have injuries requiring emergency attention, the College encourages that individual to seek medical care as soon as possible, whether at Health and Counseling Services or another health care provider or hospital.

Please know that, in most instances, any health care provider will likely encourage an individual reporting sexual assault to authorize collection of evidence. For individuals who seek initial medical treatment at Health and Counseling Services and agree to evidence collection, the individual will be escorted to the nearest hospital by Campus Safety or will be escorted to a taxi (the College will provide a voucher) to be transported to the chosen medical provider. An individual can receive follow-up health care at Health and Counseling Services or the chosen health care provider or hospital.

C. Emergency Mental Health Support

Students who have experienced sexual misconduct can also speak with a counselor at Health and Counseling Services at any time.

The College's Health and Counseling Services offer students completely confidential counseling services. This means that Health and Counseling Services staff cannot disclose any information without your permission. Health and Counseling Services is between Peckham Hall and the Wellness & Rehabilitation Institute. The phone number during normal business hours (8:30 a.m. to 4:30 p.m.) is 585.389.2887.

For after-hours on-campus emergencies when school is in session, emergency mental health services are accessible 24 hours a day, 7 days a week. A student can access a counselor by calling Campus Safety at ext. 3333 or 585.389.2850. A Campus Safety officer will take the student's first name and a phone number at which the counselor can call the student back.

For after-hours emergencies off campus or when school is not in session:

- **call Life Line** at 585.275.5151; *or*
- **call 911**; *or*
- **go to the Psychiatric Emergency Department** at University of Rochester Medical Center (601 Elmwood Avenue in Rochester / 585.275.4501); *or*
- **call Restore Sexual Assault Service's** 24 hour/day, confidential rape crisis hotline at
 - 585.546.2777 (Monroe County)
 - 800.527.1757 (Genesee, Livingston, Orleans & Wyoming Counties); *or*
- **call Willow Domestic Violence Center's** 24 hour/day confidential hotline (585.232.7353) for victims of domestic violence

Employees may contact Campus Safety or access any of the off-campus resources listed above. Employees can also seek confidential assistance through the Employee Assistance Program. Information shared with these resources will remain confidential and will not be shared with the College or anyone else without express permission of the individual seeking services.

- 1-800-311-4327
- www.guidanceresources.com

SECTION V. PROHIBITED CONDUCT

Prohibited conduct includes all sex and gender-based prohibited by state or federal law and the following:

A. Sexual Harassment

Any unwelcome sexual advance, request for sexual favors or other unwelcome verbal or physical conduct of a sexual nature when:

- submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work or participation in any aspect of a College's program or activity; *or*
- submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; *or*
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, *i.e.*, it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning or sexually offensive working, academic, residential or social environment under both a subjective and objective standard.

The first two types of conduct described above constitute quid pro quo, or "this for that", harassment (for example: "I'll give you this if you give me that" or "Because you won't do this, I am denying you that"), and the third constitutes harassment that creates a hostile environment. A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

Sexual harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does *not* have to include intent to harm, be directed at a specific target or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance or someone with whom the Complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the Complainant and/or third parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- Physical conduct:
 - unwelcome touching, sexual/physical assault, impeding, restraining or blocking movements
 - unwanted sexual advances within the employment context
- Verbal conduct:
 - making or using derogatory comments, epithets, slurs or humor
 - verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
 - objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes
- Visual conduct:
 - leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum
 - severe, persistent or pervasive visual displays of suggestive, erotic or degrading sexually oriented images that are not pedagogically appropriate
- Written conduct:
 - letters, notes or electronic communications containing comments, words or images described above
- Quid pro quo (“this for that”) conduct:
 - direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
 - offering employment benefits in exchange for sexual favors
 - making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
 - making or threatening reprisals after a negative response to sexual advances

B. Sexual Assault

Having or attempting to have sexual intercourse or sexual contact with another individual:

- by force or threat of force;
- without affirmative consent; or
- where that individual is incapacitated.

Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

Sexual contact includes intentional contact with the intimate parts of another for sexual gratification without their consent, causing another to touch one’s intimate parts or disrobing or exposure of another without permission. Intimate parts include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

Under Clery and the Campus SaVE Act, the College will record and report all relevant incidents of sexual assault.

C. Sexual Exploitation

When an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of *sexual exploitation* include, but are not limited to:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- non-consensual sharing or streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances;
- knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge;
- sexually-based stalking and/or bullying; and
- Causing incapacitation, by means of drugs, alcohol, or other physical restraint limiting the ability to consent or for the purpose of making another person vulnerable to non-consensual sexual activity.

D. Domestic Violence

A felony or misdemeanor crime of violence committed by:

- a current or former spouse or intimate partner of the person against whom the violence is committed;
- a person with whom the person against whom the violence is committed shares a child in common;
- a person who is cohabiting with, or has cohabited with, the person against whom the violence is committed as a spouse or intimate partner;
- a person similarly situated to a spouse of the person against whom the violence is committed under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

This definition does not apply to roommates who have not expressed interest in entering into, or who have not entered into, a dating or sexual relationship. Under the Clery Act and the Campus SaVE Act, the College will record and report all relevant incidents of domestic violence.

E. Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person against whom the violent act is/acts are committed. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Relationship violence is a pattern of behavior directed at an individual with whom a person is or was engaged in an intimate, romantic or family relationship and which is used to establish power and control through physical or sexual violence, coercion, threats, manipulation, isolation or intimidation. The existence of such a relationship shall be

determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. A pattern of behavior is typically determined based on the repeated use of words and/or actions and inactions in order to demean, intimidate, and/or control another person. This behavior can be verbal, emotional, economic, sexual, and/or physical. Examples include, but are not limited to: striking another person, property damage, reckless behavior, name calling and insults, public humiliation, harassment directed toward friends and acquaintances, and verbal and/or physical threats.

Under Clery and the Campus SaVE Act, the College will record and report all relevant incidents of intimate partner violence.

F. Stalking

When a person engages in a course of conduct or repeatedly commits acts directed at a specific person, including following the person without proper authority, under circumstances that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

- *Course of conduct* means two or more acts, including but not limited to, acts in which the stalker directly, indirectly or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person's property.
- *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- *Reasonable person* means a reasonable person under similar circumstances and with similarities to the Complainant.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact are used to pursue, harass or to make unwelcome contact with another person in an unsolicited fashion.

Examples of stalking include:

- unwelcome and repeated visual or physical proximity to a person;
- repeated oral or written threats;
- extortion of money or valuables;
- unwelcome/unsolicited written communication, including letters, cards, emails, instant messages, and messages on online bulletin boards;
- unwelcome/unsolicited communications about a person, their family, friends, or co-workers; sending/posting unwelcome/unsolicited messages with an assumed identity;
- implicitly threatening physical contact; or
- any combination of these behaviors directed toward an individual person.

Under Clery and the Campus SaVE Act, the College will record and report all relevant incidents of stalking.

G. Physical Assault

A purposeful action meant to hurt another person. Examples include, but are not limited to, kicking, punching, hitting with or throwing an object or biting. When these acts occur in the context of intimate partner violence or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this Policy.

H. Harm to Others

Words or types of conduct that threaten or endanger the health or safety of any person including physical abuse, verbal abuse, threats, intimidation, and/or harassment. This behavior is typically treated as a violation of the College's Student Conduct Code and expectations of professionalism for faculty, instructional-staff, and staff. Acts that constitute harm to others and that are a form of intimate partner violence or are based on sex or gender will be resolved under this Policy.

I. Bullying and Intimidation

Bullying includes any intentional electronic, written, verbal or physical act or a series of acts directed at another individual or group that is severe, persistent or pervasive and that has the intended effect of doing any of the following:

- substantially interfering with a student's education;
- creating a threatening environment; or
- substantially disrupting the orderly operation of the College.

Bullying is prohibited and participating in such acts will result in disciplinary action.

Intimidation is any verbal, written, or electronic threats of violence or other threatening behavior directed toward another person or group that reasonably leads the person or person(s) in the group to fear for their physical well-being. Intimidation is prohibited and will result in disciplinary action.

Anyone who attempts to use bullying or intimidation to retaliate against someone who reports an incident, brings a complaint, or participates in an investigation in an attempt to influence the resolution of a complaint will have retaliated as described within this Policy and will be subject to disciplinary action.

J. Indecent Exposure

A person commits *indecent exposure* if that individual exposes the individual's genitals in any public place or in any place where there are present other persons under circumstances in which one knows or should know that this conduct is likely to offend, affront or alarm.

K. Retaliation

Acts or attempts to retaliate or seek retribution against the Complainant, Respondent or any individual or group of individuals involved in the complaint, investigation, and/or resolution of an allegation of sexual misconduct. *Retaliation* can be committed by any individual or group of individuals, not just a Respondent or Complainant. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

**SECTION VI. RELATED DEFINITIONS: AFFIRMATIVE
CONSENT, FORCE, COERCION, INCAPACITATION,**

ALCOHOL AND OTHER DRUGS, AND BYSTANDER INTERVENTION

A. Affirmative Consent

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

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time. Individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, pressuring, force or threat of harm, or by taking advantage of the incapacitation of another individual.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
- New York state law establishes that an individual less than 17 years old is incapable of consent.

Consensual Sexual Activity between Employees and Students: Consensual sexual relationships between employees and students may not only have negative repercussions for the individuals involved, but may create an uncomfortable or distrustful environment for others in the community. Such conduct results in relationships that are fundamentally asymmetrical. The power differential complicates the ability to demonstrate that any such relationship is fully consensual. Given the complications inherent in these types of relationships, it should be noted that faculty, instructional-staff, and staff risk potential personal civil or criminal action as a result of engaging in such relationships. The potential for conflicts of interest is also strong.

Accordingly, the College strongly discourages all consensual sexual activity between students and employees, and prohibits such activity where any supervisory role exists. Therefore,

- faculty members shall not engage in consensual sexual relationships with students enrolled in their courses; and
- faculty members or other employees of the College shall not engage in consensual sexual relationships with students under their supervision in such matters as evaluating, advising, coaching or directing a student as part of a school program.

Where such a relationship develops, it is the obligation of the faculty member to bring this matter to the immediate attention of the supervisor, who will take action as necessary to shift class sections or supervisory roles to eliminate conflicts of interest.

B. Force

The use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. Demonstration of use of force **does not require** that a Complainant resists the sexual advance or request. However, resistance by the Complainant will be viewed as a clear demonstration of non-consent.

C. Coercion

The improper use of pressure to compel another individual to initiate or continue sexual activity against that individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity or gender expression, and threatening to harm oneself if the other party does not engage in the sexual activity.

D. Incapacitation

A state in which an individual cannot make an informed and rational decision to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (*e.g.*, to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if the individual is asleep, unconscious or otherwise unaware that sexual activity is occurring.

Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; and
- capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known that the Complainant was incapacitated.

E. Alcohol or Other Drugs

In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking or intimate partner violence and does not diminish one's responsibility to obtain consent.

