

SUBJECT: Sexual Misconduct and Title IX Compliance Policy

Applies to: All Employees and Students

Effective: October 30, 2015

Reviewed & updated: December 2017

I. **Policy:** The College is committed to creating and maintaining an academic and work environment that respects each person and nurtures the trust of its mission. The College has general expectations of students and employees and expects all to behave in a manner that supports the College's Mission and Ethos, including respecting and protecting the personal rights of others.

The College seeks to create and maintain an environment free from intimidation or injury generated by sexual harassment, including sexual violence. The College will act to eliminate such practices from our community and to remedy their effects. All members of the College community are entitled to a professional working and learning environment and are accountable and responsible for maintaining a respectful and trusting environment.

This Policy prohibits all forms of sexual misconduct in any program or activity offered or sponsored by the College. Sexual misconduct is varying extremes of discrimination and wrongdoing based on one's gender, sexuality, sexual orientation, and/or gender identity or expression. Sexual misconduct includes sexual harassment, non-consensual sexual contact, non-consensual sexual intercourse, dating violence, domestic violence, stalking, sexual exploitation, and indecent exposure as defined further in Section III below. Such behavior destroys the trust and respect at the core of our academic mission. Such actions are condemned by the College and in many instances may be violations of NYS and federal laws. Members of the RWC community who are determined to have committed these acts will be subject to sanctions from the College and/or may be subject to sanctions as the result of a criminal process. Repeat violations will result in more stringent sanctions; however, as more fully described below, permanent separation of a student or termination of employment or volunteer status may result after a first offense.

Any individual who has experienced sexual misconduct, including sexual harassment, sexual violence, domestic violence, dating violence, stalking, or any other type of sexual misconduct defined in this Policy has the option to make a report to law enforcement, to initiate the College's internal complaint process described in this Policy, to do both or to do neither. This Policy also describes support resources and accommodations available to members of the College community who experience sexual harassment, including sexual violence, whether or not that individual decides to pursue a formal report on campus.

When a member of the College community chooses to make a formal report of an incident of sexual misconduct or related retaliatory behavior, then the College will use the procedures outlined below to take prompt and appropriate action to respond.

II. **Title IX, Title IX Coordinator and Title IX Officer:** Title IX of the Education Amendments Act of 1972 prohibits discrimination on the basis of sex in education programs or activities by recipients of federal financial assistance. All sexual misconduct complaints and grievances made under Title IX, including allegations of sexual violence, will be handled under this Policy.

The College's Title IX Coordinator is the Risk Manager. She can be reached by calling 585.594.6222 or by emailing robertson_monika@roberts.edu. The Title IX Coordinator is:

- responsible for intake of Title IX complaints or allegations;
- oversight of the investigation and resolution of all reports of sexual harassment, including sexual assault;
- knowledgeable and trained in relevant state and federal laws and the College's Policies and procedures;
- available to advise any individual, including a Reporting Individual, 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 College community member regarding how to respond appropriately to reports of sexual assault and harassment;
- responsible for communicating complaints and outcomes with the Title IX Officer.

The College's Title IX Officer is the Vice President for Student and Organizational Development. She can be reached by calling 585-594-6532 or by emailing loganr@roberts.edu. The Title IX Officer is:

- responsible for monitoring full compliance with Title IX requirements and timelines specified in the complaint procedures; and
- ensuring required reports are compiled.

III. Definitions: In administration of this Policy, the College adheres to the following definitions:

Reporting Individual – the person who initiates the complaint. The College may act as the Reporting Individual in circumstances where the impacted individual does not wish to participate in the process.

Respondent – the person alleged to have violated this policy.

Jurisdiction - The jurisdiction of the College generally includes conduct that occurs:

- on College property,
- off College property at College-sponsored events
- off College property but involving two or more students of the College, and
- off-campus conduct that is likely to have a substantial adverse effect on, or poses a threat of danger to, any member of the College community or the College, including
 - activities that take place at events hosted by organizations recognized by the College
 - study abroad and internship programs
 - conduct that has continuing effects on campus or in an off-campus education program or activity.

This includes conduct which occurs by way of electronic means as well as in person.

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 Reporting Party 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 Reporting Party 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

Non-Consensual Sexual Contact or Non-Consensual Sexual Intercourse - Non-consensual sexual contact and non-consensual sexual intercourse are serious violations and are prohibited. In some instances, these forms of sexual misconduct involve violence or threats. Allegations involving violence or threats are taken very seriously and the College applies the severest sanctions for these violations. In addition, conduct involving violence or threats may be felony offenses.

- a) Non-Consensual Sexual Contact is any intentional sexual touching (“sexual touching” includes but is not limited to touching breasts, genitals, and buttocks, including disrobing or exposure), however slight, with any object, by a man or woman upon a man or woman, either directly or through the clothing, without effective consent, by force or threat of force (this includes the use of coercion, threat of retaliation, or rendering someone incapable of consent) or when that individual is incapacitated.
- b) Non-Consensual Sexual Intercourse is any sexual penetration (anal, oral or vaginal), however slight, with any body part (e.g., penis, tongue, finger) or object, or oral penetration involving mouth to genital contact or with an object used in a sexual manner, by a man or woman upon a man or woman without effective consent, by force or threat of force (including the use of coercion, threat of retaliation, or rendering someone incapable of consent) or when that individual is incapacitated.

