



ALBANY LAW SCHOOL

Student Policy on Harassment, Sexual Assault & Relationship Violence

I. Statement of Purpose

Albany Law School recognizes the enriching effects of human diversity in all its forms on the Albany Law School community and the broader legal profession, and Albany Law School also clearly understands that discrimination, harassment, abuse, or exclusion on the basis of an individual's personal characteristics may severely impair the ability of an individual to contribute to and benefit from the life of Albany Law School. Out of deep concern for these risks, Albany Law School's policy is intended to provide a campus environment free of harassment, sexual assault and relationship violence for all members of the campus community. Albany Law School recognizes that sexual activity is a normal, multifaceted, and cherished part of human existence, that personal decisions about sexual activity are part of the basic autonomy of the self, and that the dignity of the individual requires abiding respect for the sexual privacy of each person. Albany Law School nevertheless, also understands clearly, that the personal benefits of human sexuality depend fundamentally upon the willing choice of each individual, and that the harms when that choice is invaded by others may be profound and enduring, and may severely impair the ability to contribute to and benefit from the life of Albany Law School. The right of the individual to sexual autonomy and sexual privacy are fundamental, and this policy shall be construed and implemented with the maximum respect possible for this ideal.

This policy is intended to define behavioral expectations and, therefore, deter incidents, and inform students as to the policies and procedures that will be used to respond to allegations.

II. Scope of the Policy

This policy applies to behavior engaged in, or experienced by, any student. The behavior expectations stated in this policy apply on-campus as well as off-campus, if within the context of a Law School program, including interactions that occur via electronic or virtual means, as well as between a student and non-community members, such as visitors to campus (e.g., alumni, family of students, vendors, etc.). Conduct that occurs off-campus and not in connection with Law School programs may violate this policy if the conduct creates a threatening or hostile environment on-campus or with a Law School program or if the incident causes concern for the safety or security of Albany Law School community. If a complaint is made against an individual who is accepted to Albany Law School but is not yet matriculated as a student, the student disciplinary procedure will apply.

Non-community members are expected to abide by the behavioral expectations in this policy. However, complaints against non-community members are not handled through the formal investigatory or disciplinary procedures set forth in this policy. Complaints against visitors to the campus should be reported to the Office of Student Affairs or Human Resources, which will take appropriate action, up to and including banning the individual from Law School property.

This policy applies regardless of the complainant's or respondent's race, creed, color, gender, gender identity, gender expression, ethnicity, national origin, religion, marital status, familial status, pregnancy, age, sexual orientation, military or veteran status, disability, genetic predisposition status, domestic violence victim status, or any other protected characteristic under applicable local, state or federal law.

If any part of the New York State's "Enough is Enough Law" (Article 129-B of the New York Education Law) is deemed unenforceable by a court of controlling authority, that portion of the policy affected by the unenforceable portion shall be deemed severed.

III. Definition of Harassment

Albany Law School prohibits the harassment of any student, staff member or faculty member on the basis of legally protected characteristics. This includes harassment because of race, creed, color, gender, gender identify, gender expression, ethnicity, national origin, religion, marital status, familial status, pregnancy, age, sexual orientation, military or veteran status, disability, genetic predisposition status, status as a victim of domestic violence or any other characteristic protected under local, state or federal law. Merely by way of example, harassing conduct may consist of epithets, slurs, racially or religiously offensive jokes or graffiti, or being targeted for hostile or degrading treatment because of one's race, color, national origin, ethnicity, and other characteristics listed above.

Sexual harassment is one form of harassment. It refers to unwelcome, offensive sexual or gender-based conduct. Sexual harassment may include behavior that: exploits another on the basis of sex, such as voyeurism; intentionally invades privacy when a person is engaged in a physically private or intimate activity; or distributes sexually explicit images of another without that person's consent.

The following list provides examples of the kind of behavior that may be harassing:

- **Verbal** — examples: vulgar or lewd statements; racial, ethnic or religious slurs; name-calling; demeaning or denigrating a person because of his or her color or ethnic background; and so on
- **Physical** — examples: unwanted touching or repeated pressuring for a dating or romantic relationship after it is clear that the attention is unwelcome; or physically harming or threatening another because of his or her race, religion, sexual orientation; and so on
- **Visual** — examples: suggestive or lewd pictures or videos; cartoons, graffiti, or symbols that offend based on race, disability, sexual orientation; using gestures meant to mimic or mock; and so on
- **Communication-based** — examples: unwanted, offensive sexually graphic, threatening or vulgar phone calls or emails; social media text messages, chats or blogs that threaten or demean a person on the basis of a protected characteristic; or communications with racially, religiously or similar offensive content; and similar conduct.