F. Bystander Intervention

Safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. This includes recognizing situations of potential harm and understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking actions to intervene.

SECTION VII. STUDENTS' BILL OF RIGHTS

All students who report conduct allegedly in violation of this Policy or invoke the processes described in this Policy have the right to:

- make a report to local law enforcement and/or state police;
- have disclosure of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- 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;
- participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- 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;
- describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- be protected from retaliation by the College, any student, the accused and/or the Respondent, and/or their friends, family, and acquaintances within the jurisdiction of the College;
- access to at least one level of appeal of a determination;
- be accompanied by an advisor of choice who may assist and advise a reporting individual, accused or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- exercise civil rights and practice of religion without interference by the investigative, criminal justice or judicial or conduct process of the institution.

SECTION VIII. PRIVACY & CONFIDENTIALITY

The College is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual violence, stalking or intimate partner violence. All College employees who are involved in the College's sexual misconduct response—including the Title IX Coordinator, Deputy Title IX Coordinators, investigators, and hearing board members—receive specific instructions about respecting and safeguarding private information. Every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report.

A. Distinct Meanings of Privacy and Confidentiality

Privacy and confidentiality have distinct meanings under this Policy:

PRIVACY: Privacy generally means that information related to a report of misconduct will only be shared with a limited group of people. The use of this information is limited to those College employees who “need to know” in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

CONFIDENTIALITY: There are two levels of confidentiality for purposes of this Policy. **Complete confidentiality** means that information shared by an individual with designated campus or community professionals, when acting within the scope of their role that confers confidentiality, cannot be revealed to anyone else without the express permission of the individual. These campus and community professionals include mental health providers, ordained clergy providing pastoral counseling, rape crisis counselors, health care providers, athletic trainers, and attorneys, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others and other limited circumstances. Even College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be related only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Limited confidentiality means that designated individuals, when acting within the scope of their role that confers confidentiality, can keep specific information shared by an individual confidential but must report non-identifying information to the Title IX Coordinator. “Non-identifying information” includes only the nature, date, time, and general location of the incident. The individuals on campus who are protected by limited confidentiality are all individuals who work in or are affiliated with the College’s Center for Spirituality. This limited reporting of information allows the Title IX Coordinator to track patterns, evaluate the scope of campus incidents of sexual violence/assault, and formulate appropriate campus-wide responses. Reporting to an on-campus resource who can maintain limited confidentiality will not trigger a College investigation that could reveal the Complainant’s identity or that the Complainant has disclosed the incident.

An individual who seeks confidential assistance may do so by speaking with professionals who have a legally protected confidentiality. **On campus, completely Confidential Resources available to students are:**

- Mental health counselors and support staff in the College’s Health and Counseling Services
- Health care providers and support staff in the College’s Health and Counseling Services

On campus, limited Confidential Resources available to students are:

- Staff members of the Center for Spirituality and its affiliates

Employees may access confidential assistance through the Employee Assistance Program. Information shared with these resources will remain confidential and will not be shared with the College or anyone else without express permission of the individual seeking services.

- 1-800-433-7916
- <https://nazareth-college.lifeworks.com/signup/invitation>

These resources, including contact information, are discussed more fully in Section IX below.

B. Compliance with all Applicable Laws Related to Privacy and Confidentiality

All College proceedings will be conducted in compliance with the requirements of Family Educational Rights and Privacy Act (“FERPA”), the Clery Act, Title IX, and state and federal law. Nazareth will not release any information from such proceedings except as required or permitted by law and College policy.

SECTION IX. RESOURCES

Any individual affected by sexual violence or harassment—a Complainant, a Respondent, and/or a third party—will have equal access to support and counseling services through the College. The College understands that deciding whether to make a report and choosing how to proceed can be difficult decisions, and thus encourages any individual who has questions or concerns to seek the support of campus and community resources. Professionals on campus can

provide important initial responsive care, as well as information about available resources and procedural options. On-campus professionals can assist any party with a report under this Policy. The College strongly encourages individuals to use all available resources, regardless of when or where the incident occurred.

A. Education and Prevention Programs

The College is committed to educating and promoting community awareness about the prevention of sex discrimination and harassment, sexual harassment, sexual violence, stalking, intimate partner violence, and sex- and gender-based harassment that does not involve conduct of a sexual nature. The College will offer programs to promote awareness and prevention of such issues throughout the year, including an overview of the College's policies and procedures, relevant definitions (including prohibited conduct, discussion of the impact of alcohol and illegal drug use, effective consent, safe and positive options for bystander intervention), and information about bystander intervention and risk reduction.

The Title IX Coordinator, Deputy Title IX Coordinators, and those involved in implementing the resolution procedures established in this Policy are trained annually on handling complaints of sexual harassment, the provisions of this Policy, and applicable confidentiality requirements.

The Title IX Coordinator, Deputy Title IX Coordinators, and others designated by the Title IX Coordinator oversee the development and implementation of the College's education and prevention programs, which are based on campus needs and climate. Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation. Returning students and employees will receive ongoing training on a periodic basis. All educational programs include a review of resources and reporting options.

B. Advisors

Any student who wishes to speak with anyone at the College regarding an incident of Sexual Misconduct has the right to be accompanied by an advisor of choice (at the party's own expense, if the advisor is a paid advisor) who can assist and advise throughout the student Sexual Misconduct hearing process, including during all related meetings and hearings. Students are strongly encouraged to identify an advisor with whom they feel comfortable as soon as practical. Advisors play an important role in supporting students in a sexual misconduct process. The following guidelines have been identified to ensure advisors are able to effectively assist their students during meetings and hearings:

- The advisor is present to provide support to the student and not to serve as a proxy voice for the student.
- Advisors may not speak during the hearing process, including questioning witnesses, speaking to the board, or making statements or arguments.
- Advisors can confer quietly with their advisee as needed, but if there is a need for an extended discussion, the student should ask for a break in the proceedings.
- Advisors cannot direct the student how to answer a question. Advisors may not confer with their advisees or write notes to them when a question to them is pending-students should provide their own response to the question, not the response their advisor believes would be best.
- As this process is not a legal process, formal rules of evidence do not apply. Objections to questions or evidence are not permitted.
- Advisors should conduct themselves quietly and professionally and must not disrupt the proceedings

C. Confidential Resources and Support

The College hopes that individuals who have experienced sexual violence will report what happened in order to enable the College to respond appropriately. However, at a minimum, the College strongly encourages individuals who have experienced sexual violence to talk to someone about what happened to get needed support even if that individual is not yet ready to report an incident. There are many options available for students to speak with someone about what happened while maintaining confidentiality.

As discussed in Section VIII.A above, different members of the campus community have different abilities to maintain confidentiality when acting in the scope of their role that confers confidentiality.

- Some are required to maintain near complete confidentiality, and thus talking to these individuals is sometimes called a “privileged communication.”
- Other employees are designated as having limited confidentiality, meaning that they may talk to a Complainant in confidence and generally may report only nature, date, time, and general location of the incident without revealing any personally identifying information. Disclosures to these employees will not trigger an investigation against the Complainant’s wishes.
- Finally, some employees are required to report all the details of an incident (including the identities of both the Complainant and Respondent) to the Title IX Coordinator. A report to these employees—“responsible employees”—constitutes a report to the College and generally obligates the College to investigate the incident and take appropriate steps to address the situation.

Below is a more detailed description of confidential and non-confidential resources available at Nazareth.

1. On-Campus Confidential Resources

Unless any of these individuals serve in a Title IX/Deputy Title IX Coordinator role, professional, licensed counselors² who provide mental health counseling to members of the campus community (and including those who act in that role under the supervision of a licensed counselor), health care providers, and athletic trainers are not required to report any information about an incident to the Title IX Coordinator without the permission of the individual seeking support. However, these counselors can inform individuals of their options for on- and off-campus reporting of the sexual violence incident triggering the report.

a. Professional Counselors — Complete Confidentiality

The College’s Health and Counseling Services offer students completely confidential counseling services. They are located between Peckham Hall and the Wellness & Rehabilitation Institute. The phone number during normal business hours (8:30 a.m. to 4:30 p.m.) is 585.389.2500.

Sandra Masterton, the Secretary in the College’s Health and Counseling Services, can also interact with Reporting Parties without any obligation to report any information to the Title IX Coordinator. Sandy’s contact information is 585.389.2500 or smaster3@naz.edu.

For after-hours on-campus emergencies when school is in session, emergency mental health services are accessible 24 hours a day, 7 days a week. A student can access a counselor by calling Campus Safety at 585.389.2850. A Campus Safety officer will take the student’s first name and a phone number at which the counselor can call the student back.

² Under certain circumstances, a psychologist or mental health counselor may be required to notify law enforcement of a sexual assault committed against a minor as discussed in Section X(C) below.

For after-hours emergencies off campus or when school is not in session, please:

- **call Life Line** at 585.275.5151; *or*
- **call 911**; *or*
- **go to the Psychiatric Emergency Department** at University of Rochester Medical Center (601 Elmwood Avenue in Rochester / 585.275.4501); *or*
- **call Restore Sexual Assault Service's** 24 hour/day, confidential rape crisis hotline at
 - **585.546.2777** (Monroe County)
 - **800.527.1757** (Genesee, Livingston, Orleans & Wyoming Counties); *or*
- **call Willow Domestic Violence Center's** 24 hour/day confidential hotline (585.232.7353) for victims of domestic violence

b. Health Services — Complete Confidentiality

The College's Health and Counseling Services offer students free, confidential health care³ services. They are located between Peckham Hall and the Wellness & Rehabilitation Institute. The phone number during normal business hours (8:30 a.m. to 4:30 p.m.) is 585.389.2500.

For emergencies that occur while Health and Counseling Services are closed, students should

- **call Campus Safety** at ext. 3333 or 585.389.2850; *or*
- use the individual's **Security Escort Alarm**; *or*
- **call 911**; *or*
- proceed directly to the **Emergency Department at Strong Memorial Hospital** (601 Elmwood Avenue in Rochester / 585.275.4551), which has a Sexual Assault Forensic Examination (SAFE) Center; *or*
- call **585.922.4000** to access a **Sexual Assault Nurse Examiner at Rochester General Hospital** (1425 Portland Avenue in Rochester).

c. Non-professional Counselors — Limited Confidentiality

Unless any of these individuals serve in a Title IX/Deputy Title IX Coordinator role, counselors in and affiliates of the Center for Spirituality can talk to a Complainant without any obligation to reveal to the College any personally identifying information about an incident. A Complainant can seek assistance and support from these individuals without triggering an investigation that could reveal the reporting student's identity or that the student has disclosed the incident.

The Center for Spirituality is located in Golisano Academic Center 153 and/or by calling 585.389.2303. Students can reach the Center's staff and/or affiliates directly by using the following contact information:

- **Jamie Fazio: Director, jfazio1@naz.edu or 585.389.2308**
Catholic Chaplain

³ Under certain circumstances, a health care provider may be required to notify law enforcement of a sexual assault committed against a minor as discussed in Section X(C) below.