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 reporting party'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. Under the Clery Act and the Campus SaVE Act, the College will record and report all relevant incidents of dating violence.

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.

Stalking - a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her 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 method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking includes the concept of cyber-stalking, a 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. Under the Clery Act and the Campus SaVE Act, the College will record and report all relevant incidents of stalking.

Sexual Exploitation - occurs when a person takes non-consensual or abusive sexual advantage of another to benefit anyone other than the one being exploited, and that behavior does not otherwise

constitute another form of sexual misconduct. Examples of sexual exploitation include, but are not limited to, prostitution, non-consensual video or audio-recording of sexual or other private activity, exceeding the boundaries of consent (e.g., video recording a person using a bathroom, posting on the Internet a sexually explicit photo), engaging in voyeurism, or engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually-transmitted disease (STD) without informing the other person of such infection.

Indecent Exposure - A person commits indecent exposure if that individual exposes the individual's genitals in a 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.

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.

Incapacity -Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate 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. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if

any of the parties are under the age of 17, or if an individual otherwise cannot consent.

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 Reporting Individual was incapacitated. Individuals engaging in sexual activity should continually evaluate incapacitation throughout the encounter.

There is no single standard or level of alcohol or drug consumption that leads to incapacitation. This level varies for different people, and may depend in part on their age, gender, height, weight, metabolism and whether and how much they have recently eaten. This provision does not mean that individuals cannot affirmatively consent to sexual activity or contact when they have been drinking or using drugs. Such individuals may still affirmatively consent through words or actions that clearly indicate interest in engaging in the activity.

The initiator of sexual contact will be in violation of this policy if it is determined that he or she knew or should have known that the other person's judgment was substantially impaired at the time consent was obtained or sexual contact was initiated. Possession, use and/or distribution of any of the so-called "date rape" drugs (including Rohypnol, Ketomine, GHB, Burundanga and others) is prohibited, and administering any of these drugs to another is a violation of this Policy.

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

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 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.

Retaliation - acts or attempts to retaliate or seek retribution against a person who has made a report of alleged sexual misconduct, whether or not he or she pursues any formal recourse related to such report or the Reporting Individual, 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 Reporting Individual. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

Bystander Intervention - A safe and positive course of action that may be carried out by an individual to prevent harm or intervene where there is a risk or an act of violence. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

IV. What to do if you are a Victim of Sexual Misconduct

A person who experiences sexual violence will have a number of options for recourse against the accused individual: to make a report on campus, to make a report to law enforcement, to do both or to do neither. First and foremost, the College wants you to get the immediate help you need by following these procedures immediately:

- Go to a safe place. Call a friend, a campus advocate, a family member or someone else you trust and ask her or him to be with you.
- Go immediately to see medical personnel either at the Student Health Center or a local hospital Emergency Department. An individual considering campus and/or law enforcement options against a Respondent should visit a Sexual Assault Forensic Examiner (SAFE) Nurse (also referred to as a Sexual Assault Nurse Examiner) within 96 hours of the incident. Detailed contact information for such health care providers is listed below.
- Although it may be difficult following a sexual assault, individuals who are considering or may consider legal action should take certain initial steps in order to preserve the option to pursue any type of criminal charges or campus disciplinary process:
 - Do not shower, bathe, douche, or brush teeth, and save all clothing worn at the time of the assault.
 - Place each item of clothing in a separate paper bag. Do not use plastic bags.
 - Do not disturb anything in the area where the assault occurred.
- Write down as much as you can remember about the circumstances of the assault, including a description of the assailant.
- Talk confidentially with a counselor who is trained to assist victims with the emotional and physical impacts of an assault and/or sexual harassment. See contact information for confidential on- and off-campus resources listed below.
- The College encourages victims to contact appropriate authorities as soon as that individual is prepared to make a report of the incident, including contacting:
 - Monika Robertson, the Title IX Coordinator, at 585.594.6860 or emailing robertson_monika@roberts.edu;
 - Campus Safety by calling 585.594.7777; or on-campus extension 7777
 - Local law enforcement by dialing 911;
 - New York State Police's 24/7 hotline staffed by specially-trained responders at 1.844.845.7269

V. Victim Resources and Confidentiality versus Privacy

A. VICTIM RESOURCES

The College's first priority when alleged sexual misconduct occurs is to provide safety and solace for victims, which may include medical treatment, counseling, academic accommodations, and interim

measures. All victims of sexual misconduct have the right to determine whether or not they wish to formally file a report with the College or law enforcement. The College strongly encourages individuals who are considering whether to make a formal report to seek out one of the confidential resources on or off campus in order to have a safe and confidential venue to discuss options. This document is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

In general, the Wellness Center Counselors, Chaplain, and Student Health Services Staff are confidential reporters who are not required to report incidents of sexual misconduct. Their responsibility is to provide victim assistance. **All other campus faculty and staff are considered responsible employees who are required to report sexual harassment and misconduct, including sexual violence, of which they become aware to the Title IX Coordinator, and can assist students in reporting incidents of sexual misconduct.**

Privileged and Confidential Resources

On campus, these confidential resources will not report alleged violations of this Policy to College officials or law enforcement without your permission, except for as dictated by law, such as when an individual is a threat to him or herself or others and the mandatory reporting of child abuse. At the College, this includes:

