



POLICY AGAINST SEXUAL VIOLENCE, DATING VIOLENCE, DOMESTIC VIOLENCE & STALKING
Policy No. 124

TITLE: **Policy Against Sexual Violence, 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.

POLICY: Trocaire College condemns and will not tolerate sexual violence, dating violence, domestic violence and stalking. 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 NYS Educational Law 129B (Enough is Enough), 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”), Violence Against Women Act (VAWA), and the Family Educational Rights and Privacy Act of 1964 (“FERPA”).

Civil Rights Compliance Officer and Title IX Coordinator

The Civil Rights Compliance Officer (“CRC Officer”)/College’s Title IX Coordinator 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/Title IX Coordinator is also responsible for conducting the investigation of an alleged violation of the policy. The CRC Officer/ Title IX Coordinator will be available to meet with or talk to students and employees regarding issues relating to Title IX and this policy. The CRC Officer/Title IX Coordinator can be reached at 360 Choate Avenue, Buffalo, NY 14220 at (716) 827-2461 or via e-mail at civilrightscompliance@trocaire.edu

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DEFINITIONS AND EXAMPLES OF CONDUCT PROHIBITED UNDER THIS POLICY

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

Accused

Person accused of a violation who has not yet entered an Institution's judicial or conduct process.

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.

Bystander

A person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.

Clery Act

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or Clery Act is a federal statute (20 U.S.C. §1092(f)) that requires colleges and universities that participate in federal financial aid programs to keep and disclose statistics about crime on or near their campuses. Compliance is monitored by the U.S. Department of Education.

Code of Conduct

The written policies adopted by an Institution governing student behavior, rights, and responsibilities while such student is matriculated in the Institution.

Confidentiality

May be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with State and Federal law, including but not



limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.

Dating Violence

Dating violence is defined as violence committed by a person:

- a) who has been in a social relationship of a romantic or intimate nature with the victim; and
- b) 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

Discrimination

Discrimination is the materially adverse treatment of an individual or group of individuals because they possess a protected characteristic. Protected characteristics include an individual's actual or perceived race, color, creed, religion, religious practice, national origin, ethnic group, sex, gender identity, sexual orientation, political affiliation, age, marital status, military status, veteran status, disability, domestic violence victim status, genetic predisposition or carrier status, or any other basis prohibited by New York State, local, and/or federal non-discrimination laws or regulations.

Domestic Violence

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

- a) a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common,
- b) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- c) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- d) 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.

Harassment

Harassment is a form of discrimination which involves unwelcome conduct, based on a protected characteristic, where the conduct creates an intimidating, hostile, or offensive academic environment or otherwise adversely affects academic opportunities or participation in the College's activities or benefits.

Institution

Any college or university chartered by the regents or incorporated by special act of the legislature that maintains a campus in New York.

Privacy

May be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident



more than necessary to comply with applicable laws, including informing appropriate institutional officials.

Reporting Individual

Shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.

Respondent

A person accused of a violation who has entered an institution's judicial or conduct process.

SaVE Act

The Campus Sexual Violence Elimination Act amends the Clery Act. It was signed into law as part of the Violence Against Women Reauthorization Act (VAWA). The SaVE Act provision, Section 304, requires colleges and universities to report domestic violence, dating violence, and stalking beyond the crime categories that the Clery Act already mandates; adopt certain student conduct procedures, such as for notifying victims of their rights; and adopt training protocols and policies to address and prevent campus sexual violence.

Sexual Act

The term "sexual act" means:

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

Sexual Activity

Shall have the same meaning as "sexual act" and "sexual contact."

Sexual Assault

Sexual assault is any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape.

Sexual Contact

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

Sex Discrimination

Includes all forms of sexual harassment, sexual assault, and other sexual violence by employees, students, or third parties against employees, students, or third parties. Students, employees, and third parties are prohibited from harassing other students and/or employees whether or not the harassment occurs on



Trocaire campuses and whether or not the incidents occur during working hours. All acts of sex discrimination including sexual harassment, sexual assault, and other sexual violence, are prohibited by Title IX.