- Nadia Mullin: nmullin7@naz.edu or 585.389.2306
Protestant Chaplain
- Muhammed Shafiq: mshafiq5@naz.edu or 585.389.2963
- Sam Asher: sam.asher@mail.naz.edu or 585.461.3370

While maintaining a Complainant’s confidentiality, these individuals and all other staff in the Center for Spirituality must report the nature, date, time, and general location of an incident to the Title IX Coordinator. This limited report—which will include no information that would directly or indirectly identify the reporting student—helps keep the Title IX Coordinator informed of the general extent and nature of sexual violence on and off campus so that s/he can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, these individuals will consult with the Complainant to ensure that no personally identifying details are shared with the Title IX Coordinator.

2. *Off-Campus Confidential Resources*

Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the College unless the Complainant requests the disclosure and signs a consent or waiver form.

a. Counselors and Advocates

Members of the College’s community may contact any of the following local resources for confidential support:

- Restore Sexual Assault Services maintains a 24 hour/day, confidential rape crisis hotline:
 - 585.546.2777 (Monroe County)
 - 800.527.1757 (Genesee, Livingston, Orleans & Wyoming Counties).
- Willow Domestic Violence Center maintains a 24 hour/day confidential hotline (585.232.7353) for victims of domestic violence, and offers a shelter, counseling, support groups, children’s services, court advocacy, Latina services, dating violence education, and transition program.
- Safe Journey (585.425.1580) serves women and children in transition from domestic violence, who need individual or group counseling, advocacy or community referrals as they heal from abuse.

Employees can access free, confidential assistance through the College’s Employee Assistance Program 24 hours a day, 7 days a week:

- 1-800-433-7916
- <https://nazareth-college.lifeworks.com/signup/invitation>

b. Health Care

Individuals who have experienced sexual violence should visit a local Emergency Department or the local medical provider⁴ of their choice for confidential emergency care. Options include:

- Call 911.

⁴ Under certain circumstances, a health care provider may be required to notify law enforcement of a sexual assault committed against a minor as discussed in Section X(C) below.

- Proceed directly to the Emergency Department at Strong Memorial Hospital (601 Elmwood Avenue in Rochester / 585.275.4551), which has a Sexual Assault Forensic Examination (SAFE) Center.
- Call 585.922.4000 to access a Sexual Assault Forensic Examiner at Rochester General Hospital (1425 Portland Avenue in Rochester).

D. More About Confidential Resources

A Complainant who at first requests confidentiality may later decide to file a complaint with the school or report the incident to local law enforcement or the New York State Police, which would likely result in investigation by local law enforcement or State Police. These on-campus counselors and health care providers will assist the Complainant with further or formal action on or off campus.

1. Limitations

An individual who speaks to an on-campus professional or non-professional counselor or health care provider must understand that, if the individual wants to maintain confidentiality, the College may be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Even so, these on-campus counselors and health care providers will still assist the Complainant in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working or course schedules.

2. Exceptions

Please note that, while these on-campus professional and non-professional counselors and health care providers may maintain a Complainant’s confidentiality with respect to further reporting to the College, their ability to maintain confidentiality may be limited in the following circumstances:

- If a counselor or health care provider believes that the individual seeking resources or support or someone else is in clear and imminent danger of harm, the counselor is legally obligated to inform proper authorities and others in order to help prevent the harm from occurring; in such cases the counselor or health care provider may also decide that it is in the individual’s best interest to contact the individual’s family and College officials.
- If an individual provides information indicating that a minor (someone under 18 years old) is being abused or has been sexually assaulted, the counselor or health care provider is legally required to notify proper authorities.
- In addition to mandated reporting requirements, there may be other circumstances in which a counselor or health care provider may decide it is necessary and/or appropriate to notify the minor’s parents.
- In rare cases, a court may order a counselor or health care provider to disclose information.

3. Timely Warnings

Significantly, if the College determines that the Respondent(s) poses a serious and ongoing threat to the Nazareth community, the College may decide to issue a timely warning to the community (discussed below). However, any such warning will not include any information that identifies the Complainant seeking resources and support.

SECTION X. REPORTING

As outlined in Section IV explaining Emergency Support Services in the event of sexual misconduct, the College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual violence. The College also encourages individuals to report the misconduct to the Title IX Coordinator, a Deputy Title IX Coordinator or other responsible employee.

A. Overview

The College encourages all community members to report sexual assault and harassment in order to achieve a campus environment that maximizes its community members' academic pursuits and positive feelings of community. The College will respond to any information it receives—whether from a Complainant, third party or anonymously—against a named Respondent.

Nazareth's Policy, definitions, and standard of review differ from New York criminal⁵ law. A Complainant who wishes to make a report of sexual misconduct has a number of options to resolve a complaint, through:

- the College's complaint process;
- criminal action; *or*
- both the College's complaint process and criminal action.

The College is committed to providing a variety of welcoming and accessible means of reporting sexual misconduct so that all instances of sexual assault or harassment will be reported. The Title IX Coordinator is specifically charged with coordinating the initial assessment, initiating the investigation, and responding to allegations of sexual assault or harassment to stop the harassing conduct, address its effects, and prevent its recurrence.

At the time a report is made, a Complainant does not have to decide whether or not to request disciplinary action. The College recognizes that not every individual will be prepared to make a report to the College or to law enforcement, and individuals are not expected or required to pursue a specific course of action. To the extent possible, the College will respect an individual's autonomy in making these important decisions and provide support that will assist each individual in making that determination.

As outlined in the [Resources](#) section of this Policy, Nazareth offers a number of confidential resources on campus, which can be supplemented by other community resources, to individuals who want support, regardless of whether they currently plan to make a report to the College. Information shared with the identified confidential resources will not be reported to the College.

As outlined in the statement regarding [Privacy and Confidentiality](#), the College respects the privacy interests of students, faculty, and staff. All information reported to the Title IX Coordinator will be shared only with those College employees or agents who will assist in the investigation and/or resolution of the complaint.

The Title IX Coordinator or designated Deputy Title IX Coordinator, working with any other relevant campus units (such as, Campus Safety, Residential Life, Registrar, Student Conduct Office, and Human Resources), will ensure that the College responds to all reports in a timely, effective, and consistent manner. The Title IX Coordinator and Deputy Title IX Coordinators are charged with coordinating the review, investigation, and resolution of all reports to ensure consistent responsiveness and the integrated provision of interim measures to support the individuals involved and to protect the Nazareth community.

The College is committed to using a consistent and informed response to create a culture of accountability. The College is positioned to provide seamless support, assess individual and campus safety, and effectively respond to allegations of sexual assault and harassment.

The College will promptly review and respond to all reports of sexual violence and harassment in an integrated, consistent manner that treats each individual with dignity and respect and ensures fair and impartial evaluation and resolution.

⁵ See Appendix A.

B. Reporting to Law Enforcement

The College encourages Complainants to pursue criminal action for incidents of sexual assault or harassment that may also be crimes under New York State criminal statutes. The College will assist a Complainant, at the Complainant's request, in contacting local law enforcement. If a Complainant decides to pursue the criminal process, Nazareth will cooperate with law enforcement agencies to the extent permitted by law.

The College will generally respect a Complainant's choice whether or not to report an incident to local law enforcement, unless the College determines that there is an overriding issue with respect to the safety or welfare of the Nazareth community. Where a report involves suspected abuse of a minor less than 18, certain individuals at the College may be required by state law to notify law enforcement and/or the New York Statewide Central Register of Child Abuse and Maltreatment, as discussed further in Section X.G.

Neither law enforcement's determination whether or not to prosecute a complaint, nor the outcome of any criminal prosecution of such a complaint, creates any presumption regarding whether sexual assault or misconduct has or has not occurred under this Policy. Proceedings under this Policy may be carried out prior to, simultaneously with or following civil or criminal proceedings off campus.

Students who wish to pursue a formal complaint with local law enforcement can enlist the help of the Title IX Coordinator, Campus Safety or call the Monroe County Sheriff's Office (MCSO) directly by dialing 911.

1. Victim Assistance Programs

The Monroe County Sheriff's Office has a victim assistance program available to individuals who file a report with law enforcement. Victim assistance programs provide individual counseling, transportation to court, accompaniment to court, assistance in filing with the Crime Victims Board for compensation for crime-related out-of-pocket costs, property release, restitution assistance, referral, public awareness, and an explanation of the criminal justice system.

- Monroe County Sheriff's Department Victim Assistance Program: 585.753.4389 (<http://www.monroecountysheriff.info/>)

The following other agencies also provide assistance to individuals who pursue criminal complaints:

- Willow Domestic Violence Center: 585.232.5200 (<http://www.willowcenterny.org/>)
- Monroe County District Attorney Victim/Witness Assistance Bureau: 585.753.4573 (<http://www.monroecounty.gov/da-assistance.php>)
- Planned Parenthood of the Rochester/Syracuse Region: 585.546.2595 (<http://www.pprsr.org/>)
- Society for the Protection and Care of Children - Family Violence Program: 585.325.6101 (<http://www.spcc-roch.org/>)
- The Legal Aid Society of Rochester, NY, Inc.: 585.232.4090 (<http://www.lasroc.org/>)

To learn more about these programs, visit the website for the New York State Office of Victim Services (<http://www.ovs.ny.gov/>), which funds local victim assistance programs.

2. Sharing of Information Between the College and Law Enforcement in Parallel Investigations.

The MCSO and the College's Campus Safety Department will timely share information in parallel investigations except that the MCSO may manage sharing of information so as not to impede the MCSO's ongoing law enforcement investigation. The College will work similarly with other law enforcement agencies as necessary. In addition, the College's ability to share information related to its own investigation and/or adjudication of certain offenses involving a student or students will be governed by the Family Educational Rights and Privacy Act, which prohibits disclosure of student education records containing personally identifiable information except under certain circumstances.

C. Campus Reporting Options

To enable the College to respond to all reports in a prompt and equitable manner, the College encourages all individuals to directly report any incident to any of the following individuals or offices:

Title IX Coordinator

Heather Sourwine
Title IX Coordinator
hsourwi8@naz.edu
585.389.2877
Shults Center 100A

Acting Title IX Coordinator

Vicky Gebel
Acting Title IX Coordinator
vgebel4@naz.edu
585.389.2480
Kearney Hall

Deputy Title IX Coordinator

Phil Steckley
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Stadium 106

Campus Safety

Ext. 3333 or 58.289.2850
Lower level of Shults Center

Center for Spirituality⁶

585.389.2303
Golisano Academic Center 153

Health and Counseling Services⁷

Health Services: 585.389.2500
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*Between Peckham Hall and the
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Human Resources

Deborah Winslow-Schaber
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With the exception of the College's Health and Counseling Services staff and athletic trainers (complete confidentiality) and Center for Spirituality staff (limited confidentiality), reports to any of the above will trigger the College's obligation to inquire further to evaluate the alleged conduct and appropriate response options.

1. Responsible Employees

The College recognizes that a student or employee may choose to report sexual assault or harassment to any employee of the College. For example, a student may choose to talk with a dean, a resident assistant, a faculty member or a coach. An employee may choose to tell a supervisor or colleague.