- The Counseling Center, located in the upper level of the Voller Athletic Center (across from the mailroom). You can reach the Counseling Center by calling 585.594.6882 (or Campus Safety at x. 7777 or 585.594.7777). Counselors can provide confidential support for you, including informing you of common emotional reactions and discussing coping methods that may assist you immediately following the assault and later. Talking about your concerns with a counselor in a safe and supportive environment may help you sort through your feelings and decide what to do. You do not need to disclose your name if you call the Counseling Center for information. Counselors will not reveal your identity to anyone without your permission. When classes are in session, the Counseling Center is open Monday through Friday from 9:00 a.m. to 5:00 p.m. During the semester there is a counselor on-call for after-hours emergencies. You can access the counselor on-call through your resident director or Campus Safety. The Counseling Center is closed over breaks and during the summer. Visit the website for more information: <http://www.roberts.edu/student-experience/counseling-center.aspx>
- Chaplain Jon Bratt can serve as a confidential resource. You can contact Pastor Jon by visiting his office, located in the upper level of the Voller Athletic Center, calling 585-594-6530 or emailing bratt_jonathan@roberts.edu. Visit the Chaplain's website: <https://www.roberts.edu/student-experience/spiritual-life/chaplains-office.aspx>
- The Student Health Center, located in Suite 231 of upper Voller Athletic Center. You can also reach the Health Center by calling 585.594.6360. Health Center staff can assist you with initial assessment after an incident of sexual violence. In Fall and Spring semesters, Physician Assistants are in the Health Center from 8:00 – 11:30 a.m. on Monday, Wednesday, and Friday and from 1:30 -5:00 p.m. on Tuesday and Thursday. During the Summer, students may still call the Health Center Monday through Wednesday from 8:00 a.m. to 1:00 p.m. for referrals to other health care providers and resources. Visit the website at

<https://www.roberts.edu/student-experience/health-center.aspx>

Off-campus options to confidentially disclose sexual violence include:

- Counselors and Advocates - Members of the College community may contact any of the following local resources for confidential support:
 - Restore Sexual Assault Service's 24 hour/day, confidential rape crisis hotline:
 - 585.546.2777 (Monroe County)
 - 800.527.1757 (Genesee, Livingston, Orleans & Wyoming Counties)
 - Willow Domestic Violence Center's 24 hour/day confidential hotline (585.232.7353) for victims of domestic violence. Willow offers a shelter, counseling, support groups, children's services, court advocacy, Latina services, dating violence education, and transition programs. All services are free.
 - Safe Journey (585.425.1580), which serves women and children in transition from domestic violence who need individual or group counseling, advocacy or community referrals as they heal from abuse.
 - The Victim Resource Center of the Finger Lakes, Inc., a private, non-profit domestic, sexual, stalking, dating violence and child abuse services agency that provides a 24 hour a day/7 day a week bilingual (Spanish/English) toll-free hotline at 866.343.8808 or 800.456.1172.

- Medical Care - Individuals who have experienced sexual violence should visit the Student Health Center, a local Emergency Department or the local medical provider of their choice for confidential emergency care, whether or not they have any intention of pursuing an on-campus complaint or complaint with law enforcement. (Visits to a hospital, urgent care center, or other medical provider are subject to a fee after insurance coverage.) An individual considering campus and/or law enforcement options against a Respondent (accused individual) should visit a Sexual Assault Forensic Examiner (SAFE) Nurse (also 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. Obtaining medical care or a sexual assault examination in no way binds anyone to pursue a complaint process. Options for seeking medical care include:
 - 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*
 - proceed directly to the Emergency Department at Highland Hospital (1000 South Avenue in Rochester / 585.341.0725) to access a SAFE Nurse; *or*
 - call 585.922.4000 to access a SAFE Nurse at Rochester General Hospital (1425 Portland Avenue in Rochester); *or*
 - call Restore Sexual Assault Service's 24 hour/day, confidential rape crisis hotline at 585.546.2777 (Monroe County) or 800.527.1757 (Genesee, Livingston, Orleans & Wyoming Counties) for assistance locating a SAFE Nurse at other area hospitals and/or to request an escort to the hospital; *or*
 - call Campus Safety at 585.594.7777 or dial 7777 from a campus phone for assistance; *or*
 - call 911 for an ambulance.

A medical exam conducted by a SAFE Nurse (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, sexually transmitted infections (“STIs”); a vaginal examination; 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 pursue legal action against the assailant, but is important for preserving that option.

- If you suspect that you may have been given a rape drug, inform the hospital or clinic where you receive medical care and/or ask to provide a urine sample. Rape drugs, such as Rohypnol and GHB, are more likely to be detected in urine than in blood.

Hospitals are not required to report non-identifying information to the College or 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 local rape crisis services or victim assistance organizations to accompany the individual through the sexual offense exam;
- contact a local rape crisis or victim assistance organization 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.

Most health care providers will encourage an individual seeking medical treatment related to a sexual assault to authorize collection of evidence. (Note: If the individual has not seen medical personnel at the time a report is received by the College, the individual will be immediately advised to do so. The College will provide transportation, if needed.)

- Be aware that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The NYS Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found at: http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf, or by calling 1-800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.

Please note that even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.

The College will provide assistance to students and employees about existing counseling, health,

mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims in the community.

