

Siena College Sexual Misconduct and Interpersonal Violence Policy

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Sexual Misconduct and Interpersonal Violence Policy

I. Statement of Basis and Purpose

Siena College is committed to promoting a learning and working environment where sexual misconduct (such as sexual harassment and sexual assault), interpersonal violence (such as dating violence, domestic violence and stalking) and other Prohibited Conduct as defined below, is not tolerated. This policy prohibits Prohibited Conduct in all College programs and activities and other circumstances described below. Conduct prohibited by this policy also may violate laws enforced through the public criminal justice system. Individuals may decide to utilize both this policy and the public criminal justice system simultaneously, or to utilize either this policy or the criminal justice system, to address covered conduct. Siena College proceedings that involve alleged violations of this policy will be conducted through a process that is prompt, equitable, fair, impartial, and provides adequate notice and a meaningful opportunity to be heard, as outlined below and in accordance with applicable law.

This policy applies to conduct involving students, employees, or third parties (e.g., contractors, alumni, visitors) that: (a) occurs on College property, (b) takes place in any College-sponsored program or activity such as travel, research, or internship programs or (c) when such conduct may have a continuing adverse effect or could create a hostile environment on campus. This policy also applies to student conduct that occurs off College property.

Our commitment is rooted in the Franciscan and Catholic tradition, which affirms the unique worth of each person and shares a commitment to building a world that is more just, peaceable, and humane. The dignity of the individual should never be violated in any way, and the College community views, with seriousness, violations of this policy against any person.

This policy shall apply regardless of race, color, religion, creed, ethnicity, national origin, gender, age, sexual orientation, gender identity or expression, familial status, veteran status, disability, predisposing genetic characteristics, domestic violence victim status, or other characteristics as protected and defined by federal or state law. Acts of discrimination and harassment, which are offenses directed against persons because of their identification with one of these categories, are prohibited under Siena College's Policy Prohibiting Discrimination and Harassment. Where conduct is covered by both this Sexual Misconduct Policy and the Policy Prohibiting Discrimination and Harassment, the College will use the procedures set forth in this policy to resolve the allegation(s).

Accordingly, Siena College is committed to:

- Defining conduct that constitutes Prohibited Conduct.
- Providing clear reporting options for all members of our campus community and visitors.
- Promptly responding to and investigating allegations of Prohibited Conduct, including taking steps to eliminate a hostile environment if one has been created, prevent the recurrence of future incidents of Prohibited Conduct, and to restore or preserve a Complainant's equal access to the College's education programs or activities. The College's response may include pursuing disciplinary action when appropriate, referring the incident to local authorities when appropriate, and acting to investigate and address any substantiated reports of retaliation.
- Providing ongoing assistance and support to members of our campus community who file complaints of Prohibited Conduct.
- Providing awareness and prevention information on Prohibited Conduct, including disseminating our policies, implementing training and educational programs for all College constituents.

II. Title IX and the Title IX Coordinator/EOS (Equal Opportunity Specialist) Responsibilities

- A. Siena College has designated and authorized its Title IX Coordinator/Equal Opportunity Specialist (EOS) as the College employee who has primary responsibility for coordinating the College's efforts to comply with and carry out its responsibilities under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., and related regulations issued by the U.S. Department of Education in May 2020, 34 C.F.R., Part 106 ("May 2020 Title IX regulations") to implement Title IX, which prohibit sex discrimination in all of the College's programs and activities, as well as retaliation for the purpose of interfering with any right or privilege secured by Title IX or the May 2020 Title IX regulations.
- B. The Title IX Coordinator/EOS oversees the College's response to reports and complaints that involve possible Prohibited Conduct, to monitor outcomes, identify and address any patterns, and assess effects on the campus climate, so the College can address issues that affect the wider College community.
- C. An individual should contact the Title IX Coordinator/EOS in order to:
- Seek information or training about rights and courses of action available to resolve reports or complaints that involve potential violations of this policy.
 - Make a report that involves potential violations of this policy.
 - Get information about available resources (including confidential resources) and support services relating to Prohibited Conduct.
 - Ask questions about the College's policies and procedures regarding Prohibited Conduct.

D. The Title IX Coordinator/EOS at Siena College is:

Lois Goland, JD
Sarazen Student Union Room 235
Siena College
515 Loudon Road
Loudonville, NY 12211-1462
518-782-6673
lgoland@siena.edu

E. The following individuals serve as Deputy Title IX/EOS Coordinators, Title IX/EOS Investigators or Title IX/EOS Advisors and Educators:

1. Deputy Title IX/EOS Coordinators and Associates:
John Bebb, Senior Deputy Title IX Coordinator
Senior Associate Dean of Students
Student Specialist for Compliance/Education and Investigations
Sarazen Student Union Room 302
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Jeanne Obermayer, Deputy for Students Student Life Compliance Officer
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2. Assists with Education and Investigations:
Robin MacHattie
Assistant Professor
Assists with Education and may serve as an Advisor
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Melody Nadeau, Ph.D.
Assistant Director of International Programs/ESOL
Assists with Education and may serve as an Advisor
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3. Title IX/EOS Investigators

Michael Hicks, Associate Director of Public Safety
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Brian Hogan, Assistant Director of Public
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III. Terminology

A. Definition of “Affirmative Consent”:

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.

Consent will be determined with the following principles in mind:

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the

influence of drugs and/or alcohol.

- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated (see definition below).
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

B. Definition of Incapacitation:

Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

For purposes of determining whether a Respondent is responsible for a violation of this policy due to their engaging in sexual activity without consent with a person who was incapacitated, the College will assess whether a Respondent knew or a reasonable, sober person in the Respondent's circumstances should have known, that the other individual was incapacitated. A person's responsibility for obtaining consent is not diminished by their use of alcohol and or other drugs. Being intoxicated or impaired by drugs or alcohol is never an excuse for Prohibited Conduct.

C. Definition of Sexual Activity:

"Sexual Activity" shall have the same meaning as "sexual act" and "sexual contact" as defined below:

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

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

“Sexual activity” also includes sexual acts and sexual contact as described in the definitions of Title IX Sexual Harassment and Non-Title IX Sexual Misconduct below.

- D. Definition of Complainant and Survivor:
“Complainant” shall mean a student or employee who has reported sexual misconduct. Depending on the context, Complainants may also be referred to in the abstract as “survivors” or “victims” throughout this policy (that is context-dependent and is not intended to suggest that the College has pre-judged the outcome of any individual case). In some instances, the College may proceed with an investigation and resolution process without a named Complainant (see Section X).
- E. Definitions of Accused and Respondent:
1. “Accused” shall mean a person accused of a violation under this policy who has not yet entered the College’s conduct process. A person accused under this policy who is not a student or employee of Siena or whose identity is unknown shall also be referred to as accused.
2. “Respondent” shall mean a person accused of a violation who has entered the College’s conduct process.
- F. Definition of Reporting Individual:
“Reporting Individual” shall encompass the terms victim, survivor, Complainant, witness with victim status, and any other term used to reference an individual who brings forth a report of a violation or is reported by another person to have been subjected to Prohibited Conduct.
- G. Definition of Witness:
A “witness” is defined as an individual who has knowledge of facts that may be relevant to the resolution of an allegation.
- H. Definition of Bystander:
A “bystander” shall mean a person (who may also be a “witness”) who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of the College.
- I. Definition of Appeal Panel:
The appeal panel consists of faculty, staff, and administrators selected from the Siena College community, and/or external individuals retained by the College to serve as appeal panel members. The appeal panel makes determinations regarding appeals, as outlined below. Appeal panel members are trained annually regarding the College’s Sexual Misconduct and Interpersonal Violence policy and procedures, case review, and adjudication. An appeal panel member will not participate in a panel meeting if there is a conflict of interest.

IV. Definitions and Behavioral Examples of Prohibited Conduct (Title IX Sexual Harassment and Non-Title IX Misconduct)

This policy prohibits the following forms of misconduct, collectively referred to throughout the policy as “Prohibited Conduct”. Due to certain requirements in the May 2020 Title IX regulations and the College’s desire to define and address Prohibited Conduct consistently with its institutional values and practices, the definitions of Prohibited Conduct set forth below are grouped into two general categories, as follows:

Title IX Sexual Harassment (i.e., Quid Pro Quo Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, and Domestic Violence, Dating Violence and sex-based Stalking that fall within the scope of Title IX); and

Non-Title IX Misconduct (i.e., Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking that fall outside the scope of Title IX, Sexual Exploitation, Sexual Coercion, and Retaliation, as defined below).

Specifically, Title IX Sexual Harassment and Non-Title IX Misconduct are defined as follows for purposes of this Policy:

Title IX Sexual Harassment

“Title IX Sexual Harassment” is a subset of Prohibited Conduct. Under the May 2020 Title IX regulations, the College is required to prohibit certain forms of sexual harassment as defined in those regulations. Title IX Sexual Harassment is Prohibited Conduct of the following types committed by or against students and/or employees in an education program or activity of the College, in the United States. Further, in order for the College to consider a Formal Complaint of such misconduct as falling within its Title IX Sexual Harassment policy and procedures, the Complainant must be participating in or attempting to participate in a College program or activity at the time the complaint is filed.

Conduct takes place within the College’s “programs and activities” when that conduct occurs: (1) in a location, at an event, or in a circumstance where the College exercises substantial control over both the Respondent and the context in which the conduct occurs; or (2) in any building owned or controlled by a student organization recognized by the College. Conduct that occurs off campus in locations or at events with no connection to the College is unlikely to have occurred in a program or activity of the College.