In general, conversations with most employees are not completely confidential under the law. Under Title IX, colleges are required to take immediate, corrective action if a "responsible employee" knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment that creates a hostile environment. The Office for Civil Rights defines a "responsible employee" as any employee who:

- has the authority to take action to redress the harassment;
- has the duty to report to appropriate school official's sexual harassment or any other misconduct by students or employees; *or*

⁶ An individual reporting to the Center for Spirituality will need to authorize the disclosure of personally identifiable information to the Title IX Coordinator

⁷ An individual reporting to Health and Counseling Services will need to authorize further disclosure to the Title IX Coordinator

- a student could reasonably believe has the authority or responsibility to take action.

With the exception of those employees specified in the section explaining [Confidential Resources](#), all College employees, including faculty⁸, staff, administrators, and students who are Resident Assistants, are required to share with the Title IX Coordinator any report of sexual assault or harassment they receive or of which they become aware. These individuals are required to share with the Title IX Coordinator all information of which they are aware, including the identities of the parties involved in the sexual misconduct, if known.

2. *Anonymous Reporting*

Any individual may report an incident without disclosing one's name, identifying the Complainant or Respondent or requesting any action. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may impact the College's ability to respond or take further action.

All anonymous reports will go to Campus Safety and the Title IX Coordinator for review and appropriate response and action. Where there is sufficient information, the College will ensure that anonymous reports are reviewed and included for compliance with federal law (the Clery Act).

D. **Reporting Considerations**

1. *Timeliness of Report, Location of Incident*

While the College does not limit the timeframe for reporting, individuals are encouraged to report sexual assault and harassment as soon as possible in order to maximize the College's ability to respond promptly and effectively. If the Respondent is no longer a student or employee, the College may not be able to take action against the Respondent, but it will still seek to take steps to end the harassment, prevent its recurrence, and address its effects.

An incident does not have to occur on campus to be reported to the College. Off-campus conduct that is likely to have a substantial adverse effect on any member of the College community or the College may be covered under this Policy.

2. *Amnesty for Personal Use of Alcohol or Other Drugs*

The health and safety of every student at the College is the utmost importance. The College 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. The College strongly encourages students to report domestic violence, dating violence, stalking, sexual assault, and any other form of sexual misconduct to institution officials.

A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, sexual assault or any other form of sexual misconduct to the College's officials or law enforcement will not be subject to action under Nazareth's code of conduct 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, sexual assault or other act of sexual misconduct.

E. **Statement Against Retaliation**

As emphasized above, retaliation is a violation of College policy. The College understands that retaliation can take many forms, may be committed by or against an individual or a group, and that a Respondent or third party may also be the subject of retaliation by another individual, including the Complainant.

An individual reporting sexual assault or harassment is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is not later substantiated.

⁸ Faculty are not required to make reports to the Title IX Coordinator when they learn of allegations of sexual assault or harassment through classroom writing assignments or class-related discussions unless the Complainant expressly requests reporting.

F. False Reporting

Given that a charge of sexual assault or harassment may have severe consequences, the College takes very seriously the truthfulness of information provided in support of an allegation of sexual misconduct.

A Complainant who is later found to have made a report that was intentionally false or made maliciously without regard for truth may be subject to disciplinary action. To be clear: this provision does not apply to reports made in good faith, even if the facts alleged in the report are not substantiated by an investigation or do not result in a finding of responsibility.

Similarly, a Respondent or witness who is later proven to have intentionally given false information during the course of an investigation or judicial action may be subject to disciplinary action.

G. Reports Involving Minors

The College's Protection of Minors Policy imposes an obligation on all members of the College community—regardless of mandated reporter status—to report upon reasonable cause to suspect that a minor (a person under the age of 18) is a victim of child abuse, neglect or sexual harassment based on:

- information shared by the minor or any other individual; or
- personal observations or knowledge.

The duty to report is triggered by reasonable suspicion or belief. There is no requirement that there be actual evidence of abuse, nor should any individual seek to investigate the matter before reporting. The source of abuse does not need to be known in order to file a report. Any doubt as to whether or not to report should be resolved in favor of making the report to ensure that the appropriate professionals in child protective services can assess the report and evaluate the safety of the minor.

Please see the [Protection of Minors Policy](#) for reporting options and procedures.

H. Take Back the Night and Other Public Awareness Events

Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which students disclose incidents of sexual violence are not considered notice to the College for purposes of triggering its obligation to investigate any particular incident(s) of sexual violence. Such events may, however, inform the need for campus-wide education and prevention efforts, and the College will provide information about students' Title IX rights at these events.

I. Timely Warnings

If a report of misconduct discloses a serious or continuing threat to the Nazareth community, the College may issue a campus-wide timely warning (which can take different forms, including an email to campus) to protect the health or safety of the community.

Any such timely warning issued by the College will omit the name of the Complainant. The Complainant's name will not be released to the general public without the Complainant's express consent. In deciding whether to release the Respondent's name in a timely warning, the College will consider the need to release the name to make the timely warning effective.

J. Broader Remedial Action Based on Reported Sexual Misconduct

Because the College is under a continuing obligation to address the issue of sexual misconduct campus-wide, reports of sexual misconduct (including non-identifying reports) will prompt the College to consider broader remedial action, such as: increased monitoring, supervision, and/or security at locations where the reported sexual misconduct

occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

SECTION XI. INTERIM MEASURES

Upon receipt of a report of sex discrimination or harassment, sexual harassment, sexual violence, stalking, domestic violence, dating violence, or sex- or gender-based harassment that does not involve conduct of a sexual nature, the College will evaluate and, in its discretion, impose reasonable and appropriate interim measures designed to eliminate the reported hostile environment and protect the parties involved. The College will maintain consistent contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed. The College may impose interim measures regardless of whether formal disciplinary action is sought by the Complainant or the College. The College will implement interim measures promptly and at no cost to the parties.

A Complainant or Respondent may request separation or other protection, or the College may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader College community, and/or the integrity of the investigative and/or resolution process. The College will maintain as confidential any accommodation(s) or protective measure(s) provided to Complainant to the extent that maintaining such confidentiality will not impair its ability to provide the accommodation(s) or protective measure(s).

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

Potential interim measures that may be applied to the Complainant and/or the Respondent include:

- access to counseling services and assistance in setting up an initial appointment, on and off campus;
- imposition of an on-campus “no contact” directive that requires the Respondent to leave an area immediately and without directly contacting the Complainant if the parties are both in the same public place;
- rescheduling of exams and assignments;
- providing alternative course completion options;
- changing class schedules, including the ability to transfer course sections or withdrawal from a course without penalty;
- changing work schedules or job assignments;
- changing a student’s College-owned housing;
- assistance from College’s support staff in completing housing relocation;
- limiting an individual’s or organization’s access to certain College facilities or activities pending resolution of the matter;
- voluntary leave of absence;
- providing an escort to ensure safe movement between classes and activities;
- providing medical services;
- providing academic support services, such as tutoring;

- College-imposed leave or separation; and/or
- any other remedy that can be tailored to the involved individuals to achieve the goals of this Policy.

A. Review of Certain Interim Measures

With respect to no contact orders, changes to academic, housing, employment, and transportation arrangements in order to help ensure safety, prevent retaliation, and avoid an ongoing hostile environment, both parties shall, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of such interim measure that directly affects the party, including potential modification, and shall be allowed to submit evidence in support of their request.

B. Interim Suspensions

If the Title IX Coordinator, in consultation with the Director of Campus Safety, decides at any point that the well-being of a student or of any member of the College’s community is at stake, an interim suspension may be imposed on a Respondent who poses a continuing threat to the health and safety of the campus pending the outcome of the conduct process. This action assumes no determination of responsibility and the hearing will be held as soon as possible.

Both parties shall, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification. Such requests shall be directed in writing to the Vice President for Community & Belonging, in writing within 24 hours of notice of the interim suspension. The request must include an explanation of the objection to the interim suspension, and may include evidence in support of the request. The written request will be provided to the other party, who will have the opportunity to respond to the request. In most instances, the response must be provided within 24 hours. Both parties will be notified of the College’s decision as soon as possible. While this review is pending, the interim suspension shall remain in place.

Similarly, the College may impose leave on any employee or faculty member.

The terms of all such leaves shall be determined in the College’s sole discretion.

**SECTION XII. PROCEDURES FOR THE RESOLUTION
OF
SEXUAL MISCONDUCT CHARGES AGAINST
STUDENTS**

The following “Student Sexual Misconduct Resolution Procedures” are the student conduct procedures applicable to allegations of student sexual misconduct⁹. These procedures prevail to the extent that there is any conflict with the Student Handbook at Section IV of the Student Conduct Code, Statement of the Conduct Code, Disciplinary Sanctions and Conduct Hearing Procedures (“Student Conduct Procedures”).

The resolution process described in this Policy is based on the following premises: first, the aim of student conduct is to promote the welfare of students who participate in the process, and second, the goal is not just to punish offenders or deter potential violators.

All individuals involved in these procedures are annually trained and/or have experience in handling sexual violence complaints and in the operation of the College’s conduct process.

When the College receives a report of sexual misconduct to which it has decided it must respond through an investigation (certain exceptions and alternate paths described below), it is irrelevant whether a Complainant decides to make a report to law enforcement. In the event that a Complainant makes a report to law enforcement, Nazareth

⁹ The policies and processes applicable to faculty and staff are found in the Faculty Manual and Staff Personnel Policy Manual.

must continue its independent investigation while law enforcement's investigation proceeds. However, the College and law enforcement will coordinate their investigations, including sharing information to the extent it is prudent and feasible.

A. Initial Assessment to Evaluate Appropriate Interim Measures and Procedural Options

When the College receives a report of alleged sexual misconduct, the Title IX Coordinator (or designee) will make an initial assessment of any risk of harm to individuals or to the campus community and will take necessary action to address those risks. These steps may include interim protective measures to provide for the safety of the individual and the campus community. As necessary, one or more additional campus officials (including but not limited to a Deputy Title IX Coordinator, the Director of Campus Safety, the Vice President for Community & Belonging, and/or Assistant Director of Counseling Services) may also be included in the initial assessment or in evaluating information gathered in the initial assessment. In certain cases, the Title IX Coordinator may convene the College's Behavior Intervention Team to participate in evaluating information gathered in the initial assessment.

The first step of the assessment will usually be a preliminary meeting between the Title IX Coordinator and the Complainant. The purpose of the preliminary meeting is to:

- assess the nature and circumstances of the allegation;
- address the immediate physical safety and emotional well-being of the Complainant;
- notify the Complainant of the right to contact law enforcement (or not) and seek medical treatment;
- notify the Complainant of the importance of preservation of evidence;
- provide the Complainant with information about on- and off-campus resources;
- notify the Complainant that the institution can provide assistance in initiating legal proceedings in family court or civil court;
- notify the Complainant of the range of interim accommodations and responses;
- provide the Complainant with an explanation of the procedural options;
- assess for pattern evidence or other similar conduct by Respondent;
- enter the report into the College's daily crime log;
- assess the reported conduct for the need for a timely warning under the Clery Act;
- discuss the Complainant's expressed preference for the manner of resolution and any barriers to proceeding; and
- explain the College's policy prohibiting retaliation.

