

## **IX – Student Rights and Responsibilities**

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## **A. Background Information**

**What is VAWA?** Under The Violence Against Women Act (“VAWA”), colleges and universities are required to: (1) report dating violence, domestic violence, sexual assault, and stalking, beyond crime categories the Clery Act already mandates; (2) adopt certain student discipline procedures, such as for notifying purported victims of their rights; and (3) adopt certain institutional policies to address and prevent campus sexual violence, such as to train in particular respects pertinent college personnel.

**Updates to VAWA:** The Violence Against Women Reauthorization Act, which President Obama signed into law on March 7, 2013, imposes new obligations on colleges and universities under its Campus Sexual Violence Act (“saVE Act”) provision, Section 304. This provision imposes new reporting requirements, new student discipline requirements, and new requirements to educate and train students and employees on sexual violence.

**What is Clery?** The Clery Act Requires colleges and universities that participate in federal financial aid programs to report annual statistics on crime, including sexual assault and rape, on or near the campus, and to develop and disseminate policies.

**What is Title IX?** Title IX of the Education Amendments of 1972 is a comprehensive federal law that protects people from discrimination based on sex in education programs or activities which receive Federal financial assistance. The law prohibits discrimination on the basis of sex in any federally funded education program or activity. Title IX applies to traditional educational institutions such as colleges and universities. Under Title IX of the Educational Amendments Act of 1972, colleges and universities are required to develop procedures to respond to claims of sexual harassment.

**Title IX 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.*

**College duty under Title IX:** promptly respond to complaints of sexual harassment and sexual violence in a way that limits its effects and prevents its recurrence, through the Title IX coordinator, and training and education.

## **B. Students' Bill of Rights**

In accordance with Title IX, Mount Sinai Phillips School of Nursing (PSON) does not discriminate on the basis of its educational programs, activities, admissions or employment practices. Title IX protects students and employees, both female and male, from unlawful sex discrimination.

PSON encourages the reporting of sex discrimination, sexual assault, sexual harassment and sexual violence that is prompt and accurate. This allows the college community to quickly respond to allegations and to offer immediate options, support and assistance to the victims/survivors of sexual assault, domestic violence, dating violence and/or stalking to ensure that they can continue to participate in college and campus-wide programs, activities and employment. PSON is committed to protecting the confidentiality of victims, and will work closely with students who wish to obtain confidential assistance regarding an incident of sexual violence. All allegations will be investigated promptly and thoroughly, and both the victim and the accused will be afforded equitable rights during the investigation process.

All victims/survivors of the above-mentioned crimes and violations regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, 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 campus, off campus, or while studying abroad:

### **All students have the right to:**

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 from 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 health care and counseling services, where available;
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 institutional representatives as practicable and not to 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 the judicial or conduct process including during all meetings and hearings related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

Victims/survivors have many options that can be pursued simultaneously, including one or more of the following:

- Receive resources, such as counseling and medical attention;
- Confidentially or anonymously disclose a crime or violation;
- **Make a report to:**
  - **Title IX Coordinator, Bernice Pass-Stern, Assistant Dean (646-396-4436)**
  - **New York City Police Department (911)**

### **C. Sexual Misconduct and Violence Response Policy**

#### **1. Definitions of Sexual Assault Crimes and Consent**

##### **A. SEXUAL VIOLENCE**

Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving affirmative consent. This category of crimes includes rape, sexual assault, sexual battery, sexual abuse and sexual coercion.

##### **B. DATING VIOLENCE**

Dating violence is any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.

##### **C. DOMESTIC VIOLENCE**

Domestic violence is any violent felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim, or a person cohabitating with the victim as a spouse or intimate partner.

D. STALKING

The term stalking means intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for his or her safety or the safety of others or cause that person to 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.

E. CONSENT

Affirmative consent is a clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity. Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent. Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent to any sexual act or prior consensual sexual activity between or with any party does not constitute consent to any other sexual act. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. Consent may be initially given but withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if any of the parties are under the age of 17, or if an individual otherwise cannot consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

2. Policy Statement on Sexual Misconduct

PSON strictly prohibits the offenses of domestic violence, dating violence, sexual assault and stalking. It is the school's policy that, upon learning that an act of sexual misconduct has taken place, immediate action will be taken to address the situation and punish the perpetrator. This includes working with local law enforcement to bring possible criminal charges, seeking disciplinary action through the school and enforcing mandatory transcript notifications so other institutions are on notice of the offense committed.