A complaint about conduct that does not meet this strict definition for Title IX Sexual Harassment is still prohibited by this policy if it otherwise constitutes Prohibited Conduct within the definition of Non-Title IX Misconduct as defined below.

The following Prohibited Conduct definitions apply for purposes of the definition of Title IX Sexual Harassment:

Title IX Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States by which an employee of the College conditions the provision of an aid, benefit, or service of the College on a student’s or employee’s participation in unwelcome sexual conduct.

Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment

Severe, pervasive and objectively offensive sexual harassment for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to the College education program or activity.

Title IX Sexual Assault

As required by the May 2020 Title IX regulations, the College's definition of Title IX Sexual Assault incorporates the definitions of the FBI's Uniform Crime Reporting (NIBRS) program, and is defined as follows:

- **Rape:**¹
 - The carnal knowledge of a person (i.e., penile-vaginal penetration), without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (it should be noted that any individual, regardless of gender identity, could be Complainants under this definition);
 - Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
 - To use an object or instrument (e.g., an inanimate object or body part other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (for purposes of this definition, "private body parts" includes breasts, buttocks, or genitals, whether clothed or unclothed);
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

Sexual assault can be committed by any person against any other person, regardless of gender, gender identity, sexual orientation, or past or current relationship status. Sexual assault may occur with or without physical resistance or violence.

Any incident falling within this definition is a violation of College policy and is prohibited.

Title IX Dating Violence

Title IX Dating Violence for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes violence committed by a person who is or has been in a social relationship of a romantic or

¹ Both completed rape and attempted rape are prohibited by this policy.

intimate nature with the Complainant. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

Any incident falling within this definition is a violation of College policy and is prohibited.

Title IX Domestic Violence

Title IX Domestic Violence for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes a felony or misdemeanor crime of violence committed—

(A) By a current or former spouse or intimate partner of the victim;

(B) By a person with whom the victim shares a child in common;

(C) By a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner;

(D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Any incident falling within this definition is a violation of College policy and is prohibited.

Title IX Stalking

Title IX stalking for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

(ii) For purposes of this definition—

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Examples of stalking behaviors or activities include, but are not limited to the following, if they occur in the context of stalking as defined above (i.e., the behaviors or activities would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress): (1) non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, written letters, gifts, or any other communications that are unwelcome; (2) use of online, electronic or digital technologies, such as posting pictures or text in chat rooms or on websites, sending unwanted or unsolicited e-mail or talk requests, posting private or public messages on Internet sites, social networks, and/or school bulletin boards, installing spyware on a person's computer, or using Global Positioning Systems (GPS) or similar technology to monitor a person; (3) pursuing, following, waiting for, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the person; (4) surveillance or other types of observation, including staring and voyeurism; (5) trespassing; (6) vandalism; (7) non-consensual touching; (8) direct verbal or physical threats against a person or a person's family member, pet or personal property; (9) gathering information about a person from friends, family, or co-workers; (10) accessing private information through unauthorized means; (11) threats to harm self or others; (12) defamation and/or lying to others about the person; and (13) using a third party or parties to accomplish any of the above.

Behaviors or activities that fall within this definition are violations of College policy and are prohibited.

Non-Title IX Misconduct

Non-Title IX Misconduct is Prohibited Conduct that falls within the scope of this policy and the definitions below but that does not fall within the definition of Title IX Sexual Harassment, either due to the nature of the conduct or because it did not reportedly occur within a program or activity of the College in the United States. Behavior that falls within the definition of Non-Title IX Misconduct violates College policy and is prohibited. Such conduct is defined for purposes of this policy as:

Non-Title IX Sexual Harassment

Non-Title IX Sexual Harassment is any unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and or other verbal, nonverbal, or physical conduct of a sexual nature, that does not fall within the definition of Title IX Sexual Harassment stated above. Non-Title IX Sexual Harassment occurs when any of the following conditions are present:

- Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a college program or activity; or,
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, e.g. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both the subjective perspective of the person who experiences such conduct and objective standard of a reasonable person's perception of such conduct. A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show

a repetitive series of incidents to establish the existence of a hostile environment, particularly if the harassment is physical. Conduct which is pervasive or persistent, even if not severe, may also create a hostile environment. Sexual harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender, sex or gender, and/or sex or gender stereotyping, even if those acts do not involve conduct of a sexual nature (NY State law has eliminated the “severe and pervasive” standard, requiring only that an employee show that alleged harassment or retaliation rises above the level of “petty slights and trivial inconveniences”).

1. Sexual harassment:

- May be blatant and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated;
- May or may not include intent to harm, be directed at a specific target, or involve repeated incidents;
- May be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships, harassment can occur in any context;
- May be committed by a stranger, an acquaintance, or someone with whom the Complainant has an intimate or sexual relationship;
- May be committed by or against an individual or group;
- May occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation;
- May occur in the classroom, in the workplace, in athletic facilities, in residential settings, or in any other setting;
- May be a one-time event or part of a pattern of behavior;
- May be committed in the presence of others, when the parties are alone, or through the use of technology; and/or
- May affect the Complainant and/or third parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent, or pervasive pattern of unwelcome conduct that includes one or more of the following:

- a. Physical conduct that does not meet the Title IX Sexual Harassment definition and that involves:
 - Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements; and/or
 - Unwanted sexual advances.
- b. Verbal conduct:

- Making or using derogatory comments, epithets, slurs, or humor;
 - Intentionally using incorrect pronouns or an incorrect name when a person has clearly stated their preferred name and pronouns;
 - Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; and/or
 - Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes.
- c. Visual conduct:
- Leering, making sexual gestures, displaying of suggestive or demeaning objects or pictures, cartoon or posters in a public space or forum;
 - Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading images. This example should not be understood to constrain academic freedom in teaching, research, or creative activity, or to limit intellectual and or expressive rights; and/or
 - Letters, notes, or electronic communications containing comments, words, or images described above.
- d. Quid pro quo conduct that does not meet the definition of Title IX Sexual Harassment stated above:
- Direct propositions of a sexual nature between those for whom a power imbalance, supervisory, or other authority relationship exists;
 - Offering educational or employment benefits in exchange for sexual favors;
 - Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose; and/or
 - Making or threatening reprisals after a negative response to sexual advances.

Non-Title IX Sexual Assault

Sexual Assault (i.e., rape, fondling, incest or statutory rape) as defined in the Title IX Sexual Assault definition above that did not reportedly occur in a program or activity of the College in the United States, and attempts to commit such misconduct.

Non-Title IX Domestic Violence

Domestic violence as defined in the Title IX Domestic Violence definition above that did not reportedly occur in a program or activity of the College in the United States.

Non-Title IX Dating Violence

Dating violence as defined in the Title IX Dating Violence definition above that did not reportedly occur in a program or activity of the College in the United States.

Non-Title IX Stalking

Stalking as defined in the Title IX Stalking definition above that did not reportedly occur in a program or activity of the College in the United States, or that otherwise fits within the definition of stalking but does not fall within the Title IX Stalking definition because the reported conduct is not directed at the Complainant on the basis of sex.

Non-Title IX Sexual Exploitation

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute another form of sexual misconduct. Examples of sexual exploitation include, but are not limited to, prostitution, non-consensual video or audio-taping of sexual or other private activity, exceeding the boundaries of consent (e.g., permitting others to hide in a closet and observe consensual sexual activity, videotaping of a person using a bathroom), engaging in voyeurism, or engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of such infection.

Non-Title IX Sexual Coercion

Acts constituting sexual coercion are acts that do not fall within the definitions of Title IX Sexual Harassment or Non-Title IX Misconduct stated above and that involve using force, threats, alcohol or drugs, and/or using physical, emotional, or verbal pressure to have sexual contact with someone against their will, or where a person is incapable of giving consent for reasons including, but not limited to, the Complainant's age, the Complainant's incapacitation due to drugs or alcohol, or the Complainant's inability to give consent due to intellectual or other disability. Sexual contact includes kissing, patting, fondling, oral sex, genital touching, and any other sexual behavior that makes the Complainant feel uncomfortable.

Retaliation

Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or the May 2020 Title IX regulations or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing regarding Prohibited Conduct (including both Title IX Sexual Harassment and Non-Title IX Misconduct). Retaliation is strictly prohibited. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitute retaliation, as do any adverse action taken against a person because they have made a good faith report of Prohibited Conduct or participated in any proceeding under this Policy. Retaliation may include intimidation, threats, coercion, harassment, or adverse employment or educational actions that would discourage a reasonable person from engaging in activity protected under this policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process under this policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility is not alone sufficient to establish that any party made a materially false statement in bad faith.

The College will not engage in, and will investigate and address, reports of retaliatory conduct. Retaliation under this policy may be found whether or not the underlying complaint is ultimately found to have merit.

V. Definition of Employee Consensual Relationships

Siena College does not intrude upon private choices regarding personal relationships when these relationships do not violate the policies of the College, cause harm to the safety and wellbeing of members of the campus community, or increase the risk of harm to the safety and wellbeing of members of the campus community.

Should an employee be found in violation of the consensual relationship policy and charges of sexual harassment are made, it shall not be a defense to allege that the relationship was consensual in any proceeding brought under these procedures.