After this assessment, the Title IX Coordinator may direct that an investigation continue depending on a variety of factors, such as the Complainant's wish to pursue disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation. Where possible, the College will seek action consistent with the Complainant's expressed preference for the manner of resolution.

The Title IX Coordinator will continue to evaluate the need for interim measures to protect or support the parties to the process and any involved third parties on an ongoing basis.

B. Weighing a Request for Confidentiality

If a Complainant who makes a report to the College wishes to maintain confidentiality during an investigation or requests that no investigation into a particular incident be conducted or disciplinary action taken, the College must weigh that request against the College's obligation to provide a safe, non-discriminatory environment for all students, including the Complainant. A Complainant's request for confidentiality often will limit the College's ability to meaningfully investigate the incident and pursue disciplinary action against the Respondent(s). There are times when the College may not be able to honor a Complainant's request for confidentiality in order to provide a safe, non-discriminatory environment for all community members and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a Respondent.

The Title IX Coordinator and a Deputy Title IX Coordinator will evaluate requests for confidentiality by considering a range of factors, including the following:

- the increased risk that the Respondent will commit additional acts of sexual or other violence, such as:
 - whether there have been other sexual violence complaints about the same Respondent;
 - whether the Respondent has a history of arrests or records from a prior school indicating a history of violence; and
 - whether the Respondent threatened further sexual violence or other violence against the Complainant or others;
- whether the sexual violence was committed by multiple perpetrators;
- whether the sexual violence was perpetrated with a weapon or force;
- whether the Complainant is a minor;
- whether the College possesses other means to obtain relevant evidence of the sexual violence (*e.g.*, security cameras or personnel, physical evidence); and
- whether the Complainant's report reveals a pattern of perpetration (*e.g.*, via illicit use of drugs or alcohol) at a given location or by a particular group.¹⁰

The presence of one or more of these factors could lead the College to investigate and, if deemed necessary, pursue disciplinary action in the absence of a participating Complainant. If none of these factors is present, the College will likely respect the reporting student's request for confidentiality.

If the College determines that it cannot maintain a Complainant's confidentiality, it will notify the Complainant prior to commencing any investigation, and will—to the extent possible—only share information with people responsible for handling the College's response. Alternatively, the course of action may include steps to limit the effects of the alleged misconduct and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

In the event that the College proceeds with an investigation and is unable to maintain confidentiality, the College will continue to evaluate methods and measures to protect the reporting student from retaliation or harm. Retaliation against the reporting student(s), whether by students or College employees, will not be tolerated.

The College will also:

¹⁰ This list of factors is recommended by the White House Task Force to Protect Students from Sexual Assault, April 2014 and Article 129-B of the New York Education Law section 6446(1)(d).

- assist the reporting individual in accessing other available advocacy support, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus;
- provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the Respondent pending the outcome of an investigation) or adjustments for assignments or tests; and
- inform the reporting student of their right to report a crime to campus or local law enforcement and provide them with assistance if they wish to do so.

The College may not require a Complainant to participate in any investigation or disciplinary proceeding; however, the Complainant's refusal to participate will limit the College's ability to fully investigate the matter and determine whether a violation of this Policy has occurred.

If the College determines that it can respect a Complainant's request for confidentiality, the College will also take immediate action as necessary to protect and assist the Complainant. Such protection and assistance could include: issuing a no contact order, helping arrange a change of living or working arrangements or course schedules (including for the Respondent pending the outcome of an investigation) or adjustments for assignments or tests. The College will also assist the Complainant in accessing other available advocacy support, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus.

C. Evaluation of Response Options

When the Title IX Coordinator concludes that the alleged conduct falls within the scope of this Policy and the College's hearing process or disciplinary action may be appropriate, the College will initiate an investigation (see Section XII.D below).

When the Title IX Coordinator concludes that a more appropriate course of action is a non-hearing approach designed to eliminate the hostile environment, the Title IX Coordinator will evaluate potential responses and discuss them with the Complainant. This may include interim measures designed to reduce the burden on the Complainant (see Section XI of this Policy), or possibly remedies for the community, such as targeted or broad-based educational programming or training, direct communication with the Respondent by the Complainant, communication with the Respondent by the Title IX Coordinator or another administrator or other forms of restorative justice. Depending on the form of response used, it may be possible for a Complainant to maintain anonymity.

When the Title IX Coordinator concludes that the alleged conduct does not fall within the scope of this Policy, the matter will be referred to the appropriate office for further consideration or otherwise addressed with the Complainant. The determination regarding next steps will be communicated to the Complainant in writing. A Respondent will be notified when the College seeks action that would impact a Respondent, such as protective measures that restrict the Respondent's movement on campus or the initiation of an investigation. Even if the complaint resolution process is not pursued, the College will have the discretion to require the Respondent to participate in remedial measures that ensure sufficient education and counseling related to the College's policies.

D. Investigation

The College's investigation is designed to provide a fair and reliable gathering of the facts. Information gathered during the investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the campus community, and impose (additional) remedies as deemed necessary to address the effects of the alleged conduct.

1. Investigators

The Title IX Coordinator will determine who will serve as investigator(s) and supervises the investigation. In most instances, the investigations will be conducted by a Campus Safety Investigator. When deemed appropriate, the investigator may be a different Nazareth employee, an external investigator engaged to assist the College in its fact-gathering or a team of investigators that pairs an external investigator with a Nazareth employee. All investigators

must have specific training and experience investigating allegations of sexual misconduct. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.

The investigator(s) will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary, and other evidence, as appropriate and available. The investigator(s) will decide which individuals to interview. The Title IX Coordinator may also direct that additional interviews be conducted. As part of the investigation, the College will provide an opportunity for the parties to suggest witnesses and present other evidence. The investigation will be conducted with the goal of being thorough, impartial, and fair; all individuals will be treated with appropriate sensitivity and respect.

The investigation will be conducted in a manner that is respectful of individual privacy concerns. To be clear, however, confidentiality cannot be promised during an investigation because, for example, it may be necessary for a number of individuals to participate in discussions regarding accommodations and interim measures, and for the investigator(s) to speak with witnesses.

2. Investigative Report

At the conclusion of the investigation, the investigator(s) will prepare a report setting forth the facts gathered and an evaluation of the reliability of the information presented. The College will share the report with the Complainant and Respondent, and each party will have the opportunity to prepare and submit a written response. Before the parties access the investigative report, the Title IX Coordinator (or designee) will review the report and appended materials to determine whether any information contained therein is relevant and material to the determination of the charged violations of this Policy given the nature of the allegation(s). The Title IX Coordinator (or designee) may redact information that is: irrelevant; more prejudicial to a party or witness than relevant to a determination of a Policy violation; an unwarranted invasion of an individual's privacy; immaterial; a statement of personal opinion rather than direct observations or reasonable inferences from the facts; and statements as to general reputation for any character trait, including honesty.

The investigator(s) may find it necessary to follow up on information provided in a written response submitted by any party and supplement their prior report accordingly. All of these written submissions and all information gathered during the investigation will collectively be considered the investigative report. Upon receipt of the investigative report, the College will notify all parties that the investigation is complete and provide information about next steps in the process.

E. Determination After Investigation

Following the conclusion of the investigation, the Title IX Coordinator (or designee) will review the investigative report and determine whether there is sufficient cause to believe that the alleged sexual misconduct may have occurred, warranting further review of the matter. If so, the Title IX Coordinator (or designee), will prepare a notice of charge(s) based on information contained in the investigative report.

If the Title IX Coordinator or designee determines that there is not sufficient cause to believe the alleged sexual misconduct may have occurred or that the alleged misconduct does not fall within the scope of this Policy, the Title IX Coordinator will issue a notice informing the parties of this determination.

F. Notice of Charge

When a Notice of Charge is issued, it will be delivered to the parties, to proceed with the case through one of the methods described further in Section XII.G below.

At least seven (7) business days before the scheduled hearing date, a written or electronic notice including the following information shall be sent or given to the parties:

- the date, time, location, and type of hearing;

- a brief factual summary of the conduct alleged to have violated the Policy, including date, time, and location;
- the specific Policy provision(s) at issue;
- possible sanctions associated with a finding of responsibility for the alleged Policy violation(s); and
- the composition of the hearing board, if any, empaneled by the Title IX Coordinator (for a formal hearing) or the identities of the designated decision-maker(s) (for an administrative hearing)

Each party has the right to request that the Title IX Coordinator remove a member of the Hearing Board or a decision-maker(s), whichever is applicable given the type of hearing, based on reasonable and articulable grounds of bias, conflict of interest or an inability to be fair and impartial. This challenge must be raised in writing within two (2) business days of receipt of the notice of hearing. The Title IX Coordinator, will determine whether to remove the panelist or decision-maker(s).

Similarly, each party may request that someone other than the Title IX Coordinator oversee the investigation and hearing process based on reasonable and articulable grounds of bias, conflict of interest or an inability to be fair and impartial. Any such request should be submitted in writing to the Vice President for Community & Belonging as soon as a party becomes aware of any such grounds for removal.

The Notice of Charge(s) will attach a copy of this Policy or include a web link to this Policy.

Note that students may be accountable for additional violations discovered through the hearing process and not part of the initial notice of charges. There will be a separate investigation and, if applicable, hearing for any additional violations that result in additional charges.

G. Disciplinary Hearings: Formal and Administrative Student Sexual Misconduct Hearings

Generally, student sexual misconduct cases are resolved through administrative or formal hearing processes overseen by the Title IX Coordinator or his or her designee. The Title IX Coordinator (or designee) convenes and presides over administrative hearings. The Title IX Coordinator (or designee) attends formal hearings as chair, serving as a process and policy advisor to the Hearing Board.

In all cases, charges are brought by the College against a student accused of a policy violation; in many cases, the College is in fact the only identifiable injured party. However, there are cases in which there is an identifiable Complainant other than the College. When the complaint relates to an alleged act of misconduct that violates the physical and/or mental welfare of an individual, the Complainant can expect the College's student conduct process will respond in a caring, sensitive, and supportive manner allowing the Complainant to utilize the conduct process unimpeded while ensuring the rights afforded to the Respondent(s).

The Complainant is entitled, regardless of the outcome or stage of an internal hearing, to file a criminal complaint with law enforcement.

1. Parties' Rights

Parties to a sexual misconduct proceeding are entitled to the following:

- To be treated with dignity, respect, and compassion by all persons involved in the disciplinary process.
- Information regarding the College's sexual misconduct resolution process.
- Information about accessing support services on and off campus.
- Freedom from intimidation and harassment throughout this process.

