



## ADMINISTRATIVE REGULATIONS

No. 124

### **TITLE: Policy Against Sexual Misconduct, Dating Violence, Domestic Violence & Stalking**

#### **Purpose**

Trocaire College is fully committed to ensuring that its Campus is a place where students and employees are able to feel secure in their physical safety and their emotional well-being. To that end, Trocaire College condemns and will not tolerate sexual misconduct, including sexual harassment and sexual violence. Acts of dating violence, domestic violence, and stalking, are also prohibited at Trocaire College. This policy applies to all students, employees, (faculty, administration or staff member), and to other members of the Trocaire College community, including contractors, consultants, and vendors doing business or providing services to Trocaire College.

#### **Applicable Federal Laws**

This policy supplements the general policy statement set forth in Trocaire College's Non-Discrimination policy and addresses the requirements of Title IX of the Education Amendments of 1972 ("Title IX"), the Campus Sexual Violence Act ("SaVE"), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery"), Title IV of the Civil Rights Act of 1964 ("Title IV") and the Family Educational Rights and Privacy Act of 1964 ("FERPA").

#### **Officer and Title IX Coordinator**

The Compliance and Diversity Coordinator serves as the Civil Rights Compliance Officer ("CRC Officer") and as the College's Title IX Coordinator. The CRC Officer is responsible for implementing and monitoring Title IX Compliance on behalf of the College. This includes coordination of training, education, communications, and administration of the complaint and grievance procedures for the handling of suspected or alleged violations of this policy. The CRC Officer is also responsible for conducting the investigation of an alleged violation of the policy. The CRC Officer will be available to meet with or talk to students and employees regarding issues relating to Title IX and this policy. The CRC Officer can be reached at 360 Choate Avenue, Buffalo, NY 14220 at (716) 827-2461 or via e-mail at [civilrightscompliance@trocaire.edu](mailto:civilrightscompliance@trocaire.edu)

#### **Definitions and Examples of Conduct Prohibited Under this Policy**

Prohibited conduct includes all forms of sexual misconduct, as well as acts of dating violence, domestic violence, and stalking.

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### *Reporting Individual*

A Trocaire student or employee who has reportedly been subjected to sexual misconduct, dating violence, domestic violence or stalking by a Trocaire student, employee or third party (including contracted service providers or vendors).

### *Respondent*

A Trocaire student, employee or a third party (including contracted service providers and vendors) who is reported to have engaged in sexual misconduct, dating violence, domestic violence or stalking.

### *Sexual Misconduct*

Sexual misconduct is used to describe unwanted or unwelcome conduct of a sexual nature that is committed without affirmative consent, including sexual harassment, and sexual violence. Sexual misconduct may occur between people of the same sex or between people of different sexes. Sexual misconduct may include the following:

### *Sexual Harassment*

Sexual harassment may consist of repeated actions or may even arise from a single incident if sufficiently extreme. The Reporting Individual and the alleged perpetrator may be of either gender and need not be of different genders. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature where:

- submission to such conduct by the individual is made a term of conditional employment or scholastic status, either explicitly or implicitly.
- submission to, or rejection of, such conduct by the individual influences personnel or scholastic decisions concerning that individual.
- such conduct has the purpose or effect of interfering with the individual's work or academic performance or of creating an intimidating, hostile, or offensive working or scholastic environment for the individual.

### EXAMPLES

1. Physical contact of a sexual nature including unnecessary touching, patting, hugging or brushing against a person's body.
2. Explicit or implicit propositions to engage in sexual activity.
3. Comments of a sexual nature, including:
  - Sexually explicit statements or questions
  - Sexually explicit jokes or anecdotes
  - Remarks of a sexual nature regarding a person's clothing or body
  - Whistling, ogling or leering
4. Inappropriate exposure to sexually-oriented graffiti, pictures, posters or other such materials.
5. Physical interference with or restriction of an individual's movements

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### *Sexual Violence*

Physical acts perpetrated without consent or when a person is incapable of giving consent. A number of acts fall into the category of sexual violence including, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