PSON therefore encourages the reporting of sexual misconduct promptly and accurately. The school is committed to protect the confidentiality of victims and will work closely with

students who wish to obtain confidential assistance regarding an incident of sexual misconduct. Certain professionals at the school are permitted by law to offer confidentiality. Those who do not maintain the privilege to offer confidentiality are expected to keep reports private to the extent permitted under the law and college policies. This means they may have to report to college officials, but will not broadcast the information beyond what is required by law and policy. All allegations will be investigated promptly and thoroughly, and both the victim and the accused will be afforded equitable rights during the investigative process.

In an effort to promote a safe and secure campus environment and to prevent acts of sexual misconduct from occurring, the school engages in ongoing prevention and awareness education programs. All incoming students and employees are required to participate in these programs, and all members of the college community are encouraged to participate throughout the year in ongoing campaigns and training focused on the prevention of sexual misconduct on campus.

Academic Accommodation: The school is committed to ensuring the safety and well-being of the victim. A student who has been a victim of sexual misconduct may request an academic accommodation after a report of sexual misconduct. Any individual who makes a request will receive an appropriate and reasonable accommodation. Possible requests include the ability to change academic schedules or work schedules, withdraw from or retake a class without penalty, or access academic support such as tutoring services. In keeping with Title IX, in most cases of sexual violence or sex discrimination, the school will endeavor, to the extent practicable, to change the schedule or accommodations of the accused student prior to changing the schedule or accommodations of the victim. The school will maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the school from providing such accommodations.

If a student has experienced an act of sexual misconduct/violence, that student should follow the following short-term and interim measures. A student may also file a complaint/report with local authorities and/or school officials.

Short-term measures relate to ensuring the safety and health of the victim. If a sexual assault has taken place, evidence preservation should be emphasized. In order to best preserve evidence, victims should avoid showering, washing, changing clothes, combing hair, eating or doing anything to alter their physical appearance until after a physical exam has been completed. Students at PSON have 24/7 access to Mount Sinai Beth Israel

Hospital's Emergency Department and a SAFE nurse. Within 96 hours of an assault, the victim should receive a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at the hospital. Although there is no charge for a rape kit, there may be charges for medical or counseling services off campus. The New York State Office of Victim Services may be able to assist in compensating victims for health care and counseling (call 1-800-247-8035 or access <http://www/ovs.ny.gov/helpforcrimevictims.html> for further information).

Victims can file a report of the assault with the Title IX coordinator, Bernice Pass-Stern, Assistant Dean, at [bernice.pass-stern@mountsinai.org](mailto:bernice.pass-stern@mountsinai.org) or 646-396-4436. In addition, victims have the right to notify local law enforcement, and the school can assist in notifying law enforcement if the victim chooses. Victims may also decline to notify authorities.

Pending the final outcome of an investigation, the school will take immediate steps to protect victims. These steps include the academic accommodations listed above in addition to issuing no contact orders. Prior to resolution of the complaint, the accused may be prohibited from contacting the victim and may be placed on suspension or denied access to campus.

### **3. Confidentiality and Reporting Protocol**

If a crime of sexual misconduct has occurred, including dating violence, domestic violence, sexual assault, or stalking, the school encourages accurate and prompt reporting of these crimes to the school authorities and local police agencies. However, it can be difficult for a victim to come forward after such an event, and there are several options available for students who wish to maintain confidentiality while getting the support they need. Students may want to talk to someone about something they observed or experienced, even if they are unsure if that behavior constitutes sexual violence. A conversation where questions can be answered is far superior than keeping something to oneself. Different employees on campus and at Mount Sinai Beth Israel have different abilities to maintain a victim's confidentiality:

1. Privileged Communications: Some employees such as professional licensed counselors who provide mental health counseling, are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication".
2. No Personally Identifying Information: Other employees such as workers or volunteers in a sexual assault center, victim advocacy office, women's center or health center may talk to a victim in confidence, and generally only report to the school that an incident occurred without revealing any personally identifying information. Disclosures to these

employees will not trigger a school investigation into an incident against the victim's wishes.

