

## **Information and Resources for Individuals Accused of Sexual Misconduct (Respondents)**

### **Purpose of this Booklet**

This booklet provides information about resources and campus disciplinary procedures for instances of sexual misconduct. It is specifically intended to provide information for students accused of violating University policy (Respondents). It is not intended to be a comprehensive resource, but rather a source of basic information. Individuals are strongly encouraged to consult with the Title IX Coordinator or Deputy Title IX Coordinator for more information.

### **Confidential Resources – Students**

The following resources provide confidential support to students.

Counseling & Psychological Services (CAPS)

Phone:973-761-9500

Campus Ministry

Phone:973-761-9545

Health Services

Phone:973-761-9175

### **Preserving Evidence**

Text messages, records of phone calls, emails, pictures, notes, and gifts can all be pertinent for a report or investigation of sexual assault, sexual harassment, dating violence, domestic violence or stalking.

### **Privacy**

The University will maintain as private any accommodations or protective measures provided to a student if it does not impair the ability to provide such measures. Personally identifiable information about students will not be included in any publicly available record-keeping, including the reporting and disclosure of crime statistics.

### **Restraining Order and No Contact Order**

A Restraining Order is a legal order of protection issued in the state of New Jersey. To obtain a restraining order, you must go to the law enforcement agency for where you live in NJ or for where the incident occurred. After taking your statement, the police will arrange for you to speak with a judge (usually by phone) who will issue a Temporary Restraining Order. You will then be given a court date for when the judge will determine if the Temporary Restraining Order will become Permanent. Again, we will assist you in getting to the police, the courthouse, or any other related places. You can find more details about restraining orders in NJ [here](#).

A [No Contact Order](#) is issued by Seton Hall University and only has authority over individuals associated with the University. It limits contact between the parties. Violation of the No Contact Order is a violation of University policy and subject to separate review for disciplinary action.

### **Assistance and Campus Resources - Students**

Assistance and campus resources are available to both Complainants and Respondents. Examples of assistance and resources that may be available include, but are not limited to:

- Living accommodations - assistance with a room change or obtaining campus housing
- Academic assistance - address difficulties with classes
- Transportation assistance – to get to the hospital, the police, etc.

- Counseling – confidential services available on campus
- Safety and Security – 24-hour escort service on campus
- No Contact Order – a University directive prohibiting direct or indirect contact between the victim and the Respondent when the Respondent is a student or employee

To obtain any of the above assistance, the Respondent is encouraged to speak with the Dean of Students/Deputy Title IX Coordinator who will arrange the resources if requested and reasonably available. The Dean of Students can be reached at (973) 761-9076, or room 215, University Center. After hours and on weekends, the Dean can be contacted through Public Safety by calling 973-761-9300 – just provide your name and a number where you can be reached.

### **Disciplinary Procedures**

The person bringing forth the report or complaint is referred to as the Complainant. The person against whom the complaint is made is referred to as the Respondent. Whether the Respondent is a student or employee/faculty member/vendor depends upon which Disciplinary Process is used.

### **Disciplinary Procedures – Student Respondent**

The Student Conduct procedures are designed to be prompt, fair, and impartial from the initial investigation through the final result. This is accomplished by:

- Providing timely notice of all meetings to all parties.
- Providing equal access to all information to both the Complainant and the Respondent.
- Conducting the investigation and adjudication by individuals who receive annual training on issues related to sexual misconduct and violence, as well as to how to conduct a fair and impartial investigation and hearing that protects the rights of all parties and promotes accountability within the community.
- Providing for both the Complainant and the Respondent to have an Adviser of their choice present at any meeting associated with the matter (provided that the Adviser is not a Witness in the matter).
- Providing simultaneous written notice to the Complainant and the Respondent of the 1) outcome of the Student Conduct Review Board if one is held, 2) the appeal procedures, 3) any change to the outcome of the Review Board decision.

### **As a brief overview of the process, the following outline is shared.**

- The report is received by the Dean of Students/Deputy Title IX Coordinator. A Notice of Investigation is sent to the Complainant and to the Respondent.
- The matter is assigned to two co-investigators who will meet with the Complainant, the Respondent, and any witnesses with direct information about the matter. The investigators will also collect any relevant and available evidence. The investigation will be completed as efficiently as possible, normally within four to six weeks of the official report.
- The Respondent will be made aware of options available to him/her (to accept responsibility and be sanctioned, to deny responsibility and request a hearing, to permanently withdraw from the University prior to referral to hearing).
- The Complainant and Respondent will each be given an opportunity to review the full investigative report prior to the scheduling of the Student Conduct Review Board hearing.
- If the matter is referred for student conduct hearing, the Complainant and the Respondent will be notified in writing of the time and date of the hearing. The hearing will be scheduled to accommodate the parties' class schedules only. The hearing will normally be scheduled within twenty days of the official notification of the hearing.
- Both the Complainant and Respondent are encouraged to meet with the Board Chair to review hearing procedures prior to the hearing.
- Both the Complainant and Respondent will be notified in writing of the decision of the Board, normally within ten days of the decision being final. Such notification will include the effective

date(s) of any sanction(s) issued.