### *Affirmative Consent*

Affirmative consent is 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. Here are some important points to keep in mind with respect to affirmative 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.
- 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 coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

### *Dating Violence*

Dating violence is defined as violence committed by a person-

- who has been in a social relationship of a romantic or intimate nature with the victim; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - the length of the relationship
  - the type of the relationship
  - the frequency of the interaction between the persons involved in the relationship

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### *Domestic Violence*

Domestic violence is defined as felony or misdemeanor crimes of violence perpetrated by:

- a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the alleged victim as a spouse or intimate partner,
- a person similarly situated as a spouse to the alleged victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- any other person against an alleged adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

### *Stalking*

Stalking is defined as 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 action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property
  - substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

### **Students' Bill of Rights**

Trocaire College is committed to providing options, support and assistance to students who report incidents of sexual misconduct, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in College-wide and campus programs, activities, and employment. All Reporting Individuals of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on or off campus:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the College;

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4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the College courteous, fair, and respectful counseling services;
6. Be free from any suggestion that the Reporting Individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be free from retaliation by the College, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the College;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a Reporting Individual, accused, or respondent throughout any judicial or conduct proceeding including during all meetings and hearings related to such proceeding; and the right to be notified of the outcome of such proceeding; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

Additionally, and in the accordance with the SaVE provision of the Violence Against Women Act (VAWA), the College will work with the Reporting Individual to ensure that he/she is able to continue their studies safely while the matter is addressed. This includes applying, at the discretion of the Chief Student Affairs Officer and the Director of Student Life (or his/her designee) and as dictated by the situation and the needs of the Reporting Individual, the use of administrative room changes, if available, Orders of No Contact, and/or other steps deemed necessary.

### **Options for Disclosing**

Trocaire College wants you to get the information and support you need regardless of whether you would like to move forward with a report of sexual misconduct, dating violence, domestic violence or stalking to campus officials or to police. You may want to talk with someone about something you observed or experienced, even if you are not sure that the behavior constitutes an act of sexual misconduct, dating violence, domestic violence or stalking. A conversation where questions can be answered is far superior to keeping something to yourself. Confidentiality varies, and this section is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

### *Confidential Resources*

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Individuals who are *confidential* resources will not report crimes to law enforcement or college officials without your permission, except for extreme circumstances, such as a health and/or safety emergency.

At Trocaire, this includes:

- Student Counselor, 360 Choate Ave., Room 112, (716) 827-2412.

Off-campus options to disclose sexual violence *confidentially* include (note that these outside options do not provide any information to the campus):

- New York State Coalition Against Sexual Assault: <http://nyscasa.org/>
- Office for the Prevention of Domestic Violence: <http://www.opdv.ny.gov/help/index.html>
- Legal Momentum: <https://www.legalmomentum.org/>
- New York State Coalition Against Domestic Violence: <http://www.nyscadv.org/>;
- Pandora's Project: <http://www.pandys.org/lgbtsurvivors.html>;
- GLBTQ Domestic Violence Project: <http://www.glbtqdv.org/>; and
- RAINN: <https://www.rainn.org/get-help>.
- Safe Horizons: <http://www.safehorizon.org/>.

(note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting Individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases).

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.

### *Non-Confidential Resources*

The following college officials can offer *privacy* and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. These officials will also provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution. These college officials will disclose that they are **private and not confidential** resources and they may still be required by law and college policy to inform one or more college officials about the incident, including but not limited to the Title IX Coordinator. They will notify Reporting Individuals that the criminal justice process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or district attorney,:

- Title IX Coordinator; 360 Choate Ave., Room 324, (716) 827-2461
- Chief Student Affairs Officer; 360 Choate, Ave., Room B-15, (716) 827-2481;

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- Director of Student Life; 360 Choate Ave., Room 137, (716) 827-2445
- Director of Security & Facilities, 360 Choate Ave, Room 330, (716) 827-2564
- Security, 360 Choate Ave., (716) 827-2500

In addition to these disclosure/reporting options, Reporting Individuals also have the right:

- To file a criminal complaint with local law enforcement and/or state police:
  - City of Buffalo Police Department Headquarters, (716) 851-4444, 74 Franklin Street Buffalo, NY 14202
  - Town of Lancaster Police Department, (716) 683-2800, 525 Pavement Rd., Lancaster, NY 14086
  - State police 24-hour hotline to report sexual assault on a NY college campus: 1-844-845-7269.
- To receive assistance from the Title IX Coordinator in initiating legal proceedings in family court or civil court.
- To file a report of sexual misconduct, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator for information and assistance. Reports will be investigated in accordance with this policy and the Reporting Individual's identity shall remain private at all times if said Reporting Individual wishes to maintain privacy. If a Reporting Individual wishes to keep his/her identity anonymous, he or she may call the Student Counselor to anonymously discuss the situation and available options.

When the Respondent is an employee, a Reporting Individual may also report the incident to the Office of Human Resources or may request that the above referenced confidential or non-confidential employees assist in reporting to Human Resources. Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. When the Respondent is an employee of an affiliated entity or vendor of the college, college officials will, at the request of the Reporting Individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and college policy.

- Human Resources Office, (716) 827-2545, 360 Choate Ave., Buffalo, NY 14220

**Every college shall ensure that, at a minimum, at the first instance of disclosure by a Reporting Individual to a college representative, the following information shall be presented to the Reporting Individual: "You have the right to make a report to Campus Security, local law enforcement, and/or State Police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution."**

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*Privacy versus Confidentiality:*

Even Trocaire 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 spotting systemic issues. Trocaire will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

*Requesting Confidentiality: How Trocaire Will Weigh the Request and Respond:*

If you disclose an incident to a Trocaire employee who is responsible for responding to or reporting sexual misconduct, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you. You may withdraw your complaint or involvement from the College process at any time.

We will assist you with all reasonable and available accommodations regardless of your reporting choices. Reporting Individuals may request accommodations through several college offices, the following office can serve as a primary point of contact to assist with these measures Office of Student Affairs, 360 Choate Ave., Room 137. We also may take 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.

We 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 Trocaire's failure to act does not adequately mitigate the risk of harm to you or other members of the Trocaire community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual. If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.

When you disclose an incident to someone who is responsible for responding to or reporting sexual misconduct, but wish to maintain confidentiality, Trocaire will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:

- Whether the Respondent has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation, such as a situation that previously involved sustained stalking,
- the increased risk that the Respondent will commit additional acts of violence;
- Whether the Respondent used a weapon or force;
- Whether the Reporting Individual is a minor; and

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- Whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

If the College determines that it must move forward with an investigation, the Reporting Individual or victim/survivor will be notified and the College will take immediate action as necessary to protect and assist them.

*Public Awareness/Advocacy Events:*

If you disclose a situation 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. Trocaire may use the information you provide to inform the need for additional education and prevention efforts.

*Institutional Crime Reporting*

Reports of certain crimes occurring in certain geographic locations will be included in the College Clery Act Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the Reporting Individual or victim/survivor.

Trocaire is obligated to issue timely warnings of Clery Act crimes 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 Reporting Individual or victim/survivor). A Reporting Individual will never be identified in a timely warning.

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 a dependent on either parents’ prior year federal income tax return. Generally, Trocaire will not share information about a report of sexual misconduct, dating violence, domestic violence or stalking with parents without the permission of the Reporting Individual.