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.

Stalking

Engaging in a course of conduct; directed at a specific person, that would, cause a reasonable person to (a) fear for his or her safety or the safety of others or (b) suffer substantial emotional damage.

Examples include, but are not limited to, repeatedly following such person(s), repeatedly committing acts that alarm, cause fear, or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means, including electronic means, with such person(s) in a manner likely to intimidate, annoy, or alarm him or her.

Title IX

Part of the Educational Amendments of 1972, Title IX prohibits sexual discrimination in any form; to include any form of sexual harassment and gender discrimination. Federal law states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Violence Against Women Act (VAWA)

VAWA is a federal law initially passed in 1994 and reauthorized three times, most recently in 2013 (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355). VAWA's initial focus has expanded from domestic violence and sexual assault to also include dating violence and stalking. The Act provides funding for investigation and prosecution of violent crimes against women, imposes mandatory restitution by those convicted, and allows civil remedy in certain cases. The Act created the Office on Violence Against Women within the U.S. Department of Justice. While the title of the law refers to women victims of violence, the actual text is gender-neutral, providing coverage for male victims of domestic violence as well.

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;

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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;
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 CRC Officer/Title IX Coordinator, or Chief Student Affairs Officer, or Dean for Student Success, or designee, and as dictated by the situation and the needs of the Reporting Individual, the use of administrative location changes, if available, Orders of No Contact, and/or other steps deemed necessary.

POLICY FOR ALCOHOL AND/OR DRUG USE AMNESTY

The health and safety of every student at Trocaire College is of utmost importance. Trocaire 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.

Trocaire 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 Trocaire'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.

This language is also included in the Student Drug and Alcohol Policy #604

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OPTIONS FOR DISCLOSING AND FILING A REPORT

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 violence, 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 violence, 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

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.

Trocaire College:

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

Community:

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

- Crisis Services: <http://crisisservices.org/>
- 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/>.

Local Hospitals:

- 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: <https://ovs.ny.gov/help-crime-victims> 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.
- 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.
- 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:

- CRC Officer/Title IX Coordinator; 360 Choate Ave., Room 321 (716) 827-2461
- Chief Student Affairs Officer; 360 Choate Ave., Room 121, (716) 827-2445
- Security (for all locations), 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. <https://consentfirst.troopers.ny.gov/>
- To receive assistance from the CRC Officer/Title IX Coordinator in initiating legal proceedings in family court or civil court.
- To have emergency access to the Title IX Coordinator or other appropriate officials trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a Reporting Individual to provide information regarding options to proceed, and,

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where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the District Attorney. Such official shall also explain whether he or she is authorized to offer the Reporting Individual confidentiality or privacy, and shall inform the Reporting Individual of other reporting options;

- To disclose confidentially the incident to institutional representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Reporting Individuals;
- To disclose confidentially the incident and obtain services from the state or local government;
- To disclose the incident to institution representatives who can offer privacy or confidentially, as appropriate, and can assist in obtaining resources for Reporting Individuals;
- To file a report of sexual violence, domestic violence, dating violence, and/or stalking, and the right to consult the CRC Officer/Title IX Coordinator for information and assistance. Reports will be investigated in accordance with institution policy and the Reporting Individual's identity shall remain private at all times if said Reporting Individual wishes to maintain privacy.
- 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, and
- To withdraw a complaint or involvement from the institution process at any time.
- **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."**

Plain Language Explanation of 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 determine Continuing Threat:

If you disclose an incident to a Trocaire employee who is responsible for responding to or reporting sexual violence, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the CRC Officer/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. 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 Trocaire's failure to act would not adequately mitigate the risk of harm (continuing threat) 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 via writing 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 that an investigation not be undertaken, Trocaire will consider many factors to determine whether there is a continuing threat to the campus community and may proceed despite that request. These factors include, but are not limited to:

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

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

All reports of Sexual Violence, Dating Violence, Domestic Violence or Stalking will be investigated unless the Respondent decides to withdraw the complaint (if no continuing threat exists). Allegations involving acts of sexual violence may not be resolved using an informal resolution process (i.e. mediation).