- The standard of evidence used by the Board in reaching its decision is Preponderance of the Evidence.
- From the date of the Notice of Investigation until the decision of the Board, the process normally takes between 90-120 days depending upon the complexity of the case, number of witnesses, etc.
- Both the Complainant and Respondent will have the opportunity to appeal within five days of receiving the Board decision. The grounds for appeal are and detailed appeal procedures are listed in the Student Code of Conduct and included in the written notification of the Board's decision.
- Both the Complainant and Respondent will be notified in writing of the decision of any appeal within fifteen days of receipt of the appeal. The appeal authority may increase any sanction issued, decrease any sanction issued, or refer the case for review by a new Board. The written notification will include any change to the original sanction, including any change to the effective date. The decision of the appeal authority is final.

The full Student Conduct Review process is available online at – [Student Code of Conduct](https://www.shu.edu/documents/Student-Code-of-Conduct.pdf).  
(<https://www.shu.edu/documents/Student-Code-of-Conduct.pdf>)

### **Standard of Evidence – Student Process**

That standard of evidence used to determine responsibility for violation of the Student Code of Conduct is Preponderance of the Evidence.

### **Possible Sanctions**

A student found responsible for violation of the University's policy of sexual misconduct is subject to any of the following possible sanctions.

- Responsible for Sexual Assault (Non-consensual intercourse) – University Suspension for one semester, University Suspension for two semesters, University Suspension for three semesters, University Suspension for four semesters, or University Expulsion.
- Responsible for Sexual Assault (Non-consensual sexual contact), Dating Violence, Domestic Violence, Stalking, or Sexual Harassment – Probation II for one semester, Probation II for two semesters, Probation II for three semesters, Probation II for four semesters, Probation II for the remainder of time enrolled at the University, Residence Hall Suspension for one semesters, Residence Hall Suspension for two semesters, Residence Hall Suspension for three semesters, Residence Hall Suspension for four semesters, Residence Hall Expulsion, University Suspension for one semester, University Suspension for two semesters, University Suspension for three semesters, University Suspension for four semesters, or University Expulsion.

In addition to the above issued sanction(s), we may require an educational or developmental sanction such as required counseling, mandated change in residence, restricted access to campus or programs, or required service. Note that this type of sanction is additional and is not a sanction for sexual misconduct or violence by itself.

Sanctions of University Suspension for any period of time and University Expulsion are noted on the academic transcript.

## **Employee Complaint Process**

In those cases when the accused is an employee of the University, the matter is referred to the Office of EEO Compliance and Title IX Coordinator.

The person making the complaint or report is called the “complainant.” The person accused is called the “respondent.” The investigation is conducted by the Director of EEO Compliance/Title IX Coordinator (Director) and an assigned co-investigator. The investigators will interview the Complainant, the Respondent, and any witnesses with direct knowledge about the incident. The investigators will also collect any evidence that directly relates to the incident.

Both the Complainant and the Respondent may be accompanied to any meeting by an adviser of their choice for the sole purpose of providing support. The support person may not have personal knowledge of or involvement in the matter being reviewed. Respondent’s supervisor may not serve as a support person. The support person is not permitted to participate in the investigation by, for example, asking or answering questions. A participant’s legal counsel shall not be permitted to participate in or interfere with the University’s investigation.

## **Timeline-Employee Complaint Process**

All matters are handled as promptly as possible. The exact timeline will vary depending upon the complexity of the matter, the number of individuals involved, etc.

The Investigation and Final Report will normally be completed within 50 days of receipt of the complaint by the Director.

Within five (5) business days after receipt of the complaint by the Director, the Director will determine, in his/her discretion, whether the complaint falls within the Director’s authority and notify the Complainant.

Within five (5) business days after notification to the Complainant that the complaint falls within the Director’s authority, as described above, the Director, in consultation with appropriate University personnel, will evaluate the complaint and determine whether an investigation and/or other action is necessary. Although consultation with University personnel is called for under these Guidelines, the determination of whether an investigation is necessary remains at all times with the Director.

Within ten (10) business days following the completion of the investigation, the Complainant and Respondent will be advised verbally of the findings at separate meetings with appropriate University personnel. A confirming letter may be provided.