**Response to a report of sexual misconduct, dating violence, domestic violence or stalking**

Individuals shall have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the options below:

*Resources*

- To obtain effective intervention services.
  - Student Counselor, 360 Choate Ave., Room 112, 827-2412. There is no charge for these services.
  - Crisis Services, <http://crisisservices.org/content/>, 716-834-3131 available 24/7

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- Local hospital information can be found here:
  - Catholic Health System: <http://www.chsbuffalo.org/>
  - Kaleida Health: <http://www.kaleidahealth.org/>
  - Erie County Medical Center: <http://www.ecmc.edu/>
- Sexual contact can transmit Sexually Transmitted Infections (STI). Testing for STIs is available. Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital which will include testing for STIs. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: <http://www.ovs.ny.gov/helpforcrimevictims.html>. or by calling 1-800-247-8035.
- To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

*Protection and Accommodations:*

- When the Respondent is a student, to have the college issue a “No Contact Order,” consistent with college policy and procedure, meaning that continuing to contact the protected individual is a violation of college policy subject to additional conduct charges; if the Respondent and a protected person observe each other in a public place, it is the responsibility of the Respondent to leave the area immediately and without directly contacting the protected person. Both the Respondent/respondent and Reporting Individual may request a prompt review of the need for and terms of a No Contact Order, consistent with College policy. Parties may submit evidence in support of their request.
- To have assistance from the Chief Student Affairs Officer or his/her designee or other college officials in obtaining a court-ordered Order of Protection.
- To receive a copy of the court-ordered Order of Protection or equivalent and have an opportunity to meet or speak with the Chief Student Affairs Officer or his/her designee who can explain the order and answer questions about it, including information from the Order about the Respondent’s responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s).
- To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- To have the College call on and assist local law enforcement in effecting an arrest for violating such a court-ordered Order of Protection.
- When the Respondent is a student and presents a continuing threat to the health and safety of

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the community, to have the Respondent subject to interim suspension pending the outcome of a conduct process. Parties may request a prompt review of the need for and terms of an interim suspension.

- When the Respondent is not a student but is a member of the college community and presents a continuing threat to the health and safety of the community, to subject the Respondent to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and College policies and rules.
- To obtain reasonable and available interim measures and accommodations in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Parties may request a prompt review of the need for and terms of any interim measures and accommodations that directly affect them.

*Conduct Process:*

- To request that student conduct charges be filed against the Respondent. Conduct proceedings are governed by the procedures set below as well as federal and New York State law.
- Throughout conduct proceedings, the respondent and the Reporting Individual will have:
  - The same opportunity to be accompanied by a non-participating advisor of their choice who may only assist and advise the parties throughout the conduct process and any related hearings or meetings.
  - 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, and other issues related to sexual misconduct, domestic violence, dating violence, and stalking.
  - The right to an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard, and is not conducted by individuals with a conflict of interest.
  - The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Accused individuals will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
  - The right to have a conduct process run concurrently with a criminal investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
  - The right to offer evidence during an investigation and to review available relevant evidence in the case file (or otherwise held by the College).
  - The right to present evidence and testimony at a hearing, where appropriate.
  - The right to a range of options for providing testimony via alternative arrangements,

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- including telephone/videoconferencing or testifying with a room partition.
- The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in college disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual misconduct may be admissible in the disciplinary stage that determines sanction.
  - The right to ask questions of the decision maker and via the decision maker indirectly request responses from other parties and any other witnesses present.
  - The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
  - The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.
  - The right to written or electronic notice about the sanction(s) that may be imposed on the Respondent based upon the outcome of the conduct proceeding.
  - Access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest.
  - The right to have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least five years.
    - Student Affairs Office, 827-2481, 360 Choate Ave., Room B-15
  - The right to choose whether to disclose or discuss the outcome of a conduct hearing.
  - The right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

### **Informal Resolution Process**

**Allegations involving acts of sexual violence may not be resolved using an informal resolution process (i.e. mediation).** However, other alleged violations of this policy, including some allegations of sexual harassment, may be resolved using an informal resolution process overseen by one or more College representatives if (i) the College determines, in its discretion, that such a process would be appropriate; and (ii) all parties agree to participate. The parties to any such informal process will not be required to deal directly with one another without the College's involvement. Instead, one or more College representatives may arrange for or facilitate mediation between the involved parties and coordinate other informal resolution measures. Any party may request that the informal resolution process be terminated at any time, in which case the formal resolution process (described below) would commence. In addition, any party can pursue formal resolution if he or she is dissatisfied with a proposed formal resolution.