The determination as to whether the alleged harassment in violation of this policy occurred depends on a consideration of the totality of the circumstances. This includes the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the learning community. Even statements intended as jokes or pranks meant to be “all in good fun” can be deeply hurtful and inappropriate for a professional community, and, therefore, may violate this policy.

When harassment becomes so severe or pervasive as to interfere with an individual’s ability to work or learn, it is called a “hostile environment”. Albany Law School reserves the right to address harassing conduct that does not rise to the level of creating a hostile environment as defined by applicable law. Further, Albany Law School encourages students and others to report even minor incidents of concern, as early reporting often allows situations to be corrected more easily.

Albany Law School also prohibits “quid pro quo” harassment, which occurs when a person in a position of authority or control links the receipt of some benefit (such as a grade or a promotion) to another’s submission to unwelcome sexual advances or sexual conduct or requires the other to perform or submit to demeaning or degrading sex or sexually-charged acts. “Quid pro quo” harassment can be expressly stated, but it can also be implied by words, actions or the surrounding circumstances. No person - no matter their title or position with Albany Law School – has the right to pressure a student for sexual activity.

Even consensual sexual relationships between faculty and students and staff and students are problematic due to the inherent power differential. Therefore, sexual or romantic relationships knowingly between faculty and currently matriculated students, or knowingly between staff and currently matriculated students, are absolutely prohibited. Similarly, sexual or romantic relationships knowingly between a supervisor, or manager, and any person with lesser authority within the chain of command, are absolutely prohibited.

The above examples of harassment are provided for educational and illustrative purposes. An individual reporting an incident is expected only to relay the facts in good-faith; Albany Law School representatives will assist the complainant in determining whether the incident may constitute a violation of this or another Albany Law School policy.

This policy is designed to ensure that our community is a respectful environment. However, the fact that a person is offended by a statement or incident is not alone enough to constitute a violation of this policy. Albany Law School is an academic community in which vigorous intellectual exploration of the law and social policy is not only expected but demanded. This policy is not intended to stifle or penalize honest intellectual exploration or debate, or to prevent the expression of legitimate criticism as it applies to work or academic performance. This policy is intended to protect members of the Albany Law School community from discrimination, not to regulate protected speech or limit academic freedom. Thus, for example, this policy would not prohibit a person from speaking against affirmative action but would prohibit the use of racial slurs in the context of that discussion. As another example, this policy would not prohibit a class discussion about the legalization of same-sex marriage even if some students were offended by others’ views,

but would prohibit social media posts mocking a particular student on the basis of his or her sexual orientation.

In the practice of law, attorneys are expected to represent their clients' interests with vigor but also to treat their adversaries personally with collegiality and respect. This is the guiding principle underpinning this policy. As a professional legal community, we are called to treat each other with professionalism and respect at all times and to debate ideas vigorously but without personal denigration.

IV. Affirmative Consent and Coercion with Respect to Sexual Assault

A safe and respectful learning community requires that sexual activity be premised only on affirmative consent. If sexual activity involves a student, consent must be affirmative, and, whenever the word "consent" is used in this policy, it should be understood to mean affirmative consent as defined here. 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 affirmative consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Additionally, mere silence, passivity, or lack of resistance cannot be a defense to such an allegation.

Certain conditions prevent a person from being able to consent. 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 or drugs or other intoxicants may be incapacitated and therefore unable to consent.

A person who has been drinking or using drugs is still responsible for ensuring that he or she has the other person's affirmative consent and/or appreciating the other person's incapacity to consent. It is not an excuse that the person accused of a sexual assault or relationship violence offense was himself or herself under the influence of alcohol or drugs and, therefore, did not realize the incapacity of the other.

Consent to some sexual contact cannot be presumed to be affirmative consent for other sexual activity. A current or previous sexual or dating relationship is not sufficient to constitute affirmative consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

Sexual activity as the result of coercion is non-consensual. Coercion is a threat, undue pressure, intimidation, force or threat of harm to engage in sexual activity.

In New York State, a minor (meaning a person under the age of 17 years) cannot consent to sexual activity. This means that sexual contact with a person less than 17 years old may be a crime, as well as a violation of this policy, even if the minor wanted to engage in the sexual act.