Protection and Accommodations:

- A. When the Accused or Respondent is a student, to have the college issue a "No Contact Order," consistent with college policies and procedures, whereby continued intentional contact with the Reporting Individual would be a violation of college policy subject to additional conduct charges; if the Accused or Respondent and a Reporting Individual observe each other in a public place, it shall be the responsibility of the Accused or Respondent to leave the area immediately and without directly contacting the Reporting Individual.

Both the Accused or Respondent and Reporting Individual shall, upon request and consistent with institution policies and procedures, 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 his or her request.

The college may establish an appropriate schedule for the Accused and Respondents to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the Reporting Individual.

- B. To have assistance from either Security, the Chief Student Affairs Officer or his/her designee in obtaining a court-ordered Order of Protection or, if outside of New York State, an equivalent protective or restraining order
- C. To receive a copy of the court-ordered Order of Protection or equivalent when received by the institution 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).
- D. To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.



- E. To have the College call on and assist local law enforcement in effecting an arrest for violating such a court-ordered Order of Protection.
- F. When the Accused or Respondent is a student determined to present a continuing threat to the health and safety of the community, to subject the Accused or Respondent to interim suspension pending the outcome of a judicial or conduct process consistent with Trocaire's policies. Both the Accused or Respondent and the Reporting Individual shall, upon request and consistent with Trocaire's policies and procedures 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 his or her request;
- G. When the Accused 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 Accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and College policies and rules;
- H. To obtain reasonable and available interim measures and accommodations that effect a change in academic, employment, transportation or other applicable arrangements in order to help ensure safety, prevent retaliation, and avoid an ongoing hostile environment, consistent with Trocaire's policies and procedures. Both the Accused or Respondent and the Reporting Individual shall, upon request and consistent with Trocaire's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need and terms of any such interim measure and accommodation that directly affects them and shall be allowed to submit evidence in support of their request.

Conduct Process:

Every student will be afforded the following rights:

- a) The right to request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set below as well as federal and New York State law.
- b) The right to a process in a student judicial or conduct cases, where a student is accused of sexual violence, domestic violence, dating violence, talking or sexual activity that may otherwise violate the institution's code of conduct, that includes, at a minimum:
 - 1. Notice to Respondent describing the date, time, location and factual allegations concerning the violation, reference to the specific code of conduct provisions alleged to have been violated and possible sanctions.
 - 2. Opportunity to offer evidence during an investigation, and to present evidence and testimony at a hearing, where appropriate, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five years from such a hearing and may include a transcript, recording or other appropriate record; and
 - 3. 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. In order to effectuate an appeal, a Respondent and Reporting Individual in



such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a Reporting Individual must be similarly provided to a Respondent and any rights provided to a Respondent must be similarly provided to a Reporting individual.

- c) Throughout proceedings involving such an accusation of sexual violence, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the institution's code of conduct, the right:
1. For the Respondent, Accused and Reporting Individual 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.
 2. 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 New York law and the College's policies and procedures, and other issues including but not limited to related to sexual violence, domestic violence, dating violence, sexual assault, and stalking.
 3. 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.
 4. 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.
 5. To review and present available evidence in the case file, or otherwise in the possession or control of the college, and relevant to the conduct case, consistent with institution policies and procedures. The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
 6. 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 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.
 7. To receive written or electronic notice, provided in advance pursuant to 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.

8. The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
9. The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including any sanctions.
10. To be informed of the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process and the rationale for the actual sanction imposed.
11. The right to choose whether to disclose or discuss the outcome of a conduct or judicial process.
12. 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.

INVESTIGATION

Time Frame

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 CRC Officer/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.

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.