3. **Responsible Employees**: These employees are required to report all the details of an incident (including the identities of both the victim and accused) to the Title IX coordinator. A report to these employees (called "responsible employees") constitutes a report to the college—and generally obligates the college to investigate the incident and take appropriate steps to address the situation. Before a victim reveals any information to a responsible employee, the employee should ensure that the victim understands the employee's reporting obligations.

The school will also assist the victim in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services and legal assistance both on and off campus. It will provide, as needed, other security and support which can include issuing a no-contact order or helping to arrange a change in course schedules or adjustments for assignments or exams. The school will remain even mindful of the victim's well-being and will take ongoing steps to protect the victim from retaliation or harm, and work with the victim to create a safety plan. Retaliation against the victim, whether by students or college employees, will not be tolerated.

#### 4. **Good Samaritan 911 Policy**

##### **Summary:**

PSON's *Good Samaritan 911 Policy* supports students who reach out for assistance in the case of a medical emergency, as well as supports the student who is helped. Therefore, a student seeking medical treatment for him/herself, or for any other student who is in immediate medical need, or any student who is the recipient of this emergency medical help, will not be subject to disciplinary sanctions related to the violation of using or possessing alcohol or other drugs, as delineated in the student code of conduct found elsewhere in this document. This amnesty policy applies to emergencies both on and off campus.

##### **Purpose:**

At the school, the health and safety of every student is of primary importance and all students are strongly encouraged to be empowered bystanders who respond in a potentially dangerous situation without fear of reprisal from the school. The school's *Good Samaritan 911 Policy* supports students who act responsibly by reaching out for assistance in the case of a medical emergency, as well as supports the student who is helped.



**Application of the Policy:**

A student is eligible to use the Good Samaritan 911 Policy on more than one occasion and students are always strongly encouraged to report a medical emergency.

**Parental Notification:**

Because parents are vital partners in the educational process and because the student can be best supported from home, the school typically contacts parents of students under 21 years of age in instances where there is evidence of risk to health, welfare or safety. In addition, the school may record names of those students involved to enable the school to follow up with the students as deemed necessary to ensure a student's well-being.

**5. Filing a Report**

To file a report of sexual assault, domestic violence, dating violence and/or stalking, speak with the Title IX coordinator, the Assistant Dean. Reports will be investigated in accordance with school policy, and the reporting individual's identity will remain private at all times if that individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, he or she may contact the guidance counselor or the SAFE nurse to discuss the incident and available options.

If the accused is an employee, the reporting individual may also report the incident to the school's leadership or may request that one of the confidential or private employees (referenced above) assist in reporting to the school's leadership or Human Resources. In this instance, disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements.

The reporting individual will be advised that they have the right to make a report to local law enforcement, or choose not to report, to be protected by the school from retaliation for reporting the incident and to receive assistance and resources from the school.

A student may withdraw his or her complaint or involvement from the school process at any time.

**D. Disciplinary Hearings**

The institutional disciplinary procedures will provide a fair, prompt, and impartial process from investigation to final result. The investigation and any hearing will be conducted by those who receive annual training on issues related to VAWA crimes, on how to conduct an investigation, and a hearing process that protects victim safety and promotes accountability. Parties are entitled to the same opportunities to have an advisor of their choice present at any hearing and

related meetings. There is no limit to the choice of an advisor; however, the parties are responsible for presenting evidence on their own behalf. Advisors may speak privately to their advisee during the proceeding, and cannot present evidence or cross-question witnesses. Parties will be informed simultaneously in writing of the outcome of the process, the availability of any appeal procedures, and when the results become final after any appeals. The disciplinary processes available for victims of domestic violence, dating violence, sexual assault, and stalking are the standard student conduct disciplinary procedures that will follow the following steps: report taken, investigation, charges issued, initial meeting, pre-hearing meeting, hearing, appeal. The standard of evidence in these cases is preponderance of the evidence. Following an allegation or report of one of these crimes, the school may offer available protective measures such as a no-contact order; alteration of academic or work situations.

#### 1. Establishing Time Frames for the Review Process

The school will conduct a timely review of all complaints of domestic violence, dating violence, and/or stalking. Absent extenuating circumstances, review and resolution is expected to take place within sixty (60) calendar days from receipt of the complaint.

The preliminary review of all complaints, including any necessary interviews to be conducted and any necessary interim measures to be put in place, will usually be completed within 10 days of receipt of the complaint.