V. Definitions of Sexual Assault Offenses

Sexual Assault: Consistent with federal law, Albany Law School defines sexual assault as including non-consensual sexual intercourse and non-consensual contact which can be further defined as follows:

- (A) **Non-Consensual Sexual Intercourse** is any sexual penetration (anal, oral or vaginal), however slight, with any body part or object by a person upon another person that is without affirmative consent, including acts of incest and other instances where the complainant is legally incapable of giving consent. Non-consensual sexual acts include the following:
 - 1. **Rape:** 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 affirmative consent of the complainant.
 - 2. **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.
- (B) **Non-Consensual Sexual Contact:** is any intentional sexual touching, however slight, for purposes of sexual gratification or with sexual intent, of any private body part or object, by a person upon another person that is without affirmative consent. This may include forcible fondling and other non-penetrative sexual assaults.

VI. Definition of Relationship Violence

Dating Violence: The term “dating violence” means violence, including sexual or physical abuse or the threat of such abuse, committed by a person –

- (A) who is or has been in a social relationship of a romantic or intimate nature with the complainant; and
- (B) where the existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the following factors -
 - 1. the length of the relationship,
 - 2. the type of relationship.
 - 3. the frequency of interaction between the persons involved in the relationship.

Domestic Violence: The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a

person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the acts of violence occurred, or by any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of that jurisdiction.

Stalking: The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person under similar circumstances and with similar identities to the victim to –

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress (that may, but does not necessarily, require medical or other professional treatment or counseling).

Albany Law recognizes that relationship violence and sexual assault affect people of all backgrounds, regardless of ethnicity, gender, sexual orientation, and economic status. All situations will be handled with the respect and seriousness they deserve.

VII. What to Do

Procedure for Responding to Crimes, Including Sexual Assault and Relationship Violence

If you are the victim of a crime, or any violation of this policy, follow the following procedures:

1. ***Get yourself to a safe place.*** UHA Public Safety and the Albany Police Departments can help you do this.

UHA Public Safety (518) 244-3177

Albany Police Department 911 or (518) 438-4000

2. ***Obtain medical attention if it is required.*** We encourage survivors of sexual assault to be examined as quickly as possible at a facility that uses Sexual Assault Nurse Examiners (“SANE”). Albany Medical Center is a SANE facility. Remember that this medical treatment may also provide the opportunity for the collection and documentation of evidence, should you decide to pursue the incident and offender through the criminal law enforcement system. UHA Public Safety and the Albany Police Department may assist you in this effort as well.

Albany Medical Center: 43 New Scotland Avenue, Albany, NY 12208
Emergency Room: (518) 262-3131

3. ***Report the incident to law enforcement.*** A victim of a crime, including sexual assault or relationship violence, is encouraged to, but is not required to, report the incident to local law enforcement and pursue criminal charges. Albany Law School encourages reporting of all criminal offenses to law enforcement authorities.

The Albany Law School disciplinary process and the criminal process are not mutually exclusive. This means that an individual may pursue either a criminal complaint or internal complaint with Albany Law School or both. Any internal Law School investigation and/or hearing process will be conducted concurrently with any criminal justice investigation and proceeding that may be pending. Temporary delays in Albany Law School's internal processes may be requested by local law enforcement authorities for the purpose of gathering evidence. Any requested temporary delay shall not last more than ten (10) days, except when local law enforcement authorities specifically request and justify a longer delay.

In criminal cases, including non-consensual sex offenses, the preservation of evidence is critical and must be done properly and promptly. The local law enforcement authorities can assist in filing a criminal complaint and in securing appropriate examination, including by a Sexual Assault Nurse Examiner (SANE). For assistance with a criminal complaint, contact:

UHA Public Safety (518) 244-3177

Albany Police Department (518) 438-4000

New York State Police (518) 783-3211

New York State Police maintain a **24-hour hotline (1-844-845-7269)** staffed by individuals trained to respond to sexual assault. Reporting individuals should understand that not all sexual assault or relationship violence offenses under this policy are crimes and that the standard that local law enforcement employs in processing complaints is different than Albany Law School's standard under this policy. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to local law enforcement officials or the Albany County District Attorney.

Orders of Protection

Orders of Protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence. In appropriate circumstances, an Order of Protection may be available that restricts the offender's right to enter Albany Law School property, and Albany Law School will abide by any lawfully issued Order of Protection. Albany Law School officials will, upon request, provide reasonable assistance to any member of the Albany Law School community in obtaining an Order of Protection or, if outside of New York State, an equivalent Protective or Restraining Order, including providing that person with:

- a copy of an Order of Protection, or equivalent, when received by Albany Law School and providing that person with an opportunity to meet or speak with an Albany Law

School representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the Order about the other person's responsibility to stay away from the protected person or persons;

- an explanation of the consequences for violating these orders, including but not limited to, arrest, additional conduct charges, and interim suspension; and
- assistance in contacting local law enforcement related to alleged violations of such Order of Protection.