- Timely, similar access to information and documents to be used at the hearing, including any investigative report.
- Discuss and share information related to the complaint with others that may support them or assist them in presenting their case.
- To separate hearing rooms (connected by telephonic/electronic means) in order to allow full participation of the parties while at the same time avoiding any re-traumatization, undue embarrassment or intimidation. Where a party does not conduct themselves in a proper civil and respectful manner and/or disrespects or obstructs the hearing process, the Chair of the Hearing Board will issue a warning. If the disrespectful and/or obstructive behavior persists, the party will be dismissed and the individual will later be provided an opportunity to listen to the recording of testimony.
- To be accompanied at the hearing and any related meeting or proceeding by an advisor of choice. An advisor is any individual who provides a party support, guidance or advice. The advisor may confer with and assist the party, but may not speak for the party as an advocate or directly address the Investigator/Student Conduct Hearing Board/Title IX Coordinator, the other party(ies) or witnesses through questions or otherwise. Parties should identify their advisor of choice at the earliest opportunity during the process by sending the Title IX Coordinator their advisor's name and, if the party desires that the advisor be included on investigation- and/or hearing-related communications, their advisor's contact information.
- The right not to answer any questions asked during the hearing. However, the Student Conduct Hearing Board may draw inferences from and consider as part of deliberations silence or refusal to participate in the context of all information presented.
- To learn of the decision of the Hearing Board at the same time and in the same manner as the other party.
- Privacy throughout the student conduct process in relation to campus and other media, and in relation to all other involved parties. In this regard, while parties are permitted to disclose or discuss the outcome of the process, the College encourages parties to refrain from speaking publicly about the result of student conduct cases.
- In instances where the Respondent(s) is found responsible, the opportunity to provide an impact statement to the Title IX Coordinator prior to a sanction determination. Such statement (either written or an oral synopsis delivered by the Title IX Coordinator) will become part of the case record/file and shared with anyone charged with determining sanctions, as well as anyone reviewing the case on appeal.
- To be advised in writing of the appropriate procedures for requesting an appeal. The notice will be included with the written decision sent to the parties. A party submitting an appeal may request an opportunity to listen to a copy of the recording of the hearing by submitting a written request to the Title IX Coordinator. This request must be made within the timeframes identified for appeals. The recording will then be made available to the party in the company of a College employee, and in a location identified by the Title IX Coordinator. The recording will be accessible to any person determining the outcome of the appeal.

2. *Student Sexual Misconduct Hearings*

The Title IX Coordinator may independently hear and resolve a complaint or may empanel a Student Conduct Hearing Board composed of members of the faculty, staff, and/or the student body to resolve a complaint. Cases heard by a Student Conduct Hearing Board are convened by the Title IX Coordinator, who oversees all related activities. The Title IX Coordinator will ensure that Board Members represent the faculty, staff, and/or student populations of the College. In rare circumstances when the Title IX Coordinator is unavailable or ineligible due to, for example, a conflict of interest, the Title IX Coordinator will appoint a substitute to convene and oversee the hearing board process.

The Title IX Coordinator (or designee) will be the non-voting chair of all hearings, serving as a process and policy advisor to the Hearing Board.

The Nazareth College Student Conduct process is not a court of law, nor is it intended to be, and legal rules of evidence and procedure do not apply. With guidance from the Title IX Coordinator, the Hearing Board will determine in its sole discretion who will appear before the Hearing Board and what information will be provided, which will be guided by principles of fundamental relevance and fairness.

All procedural questions will be decided in the sole discretion of the Hearing Board, in consultation with the Title IX Coordinator, as deemed necessary. It may decide to adjourn the hearing for a reasonable period of time. The Hearing Board will accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the Complainant, Respondent, and/or witnesses during the hearing by providing separate facilities and/or permitting participation via appropriate technology to allow the testimony while not depriving the Respondent of access to information. In matters involving more than one Respondent, the Hearing Board may permit hearings concerning each Respondent to be conducted separately or simultaneously.

College officials' individualized assessments of each matter may require additional safety and security measures to be employed. For example, in order to minimize risk, the Title IX Coordinator, and/or Hearing Board may determine that it is necessary to conduct hearings at off-campus locations, limit personal items or bags that may be brought into the hearing (all may be subject to search before entering) or the use of electronic wands and any additional related safety precautions as identified and recommended to the Vice President for Community & Belonging by the Campus Safety Director. The parties will be notified of these conditions by the Title IX Coordinator and/or Campus Safety Director, either directly or through the use of electronic means or mail.

a. Formal Hearings

The Formal Student Sexual Misconduct Hearing process shall include the following, some of which may be modified based on whether one or both parties request to be separate from the other party(ies) during the hearing:

- Prior to a formal hearing, the Complainant and Respondent, will have similar access to information and documents to be used at the hearing, including any investigative report.
- The Title IX Coordinator, Hearing Board members, the Respondent and/or the Complainant may request that any person be called to be questioned as a witness.
 - Party requests for witnesses must be submitted in writing to the Title IX Coordinator within three (3) business days of being notified of the charges. Exceptions to this timeline will only be made when there are extenuating circumstances preventing the names of witnesses to be submitted in timely fashion.
 - If any proposed witness was not identified to the investigator(s) or Title IX Coordinator during the investigation, then the individual requesting such witness must explain why that person was not identified. The hearing may be postponed to permit the investigator to meet with the proposed witness and alter the investigative report accordingly.
 - The Title IX Coordinator may elect not to grant witness requests when it is determined that a specific witness is not likely to provide relevant evidence, or the testimony provided will be cumulative or duplicative. The Title IX Coordinator may call other witnesses s/he or the Hearing Board deems appropriate.
- The Title IX Coordinator will serve as the Chair of the Board. The Chair will call the hearing to order, and will first explain the hearing process and provide an opportunity for all parties to ask procedural questions prior to initial statements and the presentation of information.
- The Chair shall read the charges brought against the Respondent by the College.
- The parties shall be informed that the hearing is being recorded. The recording is the sole official verbatim record of the hearing and is the property of the College. No other recordings of the hearing are allowed.

- The Chair will provide a brief opening statement summarizing the investigation. The opening statement should focus on the areas of agreement and disagreement in order to assist the members of the Hearing Board in prioritizing areas of inquiry.
- The Chair will advise the parties that only members of the Hearing Board may ask questions of any person testifying. It is the responsibility of the members of the Hearing Board to ensure that they have sought and probed all information necessary to make an informed decision. Thus, the Hearing Board members may play an active role in questioning both parties and witnesses involved in the case. At times, the members of the Hearing Board may need to ask difficult or sensitive questions in order to understand areas of factual dispute or gain a full understanding of the context. However, the Respondent and the Complainant shall each be given the opportunity to request that the Hearing Board ask additional questions of the parties and witnesses. The parties may not personally question or cross-examine each other during a hearing.
- The parties will then be asked to meet separately with the Hearing Board for questions, and the party that is not present will be given the opportunity to listen to this meeting through an open telephone line or other type of technology that results in live broadcast of the meeting.
- The Complainant may make a brief statement. The Board may pose questions to the Complainant. The Respondent is encouraged to compile a written list of questions to pose to the Complainant. The list will be provided to the members of the Hearing Board, who will determine the relevance of the questions and will ask the Complainant those questions deemed relevant and appropriate.
- After the Hearing Board has concluded its meeting with the Complainant, the Board will meet with the Respondent. The Respondent may make a brief statement, which provides the opportunity to answer the charges, refute, explain or offer any additional information that might be helpful in resolving the case. The Board may pose questions to the Respondent. The Complainant is encouraged to compile a written list of questions to pose to the Respondent. The list will be provided to the members of the Hearing Board, who will determine the relevance of the questions and will ask the Respondent those questions deemed relevant and appropriate.
- The Hearing Board will then meet with each witness separately, and the parties will be given the opportunity to listen to this meeting through an open telephone line or other type of technology that results in live broadcast of the meeting. Each witness will be permitted to give a brief statement but need not do so. The Board will question each witness. The Complainant or Respondent may present a list of written questions to the members of the Hearing Board, who will determine the relevance of the questions and will pose to the witness any questions deemed relevant.
- At the conclusion of the meetings with all witnesses, the Complainant and Respondent will each be given the opportunity to separately give a brief closing statement.
- The Hearing Board will apply a clear and convincing standard during its deliberations. The clear and convincing standard of proof is met when the evidence demonstrates that an allegation is substantially more likely than not to be true. The evidence must be clear, unequivocal, satisfactory, and convincing.

Admission and use of prior sexual history and/or pattern evidence at a formal student sexual misconduct hearing is evaluated as follows:

- **Prior sexual history of a Complainant.** The parties have the right to exclude their own prior sexual history with persons other than the other party or parties to the proceeding. Where there is a current or ongoing relationship between the parties, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. The mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.
- **Pattern evidence by a Respondent.** Where there is evidence of a pattern or conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, this information may be deemed

relevant and aid in the determination of responsibility and/or assigning of a sanction. Relevance will be assessed based on the presence of the following information regarding a previous incident (a) substantial similarity to the present allegation or information and (b) a pattern of behavior and substantial conformity with that pattern by the Respondent. Where there is a prior finding of responsibility for a similar act of sexual misconduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and/or assigning of a sanction.

- Any party seeking to introduce information about prior sexual history or pattern evidence should bring this information to the attention of the investigator at the earliest opportunity. A party who provides this information and wishes to seek its admission at the hearing must submit a written request to the Title IX Coordinator no later than three (3) business days after the notice of charge(s) has been issued:
 - a written statement and/or description of the proposed information, if not already provided;
 - a summary of the relevance of this information to making a decision of responsibility at the hearing; and
 - a brief explanation why this information was not shared earlier in the process.
- Where sufficient foundation exists, the Title IX Coordinator or a Deputy Title IX Coordinator will assess the relevance, form, and reliability of the information and determine if it is appropriate for inclusion at the hearing. Any information submitted will be for the exclusive use of the individual(s) making a determination about the relevance of such information. If the information is approved as appropriate for presentation at the hearing, the parties will be provided with a brief description of the approved information no later than two (2) business days before the hearing.

Parties and other individuals who offer information at a hearing are expected to respond honestly and to the best of their knowledge. The Hearing Board reserves the right to recall any party or witness for further questions and to seek additional information necessary to make a decision. A Complainant, Respondent or witness who intentionally provides false or misleading information may be subject to discipline under this Policy.

b. Administrative Hearings

The Title IX Coordinator has the discretion to decide if the case will be resolved by a hearing panel as described above or through the Administrative Hearing process. Sanctions imposed after an administrative hearing, other than oral admonitions and written administrative warnings, may be appealed using the [appeal procedures](#) described in this Policy in Section XIV. At any time during the administrative process or in the event that administrative resolution is not achieved, either the Complainant or the Respondent may request that the matter proceed to formal resolution.

c. Alternate Means of Resolution

In certain cases, the alleged violation of the Sexual Misconduct Policy could be better resolved through an alternate means such as counseling or mediation. In such a case—and provided the Respondent and the Complainant both agree—the Title IX Coordinator shall refer the matter to an appropriate counselor or mediator. A Student Conduct Hearing shall be scheduled, but may then be adjourned for up to thirty (30) business days pending counseling or mediation. If the Respondent and the Complainant receive counseling or mediation prior to the adjourned hearing date, and agree that the matter pertaining to the violation is resolved, the Title IX Coordinator may dismiss the alleged violation.