B. CONFIDENTIALITY VERSUS PRIVACY

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 relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible under the law for tracking patterns and identifying systemic issues. The College will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored (as discussed further below).

VI. Reporting Individual's Bill of Rights

All Roberts Wesleyan College students or employees who report conduct allegedly in violation of the College's Sexual Misconduct and Title IX Compliance 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 Responding Party, 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 Responding Party 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.

VII. Reporting Sexual Misconduct

Reporting Timeframe

Any individual may file a complaint of sexual misconduct at any time. Early reporting is encouraged to preserve information and advise victims of rights, options, and resources available to them pursuant to this policy and federal and state laws.

How to Report

Any member of the College community or any visitor or guest who feels he or she has been subjected to conduct in violation of this policy or who feels he or she has been accused of a violation of this policy should report the incident promptly to any of the following designated members of the community with whom he or she feels comfortable. A Reporting Individual can enlist the help of any other member of faculty or staff whom he or she trusts when making a report. Except in limited circumstances, the victim has the right to decide whether to make a report on campus, to law enforcement, to do both or to do neither.

- Title IX Coordinator - Individuals are strongly encouraged to report any sexual misconduct to Ruth Logan, the College's Title IX Coordinator, who can provide assistance in addressing the incident through consultation and investigation. One can reach Ruth by calling 585.594.6260, emailing loganr@roberts.edu or contacting a faculty or staff member for assistance. This option remains available when the accused is an employee.
- Campus Safety - Roberts Wesleyan Campus Safety officers understand the College's policy and resources available to help and guide victims reporting sexual misconduct. Campus Safety officers can be reached 24 hours a day by calling 585.594.7777 (or ext. 7777 from a campus phone).
- Reporting to Law Enforcement - Call 911 or the New York State Police's 24/7 hotline at 1.844.845.7269. Law enforcement officers are specially trained in investigating sexual offenses and supporting victims with reporting a sexual offense. Law enforcement officers have the authority to commence a criminal investigation, which may lead to prosecution for a crime. Campus Safety maintains a close relationship with local law enforcement agencies and can assist in making contact if requested.
- Monroe County Sheriff's Office Victims Assistance - The Monroe County Sheriff's Office employs experienced and professional victim counselors, all of whom have in-depth knowledge of the Criminal Justice System and the challenges of coping with trauma. These counselors can provide initial crisis and assessment to determine the appropriate steps for long-term assistance. The Victim's Assistance Counselor is located at the Monroe County Sheriff's Office C-Zone substation located at 2330 South Union Street, Spencerport, or by calling 585.753.4455. Campus Safety can assist you with making contact. The following agencies also provide assistance to individuals who pursue criminal complaints:
 - Willow Domestic Violence Center: 585.232.5200 (<http://www.willowcenterny.org/>) - services are free
 - Monroe County District Attorney Victim/Witness Assistance Bureau: 585.753.4573

- (<http://www.monroecounty.gov/da-assistance.php>) – services are free
- Society for the Protection and Care of Children - Family Violence Program: 585.325.6101 (<http://www.spcc-roch.org/>) – services are free
- The Legal Aid Society of Rochester, NY, Inc.: 585.232.4090 (<http://www.lasroc.org/>) – available for those who qualify based on income and county of residence

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, and/or the New York State Police website (<http://troopers.ny.gov/>).

These same reporting options are available for bystanders. The College strongly encourages bystanders to step up on behalf of another person’s well-being when it is safe to do so.

Public Awareness/Advocacy Events

If you disclose an incident of sexual misconduct, including domestic violence, dating violence, sexual assault or stalking, through a public awareness event such as “Take Back the Night,” candlelight vigils, protests, or other public event, the College is not obligated to begin an investigation. However, the College may use the information you provide to inform the need for additional education and prevention efforts on campus and in College programs, and may provide you information about available support services and accommodations.

Anonymous Disclosure

New York State Hotline for Sexual Assault and Domestic Violence: 1.800.942.6906

Requesting Confidentiality – How the College Will Weigh the Request and Respond

If the Title IX Coordinator receives a report of an act covered by this Policy, but the individual impacted requests confidentiality or otherwise asks that an investigation not be pursued, the Title IX Coordinator will make every effort to balance this request with the College’s commitment and obligation to provide a safe and non-discriminatory environment for all members of the community. Honoring such a request may limit the College’s ability to conduct a thorough investigation and take appropriate disciplinary action. Accordingly, the Title IX Coordinator will consider many factors when determining whether or not the College can honor the request for confidentiality, including but not limited to whether:

- the alleged perpetrator has a history of violent behavior or is a repeat offender;
- the information provided suggests an increased risk that the alleged perpetrator will commit additional acts;
- the alleged perpetrator used a weapon or force;
- the sexual violence was committed by multiple perpetrators;
- the incident represents escalation, such as a situation that previously involved sustained stalking;
- the information provided suggests that the act is part of a larger pattern at a specific location or by a particular group;
- the individual impacted is a minor; and
- information can be obtained by means other than from the impacted individual (e.g., by

personal or security cameras, witnesses, or through physical evidence).

The College may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless the College determines that its failure to act may result in harm to you or other members of the College community. If we determine that an investigation is required, we will notify you and take immediate action to assist you, including academic, housing, transportation, employment, and other reasonable and available accommodations regardless of any other choices you make regarding internal or external processes. The Title IX Coordinator can help you evaluate and implement any such accommodations.