4. ***Report the incident to Albany Law School.*** Albany Law School will take appropriate disciplinary and/or remedial action in response to reported incidents. Reports may be made to the confidential or non-confidential resources listed below.

VIII. Options for Responding to Incidents

A student who has been the victim of sexual assault or relationship violence has the right to make a report to Albany Law School, local law enforcement and/or the New York State Police, or choose not to report. If reported to Albany Law School under this policy, a reporting individual will be protected from retaliation and will receive appropriate assistance and resources from Albany Law School. A Student's Bill of Rights for cases involving sexual assault, domestic violence, dating violence or stalking is located at the end of this policy.

All Albany Law School staff, faculty and administrators have a duty to report to the Harassment Committee, the Office of Student Affairs, or the Title IX Coordinator any reported or suspected violations of this policy. Therefore, any report or disclosure to an on-campus source is not considered confidential and may result in the initiation of an investigation and disciplinary action.

Victim Support in Reporting to Law Enforcement/Prosecution

Albany County Crime Victim and Sexual Violence Center
112 State Street, Room 1100
Albany, NY 12207
(518) 447-7100
Hotline: (518) 447-7716
Website: www.albanycounty.com/departments/cvsvc/

The Legal Project
24 Aviation Road, Suite 101
Albany, NY 12205
Phone: (518) 435-1770
Website: www.legalproject.org

Confidential Victim Support and Advocacy (ONLY these sources will NOT automatically report to local law enforcement, district attorney or Albany Law School)

A student seeking only support, resources and treatment (and not responsive action by Albany Law School or law enforcement) should contact the following confidential resources.

Equinox Domestic Violence Services
95 Central Avenue, Albany, NY 12206
(518) 434-6135
Hotline: (518) 432-7865
Website: www.equinoxinc.org/

WorkLifeMatters
1-800-386-7055, 9:00 am-8:00 pm, after hours answering service available
E-mail: eapcounselor@ibhcorp.com
Chat With a Counselor available at www.ibhworklife.com

Sharing information with any Confidential Resource listed above will not result in a report to Albany Law School or investigatory or disciplinary action against the alleged offender. In order to initiate an investigation or disciplinary action, report the incident to any one of Albany Law School's Non-Confidential Resources mentioned below.

Reporting the Incident to On-Campus Non-Confidential Resources

Any person having a complaint of harassment, sexual assault or relationship violence is encouraged to promptly make an internal report to Albany Law School by contacting the Title IX Coordinator, at (518) 445-2396 or TitleIXCoordinator@albanylaw.edu.

Reports of violations of this policy may also be reported to any member of the Albany Law School Harassment Committee, which is a group of faculty and staff members trained to respond to alleged violations of this policy. The Albany Law School Harassment Committee members are listed in Section XV of this policy.

A report may also be made to the Office for Student Affairs, at (518) 445-3235 or StudentAffairs@albanylaw.edu

While all Law School employees are expected to report incidents of harassment, sexual assault and relationship violence, if a complaint is made to anyone other than the individuals mentioned above, the complainant risks the possibility that it will not come to the attention of the proper Law School officials and may, therefore, not be acted upon. Similarly, information shared at public awareness and advocacy events is not considered a report to Albany Law School.

The Office of Student Affairs is available to inform persons affected about the reporting procedures for relationship violence, harassment and sexual assault, and offer appropriate referrals to resources, including counseling, health, mental health and victim advocacy, in a safe and supportive setting.

IX. Confidentiality

Albany Law School will protect the privacy of all individuals throughout all phases of the complaint, investigation and resolution process, to the extent practicable and appropriate under the circumstances.

A complainant may request that Albany Law School maintain the report as confidential. This type of request may be made if the complainant does not want his/her identity known to the respondent and witnesses, or the complainant wishes that Albany Law School not conduct an investigation or that action not be taken against an alleged perpetrator.

Albany Law School may or may not be able to comply with a request for confidentiality and/or to take no action. In cases covered by Title IX, Albany Law School is required to weigh the complainant's request with Albany Law School's commitment to provide a reasonably safe and non-discriminatory environment for all members of the Albany Law School community. In evaluating a request for confidentiality, the Title IX Coordinator will consider a range of factors, including, but not limited to:

- Whether the complainant wants to participate in an investigation or judicial hearing;
- The severity and impact of the harassment, sexual assault or relationship violence offense;
- The respective ages of the parties;
- Whether the complainant is a minor under the age of 18;
- Whether the respondent has admitted to the harassment, sexual assault or relationship violence offense;
- Whether there have been other sexual assault, relationship violence or harassment complaints about the respondent;
- Whether the respondent has a history of arrests or records from a prior school indicating a history of violence;
- Whether the respondent threatened further sexual assault or relationship violence or other violence against the complainant or others;
- Whether the sexual assault or relationship violence was committed by multiple respondents;
- Whether the sexual assault or relationship violence was perpetrated with a weapon;
- Whether Albany Law School possesses other means to obtain relevant evidence of the sexual assault or relationship violence (e.g., security cameras or personnel, physical evidence) and
- The overall safety of the campus community (including the complainant).