Investigation Process

1. Assigning an Investigator. When a determination is made to proceed with an investigation pursuant to this policy, the CRC Officer/Title IX Coordinator, or designee 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 violence, dating violence, domestic violence or stalking 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 CRC Officer/Title IX Coordinator will direct the Reporting Individual, Respondent, witnesses, and other involved individuals to preserve any relevant evidence.
4. **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 with the Title IX Coordinator for a minimum of five years.
5. **Support Persons.** The Reporting Individual and Respondent may have a support person (silent advocate) accompany them 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 CRC Officer/Title IX Coordinator or his/her designee.
6. **Investigation Outcome.** The CRC Officer/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. 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.
7. If the Civil Rights Compliance/ Title IX Officer concludes that the Non-Discrimination policy was not violated, s/he will communicate their findings with the Reporting Individual and Respondent in writing within the (60) sixty calendar days outlined above.

SANCTIONS/CORRECTIVE ACTION

If the results of the investigation indicate that the College should impose sections 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 Officer, or designee, will implement sanctions in accordance with the Student Code of Conduct (Policy #600). If the Respondent is an employee, the Council Member, or designee, after

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consultation with the Chief Human Resources Officer, will implement sanctions. If the Respondent is a Council Member, the President will implement sanctions. If the Respondent is the President or a Board member, the matter will be referred to 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 following is a list of possible Code of Conduct student sanctions that may be imposed singularly or in any combination. The Chief Student Affairs Officer or designee is not limited to the following sanctions as they may impose other sanction(s) considered appropriate.

Possible Sanctions:

- a) Verbal Warning: A discussion about the incident. No written follow-up notification issued.
- b) Warning: Written notice to the student that his/her conduct is in violation of college regulations and that continuation of said conduct for a stated period of time may be cause for more serious disciplinary action.
- c) Restitution: Financial reimbursement for damages to property.
- d) Community Service: A stated number of hours of donated service commensurate to the alleged violation.
- e) Disciplinary Probation: A stated trial period of time set in writing, during which the student is expected to demonstrate appropriate conduct as a member of the College Community.
- f) Disciplinary Suspension: A stated period of time which the student is excluded from classes or activities.
- g) Disciplinary Dismissal: Termination of status as a student of the College.
- h) Transcription Notation: (See Policy #329: Transcription Notation and Appeals Policy for Crimes of Violence).

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 which includes the underlying decision, sanction, and rationales for decision and sanction within the sixty (60) day time limit unless the College determines that additional time is required. This notice shall be issued contemporaneously to both parties. 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 students in matters involving an alleged violation of this policy be required to abide by a nondisclosure agreement that would prevent disclosure of the outcome. This applies to Respondents and Reporting Individuals. Respondents and Reporting Individuals are not themselves barred by FERPA from sharing this information. Note, however, that this does not allow students to unreasonably share private information in a manner intended to harm or embarrass another individual, or in a manner that would recklessly do so regardless of intention. Such sharing may be retaliation which can result in separate charges under the code of conduct.

Right to Appeal

Once written notice of the resolution has been provided, if the Reporting Individual and or Respondent is a student, she or he has the opportunity to appeal the outcome to the Judicial Appeals Board (Policy #605), via its processes and procedures.



Both the determination as to whether there is a policy violation and any sanction(s) imposed may be appealed using these processes and procedures.

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 includes harassment and intimidation, including but not limited to violence, threats of violence, property destruction, adverse educational or employment consequences, and bullying.

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.

PRIVACY IN LEGAL CHALLENGES

Pursuant to subdivision (I) of rule three thousand and sixteen of the Civil Practice Law and Rules, in any proceeding brought against an institution which seeks to vacate or modify a finding that a student was responsible for violating an institution's rules regarding a violation covered by Article 129-B of the Education Law, the name and identifying biographical information of any student shall be presumptively confidential and shall not be included in the pleadings and other paper from such proceeding absent a waiver or cause shown as determined by the court. Such witnesses shall be identified only as numbered witnesses. If such a name or identifying biographical information appears in a pleading or paper filed in such a proceeding, the court, absent such a waiver or cause shown, shall direct the clerk of the court to redact such name and identifying biographical information and so advise the parties.

Prepared: 12/13/2017
Approved by President: 03/07/2018
Effective Date: 03/07/2018
Reviewed: 03/07/2018