The subsequent, comprehensive review and investigation of the complaint, including interviews with all involved parties and gathering of evidence, is usually completed within 20 days of receipt of the complaint.

Results of the complaint, via either a formal hearing or waiver of hearing are typically issued within 40 days of receipt of the complaint.

#### Burden of Proof

The burden of proof for all cases is the “preponderance of the evidence” – whether it is “more likely than not” that the sex discrimination, dating violence, sexual assault, or stalking occurred. If the evidence presented meets this standard, then the respondent must be found responsible.

[Adapted from SUNY Oswego Student Code of Conduct]

#### 2. Extensions

All deadlines and time requirements in this process may be extended for good cause as determined by the Dean. Both the respondent and the complainant will be notified in writing of the delay, the reason for delay, and provided the date of the new deadline or event. Extensions requested by one party will not be longer than 5 business/school days.

3. Evidence

Evidence to be presented by complainant(s) and respondent(s) during any hearing on the charges must be shared with the opposing party at least two (2) business days in advance of the scheduled hearing. The school official presiding at and/or hearing the case may exclude evidence that has not been shared or adjourn the hearing to afford all parties the opportunity to review evidence to be presented during the hearing. The school official presiding at and/or hearing the case will make the final decision relating to the admissibility of all evidence.

[Adapted from the SUNY Stony Brook University Student Conduct Code]

4. Parties' Rights to Advisor

The respondent and complainant may be assisted during disciplinary hearings and related meetings, by an advisor of their choice. The respondent and complainant may present witnesses and may produce other evidence for consideration by the student conduct body. The respondent and complainant are responsible for presenting evidence on their own behalf. Advisors may speak privately to their advisee, respondent or complainant, during the proceeding. Either party may request a brief recess to consult with their advisor which will be granted at the discretion of the school official presiding. Advisors for the respondent and complainant may not present evidence or question witnesses.

[Adapted from the SUNY Oswego Student Code of Conduct]

5. Notification of Findings

Within five (5) class days after the adjournment of the hearing, the student conduct hearing body shall submit written findings of fact, conclusions regarding the charge(s), and imposition of a sanction, if any, to the respondent and any school official who is determined by the Assistant Dean, Bernice Pass-Stern, to have a legitimate interest in the result. In the case of sexual misconduct and violations involving dating violence, domestic violence, sexual assault, or stalking, both the complainant and respondent shall also receive simultaneous notice of the results and sanctions imposed (and the rationale for the result and sanctions), as well as notice of the appellate procedures available, any possible changes to the result that may occur before it becomes final, and when the result becomes final.

[Adapted from the SUNY Oswego Student Code of Conduct]

#### 6. Sanctions

Following a final determination of a school disciplinary procedure for cases of rape, acquaintance rape, dating violence, sexual assault, domestic violence or stalking, sanctions/protective measures may be imposed. The school considers dating violence, domestic violence, sexual assault, and stalking as extremely serious violations and subject to SUSPENSION and/or EXPULSION from the school. In such cases, the Exceptional Procedure of EXECUTIVE SUSPENSION also may be invoked. Other sanctions include: community service, education programs, probation, no-contact order.

[Adapted from the SUNY Stony Brook University Student Conduct Code]

#### 7. Retaliation

No member of the school community shall retaliate, intimidate, threaten, coerce or otherwise discriminate against a person who files a Title IX complaint, serves as a witness, or assists or participates in a Title IX proceeding in any manner. Participants who experience retaliation should report the incident to the Title IX Coordinator.

[Adapted from the SUNY Oswego Student Code of Conduct]

### **E. Student Training**

Each academic year, during orientation to the School of Nursing, students will receive training on the following topics:

- Student rights under Title IX:
  - Title IX protects all students regardless of their sexual orientation or gender identity or immigration status or disability
  - Students who report sexual violence can expect their school to take steps to protect and support them, including while a school investigation is pending.
- Definitions of sexual violence and consent. Emphasis on Student Safety.
- Sexual Harassment: What it is and how to identify it?
- How the campus analyzes complaints
- Confidential resources available to the students
- Reporting options available to students
- Confidentiality

- Relevant and applicable campus procedures and codes
- Bystander intervention
- The role of alcohol and drugs, and the prohibition of retaliation

Students selected for disciplinary hearings will receive specialized training on issues related to sexual assault and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.