The Title IX Coordinator will notify the complainant if Albany Law School cannot honor the complainant's request for confidentiality. However, even when confidentiality is not available, Albany Law School officials acting under this policy will maintain privacy to the greatest extent possible. Information provided to a Non-Confidential Resource will be relayed only as necessary for the Title IX Coordinator, and those acting under this policy, to carry out the purposes of this policy. Individuals participating in an investigation, proceeding, or hearing will be encouraged to maintain the privacy of the process in order to assist Albany Law School in conducting a thorough, fair and accurate investigation.

Additionally, Albany Law School may have legal obligations to disclose information in the context of legal proceedings. In order to protect the community, Albany Law School may be obligated to respond to serious incidents even where the complainant would prefer otherwise.

Complaints may be made anonymously. However, the nature of anonymous complaints may make the investigation, determination, and remediation more difficult and, at times, impossible.

Records concerning reports of harassment, sexual assault or relationship violence are maintained in confidential files, and only those with a right and need to know are permitted access.

X. Interim Measures

In certain cases, interim measures may be put in place before the investigation is completed and/or pending completion of the investigation, to ensure the safety of all parties and/or the Albany Law School community and to ensure the integrity of the investigation. In cases involving student respondents, the Office of Student Affairs will be responsible for ensuring that the recommended measures are taken. In cases involving employees or third parties accused, the Office of Human Resources will be responsible for ensuring that the recommended measures are taken. Albany Law School will review the facts and circumstances of each case, as well as the complainant's wishes, in deciding whether and what steps are reasonable and appropriate.

If interim measures are put in place, the Title IX Coordinator will communicate the measures to all affected parties. Implementing interim measure(s) does not imply a future finding of responsibility but is meant to create a safer environment. Examples of interim measures may include (but are not limited to) contact restrictions through the issuance of a No-Contact Order, the transfer of the complainant or respondent to different classes, and/or transportation arrangements. In cases involving third parties (vendors, contingent employees, clients and consultants), examples of interim measures may include, but are not limited to, the temporary reassignment of the third party employee or a temporary suspension of services.

Upon request, the complainant or respondent may request a prompt review of the need for and terms of any interim measures and accommodations imposed or requested that directly affects him/her, including the potential addition, modification or elimination of those measures. Such a request may be made by submitting a written request for review to the Title IX Coordinator, providing the basis for that request and any evidence in support of the request. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond, including submitting evidence if desired. The Title IX Coordinator may, in his/her discretion, modify or suspend the interim measures or accommodations on a temporary basis while the parties are submitting their information and responses. The Title IX Coordinator will respond to any such requests as soon as possible, but generally no later than one calendar week of the request and the parties' submission of any evidence.

When a student is determined to present a continuing threat to the health and safety of the Albany Law School campus community, he or she is subject to an interim suspension pending the outcome of any proceedings under this policy. When the respondent is not a student, but is a member of the Albany Law School community, he or she is subject to an interim suspension and/or any other measures in accordance with Albany Law School employment policies and practices.

Upon written request to the Title IX Coordinator, both the respondent and the complainant will be afforded an opportunity for a review of the need for, and terms of, an interim suspension, as well as potential modification, by providing the basis for that request and any evidence in support.

XI. Disciplinary Process

Disciplinary sanctions for violations of this policy will be imposed in accordance with applicable Albany Law School policies, including but not limited to, expulsion and/or termination of employment. Disciplinary proceedings shall provide a prompt, fair and impartial investigation and resolution and are conducted by officials who receive annual training on the matters covered by this policy, including domestic violence, sexual assault and stalking. At any disciplinary proceeding held under this policy, both the complainant and the respondent shall receive notice referencing the specific provision of this policy alleged to have been violated and the possible sanctions. This notice shall also include the date, time, location and factual allegations concerning the alleged violation.

Albany Law School reserves the right to investigate and potentially discipline any violation of this policy that comes to its attention. If the individual who was subjected to the violation (i.e., the complainant/survivor) does not wish to act in the role of the complainant, Albany Law School may continue nevertheless to investigate and refer the case for possible discipline. In such a situation, Albany Law School will appoint an appropriate administrator to act in the role of the complainant in any disciplinary hearing.