In addition, to the extent possible, the College will only share information with people responsible for handling the College's response. In appropriate cases, 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 Reporting Individual. This could include proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify you or the situation you disclosed.

Alcohol or Drug Amnesty Clause in Sexual Misconduct Reporting

The health and safety of every student at the College is of 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 or sexual assault 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 or sexual assault to College officials or law enforcement will not be subject to the College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking or sexual assault.

Good Faith Reporting and False Allegations

Lack of corroborating evidence should not discourage individuals from filing a complaint. Because of the nature of discrimination (including allegations of sexual and other forms of harassment), allegations often cannot be substantiated by direct evidence other than the Reporting Individual's own statement. No action will be taken against an individual who makes a good faith allegation even if, after investigating, the allegation is not substantiated. However, a person found to have made an allegation or complaint he/she knew to be false will be subject to disciplinary action.

Simultaneous College and Law Enforcement Investigations

When a Reporting Individual reports to both law enforcement and the College, there will be some coordination of the simultaneous investigations.

At the request of law enforcement, the College may agree to defer its fact-gathering until after the initial stages of a criminal investigation. Such deferral should not last more than ten days, although it may be extended at the request of law enforcement. During that time, the College will continue to offer support to the Reporting Individual, including discussing Title IX rights, procedural options,

and needed 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.

The College will timely share information in simultaneous investigations except that law enforcement may manage sharing of information so as not to impede its ongoing investigation. 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.

The College's Policy, definitions, and standard of review differ from New York criminal law. Neither law enforcement's determination whether to prosecute a Respondent nor the outcome of any criminal prosecution determines whether sexual assault or harassment has occurred under this Policy. Proceedings under this Policy may be carried out prior to, simultaneously with or following civil or criminal proceedings off campus. See Appendix A for New York criminal definitions for sexual offenses.

Institutional Reporting

Crime Reporting

A federal law referred to as the Clery Act requires the College to report reports of crimes allegedly occurring within certain geographic locations. Such crimes will be included in the College's Clery Act Annual Security and Fire Safety Report in an anonymized manner that neither identifies the specifics of the report nor the identity of the victim/survivor.

Timely Warning to Community

The Clery Act also requires the College to issue timely warnings of reported Clery Act crimes allegedly occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the victim/survivor). A victim/survivor will never be identified in a timely warning.

Reporting to Parents in Limited Circumstances

The Family Educational Rights and Privacy Act allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is listed as a dependent on either parents' prior year federal income tax return. Generally, the College will not share with parents information about a report of sexual misconduct without the permission of the victim/survivor.

Age/Status and Consent

All members of the College must be aware of the power and authority context that exists in an academic setting and the potential exploitation that may arise. This could include the status of faculty or staff over students and supervisors over employees. Differences in age or status create power differentials that complicate the ability to demonstrate that any sexual relationship is fully consensual.

The College strongly discourages any form of dating relationship between faculty or staff and students.

VIII. Interim Measures

Upon receipt of a report of sexual misconduct, 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. Any such measure will be aimed at reducing the burden on the Reporting Individual. The College will implement interim measures promptly and at no cost to the parties. If the accused and a Reporting Individual observe each other in a public place, it shall be the responsibility of the accused to leave the area immediately and without directly contacting the Reporting Individual.

A Reporting Individual 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 the Reporting Individual to the extent that maintaining such confidentiality will not impair its ability to provide the accommodation(s) or protective measure(s). Any individual who becomes aware of the failure of another individual to abide by any restrictions imposed by an interim measure are encouraged to report their concerns to the Title IX Coordinator or Campus Safety. The College will take immediate and responsive action to enforce a previously implemented measure.

Potential interim measures that may be applied to the Reporting Individual 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, which requires the Respondent to immediately leave any public place in which the Reporting Individual and Respondent observe each other without directly contacting the Reporting Individual;
- 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’s-owned housing;
- assistance from College’s support staff in completing housing relocation;
- limiting an individual’s or organization’s access to certain College’s 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.

Review of Certain Interim Measures

No Contact Orders

With respect to no contact orders, both parties shall, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of their request.

Other Interim Measures

With respect to 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, and shall be allowed to submit evidence in support of their request.

Interim Suspensions

If the Title IX Coordinator, in consultation with the Director of Campus Safety and Dean of Students, determines that a student alleged to have violated this Policy presents a continuing threat to the health and safety of the community, an interim suspension may be imposed on that student until the resolution process is completed. This action assumes no determination of responsibility and the investigation will be completed as soon as possible under the circumstances and consistent with the College's time frame for investigations.

Review of Interim Suspensions

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, and shall be allowed to submit evidence in support of their request.

Imposed Leave

Similarly, the College may impose leave on any employee. The terms of all such leaves shall be determined in the College's sole discretion.

Retaliation Prohibited

Retaliation against a person for making a report under this policy, for filing a complaint, for supporting a Reporting Individual or Respondent or for participating in an investigation is strictly prohibited and will not be tolerated. Retaliation is any action taken in consequence or retribution for making a complaint or participating in a complaint. Retaliation is a serious offense that can lead to disciplinary action, independent of the merits of the original misconduct allegation.