A. With other employees:

Consensual romantic or sexual relationships in which one employee retains a supervisory line or evaluative role over another employee are unethical, create a risk for real or perceived coercion, and are expressly a violation of this policy. Therefore, persons with a supervisory line and/or evaluative responsibilities who are involved in such relationships must bring those relationships to the attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory and/or evaluative responsibilities.

B. With students:

Unique relationships exist between students and certain employees of the College, such as faculty members, administrators, and staff who serve in such roles as educator, counselor, evaluator, advisor, or who exercise other types of control over students. Given the possibility that abuse of this relationship or the appearance of abuse may occur, the College views it as unacceptable if faculty members or other instructional personnel, administrators, or staff members engage in amorous relationships with students enrolled in their classes or subject to their supervision, control, or authority, even when both parties appear to have consented to the relationship.

VI. Immediate Assistance in Cases of Prohibited Misconduct

Students, faculty, staff, administrators, and visitors at Siena College who experience any form of sexual misconduct on or off-campus (including Siena-sponsored trips and events) are strongly encouraged to immediately report the incident by contacting Siena College's Department of Public Safety (518-783-2376 or 518-783-2999), which is available 24 hours a day, 7 days a week, and/or local law enforcement, by calling 911. In addition, the New York State Police has a dedicated 24-hour hotline: 1- 844-845-7269. An initial choice to use one of these avenues does not preclude a later or simultaneous decision to use one or more of the others. Campus public safety officers can also assist the Complainant with filing a complaint both on and off campus, and in obtaining immediate medical attention, counseling, and other services.

VII. Obtaining Immediate Medical Attention and Emotional Support

Siena College is committed to assisting anyone who experiences Prohibited Misconduct to seek comprehensive medical attention as soon as possible to treat injuries, obtain preventative treatment for sexually transmitted diseases, and preserve evidence, among other things. For sexual assaults in

particular, immediate treatment and the preservation of evidence of the assault are important for many reasons, including facilitating a criminal investigation, in the event the Complainant decides to pursue one. In addition, individuals who have experienced or witnessed Prohibited Conduct are encouraged to seek emotional support as soon as possible, either on or off-campus.

- A. On-campus resources include nurses at Siena's Health Services and counselors in Siena's Counseling Center. Counselors are trained to provide crisis intervention.
- B. For off-campus resources, Siena maintains a list of providers, including rape crisis centers and domestic violence shelters, available throughout the Capital District. This list includes information about St. Peter's Health Partners, which is specially equipped to handle sexual misconduct and trained to gather evidence from such assaults. The SANE program at local hospitals provide medical exams to victims/survivors of sexual assault. As part of this program, an advocate is available to assist and support victims/survivors through the process. ([Community Resources](#))

VIII. Reporting, Confidentiality, Privacy and Choice of Actions in Response to Prohibited Misconduct

Any individual may make a report to College officials and/or law enforcement officials that they have experienced, observed, or have information about Prohibited Conduct.

- A. Options in General:
Victims/Survivors/Complainants have many options that can be pursued simultaneously, including the following:
 - Confidentially disclose a crime or violation to the Counseling Center, Health Services, or the Office of the College Chaplain and Siena College Friars. Confidential resources can share options and advice without any obligation to tell anyone, and will not share information without the consent of the victim/survivor/Complainant.
 - Anonymously disclose a crime or violation to the Public Safety anonymous tip line: www.siena.edu/anonymous. The College may have a duty to investigate anonymous disclosures to the extent possible, based on the information disclosed.
 - Make a report to a College Official/Responsible Employee/Law Enforcement. Victims/Survivors/Complainants have the right of privacy when reporting to College officials/responsible employees, to the extent possible under the circumstances. However, information must be shared with other administrators who have a need to know. Reports to College officials, responsible employees and law enforcement officers serving in such capacity are known as private but not confidential, as described further below.
 - Public Safety (Private, Not Confidential)
 - Local Law Enforcement (Private, Not Confidential)
 - New York State Police (Private, Not Confidential)
 - Title IX Coordinator/EOS (Private, Not Confidential)
 - Deputy Title IX/EOS Coordinators (Private, Not Confidential)
 - Reports to the College's Title IX Coordinator/EOS and/or Deputy Title IX Coordinators may be made by any individual 24 hours per day/7 days per week via email to Lois Goland, Title IX Coordinator/EOS (lgoland@siena.edu, 518-782-6673) or John Bebb, Deputy Coordinator (jbebb@siena.edu, 518-783-2328) or during business hours at the contact information provided above, and to College Public

Safety 24 hours per day/7 days per week at 518-783-2999.

- Individuals with a disability may request accommodations to ensure their full and equal participation in reporting incidents of Prohibited Conduct, as well as the investigatory and adjudicatory process under this policy. Requests for accommodations in connection with the reporting, investigatory and/or adjudicatory process are determined on an individual basis by the Title IX Coordinator/EOS or designee, in consultation with the College's ADA/Section 504 Coordinator as appropriate.

Reports of Prohibited Conduct should be filed with the Title IX Coordinator/EOS or designee, Public Safety, or Deputy Coordinator as soon as possible after the incident(s) occurred or in a timely manner. While Complainants are welcome to file a report or complaint at any time, Complainants are encouraged to come forward as soon as possible because a delay in reporting or making a complaint may impact the effectiveness of the investigation. Delays in reporting may impair the College's ability to investigate due to, but not limited to, fading memories and the availability of witnesses and evidence.

If the accused is an employee of the College, Complainants may also disclose a report to the College's Associate Vice President for Human Resources or designee, and Complainants may request that a private or confidential employee resource assist them in doing so.

B. Confidentiality and Confidential Resources:

May 2020 Title IX regulations contemplate that certain information will generally be treated confidentially, except as qualified by statements in those regulations. For example, the regulations provide that colleges must maintain as confidential any supportive measures provided to a Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures. The regulations also provide that institutions must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under those regulations.

In accordance with the May 2020 Title IX regulations, the College will not access, consider, disclose, or otherwise use a party's privileged records or require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to College officials in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092 (F) and 20 U.S.C. 1681 (A). Licensed mental health counselors, medical providers, and pastoral counselors are examples of College employees who may offer confidentiality.

Confidential Resources are encouraged to submit non-identifying information about violations of this policy to Public Safety for the purposes of anonymous statistical reporting under the Clery Act.

Any member of the College community who is not prepared to make a report or who may be unsure how to characterize the incident that occurred, but who still seeks information and support, is encouraged to contact a Confidential Resource.

At Siena College, the following is the list of Confidential Resources:

Counseling Center: 518-783-2342

Health Services: 518-783-2554

Office of the College Chaplain and Siena College Friars: 518-783-2332

These are the only Siena College employees who can offer legally protected confidentiality. These individuals are not required to report any information about an incident to the Title IX Coordinator/EOS or designee without a Complainant's permission. While professional counselors will maintain an individual's confidentiality vis-à-vis the College, they may have reporting or other obligations under New York State law, e.g., mandatory reporting to law enforcement in case of minors, imminent harm to self, or others. An individual who speaks to a professional and/or pastoral counselor in these specific roles must understand that, if the individual wants to maintain confidentiality, the College will be unable to conduct an investigation into particular incidents or pursue disciplinary action against the alleged Respondent.

Confidential resources may assist individuals in receiving other necessary protection and support, such as survivor advocacy, academic support or accommodations, disability, health and mental health services, changes in residence halls, working and course schedules and other Supportive Measures, in coordination with the Dean of Students Office.

Individuals who initially request confidentiality may later decide to file a complaint with the College and/or report the incident to Colonie or State Police, and thus have the incident investigated. These counselors will provide the individual with assistance in contacting the Title IX Coordinator/EOS or designee if the individual wishes to do so.

C. Privacy/Non-Confidential:

Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law, but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate College officials.

Even College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator/EOS or designee to investigate and/or seek a resolution.

If a Complainant or other individual discloses an incident of Prohibited Conduct to a responsible employee but the Complainant wishes to maintain confidentiality or does not consent to the College's request to initiate an investigation, the Title IX Coordinator/EOS or designee must weigh the request against the College's obligation to provide a safe, non-

discriminatory environment for all members of its community. As noted in the Supportive Measures section below, the College shall assist with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of reporting choices.

D. Duty to Report by Responsible Employees:

“Responsible Employees” have a duty to report incidents of Prohibited Conduct, including all relevant details, to the Title IX Coordinator/EOS or designee. A “responsible employee” is a Siena College employee who has the authority to redress Prohibited Conduct or who has the duty to report incidents of Prohibited Conduct. Such employees will be discreet and will respect a Complainant’s wish for privacy as described in this policy, but they are not permitted under any circumstances to maintain a Complainant’s complete confidentiality.

With the exception of those serving in their role as a confidential resource, Siena has designated all full-time and part-time faculty, administrators, staff, coaches, and community assistants as responsible employees.

Any responsible employee with a duty to report violations of this policy who receives a complaint of Prohibited Conduct or who observes or learns of conduct that is reasonably believed to be in violation of this policy, is required to report the alleged conduct to the Title IX Coordinator/EOS or designee and/or Public Safety who will take appropriate action to address the report.

A responsible employee must report to the Title IX Coordinator/EOS or designee and/or Public Safety all relevant details about the alleged Prohibited Conduct shared by the Complainant or other individual and that the College will need to determine what happened, including the names of the Complainant and alleged Respondent, any witnesses and any additional relevant information, including the date, time, and specific location of the alleged incident.