In sexual assault, stalking, dating violence and domestic violence cases, the complainant and respondent may be accompanied by an advisor of his/her choice (at the party's own expense) during any investigatory meeting and/or disciplinary proceedings. The advisor's role is to support the complainant or respondent throughout the process and aid in his/her understanding of the investigatory and/or disciplinary process. The advisor may talk quietly with the party, but may not participate in the interview and the party is required to speak on his/her own behalf. The advisor may not intervene in, or disrupt, an investigatory meeting or disciplinary proceeding. An advisor who does not abide by this role may be precluded from further participation.

Both parties will receive simultaneous written notice of outcomes of all disciplinary proceedings, to the extent permitted by law.

For those crimes of violence that Albany Law School is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and an appeal, if any, shall include the following notation:

- Withdrew with conduct charges pending (note that Albany Law School reserves the right to disallow a student to withdraw after an allegation has been made against him/her), or
- Suspended after a finding of responsibility for a code of conduct violation, or
- Expelled after a finding of responsibility for a code of conduct violation.

Transcript notations for suspensions may be removed at the discretion of Albany Law School one (1) year after the conclusion of the suspension. Transcript notations for expulsion shall not be removed. Notwithstanding the foregoing, Albany Law School reserves the right to provide

information to licensing authorities and/or other appropriate outside entities regarding findings of responsibility for any crimes of violence, including sexual assault offenses.

XII. Retaliation

Albany Law School policy and applicable law prohibit retaliation against any individual who files a good-faith complaint, or assists, or participates in good-faith in any manner, in an investigation or proceeding conducted by Albany Law School or an external agency. Any retaliation is subject to disciplinary action, up to and including expulsion/termination.

XIII. Complaint Procedure

In the event Albany Law School receives a report that this policy has been violated, the report will be investigated by the Harassment Committee and/or designee(s). The following investigatory procedures will apply.

a. Composition of Committee:

- i.** The Harassment Committee shall be composed of three faculty members and four staff members. The Title IX Coordinator is a permanent staff appointment to the committee. All other members are appointed by the Dean and serve term appointments. The Title IX Coordinator will call the first meeting in the fall of each academic year at which the Committee will select a Chair who will serve for that year.
- ii.** Members of the Harassment Committee shall receive annual training with respect to this policy, the procedures under this policy, and the topics covered by this policy. The Title IX Coordinator shall arrange for this training in the fall of each year.
- iii.** Committee members shall serve three-year terms. Initial appointments shall include two members with terms of one year each, two members with terms of two years, and two members with terms of three years.
- iv.** The members of the Committee will treat each complaint as confidentially as possible, while still performing a thorough and complete investigation.

b. Complaint Intake:

- i.** Upon notification to the Title IX Coordinator or any member of the Harassment Committee of a complaint, the Title IX Coordinator or other appropriate person will discuss with the complainant the options available under this policy and ensure that a written document is prepared capturing the

substance of the complaint, either by the complainant or by the Title IX Coordinator.

- ii. If the complainant requests confidentiality and/or that no action be taken on the report, Albany Law School will determine whether such a request can be granted in accordance with this policy (discussed above).

c. Informal Resolution:

- i. In some cases, an informal resolution may be appropriate. One form of informal resolution is mediation, where a designated third-party explores whether the parties can agree on a result.
- ii. Informal resolution must be agreed upon by both parties and the Title IX Coordinator must agree that informal resolution is appropriate. The parties may, but will not be required, to meet together as part of the informal resolution process. At any time during the informal resolution process, the complainant or the respondent has the right to initiate or resume the formal processing of the complaint (i.e., investigation, disciplinary procedure, appeal). The informal resolution process may provide for sanctions.
- iii. Not all complaints are eligible for informal resolution. For example, a complaint of sexual assault or any form of violence is not appropriate for mediation.

d. Investigation:

i. Conducting the Investigation:

An investigation may occur because a complainant wishes to proceed with a complaint, the parties' attempt at informal resolution was not successful, or because Albany Law School determines that this is necessary despite the wishes of the complainant. The Chair of the Harassment Committee will appoint three investigators selected from the Harassment Committee to conduct an investigation of an alleged violation of this policy. In special circumstances, Albany Law School may appoint external investigators. In any case in which there is more than one respondent or more than one complainant, the Chair of the Harassment Committee has the discretion to determine if the allegations will be investigated jointly.