At any time during the alternate resolution process, either the Complainant or Respondent may request that the complaint proceed to formal resolution. In most instances, alternate means of resolution will not be utilized if physical contact is involved in the complaint. In all instances, mediation will not be utilized when allegations of sexual violence are made.

H. Participation in a Hearing

The hearing is closed, meaning it is not open to the public. The Complainant, the Respondent, and any individuals who are witnesses may appear before the Hearing Board and/or other decision-maker(s). Witnesses may only be present for their individual meeting with the Hearing Board and/or other decision-maker(s). Advisors and the parties may be present throughout the proceeding (in person or via technology), however, the Complainant is not required to be present at the hearing as a prerequisite to proceed.

In the event the Respondent, after having been given notice, does not appear at the appointed hearing, the hearing will be conducted in the Respondent's absence. In the event the Respondent does not remain for the entire hearing, the remainder of the hearing will continue in the Respondent's absence.

I. Sanctions

Sanctions may include, but are not limited to, those set forth in the Student Conduct Procedures. In particular, a violation of this Policy may result in suspension or expulsion from the College. The sanctions may include remedial or corrective actions as warranted. In general:

- Any student who is determined to have committed sexual assault (involving sexual intercourse) may receive a sanction ranging from suspension to expulsion.
- Any student who is determined to have committed sexual assault (involving sexual contact) may receive a sanction ranging from conduct warning to expulsion.

Any student who is determined to have engaged in any other prohibited form of conduct may receive a sanction ranging from conduct warning to expulsion. The Title IX Coordinator (or Hearing Board when applicable) may broaden or lessen any range of recommended sanctions based on serious mitigating circumstances or egregiously offensive behavior. The Title IX Coordinator (or Hearing Board when applicable) will not deviate from the range of recommended outcomes unless compelling justification exists to do so. A single sanction or a combination of sanctions may be issued.

In considering the appropriate sanction within the recommended outcomes, the Title IX Coordinator (or Hearing Board when applicable) will consider the following factors:

- the Respondent's prior discipline history;
- how the College has sanctioned similar incidents in the past;
- the nature and violence of the conduct at issue;
- the impact of the conduct on the Complainant;
- the impact of the conduct on the College community, its members or the College's property;
- whether the Respondent has accepted responsibility;
- whether the Respondent is reasonably likely to engage in the conduct in the future;
- the need to deter similar conduct by others; and
- any other mitigating or aggravating circumstances, including the College's values.

Absent compelling justifications, if the Respondent has engaged in the same or similar conduct in the past, the sanction will be expulsion.

The Title IX Coordinator (or Hearing Board when applicable) should also consider other remedial actions that may be taken to address and resolve any incident of discrimination or harassment and to prevent the recurrence of any discrimination, including: strategies to protect the Complainant and any witnesses from retaliation; provide counseling for the Complainant; other steps to address any impact on the Complainant, any witnesses, and the broader student body; and any other necessary steps reasonably calculated to prevent future occurrences of harassment.

Set forth below is a full list of the range of sanctions:

- Expulsion (permanent separation)
- Suspension
- Deferred suspension
- Disciplinary Probation
- Disciplinary probation with deferred removal from the residence halls
- Loss of housing contract
- Residence hall probation
- Conduct warning

Additional conditions that may be imposed (list is not exhaustive):

- Sexual misconduct education
- Parent or guardian notification (subject to privacy restrictions)
- Financial restitution
- Organizational sanctions including probation and rescinding recognition or other organizational restrictions
- Fine
- Community restoration and/or community service
- Loss of campus privileges
- Loss of campus employment and/or opportunities for campus employment
- Withholding records or degree
- Revocation of admission and/or degree
- Bar against registration
- Discretionary action
- Substance abuse education and/or evaluation

Sanctions imposed in connection with findings of responsibility under this Policy are effective immediately and remain in effect pending the outcome of any appeal.

Failure to comply with the sanctions or conditions imposed by the Title IX Coordinator or Hearing Board, when applicable, will result in institutional action, including the possibility of additional sanctions. If the sanction imposed for failure to comply is suspension or expulsion, the party shall have the right to appeal to the Vice President for Community & Belonging. See Section XIII APPEALS for the appeal procedure. There are no appeals from any other sanctions imposed due to a failure to comply.

J. Timeframe for Decision and Notification

Typically, outcomes will be delivered within two (2) weeks following the hearing (administrative or formal). The Hearing Board will share its determination regarding responsibility and sanction(s) (if applicable) with the Title IX Coordinator. The College will issue the parties a letter containing the Hearing Board's decision with findings of fact, the disciplinary sanction(s) (if applicable), and the rationale for the decision and sanction. This letter will be simultaneously delivered to the parties via email. The information contained in the letter sent to the Complainant will be provided in accordance with FERPA and the Clery Act. Unless shown to be otherwise, the decision shall be deemed received by the Complainant and Respondent three (3) calendar days after the date it was mailed.

K. Timeframes for Resolution

The College seeks to resolve all reports of sexual misconduct (exclusive of any appeal) in a prompt and meaningful way. All time frames expressed in this Policy are meant to be guidelines rather than rigid requirements. The College will inform the parties at regular intervals of the status of its investigation and resolution process.

Circumstances may arise that require the extension of time frames. Such circumstances may include the complexity of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation or other unforeseen circumstances.

The College will make its best efforts to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

College student conduct proceedings are administrative in nature, intended to enforce this Policy at Nazareth College, and are held independent of any criminal and/or civil proceedings that may be concurrently in process. Even when a Complainant decides to report to law enforcement, the College remains obligated to conduct its own investigation. However, at law enforcement's request, the College may agree to defer its fact-gathering or sexual misconduct proceedings at the request of law enforcement and/or as it otherwise deems appropriate. The College will nevertheless communicate with the Complainant regarding Title IX rights, procedural options, and the implementation of interim measures to ensure safety and well-being. The College will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation.

SECTION XIII. APPEALS

Sanctions, other than oral admonitions and written administrative warnings, may be appealed using the appeal procedures provided below.

The parties shall both have the right to direct an appeal to the Vice President for Community & Belonging. Any request for appeal must be received by the Office of the Vice President for Community & Belonging on or before a date, specified in the written notice of outcome, which shall be no later than five (5) business days after the delivery of the written decision.

An appeal may be requested if the student believes one or more of the following conditions exists:

- the discovery of previously unavailable relevant evidence that could significantly impact the finding of the hearing;
- procedural error(s) that had a material impact on the fairness of the hearing; and/or
- the sanctions imposed were substantially disproportionate to the violation committed.

If the Title IX Coordinator determines it appropriate, interim suspensions or conditions may be imposed during the time of an appeal or until the time to appeal has passed.

When the Office of the Vice President for Community & Belonging receives a request for an appeal, the Vice President will provide the request to a panel of three individuals to determine whether the appeal will be accepted, based upon the three criteria set forth above. The panel will initiate one of the following actions:

- Reject the request for appeal due to insufficient reason(s).
- Analyze the materials related to the appeal and render a decision.

In the event that an appeals panel has been convened to render a decision, the non-appealing party will be permitted to read the appeal and invited to submit a response within forty-eight (48) hours of notification of the non-appealing party's review of the appeal.

After considering the information submitted in support of and in opposition to the appeal, if any, the panel will take one of the following actions:

- Uphold the original decision.
- Send the matter back to the Hearing Board when there is a procedural irregularity that could be corrected in a review or the presentation of previously unavailable relevant information that could significantly impact the result of the Board's determination.
- Send the matter back to the Hearing Board with a recommendation that the penalty be modified, together with an explanation of why the original penalty is deemed inappropriate; or
- Refer the matter to the Title IX Coordinator and the Hearing Board for further consideration, if substantial reason for such action has been presented.

The outcome of the appeal will be simultaneously conveyed to both parties in writing.

The parties will be notified if the time to appeal has expired without any appeal having been submitted.

A decision denying the entitlement to appeal and all decisions made by the appeals panel are final, except when sanctions of suspension or expulsion are involved. These sanctions may be appealed to the President of the College. However, such an appeal shall be entertained solely at the discretion of the President. This appeal must be received within five (5) business days of the decision from the appeals panel.

If the President entertains an appeal, an informal meeting (or meetings) of the principals involved will be arranged. After the President is satisfied with the content and extent of the information presented, the meeting will be adjourned. The President's findings will be announced within five (5) business days of the appeal meeting(s). Decisions of the President are final.

**SECTION XIV. TRANSCRIPT NOTATIONS AND
RECORD RETENTION**

A. Transcript Notations

New York law requires the College to make specific notations on the transcripts of Responding Parties found responsible for the following conduct prohibited by this Policy: sexual assault, dating violence, domestic violence, and stalking.

- Students suspended after a finding of responsibility will receive the following notation on their transcript: “suspended after a finding of responsibility for a code of conduct violation.” Such notations will remain for at least one year after the conclusion of the suspension, at which point a suspended student can seek removal of the notation by appealing to the Vice President for Community & Belonging. Students seeking removal of the notation should contact the Office of the Vice President for Community & Belonging for appeal procedures.
- Students expelled after a finding of responsibility will receive the following notation on their transcript: “expelled after a finding of responsibility for a code of conduct violation.” Such notation shall not be eligible for removal.
- Students who withdraw pending resolution of alleged violations of this Policy will receive the following notation on their transcript: “withdrew with conduct charges pending.” Such notation shall not be eligible for removal unless the charges are later resolved.
- If the College vacates a finding of responsibility for any reason, any such transcript notation shall be removed.

B. Disciplinary Records

Records related to matters processed under this Policy are maintained by the Title IX Office and are confidential in nature. These records will include: notices sent to the parties, documentation regarding no contact orders and other interim measures, the investigative report and supporting materials, the hearing recording, and appeal materials. These records will be maintained for seven (7) years. The Student Conduct Office will retain a copy of the final outcome letter. Disciplinary files for students who withdraw from the College or are suspended or expelled for disciplinary reasons are maintained for an indefinite length of time depending upon the circumstances. The College reserves the right to notify parents of dependent students when student conduct action has resulted in serious disciplinary sanctions.