IX. Resolution of a Complaint:

Complaints

The College encourages reporting of all incidents of sexual misconduct to the Title IX Coordinator or any other employee or staff member, who can help you report to the Title IX Coordinator. Formal complaints alleging a violation(s) of this Policy may be made orally or in writing, and may come directly from a Reporting Individual or through the report of any non-confidential employee, and must include, at a minimum, the time, place, and nature of the alleged offense and the name of the Respondent.

A complaint against an employee may be submitted to the Title IX Coordinator, Sexual Harassment Officer, Campus Safety or Director of Human Resources.

A complaint against a student may be submitted to the Title IX Coordinator, Dean of Students, Sexual Harassment Officer, Campus Safety or Athletics Senior Woman Administrator.

When a complaint is made, the College must respond and evaluate it regardless of any action being pursued by the authorities. All aggrieved persons are entitled, whether or not an individual decides to proceed with the internal process or is found responsible in the internal process, to pursue their complaint with law enforcement. The College will assist in contacting law enforcement if requested to do so.

The Reporting Individual may withdraw their complaint or involvement in the College process at any time.

After receiving a complaint, the Title IX Coordinator will determine if the conduct alleged by the Reporting Individual falls within this Policy. The Title IX Coordinator's evaluation will include an assessment of any risk of harm to individuals or to the campus community and will take necessary action to address those risks (such as interim protective measures to provide for the safety of the individual and the campus community). As necessary, one or more additional campus officials may also be involved in this evaluation. This evaluation will typically be aided by a preliminary meeting between the Title IX Coordinator and the Reporting Individual. 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 Reporting Individual;
- notify the Reporting Individual of the right to contact law enforcement (or not) and seek medical treatment;
- notify the Reporting Individual of the importance of preservation of evidence;
- provide the Reporting Individual with information about on- and off-campus resources;
- notify the Reporting Individual that the institution can provide assistance in initiating legal proceedings in family court or civil court;
- notify the Reporting Individual of the range of interim measures and responses;
- provide the Reporting Individual 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 Reporting Individual's expressed preference for the manner of resolution and any barriers to proceeding; and
- explain the College's policy prohibiting retaliation.

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.

The College handles complaints as swiftly and yet as carefully, confidentially, and conscientiously as possible. The College believes complaints are best handled in a time frame that permits prompt, accurate reporting and investigation of all information.

Time Frame for Addressing a Complaint

When a complaint is referred for resolution as described below, the College seeks to conclude its investigation of each report of sexual misconduct within sixty (60) days of the report (exclusive of any appeal) and, in general, a Reporting Individual and Respondent can expect that the process will proceed according to this time frame. However, because circumstances may arise that require an extension possibly beyond the overall sixty (60) day timeline – the time frame expressed is meant to be a guideline rather than a requirement. Circumstances that may require extension of the timeline 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. In the event of such an extension, the College will provide written notice to all parties of the reason and the expected adjustment in time frames. 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.

Evaluation of Response Options

If after reviewing a complaint the Title IX Coordinator determines that no action can be taken because the Respondent is not a member of the College community, the Title IX Coordinator will assess the information given and provide appropriate recommendations and resources to the Reporting Individual.

When the Title IX Coordinator determines that the act, if proven, does not fall within this Policy, no further action will be pursued and the Reporting Individual will be advised by the Title IX Coordinator of other avenues of recourse and support as appropriate.

When the Title IX Coordinator determines that the alleged act falls within this Policy, the Title IX Coordinator will analyze and discuss with the Reporting Individual the most appropriate response option, which may be non-disciplinary resolution, informal resolution or formal resolution through an investigation.

The Title IX Coordinator will work with students involved in sexual misconduct cases to evaluate reasonable and available accommodations and implement them as requested and needed.

Non-disciplinary Resolution

Non-disciplinary resolution does not involve disciplinary action against a Respondent. The College will make the decision to pursue a non-disciplinary response after gathering information about the nature and scope of the conduct. The College can reach this decision at any time, however, participation in a non-disciplinary response is voluntary, and a Reporting Individual

can request to end a non-disciplinary response at any time.

Where the Title IX Coordinator concludes that this type of resolution may be appropriate, the College, in consultation with the Reporting Individual, will take immediate and corrective action through the imposition of individual and/or community remedies designed to maximize the Reporting Individual's access to RWC's educational and extracurricular activities.

Examples of potential **remedies for individuals** include the interim measures discussed above.

Potential **remedies for the community** include targeted or broad-based educational programming or training.

Informal Process

Informal problem-solving approaches are available for the resolution of some sexual misconduct complaints. Informal approaches may include, but are not limited to, discussion of the claim with the alleged offender individually or with the applicable supervisor, or mediation. Mediation may take place with individuals designated by the College. The College will not compel a Reporting Individual to engage in mediation. The Reporting Individual and Respondent do not have to be in the presence of each other during the mediation process. At any time during the process or if an informal resolution is not achieved, either the Reporting Individual or Respondent may request that the complaint proceed to formal resolution. The designated individual handling the informal process will prepare a summary memorandum to document the process. **In most instances, the informal process is not utilized if physical contact is involved in the complaint. In no case will the informal process be used when there is an allegation of sexual violence or assault.**

Formal Process

After the Title IX Coordinator determines that a complaint should proceed to the formal process (or a complaint following a different resolution path is directed to the formal process), an investigation team comprised of personnel with training on Title IX compliance and investigations (Team) will convene as quickly as practicable. The Team will typically be comprised of two individuals who are currently assigned based on a variety of factors including expertise and availability.