E. Law Enforcement:

Some or all of the Prohibited Conduct described above is prohibited, in separate ways, by New York State Law and Siena College policy. Thus, offenders may be prosecuted under New York State criminal statutes and also be subject to disciplinary action by the College. The College may choose to pursue disciplinary action while criminal action is pending, or even if criminal justice authorities choose not to prosecute.

The College will assist Complainants in contacting law enforcement and/or other appropriate authorities for the purpose of obtaining orders of protection or other similar relief available through the court system, and will, to the extent that it is able, facilitate the implementation of any on-campus or College program-related restrictions imposed by such orders.

Siena College will investigate Prohibited Conduct in accordance with this policy even if a law enforcement investigation is also occurring. Siena College’s investigative and conduct process will run concurrently with any criminal justice investigation and proceeding except for temporary delays as requested by external law enforcement entities while law enforcement gathers evidence. Temporary delays should not last more than ten (10) business days except when law enforcement specifically requests and justifies a longer delay.

F. Anonymous Reporting:

If a Complainant self-identifies but asks to remain anonymous during the investigation, the Title IX Coordinator/EOS or designee will consider how to proceed, taking into account

the Complainant's wishes, the College's commitment to provide a safe environment, and the Respondent's right to have specific notice of the allegations if the College were to take action that affects the Respondent.

G. Welfare of the Community (Amnesty) Policy:

The health and safety of every student at Siena College is of utmost importance. Siena College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that Prohibited Conduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Siena College strongly encourages students to report Prohibited Conduct to College officials. A bystander acting in good faith or a reporting individual acting in good faith who discloses any incident of Prohibited Conduct to College officials or law enforcement will not be subject to disciplinary action under Siena's code of conduct for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the Prohibited Conduct.

This policy may also be applied, but not limited to: alcohol or drug related incidents, and situations of vandalism and damage. The policy only applies to the College's Student Code of Conduct and has no status in other jurisdictions such as local or state courts.

H. Exception to Obligation to Investigate:

If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public event, the College is not obligated to begin an investigation based on such information. The College may use the information provided at such an event to inform efforts for additional education and prevention efforts.

IX. Jeanne Clery Act and Timely Warning

A. Jeanne Clery Act:

In concert with our Catholic and Franciscan Mission, Siena College strives to create an environment that is respectful of all and conducive to learning and living. Crimes and acts of violence are not tolerated. In 1990, Congress enacted the Crime Awareness and Campus Security Act (Title II of Public Law 101-542), which amended the Higher Education Act of 1965 (HEA). This act required all postsecondary institutions participating in Title IV student financial aid programs to disclose campus crime statistics and security information. The act has been amended multiple times. The 1998 amendments renamed the law the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (commonly referred to as "the Clery Act") in memory of Jeanne Clery who was slain in her dorm room in 1986. The reauthorization of the Violence Against Women Act (VAWA), signed by President Obama in March 2013, which includes the Campus Sexual Violence Elimination Act (Campus SaVE) amended the Clery Act. All incidents of domestic violence, dating violence, and stalking must now be reported in addition to reporting incidents of sexual assault. These statistics can be found in the Annual Security and Fire Safety Report. The report includes statistics for the previous three years concerning reported crimes and institutional policies addressing campus security. To obtain a copy of this report contact the Director of Public Safety or visit: <https://www.siena.edu/offices/public-safety/campus-crime-statistics/>

B. Timely Warning:

1. In the event a situation arises within the College's Clery Geography that, in the judgment of the Director of Public Safety or designee (who may consult with the Vice President for Student Life, Dean of Students and/or Title IX Coordinator/EOS or designee), which may pose a serious or continuing threat to students and employees, a campus-wide "Timely

Warning” will be issued. The decision to issue a Timely Warning is made on a case-by-case basis considering the nature of the crime and the continuing danger to the campus community. The warning will be provided to students and employees in a manner that is timely, and that is designed to aid in the prevention of similar occurrences. Timely Warnings will include information about the crime that triggered the Timely Warning but will not include personally identifiable information about the victim of the crime. Timely Warning Notices are generally written and distributed by the Director of Public Safety (or designee) or the Dean of Students’ Office and are sent via email to students, faculty, staff, and administrators. A copy of the notice may also be posted on campus buildings.

2. The Director of Public Safety or their designee may issue a “Public Safety Advisory” where the precipitating incident(s) is/are not Clery Crimes and/or do not rise to the level of a “Timely Warning.” These Public Safety Advisories may be issued to inform the campus community for their personal safety of ongoing non-Clery crimes, suspicious activity on campus, or crimes that do not fall within Siena’s Clery Geography. These “Advisories” may be disseminated to the campus community via email and/or postings on campus buildings.

X. Initial Assessment, Initial Contact with Complainant, Supportive Measures and Emergency Removal/Administrative Leave

- A. Upon receipt of a report of alleged sexual misconduct, the College's Title IX Response Team will conduct an initial assessment within 72 hours. The goal of this assessment is to provide an integrated and coordinated response to reports of Prohibited Conduct. The Title IX Team, led by the Title IX Coordinator/EOS or designee, assists in the review, investigation, and resolution of reports. The team may include the Title IX Coordinator/EOS or designee, Deputy Coordinators, Associate Coordinator and the Director of Public Safety. Depending on the roles of the parties involved in responding to a report, other designees (Dean of Students, College Counsel) may join the team. In all cases, the Title IX Response Team will be limited to a small number of individuals who need to be informed in order to provide an effective and equitable review and timely response to and resolution of reports, while protecting the privacy of parties as fully as possible. Regular members of the Title IX Response Team receive annual training in strategies to protect parties who experience Prohibited Conduct and to promote individual and institutional accountability.

The assessment will consider the nature of the report(s), any witness statements obtained, the safety of the individual and of the campus community, and the Reporting Party's expressed preference for resolution in determining the appropriate course of action to eliminate the conduct at issue, prevent its recurrence, and address its effects.

The College’s procedures for determining whether and how to proceed with the offering of supportive measures and/or the initiation of a formal or informal resolution process are outlined below.

- B. Initial Communication with a Complainant

If a report alleges conduct that would, if proved, constitute Prohibited Conduct, the Title IX Coordinator/EOS or designee will:

- promptly contact the Complainant to discuss the availability of supportive measures as defined below;
- consider the Complainant’s wishes with respect to supportive measures;
- inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- explain to the Complainant the process for filing a formal complaint.

C. Supportive Measures

If Prohibited Conduct is reported to College authorities, College personnel will work with the reported Complainant to determine whether supportive measures such as alternative academic, transportation, working and/or living situations and no-contact orders are reasonably available and necessary in their particular case. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to a Complainant or a Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College’s education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College’s educational environment, or deter Prohibited Conduct. The Title IX Coordinator/EOS or designee will work collaboratively with the Dean of Students, Assistant Vice President for Human Resources, and Associate Vice President for Academic Affairs in providing supportive measures.

Interim measures may include, but are not limited to:

- Access to counseling services and assistance in arranging an initial appointment;
- Rescheduling of exams and assignments;
- Change in class schedule;
- Change in work schedule or job assignment;
- Residential accommodations, including but not limited to arranging for new College housing or for a temporary change in College housing;
- Arranging for medical services;
- Imposition of mutual restrictions on contact between the parties, known as a “no contact order”; a no contact order is an administrative remedy designed to curtail contact and communications between two or more individuals; no contact orders are not disciplinary in nature, though violation of no contact orders could result in College discipline;
- Providing the Complainant assistance with filing a criminal complaint and seeking an order of protection;
- Assistance in obtaining a sexual assault nurse examination
- Other academic accommodations, such as extensions of deadlines or other course-related adjustments, course changes or late drops, or other arrangements as appropriate;
- Campus escort services and safety planning steps;
- Leaves of absence;
- Increased security and monitoring of certain areas of campus;

- Referral to resources which can assist with financial aid, visa, or immigration concerns;
- No trespass notices prohibiting the presence of an individual on College property; and
- Other similar measures that can be used to achieve the goals of this policy (e.g., interim suspension or campus restriction pending the outcome of the investigation/process).

The Title IX Coordinator/EOS or designee will decide what supportive measures are reasonably available and necessary. Both the Complainant and the Respondent may appeal the need for, and the terms of, a supportive measure. The appeal must be made within three business days of when the measure was issued, and must be in writing to the Dean of Students Office. If parties wish to revisit the terms of supportive measures that have been provided or request additional supportive measures, they should contact the Title IX Coordinator/EOS or designee. The Title IX Coordinator/EOS or designee is ultimately responsible for coordinating the effective implementation of supportive measures.

All individuals are encouraged to report to the Title IX Coordinator/EOS or designee any concerns about the failure of another person to abide by any restrictions imposed through a supportive measure. In the event of an immediate health or safety concern, individuals should contact 911 immediately. The College will take immediate prompt action to enforce a previously implemented measure, and disciplinary penalties can be imposed for failing to abide by a College-imposed supportive measure.

D. Interim Suspension, Emergency Removal and Administrative Leave

Interim Suspension of Students in Non-Title IX Misconduct Cases

The College may decide at its discretion to suspend a student Respondent on an interim basis, that is, while an investigation is pending, in cases that fall within the definition of Non-Title IX Misconduct outlined above. The determination of whether to impose an interim suspension will be made by the Title IX Coordinator/EOS or designee in consultation with other College officials as appropriate. A Respondent may be suspended on an interim basis when the College has received information which indicates that the Respondent's continued presence on campus will likely have a serious effect on the physical, mental, or emotional health, safety or well-being of another person, when physical safety is seriously threatened, or when the ability of the College to carry out its operations is threatened or impaired. The College may permit written challenges to such decisions at its discretion.