## **Standard of Evidence-Employee Process**

In evaluating the evidence and assessing credibility, the Investigators will use a Preponderance of the Evidence standard to find facts and determine whether a violation of University policy has occurred. The factual findings of the Investigators are final and are not subject to appeal.

## **Sanctions-Employee Process**

If it is determined that a violation of University policy has occurred, the investigators will make recommendations as to responsive action. Final determination of responsive action is made by appropriate University personnel (i.e. supervisor, Human Resources).

When disciplinary action is recommended, such action may include one or more of the following:

- Informal and formal counseling

- Mandatory training
- Progressive disciplinary action
- No-contact directive
- Transfer of position
- Removal of administrative appointment
- Demotion
- Suspension
- Termination of employment

In addition to other sanctions, the Title IX Coordinator may recommend employment modifications, as may be appropriate, supervision and/or security at locations where the prohibited conduct occurred or is likely to recur; arrange for conducting targeted or broad-based educational programming or training for relevant persons or groups; and/or impose any other remedial or protective measures that are tailored to achieve the goals of the policy.

### **Definitions of Sexual Misconduct**

Sexual misconduct is unwelcome conduct of a sexual or gender-based nature that may adversely and unreasonably interfere with someone's education or work. It is determined based on the perspective of a reasonable person in the same circumstances as the person experiencing the misconduct. It is a form of discrimination and includes acts of sexual assault or sexual harassment as defined below. Sexual misconduct can occur in person or through e-mail, the Internet, social media, or other technologies. Anyone, regardless of gender, affectional or sexual orientation, actual or perceived, or gender identity and expression, can be the victim of sexual misconduct.

- a. **Sexual Assault: (Non-consensual intercourse).** Sexual assault is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of that person.
- b. **Sexual Assault: Non-consensual sexual contact.** Nonconsensual sexual contact means the deliberate and unwelcome touching of another person's intimate parts (sexual organs, genital area, anal area, inner thigh, groin, buttock, or breast of a person) without consent for sexual gratification or touching another with one's own intimate parts, without consent, and for the purpose of sexual gratification.
- c. **Sexual Harassment.** Sexual harassment is unwelcome conduct of a sexual nature, including sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. Hostile environment sexual harassment is based on a person's actual or perceived gender and is conduct that a reasonable person would consider so offensive, severe, persistent, or pervasive as to interfere with a person's ability to participate in educational or work activities or programs. Sexual harassment can be verbal, written, graphic, physical or through digital, online, or social media communications. Sexual harassment may occur between persons of any sex/gender, and anyone can be sexually harassed. Harassment on the basis of sex may also occur without sexual advances or sexual overtones when conduct is directed at an individual or group because of their sex or gender.
- d. **Dating and Domestic Violence.** Both dating and domestic violence are prohibited forms of misconduct under this policy and do not have to involve sexual interaction. They frequently involve a pattern of abusive behavior within an intimate relationship where one partner uses fear and intimidation to harm or control the other.
  1. Dating violence is any act of violence committed against a person who is, or has been, in a social relationship of a romantic or intimate nature by a person accused of the violation. It can include verbal statements and/or physical actions and can include, but is not limited to, name-calling, hitting, threat of physical harm, and/or damaging property. Under New Jersey criminal law, dating violence is prosecuted as a form of domestic violence
  2. Domestic violence involves criminal acts that are committed against a current or former spouse, an intimate partner, a person with whom the parties have a child in common, or with whom they live or once lived. Under New Jersey law, domestic violence includes, but is not limited to, criminal acts of homicide, assault, threats, kidnapping, criminal restraint, false imprisonment, sexual assault, criminal sexual contact, lewdness, criminal mischief, burglary, criminal trespass, harassment, and stalking.

e. Stalking. Stalking is also a prohibited form of misconduct that does not have to involve sexual interaction. Stalking is a course of conduct (or series of acts) directed at a person on at least two or more occasions that would cause a reasonable person to fear for their personal safety or the safety of others or suffer substantial emotional distress. Stalking can include pursuing/following, unwanted communication, whether directly or through third parties, trespassing, surveillance, or other acts likely to intimidate, annoy, or alarm.

In matters involving allegations of sexual misconduct or discrimination, terms and conditions shall be interpreted consistent with the requirements of the Policy Against Sexual Misconduct, Sexual Harassment and Retaliation.

### **Important Policies**

Please refer to the following University policies for further detailed information.

[Policy Against Sexual Misconduct, Sexual Harassment and Retaliation](#)

[Policy Against Discrimination, Harassment and Retaliation](#)

[Nondiscrimination/Title IX Statement](#)

[Student Code of Conduct](#)