The Title IX Coordinator will issue a notice to each party describing the date, time, location, and factual allegations known from the report concerning the alleged conduct in violation of this Policy, a reference to the specific conduct provisions the alleged conduct may violate, and possible sanctions. The investigation schedule may be adjusted to meet the needs of any party involved or depending on the nature and/or complexity of the complaint. The Team will conduct a fact-finding investigation that will typically include meeting individually with the Reporting Individual, Respondent(s), and any individuals the Team considers likely to have relevant knowledge or information related to the complaint.

The Reporting Individual, Respondent(s), and witnesses may each bring an advisor to any interviews or meetings in which they are involved. The advisor shall not address or question the Team or advocate on behalf of the party the advisor is supporting. However, each party may request to take breaks to consult with their advisor or simply to gather themselves (with or without their advisor's support) before the interview proceeds.

During meetings with the Team, the Reporting Individual, Respondent, and witnesses will have the ability to provide the Team with information (including written information such as text messages, Facebook messages, communications from Snapchat, videos, etc.) they believe is relevant to the complaint. The Team will also ask for suggestions as to other individuals with whom the parties or witnesses believe the Team should meet. The Team will consider such suggestions and meet with individuals at its discretion. Witnesses may bring a neutral advisor to any interview in which they are involved. The Team will strive to complete these investigation meetings within thirty (30) days of the complaint.

At the conclusion of the Team's individual meetings with the parties and witnesses, the Team will prepare a summary of each interview. Each individual interviewed will have an opportunity to review and suggest revisions to their respective summary, and to suggest other sources of information for the Team to review and consider which the Team may do at its discretion.

Following the party and witness review of the unique summary of their interview(s), the Team will prepare a written Investigation Report containing a summary of the investigation and findings of fact. In order to make its findings of fact, the Team will examine the information gathered, including any related documents or other physical or tangible evidence, and apply the preponderance of evidence standard (i.e. whether it is more likely than not) to determine whether or not that the actions in question occurred. The Team will in most cases complete the report within fifteen (15) days after concluding their interviews.

Upon completion of the Investigation Report, the parties will have an opportunity to review the entire report, after which they will have up to two business days to submit a written response to the Team, including additional questions they would like asked of parties and/or witnesses. The Team will meet to consider the written responses and requested questions, if any, to determine whether the suggested questions should be asked and how to incorporate the responses into the Investigation Report.

The Team will then expand the Investigation Report to include party responses and its recommended finding(s) as to Respondent's responsibility for a violation or violations of this Policy.

The Team will then meet with the Title IX Coordinator to present the Investigation Report, including its findings of fact and recommended finding(s) of responsibility. The Title IX Coordinator will review the report and will discuss with the Team any additional investigation that may be advisable. In that event, the Title IX Coordinator and the Team will agree to the scope of additional investigation, which the Team will carry out. The Team will then supplement its Investigation Report accordingly and present a final Investigation Report to the Title IX Coordinator within seven (7) days of concluding any additional investigation.

If, at the conclusion of the investigation, the Team has found a violation of this Policy and the Title IX Coordinator agrees with this finding, the Title IX Coordinator will determine the appropriate disciplinary action or sanctions. The Title IX Coordinator will share the recommended disciplinary action or sanctions with the Title IX Officer/VP for Student and Organizational Development. The Title IX Officer/VP will review and approve any disciplinary actions. In the event that the Title IX Officer/VP does not approve, the Title IX Officer/VP will share the reasons for the disapproval with the Title IX Coordinator, who will consider those reasons when making a final determination.

No later than five (5) days after the Title IX Officer/VP reviews the Team and Title IX Coordinator's determinations as to responsibility and appropriate sanctions, the Title IX Coordinator will send the parties simultaneous written notice of the: determination of responsibility, if any; sanctions to be imposed on the Respondent (only sharing with the Reporting Individual those sanctions that directly relate to the Reporting Individual), if any; other steps the College has taken or will take to remedy the misconduct or hostile environment and prevent recurrence, if any; the rationale for the decision and specific sanction(s) imposed; and procedures to appeal the decision. The Title IX Coordinator will also notify the Reporting Individual (but not the Respondent) of any individual remedies offered or provided to the Reporting Individual.

Rights of Parties Involved in Sexual Misconduct Cases

Throughout any proceeding under this Policy, the Reporting Individual and the Respondent will have:

- The same opportunity to have access to an advisor of their choice, who may accompany the party to any meeting related to the complaint and/or resolution process subject to the College's limitations on the role of such advisor.
- The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the Respondent, including the right to a presumption that the Respondent is "not responsible" until a finding of responsibility is made pursuant to the provisions of this article and the institution's policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault.
- The right to an investigation and process that is fair and that is not conducted by individuals with a conflict of interest.
- To receive written or electronic notice, provided in advance pursuant to the college policy and reasonable under the circumstances, of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the Respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.
- The right to a meaningful opportunity to be heard, including the right to review and present relevant information related to the case and in the case file or otherwise in the possession or control of the College.
- The right to continue the College process at the same time a criminal justice investigation is proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays will typically not extend beyond ten (10) days except when law enforcement specifically requests and justifies a longer extension of time. Parties will be notified in writing of the reason for any such extension of this timeframe.