E. Emergency Removal of Students or Employees in Title IX Sexual Harassment Cases

When the College determines that there is an immediate threat to the physical health or safety of any student or other individual arising from reported conduct that falls within the definition of Title IX Sexual Harassment in this policy, the College can remove a student or employee Respondent from its education program or activity (which may include removing an employee Respondent from their employment at the College) and issue any necessary related no-trespass and no-contact orders. The College will make the decision to remove a

Respondent from its education program or activity based on an individualized assessment and risk analysis.

If the College makes such a decision, the Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal. Specifically, the Respondent shall have forty-eight hours in which to submit a letter to or appear personally or virtually before a College administrator to be designated by an identified high-level official who won't be on the emergency removal team to contest the emergency removal (though a meeting could be scheduled sooner if requested by the Respondent, if practicable).

F. Administrative Leave in Title IX Sexual Harassment Cases

The College always maintains the discretion to place non-student employee Respondents on paid administrative leave during the pendency of an investigation and resolution process conducted under this policy.

The College may also place a non-student employee Respondent on unpaid administrative leave during the pendency of an investigation and resolution process. In those instances in which the College determines that an administrative leave will be unpaid and the Respondent was not offered the opportunity to challenge the suspension without pay before it was imposed through some other process, the Respondent may present a written challenge regarding the need for or the adequacy of the unpaid administrative leave to the Vice President of Finance or their designee. The College may place student-employee Respondents on administrative leave from their employment during the pendency of an investigation and resolution process where deemed appropriate as a supportive measure, under circumstances where it can do so without unreasonably burdening the student-employee Respondent.

G. Initial Determinations of Applicable Procedures, Dismissals, Transfers and Appeals of Such Determinations

When a Complainant requests an investigation, the Title IX Coordinator/EOS or designee will promptly upon receipt of a formal complaint:

- 1) determine whether the conduct alleged would, if proved, constitute Title IX Sexual Harassment (i.e., Quid Pro Quo Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, or sex-based Domestic Violence, Dating Violence or Stalking) as defined in the Title IX Sexual Harassment definition stated above;
- 2) determine whether the conduct allegedly occurred in College's education program or activity;
- 3) determine whether the conduct allegedly occurred in the United States; and
- 4) determine whether at the time the formal complaint was made, the Complainant was participating or attempting to participate in a College program or activity.

If a formal complaint of conduct that would, if proved, satisfy all four of these elements and constitute Title IX Sexual Harassment as defined in this policy is filed by a Complainant or signed by the Title IX Coordinator/EOS or designee, it will be investigated and resolved through the procedures applicable to Title IX Sexual Harassment matters as outlined below.

The College will investigate alleged Title IX Sexual Harassment when a Complainant submits a signed or electronically-submitted formal complaint to the Title IX Coordinator/EOS or designee and requests an investigation. The Title IX Coordinator/EOS or designee may also choose at their discretion to sign a formal complaint and initiate an investigation, even if the Complainant chooses not to do so. Again, if a reporting individual discloses Prohibited Conduct to a responsible employee but wishes to maintain confidentiality or does not consent to the College's request to initiate an investigation, the Title IX Coordinator/EOS or designee must weigh the request against the institution's obligation to provide a safe, non-discriminatory environment for all members of its community.² In cases where the Complainant does not wish to submit a formal complaint but the Title IX Coordinator/EOS or designee decides in their discretion to sign a complaint and initiate an investigation and resolution process, the Title IX Coordinator/EOS or designee will not be a Complainant or otherwise a party to the matter.

If some but not all of the conduct alleged in the complaint satisfies all four of these elements and a formal complaint is received from a Complainant or signed by the Title IX Coordinator/EOS or designee, the College will address the entire matter through the procedures applicable to Title IX Sexual Harassment matters as outlined below (that is, it will as required by federal regulations follow Title IX Sexual Harassment procedures to address the alleged Title IX Sexual Harassment, and it will, to promote efficiency, choose to follow Title IX Sexual Harassment procedures to address Non-Title IX Misconduct and other non-Title IX alleged misconduct in such mixed cases, so that all related misconduct may be addressed through one investigation and resolution process).

If it appears based upon initial review or upon information gathered during an investigation that the matter does not satisfy and/or no longer satisfies all four of these elements, the College will, as required by the May 2020 Title IX regulations, dismiss the matter for purposes of the Title IX Sexual Harassment process, and will transfer it for handling under the Non-Title IX Prohibited Conduct procedures outlined here or in other College procedures, as deemed appropriate by College. Investigation and resolution of a matter that does not fall within Title IX may be pursued, dismissed altogether, or transferred to another College process, as deemed appropriate in the College's discretion and/or as appropriate under applicable law.

Even if the initial allegations of a matter fall within the definition of Title IX Sexual Harassment, the College may (but is not required to) dismiss a formal complaint or any allegations therein if at any time during the investigation or resolution process:

- A Complainant notifies the Title IX Coordinator/EOS or designee in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
- The Respondent is no longer enrolled at or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

² Should the Title IX Coordinator/EOS or designee become aware of Prohibited Conduct, even if the person potentially subject to such conduct has not reported it or is unwilling to pursue a complaint, the College may conduct an investigation, as appropriate and as permitted by applicable law, and take any necessary action. In such cases the Title IX Coordinator/EOS or designee will convene an ad hoc advisory group of three (3) Deputy Coordinators and/or Title IX/EOS Advisors and Educators to review the investigative report. If, after review, the ad hoc advisory group unanimously determines that there is not enough evidence to support a complaint, the investigation will be closed. Otherwise, a complaint will be filed by the College as deemed appropriate.

If a formal complaint is dismissed by the College under the circumstances described above, the College will simultaneously provide to the parties written notice (by electronic or other means) of the dismissal and the reasons for the dismissal, and notice of the parties' opportunity to appeal such dismissal through the Title IX Sexual Harassment appeal procedures outlined below.

If the Respondent is a student and an employee, the Title IX Coordinator/EOS or designee will determine which procedures apply based upon the facts and circumstances, such as whether the Respondent's status as a student or an employee predominates in the context of the Prohibited Conduct. If a student-employee is found to have engaged in Prohibited Conduct, the student-employee may be subject to sanctions both in connection with their employment, and in connection with their student status, as appropriate under these and other applicable procedures.

In Non-Title IX Misconduct cases, the College will request that the Complainant provide a written complaint regarding the allegations, which may be submitted by the Complainant or dictated to a College official and ascribed to by the Complainant.

H. Notice

If the College initiates an investigation of Title IX Sexual Harassment or Non-Title IX Prohibited Conduct it will provide to the parties a written notice (by electronic or other means) that includes:

- Information about the College's formal and informal resolution processes;
- A statement of the allegations of behavior potentially constituting Prohibited Conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial post-intake interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Information regarding the College's presumption of good faith reporting and a summary of the College's false information policy;
- Notification that parties may have an advisor of their choice, who may be, but is not required to be, an attorney. Costs incurred for having such an advisor are parties' responsibility. If parties are unable to procure an advisor of their choice, Siena has trained a number of faculty and staff as advisors. These advisors are available for either party throughout the investigative process and for the purpose of conducting cross examination (under the Title IX regulations) within the hearing process.
- Notification of existing counseling, health and mental health services available on campus and/or in the community;

- Notification that taking any retaliatory action (directly or through others) against any person involved in the investigation is prohibited and will be considered a separate violation of College policy; and
- Notification that parties may inspect and review evidence during the investigation and resolution process, as provided below.

If in the course of an investigation the College decides to investigate allegations about any party that are not included in the notice described above, it will provide notice of the additional allegations to the parties whose identities are known.

If at any point a student or employee Respondent chooses, after having received formal notice of the allegations and after having confirmed in writing that they understand and are choosing to waive their rights under the formal procedures provided otherwise in this policy, to accept responsibility for the conduct as described in such notice, then the formal investigation process will be ended with a finding of responsibility and the matter will proceed to the sanctioning phase, as described in the applicable sanctioning section below. Both parties will receive notice that a finding of responsibility has been made in this matter, and will receive notice of the sanction(s). Both the Complainant and the Respondent may appeal the sanction(s) on the ground that the sanction(s) imposed are disproportionate to the violation of policy, under the appeals procedures outlined below.

I. Consolidation of Formal Complaints

The College may consolidate formal complaints as to allegations of Title IX Sexual Harassment and/or Non-Title IX Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of such Prohibited Conduct arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.

J. Investigations

If an investigation is to be conducted, the Title IX Coordinator/EOS or designee will appoint an investigator or investigators (referred to in the singular here for convenience), who will conduct the investigation. Investigators may be College employees or third-party contractors, as determined at the College’s discretion. The College will provide notice to the parties of the identities of the investigators. If a party believes that an investigator has a bias against or for Complainants or Respondents generally or them particularly as a party, or a conflict of interest, the party may submit a written objection to the Title IX Coordinator/EOS or designee within three (3) business days that outlines the basis for their objection to the investigator’s service. The Title IX Coordinator/EOS or designee will make a decision on such objections, and will appoint any alternate investigator, and follow this process as necessary, until an investigator is selected to conduct the investigation.