In conducting the investigation, the investigative team will obtain information from the complainant, the respondent, and other persons believed to have pertinent factual knowledge, as well as review pertinent records. The parties will have an equal opportunity to offer information, evidence, and to suggest witnesses who should be interviewed. However, the investigative team has discretion to determine the scope of the investigation and the methods of fact gathering. The investigative team will prepare a written report of the investigation and its conclusions within 30 days of receipt of a complaint. In unusual circumstances, this 30 day timeframe may be

extended, in which case the parties will be informed of the delay. The full written report will be sent to the Associate Dean for Student Affairs (if the respondent is a student); the Director of Human Resources (if the respondent is a non-faculty employee); or the Academic Dean (if the respondent is a faculty member). In the event the Committee determines that the report should not be filed with the Dean for Student Affairs, the Director of Human Resources or the Academic Dean due to conflicts concerns, the Committee has the discretion to determine that the report should instead be sent to the Dean or the Vice President for Finance and Business.

Determinations are made based on a majority vote of the investigative team. The complainant and the respondent will be provided with written notification of the outcome of the investigation. The parties, upon submission of a written request to the Title IX Coordinator at the conclusion of the investigation, will be permitted to review on campus information in the case file, subject to redaction permitted and/or required by law and consistent with Law School policy and applicable federal and state law, including the Family Educational Records Privacy Act.

The Dean and Chair of the Board of Trustees may be given notice of a complaint following the investigation, or, earlier in the process, if the Harassment Committee deems prudent under the circumstances. In any case where it would be appropriate for notification to be made to the Chair of the Board of Trustees but where the Chair is named or implicated in the allegation, notice will be made to another appropriate member of the Board of Trustees. In any case where it would be appropriate for notification to be made to the Dean but where the Dean is named or implicated in the allegation, notice will be made only to the Chair of the Board of Trustees.

ii. Possible Outcomes of the Investigation:

- a. If the complaint is against a student, the investigative team will make a determination as to whether the student is responsible for violation(s) of this policy and, if so, will assign sanction(s). Both the student accused of having engaged in a violation and the complainant will receive simultaneous written notice (which may be electronic notice) of the investigative team's determination, to the extent permitted by law. The outcome letter shall include factual findings supporting the determination, the decision and the sanction, if any, as well as the rationale for the decision and sanction. The investigation team's finding is subject to appeal as stated in the Student Disciplinary Code, Chapter XI. In the absence of an appeal, the investigative team's determination is final.
- b. If the complaint is against a faculty or staff member, the investigative team's report and determination is advisory. The investigative team's report will recommend a finding either that the respondent is, or is not, responsible for violation(s) of this policy, and the report will include a rationale for the outcome. The investigative team's report will **NOT** include recommended sanction(s) but will recommend only that the appropriate Albany Law School

authority take or initiate discipline in accordance with the (Staff Handbook) and faculty (Faculty Handbook).

iii. Procedural Rules

- a.** Notwithstanding anything contrary in any other policy or procedure, the standard of evidence used to determine whether a violation of this policy occurred is a “preponderance of the evidence” standard. This is less than “beyond a reasonable doubt”. A “preponderance of the evidence” means the evidence which is of greater weight or is more convincing than opposing evidence such that it is “more likely than not” that a violation of this policy occurred.
- b.** Respondent has a right to a presumption that the respondent is not responsible until a finding of responsibility is made pursuant to the provisions of this policy.
- c.** In any case where a student is a respondent or complainant, both the complainant and respondent will be permitted to submit a written impact statement to Albany Law School after a finding of responsibility for violation of this policy and prior to the determination of an appropriate sanction(s).
- d.** Notwithstanding anything to the contrary in any other policy or procedure, in any case of sexual assault, dating violence, domestic violence or stalking where the respondent is a student, both the complainant and respondent will be afforded access to one level of appeal before a panel. See the Student Disciplinary Code for the rules applicable to an appeal.
- e.** If either the complainant or respondent is a student, the complainant and the respondent shall have access to a full and fair record of any hearing held upon its conclusion which shall be preserved and maintained for at least five (5) years from the date of the end of the hearing and may include a transcript, recording or other appropriate record. This provision does not apply to investigative interviews. The full and fair record of a hearing shall be protected from public release until a final determination is made. A final determination is made under this policy when no appeal of the decision of the investigative team is sought, or in the event of an appeal, when the decision of the appeals panel is communicated in writing to the complainant and the respondent. Any public release of the full and fair record of the hearing shall be made in accordance with applicable Albany Law School policy and federal and state laws.

e. Protection of the Parties

- i.** The complainant will be informed of significant steps taken during the investigation.
- ii.** All reasonable action will be taken to assure that individuals do not experience retaliation based on his/her filing of a report or participating in the investigation and disciplinary proceeding.