### **Formal Resolution Process**

*A. Time Frame of Investigation and Sanctions.*

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An investigation conducted pursuant to this policy, the investigator's preparation of his/her initial report and recommendation, and the imposition of sanctions should normally be completed within 60 calendar days after the College has notice of an allegation of sexual misconduct. The Title IX Coordinator, his/her designee, may extend this time frame for good cause, including College breaks. If the time frame is extended, notice of the extension and the reasons for such extension will be provided to the Reporting Individual and Respondent.

### *B. Impact of Criminal Investigation.*

Where the Reporting Individual has also reported the sexual misconduct to local law enforcement, resulting in the commencement of a criminal investigation, the College will not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own investigation. While the College may need to delay temporarily the fact-finding portion of its investigation under this policy while law enforcement is gathering evidence, the College will still take any necessary interim accommodation and safety measures, as described above. The College will promptly resume and complete its investigation once it learns that the local law enforcement has completed its evidence gathering stage of the criminal investigation. During any delay in the College's investigation process caused by a criminal investigation, the College will update the parties on the status of its investigation and inform the parties when the College resumes its investigation pursuant to this policy.

### *C. Investigation Process.*

1. **Assigning an Investigator.** When a determination is made to proceed with an investigation pursuant to this policy, the Title IX Coordinator will investigate. At any point during this process, the investigator may, in his/her discretion, be accompanied by a qualified individual to assist in the documentation of the investigation.

2. **Standard of Review.** This investigation procedure will determine findings of fact using the "preponderance of the evidence" standard (i.e., it is more likely than not that sexual misconduct occurred).

3. **Cooperation.** All Trocaire College faculty, staff, students, community members, and third parties (including contracted service providers and vendors) are expected to cooperate in the investigation process. As early as possible in this investigation process, the Title IX Coordinator will direct the Reporting Individual, Respondent, witnesses, and other involved individuals to preserve any relevant evidence.

4. **Notice of Investigation.** At the outset of the investigation, the Title IX Coordinator will advise the Respondent in writing of the allegations against him or her ("Notice of Investigation"). A copy of this Notice of Investigation will also be provided to the Reporting Individual. Both the

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Respondent and the Reporting Individual will have an opportunity to respond to the Notice of Investigation in writing at any time during the investigation.

5. Method of Notification. Notification and/or delivery to the Reporting Individual or Respondent, whether during this Investigation Process or at any other stage of a case being handled pursuant to this Policy, shall be by personal delivery or registered mail or, if agreed upon by all parties, by electronic mail or facsimile.

6. Fact Finding. In most cases, the investigation will involve conducting a thorough fact-finding investigation, which includes meeting separately with the Reporting Individual (if participating), Respondent, and pertinent witnesses, and reviewing other relevant information. Occasionally, a different or less formal response to the report may be warranted. At any time during the course of an investigation, the Reporting Individual, Respondent, or any witnesses may provide a written statement, other supporting materials, or identify other potential witnesses or relevant documentary evidence, regarding the matter under review. All proceedings will be documented and filed in the Office of the Chief Student Affairs Officer or Human Resources Office for a minimum of five years.

7. Support Persons. The Reporting Individual and Respondent may have a support person accompany him or her through the process. A support person may not speak for the Reporting Individual or Respondent, present evidence or question witnesses. The Reporting Individual and Respondent are responsible for presenting evidence on their own behalf. Support persons may speak privately to their advisee during the investigation process. Either party may request a recess from an investigatory meeting to consult with their support person which will be granted at the discretion of the Title IX Coordinator or his/her designee.

8. Investigation Outcome. In most cases, within 45 calendar days after the College has notice of an allegation of sexual misconduct, the Title IX Coordinator or his/her designee will prepare a written report and recommendation at the conclusion of an investigation. The Investigator's written report and recommendation will generally contain, at a minimum:

- a. a summary of the investigation;
- b. the Investigator's findings, including a recommendation concerning whether the Respondent should be found responsible for the alleged sexual misconduct;
- c. a summary of the Investigator's rationale in support of the findings; and
- d. if applicable, a recommendation regarding any actions the college will take to provide accommodations to the Reporting Individual or safety measure(s) for the college community.