To the extent permitted by law, the Complainant and Respondent will be afforded the same rights and opportunities throughout the investigation and adjudication process, including the opportunity to recommend witnesses and submit evidence. However, investigation logistics, including but not limited to the sequence of interviews, the decision to interview particular

witnesses, and the decision to allow or consider evidence offered by the parties, are within the discretion of the investigator.

The Complainant and Respondent will be asked to identify, preserve and submit all evidence pertaining to the matter under investigation, and to identify witnesses they believe may have relevant testimony to share. The investigator is not required to consider the evidence submitted or interview any particular witness, even if identified by one of the parties.

Complainants and Respondents are entitled to the same opportunities to have an advisor of their choice present at any interviews, meetings, or proceedings that they are attending related to the investigation and adjudication process under this policy. The advisor may advise the Complainant or Respondent privately, but cannot act as a speaking advocate at a meeting. An investigator or other College representative may terminate meetings, and/or proceed with the investigation or adjudication based on otherwise-available information, if an advisor is disruptive or otherwise refuses to comply with the requirements of this policy. While each party may have an advisor of choice, they may not compel any specific person to serve as their advisor. The College's faculty and/or staff may be available to serve as advisors, but none are required to do so.

The College will endeavor to complete the investigation portion of the process within 90 business days of issuing a notice of investigation as described above, but this may be extended at the College's discretion due to factors such as the complexity of the matter, the availability of witnesses, requests by law enforcement agency for a temporary delay in the investigation process, College breaks, and other legitimate reasons.

A Complainant may choose to withdraw a complaint and/or involvement from the College process at any time. In such circumstances, the College will determine whether or not to sign and file a complaint and continue with the investigation in its discretion, weighing the Complainant's choosing to withdraw the complaint against the College's obligation to provide a safe, non-discriminatory environment for all members of its community.

K. Reporting Retaliation:

Individuals may file a complaint with the Title IX Coordinator/EOS or designee if they have been retaliated against for reporting sexual misconduct, assisting someone in making such a report, or participating in any manner in an investigation or resolution of a sexual misconduct complaint. Individuals may file a complaint with the Title IX Coordinator/EOS or designee if they have been subjected to retaliation as defined above. Student retaliation complaints will be referred to the Dean of Students who will adjudicate them pursuant to the Student Code of Conduct. All employee retaliation complaints will be referred to the Office of Human Resources who will adjudicate them pursuant to the applicable employee handbook.

XI. Resolution

The preponderance of evidence or "more likely than not" standard of review will be used during the formal resolution process.

General Investigation-Related Provision

- Parties' equal opportunity to present witnesses may include evidence from fact and expert witnesses; and

- Parties are not restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence; and
- Parties whose participation is invited or expected will receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

Preliminary Investigative Report

In both Title IX Sexual Harassment matters and Non-Title IX Prohibited Conduct matters, when the investigator has gathered all of the information that they determine should be gathered for purposes as an initial matter, the investigator and/or the Title IX Coordinator/EOS or designee will prepare a preliminary investigative report. The preliminary investigative report will summarize relevant evidence but will not contain any recommendations regarding whether the Respondent violated this policy or any other College policy at issue.

- The College will provide each party with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised, including the evidence upon which College does not intend to rely in reaching a determination regarding responsibility and/or which the investigator does not deem relevant, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Such evidence will not include un-redacted privileged records or information that may have been gathered or received during the investigation, absent written consent from the party holding the privilege.
- The College will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
- Parties and advisors are not permitted to download, print or copy such evidence subject to inspection and review, and are not permitted to re-disclose such evidence without the College's permission. Parties and advisors will be required to sign an acknowledgment form indicating that they understand these prohibitions. Violations of these prohibitions may subject parties to College discipline under applicable conduct codes.

Review and Response to Preliminary Investigation Report

At the conclusion of the investigation, the investigator will prepare a preliminary investigation report that fairly summarizes the relevant evidence and outlines the contested and uncontested information. The preliminary investigation report will not include any findings. In both Title IX Sexual Harassment and Non-Title IX Prohibited Conduct matters, the Complainant and the Respondent will have an opportunity to review the preliminary investigative report and provide written responses to the report.

The investigator will provide each party and their advisor, if any, with an opportunity to review the preliminary investigation report with electronic access to the evidence file. The evidence file includes any evidence obtained as part of the investigation that is directly related to the allegations, including evidence upon which the investigator does not intend to rely as well as inculpatory and exculpatory

evidence obtained from a party or other source.

During the review period, the parties will have an opportunity to meet with the investigator; submit additional comments and information to the investigator; identify any additional witnesses or evidence for the investigator to pursue; and submit any further questions that they believe should be directed by the investigator to another party or to any witness.

The parties will have ten (10) business days to review and submit an optional written response including any challenges to the relevance of evidence, to the investigator. Any response submitted will become part of the evidence file and will be made available to the other party. The investigator will consider any response(s) submitted prior to completing the final investigative report. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the investigator during the designated review and response period will **not** be considered in the determination of responsibility for a violation of the Policy, and will **not** be considered by the hearing officer.

Final Investigative Report

Final Investigative Report Generally

In both Title IX Sexual Harassment matters and Non-Title IX Prohibited Conduct matters, after considering any written response submitted by either party, or after the ten (10) business day comment period has lapsed without receiving a written response or responses, the investigator will address any relevant issues identified by the Complainant and/or the Respondent, and as appropriate, pursue any additional investigative steps as needed. The final investigative report will be reviewed by the Title IX Coordinator/EOS or designee before it is issued. Final investigative reports will be provided simultaneously to the parties and their advisors, if any. The College will give each party an opportunity to review the other party's written response, if any.

Additionally:

- The final investigative report created by the investigator and/or Title IX Coordinator/EOS or designee will fairly summarize relevant evidence and include as exhibits evidentiary materials as deemed appropriate by the investigator;
- At least ten (10) business days prior to the hearing referenced below, the College will send to each party and the party's advisor, if any, the final investigative report and exhibits in an electronic format or a hard copy, for their review and written response;
- Any written response a party wishes to provide must be submitted to the Title IX Coordinator/EOS or designee within ten (10) business days of receiving the final investigative report and exhibits; and
- The final investigative report and the parties' written responses, if any, will be provided to the hearing officer in advance of the hearing.

A. Hearings

Hearing and Resolution Provisions Applicable Only to Title IX Sexual Harassment Matters

Hearings

Live hearings, conducted via Zoom, will be provided in Title IX Sexual Harassment matters, as required by the May 2020 Title IX regulations.

Hearing Officers

Hearings will be presided over by a hearing officer, who will make the decision by a preponderance of the evidence as to whether or not the Respondent violated the policy provisions at issue. The hearing officer has broad authority to determine the process, timing and conduct of a hearing. For example, the hearing officer will determine the order of presentation, timing and overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what cross-examination questions will or will not be permitted.

Hearing officers will be appointed by the Title IX Coordinator/EOS or designee. In selecting a hearing officer for a particular matter, the Title IX Coordinator/EOS or designee will take care to select an individual who does not have a conflict of interest or bias against Complainants or Respondents generally or an individual Complainant or Respondent. The College will notify the parties of the identity of the hearing officer in advance of the hearing, and parties may, within three (3) business days of such notice, object to the service of the hearing officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the hearing officer has a conflict of interest or bias. The Title IX Coordinator/EOS or designee will make decisions regarding such objections and the appointment of an alternate hearing officer, as necessary.

Advisors

Each party may have an advisor of their choice present at a hearing for the limited purpose of conducting cross-examination on behalf of that party. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, the College will without fee or charge to the party provide an advisor of the College's choice, again for the limited purpose of conducting cross-examination on behalf of that party. No later than ten (10) business days before the hearing, parties should inform the Title IX Coordinator/EOS or designee of the identity of any advisor of choice who will accompany them to the hearing, so that the College will know whether or not it needs to arrange for the presence of a College-provided advisor.

At a time and manner deemed appropriate by the hearing officer, the advisor for each party will be permitted to ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. Scheduling accommodations generally will not be made for advisors if they unduly delay the process. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing and the appointment of an alternate College-provided advisor.

Requests for Appearance of Witnesses

If a party wishes to have an individual appear at the hearing as a witness, they must provide notice of the identity of the proposed witness and a brief description of the subject matter of the witnesses' testimony to the Title IX Coordinator/EOS or designee at least ten (10) business days before the date of the

hearing. The Title IX Coordinator/EOS or designee, in consultation with the hearing officer as necessary, will determine whether the witness is likely to have information that is relevant to the hearing, and if it is determined that the witness is likely to have relevant information, the Title IX Coordinator/EOS or designee will inform the witness that their presence at the hearing is required (to the extent that the College has jurisdiction to require the presence of the witness) or requested.

Conduct of Hearings and Relevance

At or before the hearing, the hearing officer will receive a copy of the final investigative report, any attachments thereto, and copies of the parties' written responses to the final investigative report, if any, which will be part of the information of record to be considered by the hearing officer.

Hearings will ordinarily begin with introductory remarks by the hearing officer. The College policy does not allow for opening and closing statements. Following introductory remarks, the hearing officer will ask relevant initial questions of the parties as deemed appropriate. During this portion of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to address the hearing officer or anyone else present at the hearing.

After the hearing officer has asked their initial questions of the parties, the hearing officer will permit each party's advisor to ask the other party all relevant questions and follow-up questions, including those challenging credibility.