- iii. To the extent possible, the investigations and proceedings will be conducted in a way calculated to protect the privacy interests of both parties.
- iv. During any investigatory or disciplinary proceeding or related meetings into allegations of sexual assault, dating violence, domestic violence or stalking, the complainant and the respondent have the right to be accompanied by a representative of his or her choice, (at the party's own expense).
- v. Where a complainant or the respondent is a student, both shall have the right to exclude their own prior sexual history with persons other than the other party or their own mental health diagnosis and/or treatment from admittance in any disciplinary proceeding held under this policy. Past disciplinary violations, including those involving domestic violence, dating violence, stalking or sexual assault, may be considered for purposes of determining the appropriate sanction after the finding of responsibility.
- vi. The disciplinary process should be completed within 60 days of receiving the initial complaint, but this timeframe may be extended if necessary under the circumstances.

f. Possible Sanctions:

A violation of this policy by a student will result in sanction(s) that Albany Law School determines are appropriate based on its assessment of the facts and circumstances in accordance with the sanctions provisions of the Student Disciplinary Code (Chapter XI of the Student Handbook).

g. Committee Members:

Patrick Connors – Faculty
 Term exp. 2021—Rm. L-205—ext. 2322
 pconn@albanylaw.edu

Keith Hirokawa – Faculty
 Term exp. 2020—M-512—ext.3360
 khiro@albanylaw.edu

Evelyn Tenenbaum – Faculty
 Term exp. 2019—Rm. M-417—ext. 3375
 etene@albanylaw.edu

Marcos Abad – Communications Office
 Term exp. 2020—Rm. U309—ext. 3216
 mabad@albanylaw.edu

Saadia Iqbal- Library
Term expires 2019-Rm. L116-ext 2338
siqba@albanylaw.edu

Amy Gunnells – Government Law Center
Term expires 2021- Rm. U207- ext. 2329
agunn@albanylaw.edu

Permanent:

Sherri Donnelly – Title IX Coordinator/Human Resources
Rm.U-226A—ext. 2396
sdonn@albanylaw.edu

XIV. Amnesty

The health and safety of every student at Albany Law School is of utmost importance. Albany Law School realizes 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. Albany Law School strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to Law School 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 Albany Law School officials or law enforcement will not be subject to Albany Law School's Student Disciplinary Code 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. Notwithstanding the foregoing, Albany Law School reserves the right to implement measures to protect the rights of clients (including but not limited to requiring substance abuse treatment and testing) and will comply with any obligations it may have to provide information to licensing authorities.

XV. Coordination With Other Policies

A particular situation may potentially invoke one or more policies or processes of Albany Law School. Albany Law School reserves the right to determine the most applicable policy or process and to utilize that policy or process. This policy does not apply to decisions relating to requests for reasonable accommodation due to disability.

XVI. Designation of Authority

Any Law School administrator or official to whom this policy empowers to act may delegate his/her authority to any other appropriate Law School official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a Law School official named in this policy from fulfilling his/her designated role. Any Law School administrator or official functioning under this policy may seek the advice and counsel of the Title IX Coordinator and/or Albany Law School's legal counsel at any time.

XVII. Policy Compliance

The Albany Law School's Title IX Coordinator is responsible to ensure compliance with this policy. Any questions or concerns about the administration of this policy should be directed to the Title IX Coordinator, at (518) 445-2396 or TitleIXCoordinator@albanylaw.edu . Inquiries and complaints may be made externally to the U.S. Department of Education, Office for Civil Rights, 400 Maryland Avenue, SW, Washington, DC 20202-1100.

XVIII. Clery Act Compliance

Beginning in its 2014 report, Albany Law School will collect and publish in its Annual Security Report (ASR) statistics on incidents of domestic violence, dating violence, and stalking that are reported to campus security authorities or local police agencies. Albany Law School will also establish educational prevention and awareness programs that promote the awareness of rape, domestic violence, sexual assault, forcible and non-forcible sexual offenses and stalking for all incoming students and new employees. Names of individuals involved in incidents are not reported or disclosed in ASRs. Albany Law School will submit crime statistics to the U.S. Department of Education and participate each fall in a web-based data collection to disclose crime statistics by type, location and year. In addition, Albany Law School will keep a daily crime log of alleged criminal incidents that is open to public inspection.

Albany Law School will issue a timely warning for any *Clery Act* crime that represents an ongoing threat to the safety of students or employees, and issue an emergency notification upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health and/or safety of students and/or employees occurring on the campus. In such circumstances, the name of the alleged perpetrator may be disclosed to the Albany Law School community, but the name of the complainant will not be disclosed.

XIX. Students' Bill of Rights

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 by Albany Law School;
- 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 institution, 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 be required to unnecessarily repeat a description of the incident;
- 8) Be protected from retaliation by Albany Law School, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of Albany Law School;
- 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; and
- 11) Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of Albany Law School.