**SECTION XV. POLICY/TITLE IX INQUIRIES AND
EXTERNAL TITLE IX COMPLAINTS**

Questions regarding Procedures for the Resolution of Sexual Misconduct Charges should be directed to the Title IX Coordinator. Inquiries concerning Title IX and this Policy may be directed to:

Title IX Coordinator

Heather Sourwine
Title IX Coordinator
hsourwi8@naz.edu
585.389.2877
Shults Center 100A

Acting Title IX Coordinator

Vicky Gebel
Acting Title IX Coordinator
vgebel4@naz.edu
585.389.2480
Kearney Hall

Deputy Title IX Coordinator

Phil Steckley
Assistant Athletic Trainer
psteckl4@naz.edu
585.389.2838
Stadium 106

Inquiries or complaints concerning Title IX may be directed to the U.S. Department of Education's Office for Civil Rights:

U. S. Department of Education, Office for Civil Rights
New York Office
32 Old Slip, 26th Floor
New York, New York 10005-2500
Phone: 646.428.3800
Fax: 646.428.3843
Email: OCR.NewYork@ed.gov

OCR National Headquarters
U. S. Department of Education
Office of Civil Rights, Customer Service Team
Mary E. Switzer Building
330 C. Street, S. W.
Washington, D. C. 20202
Tel: 800.421.3481
Fax: 202.205.9862

Inquiries involving employees may also be referred to:

New York State Division of Human Rights
One Monroe Square
259 Monroe Avenue, Suite 308
Rochester, New York 14607
Phone: 585.238.8250
Email: InfoRochester@dhr.ny.gov

New York State Division of Human Rights
Office of Sexual Harassment
55 Hanson Place, Suite 347
Brooklyn, New York 11217
Phone: 718.722.2060 or 1.800.427.2773
Fax: 718.722.4525

U.S. Equal Employment Opportunity Commission
National Headquarters
131 Main Street NE Fourth Floor Suite 4NW02F
Washington, D.C. 20507
Phone: 202.663.4900
Fax: 202.663.4912

U.S. Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street, 5th Floor
New York, New York 10004
Phone: 1.800.669.4000
Fax: 212.336.3790
TTY: 1.800.669.6820

U.S. Equal Employment Opportunity Commission
Buffalo Local Office
6 Fountain Plaza, Suite 350
Buffalo, New York 14202
Phone: 1.800.669.4000
Fax: 716.551.4387
TTY: 1.800.669.6820

APPENDIX A NEW YORK CRIME DEFINITIONS

The Violence Against Women Act (VAWA) and its proposed regulations require the inclusion of certain New York State definitions in a campus's Annual Security Report and also require that those definitions be provided in campaigns, orientations, programs and trainings for employees and students. Definitions required include: consent; dating violence; domestic violence; sexual assault; and stalking.

CONSENT: Lack of consent results from: forcible compulsion; or incapacity to consent; or where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct. Where the offense charged is rape in the third degree, a criminal sexual act in the third degree, or forcible compulsion in circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. A person is incapable of consent when he or she is: less than 17 years old; or mentally disabled; or mentally incapacitated; or physically helpless; or committed to the care and custody of the state department of correctional services, a hospital, the office of children and family services and is in residential care, or the other person is a resident or inpatient of a residential facility operated by the office of mental health, the office for people with development disabilities, or the office of alcoholism and substance abuse services, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.

- **CONSENT, ABBREVIATED:** Clear, unambiguous, and voluntary agreement between the participating to engage in specific sexual activity.

DATING VIOLENCE: New York State does not specifically define "dating violence." However, under New York Law, intimate relationships are covered by the definition of domestic violence when the act constitutes a crime listed elsewhere in this document and is committed by a person in an "intimate relationship" with the victim. See "Family or Household Member" for definition of "intimate relationship."

DOMESTIC VIOLENCE: An act which would constitute a violation of the penal law, including, but not limited to acts constituting 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 or blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of the act.

- **FAMILY OR HOUSEHOLD MEMBER:** Persons related by consanguinity or affinity; Persons legally married to one another; Persons formerly married to one another regardless of whether they still reside in the same household; Persons who have a child in common regardless of whether such persons are married or have lived together at any time; Unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; Persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; Any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were or are in an intimate relationship.

- **PARENT:** means natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

SEXUAL ASSAULT: New York State does not specifically define sexual assault. However, according to the Federal Regulations, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape as used in the FBI's UCR program.

SEX OFFENSES; LACK OF CONSENT: Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.

SEXUAL MISCONDUCT: When a person (1) engages in sexual intercourse with another person without such person's consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person's consent; or (3) engages in sexual conduct with an animal or a dead human body.

RAPE

- **RAPE IN THE THIRD DEGREE:** When a person (1) engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) Being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or (3) engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.
- **RAPE IN THE SECOND DEGREE:** When a person (1) being 18 years old or more, engages in sexual intercourse with another person less than 15 years old; or (2) engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense to the crime of rape in the second degree the defendant was less than four years older than the victim at the time of the act.
- **RAPE IN THE FIRST DEGREE:** When a person engages in sexual intercourse with another person (1) by forcible compulsion; or (2) Who is incapable of consent by reason of being physically helpless; or (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

STALKING

- **STALKING IN THE FOURTH DEGREE:** When a person intentionally, and for not legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct (1) is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or (2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or (3) is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.
- **STALKING IN THE THIRD DEGREE:** When a person (1) Commits the crime of stalking in the fourth degree against any person in three or more separate transactions, for which the actor has not been previously convicted; or (2) commits the crime of stalking in the fourth degree against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) with an intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or (4) commits the crime or stalking in the

fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

- **STALKING IN THE SECOND DEGREE:** When a person: (1) Commits the crime of stalking in the third degree and in the course of and furtherance of the commission of such offense: (a) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slingshot, shirken, “Kung Fu Star,” dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapons; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or (2) commits the crime of stalking in the third against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree; or (4) being 21 years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or (5) commits the crime of stalking in the third degree, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.
- **STALKING IN THE FIRST DEGREE:** When a person commits the crime of stalking in the third degree or stalking in the second degree and, in the course and furtherance thereof, he or she intentionally or recklessly causes physical injury to the victim of such crime.

CRIMINAL SEXUAL ACT

- **CRIMINAL SEXUAL ACT IN THE THIRD DEGREE:** When a person engages in oral or anal sexual conduct (1) with a person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, with a person less than 17 years old; (3) with another person without such persons consent where such lack of consent is by reason of some factor other than incapacity to consent.
- **CRIMINAL SEXUAL ACT IN THE SECOND DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) and is 18 years or more and the other person is less than 15 years old; or (2) who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense that the defendant was less than four years older than the victim at the time of the act.
- **CRIMINAL SEXUAL ACT IN THE FIRST DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) by forcible compulsion; (2) who is incapable of consent by reason of being physically helpless; (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.
- **FORCIBLE TOUCHING:** When a person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor’s sexual desire. It includes squeezing, grabbing, or pinching.

SEXUAL ABUSE

- **PERSISTENT SEXUAL ABUSE:** When a person commits a crime of forcible touching, or second or third degree sexual abuse within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which a sentence was imposed on separate occasions of one of one of the above mentioned crimes or any offense defined in this article, of which the commission or attempted commissions thereof is a felony.
- **SEXUAL ABUSE IN THE THIRD DEGREE:** When a person subjects another person to sexual contact without the latter’s consent. For any prosecution under this section, it is an affirmative defense that (1) such other person’s lack of consent was due solely to incapacity to consent by reason of being less than 17 years

old; and (2) such other person was more than 14 years old and (3) the defendant was less than five years older than such other person.

- **SEXUAL ABUSE IN THE SECOND DEGREE:** When a person subjects another person to sexual contact and when such other person is (1) incapable of consent by reason of some factor other than being less than 17 years old; or (2) less than 14 years old.
- **SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact (1) by forcible compulsion; (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old; or (4) when the other person is less than 13 years old.

AGGRAVATED SEXUAL ABUSE

- **AGGRAVATED SEXUAL ABUSE:** For the purposes of this section, conduct performed for a valid medical purpose does not violate the provisions of this section.
- **AGGRAVATED SEXUAL ABUSE IN THE FOURTH DEGREE:** When a person inserts a (1) foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or (2) finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than 17 years old.
- **AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE:** When a person inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person (1)(a) by forcible compulsion; (b) when the other person is incapable of consent by reason of being physically helpless; or (c) when the other person is less than 11 years old; or (2) causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.
- **AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE:** When a person inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person by (1) forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old.
- **AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact: (1) By forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than eleven years old; or (4) when the other person is less than thirteen years old and the actor is twenty-one years old or older.

COURSE OF SEXUAL CONDUCT AGAINST A CHILD

- **COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE:** When over a period of time, not less than three months, a person: (1) Engages in two or more acts of sexual conduct with a child less than 11 years old; or (2) being 18 years old or more engages in two or more acts of sexual conduct with a child less than 13 years old. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charges offense occurred outside of the time period charged under this section.
- **COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE:** When a person over a period of time, not less than three months in duration, a person: (1) Engages in two or more acts of sexual conduct, or aggravated sexual contact with a child less than 11 years old; or (2) being 18 years old or more engages in two or more acts of sexual conduct which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual contact with a child less than 13 years old.

- **FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE:** A person is guilty of facilitating a sex offense with a controlled substance when he or she: (1) knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and (2) commits or attempts to commit such conduct constituting a felony defined in this article.

INCEST

- **INCEST IN THE THIRD DEGREE:** A person is guilty of incest in the third degree when he or she marries or engages in sexual intercourse, oral sexual conduct or anal sexual conduct with a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.
- **INCEST IN THE SECOND DEGREE:** A person is guilty of incest in the second degree when he or she commits the crime of rape in the second degree, or criminal sexual act in the second degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.
- **INCEST IN THE FIRST DEGREE:** A person is guilty of incest in the first degree when he or she commits the crime of rape in the first degree, or criminal sexual act in the first degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or half blood, uncle, aunt, nephew or niece.

SOURCES

This Policy is based on and was adapted from several sources:

- The Campus Sexual Violence Elimination Act of 2013 (Campus SaVE Act, 2013 VAWA Reauthorization Act)
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
- Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, *et seq.*
- Violence Against Women Act (VAWA)
- Implementation by Colleges and Universities of Sexual Assault, Dating Violence, Domestic Violence, and Stalking Prevention and Response Policies and Procedures, New York Education Law Article 129-B (enacted July 7, 2015)
 - Complying with Education Law Article 129-B:
<http://www.highered.nysed.gov/ocue/documents/Article129-BGuidance.pdf> (June 2016)
- Occidental College Sexual Misconduct Policy <http://www.oxy.edu/sexual-assault-resources-support/policies-procedures>
- *Policy and Programming Changes Pursuant to the Campus SaVE Provisions of the Violence Against Women Act*, Office of General Counsel, State University of New York, January 2015 (updated from July 2014)
- Swarthmore College Sexual Assault and Harassment Policy <http://www.swarthmore.edu/sexual-assault-and-harassment-resources/swarthmore-college-sexual-assault-and-harassment-policy>
- Washington University at St. Louis Policy on Consensual Faculty-Student Relationships
- <http://wustl.edu/policies/consent.html>
- United States Department of Education Office for Civil Rights, *Dear Colleague Letter on Title IX Coordinators* (April 24, 2015) <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>
- United States Department of Education Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence* (April 29, 2014) <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>
- United States Department of Education Office for Civil Rights April 4, 2011 Dear Colleague Letter <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
- *Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault* (April 2014) http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf
- *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties Title IX*, (January 19, 2001) <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>