Subject to the discretion of the hearing officer, questioning of witnesses will generally follow a similar process, whereby the hearing officer will pose relevant questions to each witness, then the parties' advisors will be permitted to ask relevant questions of witnesses.

In accordance with May 2020 Title IX regulations, such cross-examination by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Advisors are not permitted to object to hearing officer decisions regarding relevance during a hearing.

Regarding the evidence subject to inspection and review that was provided to the parties and their advisors under the Title IX Sexual Harassment matter-specific investigation procedures outlined above, all such evidence will be made available at the hearing via a shared Zoom screen, and each party and/or their advisor will have an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized

professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), is not relevant unless the person holding the privilege has waived the privilege.

If a party or witness does not submit to cross-examination at the live Zoom hearing, the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live Zoom hearing or refusal to answer cross-examination or other questions.

In addition, before the hearing begins, both the Complainant and the Respondent may provide to the Title IX Coordinator/EOS or designee, in person or via email, a written impact/mitigation statement that addresses how the alleged Prohibited Conduct has impacted them and/or that addresses any mitigating factors that should be considered in the event that the Respondent is found responsible for the alleged conduct at issue. The impact statement will only be considered by the hearing officer and sanctioning officer if there is a finding of responsibility.

Record of Hearings

The College will create an audio or audiovisual recording and/or transcript, of any live hearing, and will make it available to the parties for inspection and review in the event of an appeal by either party.

Determinations Regarding Responsibility

Within ten (10) business days after the hearing, the hearing officer (and if necessary the sanctioning officer, as provided below) will prepare and issue a written determination regarding responsibility and sanctions. In determining responsibility, the hearing officer will apply the preponderance of the evidence standard. The written determination will include:

- Identification of the section(s) of the College's Title IX Sexual Harassment policy definition alleged to have been violated;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including but not limited to, as applicable, any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of definitions of sexual harassment in the College's Title IX Sexual Harassment Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility and, where necessary and in collaboration with the sanctioning officer, a statement regarding any sanctions and the rationale therefor;
- The hearing officer's non-binding recommendations regarding sanctions, if applicable; and
- Identification of the College's procedures and permissible bases for the Complainant and Respondent to appeal (as outlined below).

The determination regarding responsibility becomes final either on the date that the College provides the

parties with the written determination of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

The determination will also notify the parties whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant, but will not provide details about any such remedies.

If sanctions are necessary, they will be assigned in accordance with the Sanctions section below. The parties will receive notice simultaneously of the written determination regarding responsibility and, if necessary, any sanctions as determined through the procedures outlined below.

Resolution and Other Provisions Applicable Only to Non-Title IX Misconduct Matters

Hearings

Live hearings, conducted via Zoom, will be provided in Non-Title IX Misconduct matters.

Hearing Officers

Hearings will be presided over by a hearing officer, who will make the decision by a preponderance of the evidence as to whether or not the Respondent violated the policy provisions at issue. The hearing officer has broad authority to determine the process, timing and conduct of a hearing. For example, the hearing officer will determine the order of presentation, timing and overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and the nature and substance of any questions asked of parties and/or witnesses.

Hearing officers will be appointed by the Title IX Coordinator/EOS or designee. In selecting a hearing officer for a particular matter, the Title IX Coordinator/EOS or designee will take care to select an individual who does not have a conflict of interest or bias against Complainants or Respondents generally or an individual Complainant or Respondent. The College will notify the parties of the identity of the hearing officer in advance of the hearing, and parties may, within three (3) business days of such notice, object to the service of the hearing officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the hearing officer has a conflict of interest or bias. The Title IX Coordinator/EOS or designee will make decisions regarding such objections and the appointment of an alternate hearing officer, as necessary.

Advisors

Each party may have an advisor of their choice present at a hearing. Advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. Scheduling accommodations generally will not be made for advisors if they unduly delay the process. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing and the alternate appointment of a College-provided advisor.

Requests for Appearance of Witnesses

If a party wishes to have an individual appear at the hearing as a witness, they must provide notice of the identity of the proposed witness and a brief description of the subject matter of the witnesses' testimony

to the Title IX Coordinator/EOS or designee at least ten (10) business days before the date of the hearing. The Title IX Coordinator/EOS or designee, in consultation with the hearing officer as necessary, will determine whether the witness is likely to have information that is relevant to the hearing, and if it is determined that the witness is likely to have relevant information, the Title IX Coordinator/EOS or designee will inform the witness that their presence at the hearing is required (to the extent that the College has jurisdiction to require the presence of the witness) or requested.

Conduct of Hearings

At or before the hearing, the hearing officer will receive a copy of the final investigative report, any attachments thereto, and copies of the parties' written responses to the final investigative report, if any, which will be part of the information of record to be considered by the hearing officer.

Hearings will ordinarily begin with introductory remarks by the hearing officer. The College policy does not allow for opening and closing statements. Following introductory remarks, the hearing officer will ask relevant initial questions of the parties as deemed appropriate. During this portion of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to address the hearing officer or anyone else present at the hearing.

After the hearing officer has asked their initial questions of the parties, the hearing officer will permit each party to submit to the hearing officer proposed questions that they would like the hearing officer to pose to the other party. The hearing officer may at their discretion pose, rephrase, or decline to pose any and all such proposed questions. Subject to the discretion of the hearing officer, questioning of witnesses will generally follow a similar process, whereby the hearing officer will pose relevant questions to each witness, then the parties may submit to the hearing officer proposed questions that they would like the hearing officer to pose to each witness. The hearing officer may at their discretion pose, rephrase, or decline to pose any and all such proposed questions. No direct cross-examination of parties or witnesses by parties or their advisors will be permitted.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), is not relevant unless the person holding the privilege has waived the privilege.

Formal rules of evidence do not apply to hearings under these procedures. The hearing officer will accept, consider and give weight to information as deemed appropriate at the discretion of the hearing officer.

In addition, before the hearing begins, both the Complainant and the Respondent may provide to the Title IX Coordinator/EOS or designee, in person or via email, a written impact/mitigation statement that addresses how the alleged Prohibited Conduct has impacted them and/or that addresses any mitigating factors that should be considered in the event that the Respondent is found responsible for the alleged conduct at issue. The impact statement will only be considered by the hearing officer and sanctioning officer if there is a finding of responsibility.

Record of Hearings

The College will create an audio or audiovisual recording and/or transcript, of any live hearing, and will make it available to the parties for inspection and review in the event of an appeal by either party.

Determinations Regarding Responsibility

Within ten (10) business days after the hearing, the hearing officer (and if necessary the sanctioning officer, as provided below) will prepare and issue a written determination regarding responsibility and sanctions. In determining responsibility, the hearing officer will apply the preponderance of the evidence standard. The written determination will include:

- Identification of the section(s) of the College's Non-Title IX Misconduct policy definition alleged to have been violated;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including but not limited to, as applicable, any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of definitions of sexual harassment in the College's Non-Title IX Misconduct Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility and, where necessary and in collaboration with the sanctioning officer, a statement regarding any sanctions and the rationale therefor;
- The hearing officer's non-binding recommendations regarding sanctions, if applicable; and
- Identification of the College's procedures and permissible bases for the Complainant and Respondent to appeal (as outlined below).

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

If sanctions are necessary, they will be assigned in accordance with the Sanctions section below. The parties will receive notice simultaneously of the written determination and, if necessary, any sanctions as determined through the procedures outlined below.

B. Sanctions: Student Respondent Cases (Title IX and Non-Title IX Misconduct)

If the hearing officer determines that a student Respondent is responsible for a violation of this policy, the Title IX Coordinator/EOS or designee shall notify the Associate Vice President for Student Life or designee to determine sanctions.

Complainants are insured their right to exclude their own prior sexual history with persons other than the other party in the conduct process, or their own mental health diagnosis and/or treatment, from use in the review process prior to adjudication. Any sanction takes into account the Respondent's prior record and any prior complaints involving similar allegations as well as the severity of the incident and the outcome sought by the Complainant.

The hearing officer and sanctioning officer will consider impact statements submitted from both parties at this juncture. Student Respondents may have sanctions administered, including but not limited to: expulsion, dismissal, suspension, withholding degree, revocation of admission and/or a degree, disciplinary probation, suspension or dismissal from College housing, social/residence hall probation, housing relocation, restriction from privileges, student reprimand, warning, or discretionary sanctions. This may also include restriction from contact with the Complainant or restriction from parts of, or the entire campus. Student Respondents who are sanctioned with expulsion, suspension, or dismissal from college may be subject to a notation on their official college transcript as required by law.

All sanction(s), except for suspension, dismissal, or expulsion from the College will take effect immediately pending appeal. The sanction(s) shall become final five (5) business days after written notice of said findings was provided to the parties unless a formal written appeal is submitted to the Title IX Coordinator/EOS or designee. Failure to submit an appeal within five (5) business days waives the right of written appeal.

C. Sanctions: Staff, Administrator and Faculty Respondent Cases (Title IX and Non-Title IX Misconduct)

If a staff, administrator or faculty Respondent is found responsible for a violation of this policy, the Title IX Coordinator/EOS or designee shall notify the Vice President or designee of the Respondent's work assignment to determine sanctions. Any sanction takes into account the Respondent's prior record and any prior complaints as well as the severity of the incident and the outcome sought by the Complainant. The hearing officer and sanctioning officer will consider impact statements submitted from both parties at this juncture.