### **Sanctions/Corrective Action**

If the results of the investigation indicate that the College should impose sanctions and/or remedies, the matter will be referred to the appropriate President's Council Member. If the Respondent is a student, the Chief Student Affairs Office, or designee, will implement sanctions. If the Respondent is an employee, the Council Member, or designee, after consultation with the Director of Human Resources, will implement sanctions. In the case of a Council Member, the President will implement sanctions. In the case of the President or Board member, the matter will be referred to

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the chair of the Board of Trustees who will proceed according to Board guidelines. The College will take reasonable steps to prevent the recurrence of any violations of this policy and to correct the discriminatory effects on the reporting individual (and others, if appropriate). The range of potential sanctions/corrective actions that may be imposed against a student includes but is not limited to the following: verbal or written apology, discrimination or harassment education, verbal or written warning, probation, suspension and dismissal from the College.

### **Notification of Outcome**

After the conclusion of the investigation, the College will provide written notification to the Reporting Individual and the respondent of the outcome (i.e., whether a violation of this policy has occurred) within twenty (20) calendar days after the conclusion of any hearing or proceeding unless the College determines that additional time is required. This notice shall be issued contemporaneously to both parties. The College may also disclose to the Reporting Individual information about any sanctions or corrective actions taken that relate directly to the Reporting Individual (e.g. a “no contact” order). The College will maintain documentation of all hearings or other proceedings, which can take various forms (e.g. notes, written findings of fact, transcripts, or audio recordings, etc.) In no event will the Reporting Individual in matters involving an alleged violation of this policy be required to abide by a nondisclosure agreement that would prevent disclosure of the outcome.

### **Right to Appeal**

Once written notice of the resolution has been provided, either the Reporting Individual or the Respondent will have the opportunity to appeal the outcome (including the issue of whether there is a policy violation and any sanction(s) imposed). If the Respondent is a student, the appeals procedures outlined in the Judicial Appeals Board section of the handbook will apply. Appeals involving non-student respondents must be submitted in writing to the CRC Officer or to the Director of Human Resources if the CRC Officer is a party to the complaint, within seven (7) calendar days of being notified of the outcome and must set forth the grounds upon which the appeal is based. The grounds for the appeal will be limited to the following:

- There is new and compelling evidence that was not available at the time of the initial investigation that could significantly impact the outcome of the case.
- There were procedural irregularities that substantially affected the outcome of the case to the detriment of the Reporting Individual or the Respondent.
- The sanction is substantially disproportionate to the factual findings.

The CRC Officer or Director of Human Resources will forward all materials, including the letter requesting appeal of the initial decision, to the Appeals Panel, which will be appointed annually by the President, for review. The Appeals Panel will schedule a meeting within ten (10) business days of receipt of the request for review/appeal. The participants at the scheduled meeting shall be, at a

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minimum, the party appealing, and the Appeals Panel. The Appeals Panel shall conduct a prompt, thorough and impartial review of the materials. The Appeals Panel shall have the right to re-interview witnesses, e.g. if testimony is unclear or new evidence has been brought to light, or to interview additional witnesses if needed to ensure an equitable decision. The Appeals Panel will present its decision within ten (10) business days after the initial appeals meeting unless additional time is needed for good cause. If additional time is needed, both parties shall so be notified and provided with an estimated date of the appeal decision. The Appeals Panel will inform the President or designee of its findings and the President or designee shall make the final determination in the case.

### **Prohibition Against Retaliation**

No individual who makes a complaint alleging a violation of this policy or who participates in the investigation or resolution of such a complaint shall be subject to retaliation as a result of such activity or participation. Retaliation exists when action is taken against a Reporting Individual or participant in the complaint process that (i) adversely affects the individual's opportunity to benefit from the College's programs or activities, and (ii) is motivated in whole or in part by the individual's participation in the complaint process. Any acts of retaliation, as defined in this policy, shall be grounds for disciplinary action.

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