- The right to exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the institution disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- When there has been a finding of responsibility, the right to make or submit an impact statement to the Title IX Coordinator as s/he considers appropriate sanctions.
- The right to simultaneous (among the parties) written notification of the outcome of a conduct proceeding, including the factual findings, sanction(s), and rationale for the determination and sanction(s) imposed.
- Access to at least one level of appeal of a determination.
- The right to choose whether to disclose or discuss the outcome of a conduct or judicial process.
- The right to protection of all information obtained during the course of this process from public release until a final determination on appeal, if any.

X. Sanctions:

Those students found responsible for violating this policy may be suspended or expelled.

Students found responsible for any level of sexual misconduct face sanctions ranging from (but not limited to) a warning to social probation (including reprimands, educational activity, and revoking of privileges), suspension (required withdrawal) or permanent separation, depending on the nature of a particular violation and/or an individual student's overall conduct record. A first offense can result in immediate expulsion.

Employees found responsible for any level of sexual misconduct face discipline ranging from (but not limited to) a written warning to required educational training, work restrictions, suspension without pay, or dismissal, depending on the nature of a particular violation and/or whether or not it is a repeat offense. A first offense can result in immediate termination.

XI. Appeals:

The parties have equal opportunity to appeal the determination of the complaint. Requests for appeals of decisions must be made in writing to the Title IX Officer/Vice President for Student and Organizational Development within three (3) business days of the written decision. Acceptable grounds for an appeal are limited to:

- the sanctions imposed are substantially disproportionate to the violation found to have been committed; and/or
- procedural error(s) that could significantly impact the outcome of a case.

Previously unavailable relevant information that could significantly impact the outcome of the determination must be brought to the attention of the Title IX Coordinator, who will reconvene the

Team to determine whether the information would have affected the outcome.

If the Title IX Officer 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 Student and Organizational Development receives a request for an appeal, the Vice President for Student and Organizational Development (or designee) will provide the request to a panel of three individuals (including the Vice President for Student and Organizational Development) to determine whether the appeal will be accepted based upon the two criteria set forth above. The panel will then 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, 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:

- (1) deny the appeal thereby affirming the decision of the Team and Title IX Coordinator;
- (2) remand the complaint to the original Team for further consideration on the grounds that there was a procedural irregularity that could be corrected in a review;
- (3) direct the complaint to a new Team due to an extraordinary case where, in the opinion of the panel, the matter would be best addressed by a newly-constituted Team; or
- (4) remand the matter to the Title IX Coordinator with a recommendation that the sanction(s) be modified, together with an explanation of why the original sanction(s) is deemed inappropriate.

When the panel takes action pursuant to section (1) above, the Vice President for Student and Organizational Development will issue simultaneous written notice of the outcome of the appeal to each party (copying the Title IX Coordinator), including the rationale for the decision.

When the panel takes an action specified in (2), (3) or (4) above, the Vice President for Student and Organizational Development will provide the Title IX Coordinator written notice of the panel's decision, including the rationale for the decision. The Title IX Coordinator will then provide the parties written notice of the next steps in the process and/or of any sanction(s) modified pursuant to (4) above.

Decisions made during the appeal process are final, and there is no right to appeal from a decision made after remand of a matter related to (2) or (4) above.

In the case where option (3) is determined, a new investigation team will be formed and the investigation process will begin in consultation with the Title IX Coordinator.

The record of the appeal will consist of the letter of appeal; any written statements from the parties; and any written notices related to action on and/or outcome of the appeal. This record will be kept with the written record of the original decision.

XII. Transcript Notations and Record Retention

Transcript Notations

New York law requires the College to make specific notations on the transcripts of Respondents 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 are eligible for removal one year after the conclusion of the suspension if the suspended student seeks removal of the notation by appealing to the Title IX Officer/Vice President for Student and Organizational Development. A student seeking removal of the notation should contact the Office of the Title IX Officer/Vice President for Student and Organizational Development 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.

Disciplinary Records

Disciplinary files are confidential in nature. The files for sexual misconduct cases will include: notices sent to the parties, documentation regarding no contact orders and other interim measures, the investigative report and supporting materials, and appeal materials.

Disciplinary files will be maintained for seven (7) years after the most recent reported incident. 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.

XIII. Academic and Intellectual Freedom:

The College seeks to maintain the freedom of all members of the College to express their ideas and opinions. Adherence to the principle of freedom of expression and academic freedom requires that thoughts presented as ideas or the advocacy of ideas in an educational setting, if they are germane to

the subject matter being addressed, are protected. This applies to the ideas of employees and students alike. The maintenance of intellectual freedom through the open expression of ideas will sometimes be unavoidably hurtful. Knowing this to be true, the College aspires to create and maintain an environment where it is understood that derogatory or debasing comments play no meaningful role in the free exchange of ideas, and may inhibit that exchange, thereby denying some individuals full participation in the learning experience. Within this framework, the College believes all members of the community have a responsibility to foster an environment of awareness and respect.

XIV. Title IX Inquiries and External Title IX Complaints

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
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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:** Person's related by consanguinity or affinity; Persons legally married to one another; Person 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.

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, slungshot, 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.