Faculty, staff, or administrator Respondents may have sanctions administered that include, but are not limited to: the Respondent's participation in counseling or individualized training as a corrective action; prohibition of the Respondent from participating in grading, honors, and recommendations; reappointment and promotion decisions or other evaluations of the Complainant; letter of reprimand; restriction of the Respondent's access to College resources, such as salary increase for a specific period; or suspension or dismissal from employment at the College. For a faculty Respondent, notice of suspension and/or termination shall be made pursuant to the applicable provisions of the Faculty Handbook.

The sanction(s) shall become final five (5) business days after written notice of said findings was provided to the parties unless formal written appeal is submitted to the Title IX Coordinator/EOS or designee. Failure to submit the appeal within five (5) business days waives the right of written appeal.

D. Appeals: Student Respondent Cases (Title IX and Non-Title IX Misconduct)

Each party to a case falling under this policy has a right to appeal the Title IX Coordinator/EOS or designee's dismissal of a formal complaint for Title IX purposes or a determination regarding responsibility and/or sanctions on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator/EOS or designee, investigator(s), or hearing officer(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and/or
- The sanction(s) imposed are disproportionate to the violation of policy.

The Complainant and Respondent may submit an additional statement regarding the case within three (3) business days upon notification that either party has submitted an appeal.

The Title IX Coordinator/EOS or designee will convene an appeal panel to review an appeal. The appeal panel will, within (7) business days, make a decision on the appeal. The appeal panel may confirm, amend or reject actions taken by the College earlier in the process, and as necessary, send the matter back to other College officials as appropriate to correct any issues that affected the outcome of the matter. The parties will be provided simultaneously with notice of the appeal panel's decision and the rationale therefor.

E. Staff and Administrator Respondent Case Appeals (Title IX and Non-Title IX Misconduct)

Each party to a case falling under this policy has a right to appeal the Title IX Coordinator/EOS or designee's dismissal of a formal complaint for Title IX purposes or a determination regarding responsibility and/or sanctions on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator/EOS or designee, investigator(s), or hearing officer(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and/or
- The sanction(s) imposed are disproportionate to the violation of policy.

The Complainant and Respondent may submit an additional statement regarding the case within three (3) business days upon notification that either party has submitted an appeal.

The Title IX Coordinator/EOS or designee will convene an appeal panel to review the appeal. The appeal panel will, within (7) business days, make a decision on the appeal. The appeal panel may confirm, amend or reject actions taken by the College earlier in the process, and as necessary, send the matter back to other College officials as appropriate to correct any issues that affected the outcome of the matter. The parties will be provided simultaneously with notice of the appeal panel's decision and the rationale therefor.

F. Faculty Appeal (Title IX and Non-Title IX Misconduct)

Each party to a case falling under this policy has a right to appeal the Title IX Coordinator/EOS or designee's dismissal of a formal complaint for Title IX purposes or a determination regarding responsibility and/or sanctions on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator/EOS or designee, investigator(s), or hearing officer(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and/or

- The sanction(s) imposed are disproportionate to the violation of policy.

The Complainant and Respondent may submit an additional statement regarding the case within three (3) business days upon notification that either party has submitted an appeal.

The Title IX Coordinator/EOS or designee will convene an appeal panel to review the appeal. The appeal panel will, within (7) business days, make a decision on the appeal. The appeal panel may confirm, amend or reject actions taken by the College earlier in the process, and as necessary, send the matter back to other College officials as appropriate to correct any issues that affected the outcome of the matter. The parties will be provided simultaneously with notice of the appeal panel's decision and the rationale therefor.

Further, in faculty Respondent cases, a faculty member may be entitled to proceedings before the Faculty Grievance Committee through procedures outlined in the Faculty Handbook.

G. Dispositions/Compliance Monitoring:

The Dean of Students or designee is responsible for monitoring student compliance, if applicable.

Written notification of findings that trigger monitoring responsibilities shall be provided to the person responsible for monitoring compliance. Other parties may be notified, as deemed necessary, to ensure compliance.

Failure to observe the terms and/or conditions of any informal resolution or sanctions imposed in formal resolutions constitutes grounds for new action under either the procedures outlined in this policy or those identified for addressing matters of student misconduct.

The Deputy Coordinator, in consultation with the Title IX Coordinator/EOS or designee, the Complainant and/or person responsible for monitoring compliance, will determine which procedures shall be applied for investigation and response.

H. Records of Complaints/Reports:

A copy of the investigation report and the final decision shall be maintained by the College and included in the Conduct or Human Resources file of the Respondent only if the determination concludes that the Respondent engaged in prohibited conduct.

Complaints against students will be held in the Respondent's file in accordance with the policy as stated in the Retention and Release of Student Disciplinary Records.

No record of a complaint is kept in the Complainant's Human Resources file or student file unless the investigation concludes that the complaint was knowingly false and malicious.

The Title IX Coordinator/EOS or designee shall keep a record of all reports and complaints made under the Sexual Misconduct policy, regardless of the outcome.

All documents prepared and maintained pursuant to the Sexual Misconduct Policy and Procedures shall conform to all applicable governing law.

Record retention and release by the College shall be in conformance with applicable law and regulations, including those established by the 2020 Title IX regulations.

XII. Informal Resolution (Title IX and Non-Title IX Sexual Misconduct)

At any time after a formal complaint has been filed and before a hearing commences, the parties may seek

to resolve a report of Prohibited Conduct through informal resolution, an administrative process.

Participation in informal resolution is entirely voluntary; the Title IX Coordinator/EOS or designee will neither pressure nor compel either party to participate in the process or to agree to any specific terms and the process itself does not involve any in-person or face-to-face meetings between the parties. The informal process can be engaged only by mutual agreement by both parties and with the approval of the Title IX Coordinator/EOS or designee before or at any time during the investigation of the complaint. All parties must agree in writing to participate before the informal process can commence.

In every case, the Title IX Coordinator/EOS or designee has discretion to determine whether the matter is appropriate for informal resolution and to determine the appropriate terms. Before the Title IX Coordinator/EOS or designee approves the informal resolution process or the terms of any informal resolution, the Title IX Coordinator/EOS or designee will determine that they have sufficient information about the matter to make these decisions.

The parties are strongly encouraged, although not required, to consult with their advisors and any support persons during the entire informal resolution process.

If the process is terminated for any reason, the matter will be re-evaluated for resolution pursuant to the formal complaint resolution process under these procedures.

The Title IX Coordinator/EOS or designee will oversee the informal resolution process and have access to all College records in the matter, including any records or reports prepared during an investigation.

The Title IX Coordinator/EOS or designee will consult separately with both parties and recommend to the parties the terms of a potential informal resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be recommended by a hearing officer after a hearing under these proceedings.

Both parties must agree to the terms before an informal resolution agreement becomes effective.

At any time before a written agreement is effective (see below), the Complainant or the Respondent may withdraw from the informal resolution process, and the Title IX Coordinator/EOS or designee may also, at their discretion, terminate the process.

If the Respondent agrees to an informal resolution that provides for a suspension, withdrawal, or dismissal (i.e. expulsion) from the College, there will be a transcript notation consistent with College policy and New York State's Enough is Enough Law. The Title IX Coordinator/EOS or designee cannot advise any party as to whether they should pursue, agree, or reject an agreement or proposed remedy, stipulation, or sanction therein.

If both parties are satisfied with the Title IX Coordinator/EOS or designee's recommendation, the matter will be resolved with a written agreement, signed by both parties and the Title IX Coordinator/EOS or designee, with the Title IX Coordinator/EOS or designee to coordinate implementation.

Once a party has returned the signed agreement to the Title IX Coordinator/EOS or designee, the party has two (2) business days to reconsider and withdraw from the agreement by notifying the Title IX Coordinator/EOS or designee in person or in writing.

Within the two (2) business days, if either party withdraws from the agreement, the matter would be returned for resolution of the formal complaint.

After the two (2) business days, if neither party withdraws, the terms of the agreement will become

effective and the Title IX Coordinator/EOS or designee will promptly notify both parties in writing that the agreement is final.

Once the agreement is effective, the parties may not appeal the agreement and the Complainant may not seek to refile the formal complaint absent new allegations of misconduct. The parties are expected to honor and comply with the terms of the informal resolution. Noncompliance by a student may be subject to proceedings under the Student Code of Conduct. Noncompliance by employees will be adjudicated by the Office of Human Resources pursuant to the applicable employee handbook. A written copy of the agreement involving students will be provided to the Dean of Students Office, agreements involving employees will be provided to the Office of Human Resources. The Title IX Office will maintain a copy for record keeping, pattern tracking, and sharing with College personnel as needed for implementation.

If the process is terminated and the matter resolved pursuant to the formal complaint resolution process, neither the Title IX Coordinator/EOS or designee nor the parties will disclose to the hearing officer or appeal panel either the fact that the parties had participated in the informal resolution process or any information learned during the process.

While the parties are exploring informal resolution, the investigation will pause for up to ten (10) business days which may be extended by agreement from both parties, and the time spent pursuing resolution in this way will not count toward the investigation time limit.

As a necessary precondition of an informal resolution, the Respondent **must** accept responsibility for all or part of the alleged prohibited conduct and may be required to submit a letter of apology to Complainant. The parties will then have an opportunity to negotiate with Title IX Coordinator/EOS or designee what they believe the appropriate sanction should be. In support of their position, parties will submit impact/mitigation information they believe the Title IX Coordinator/EOS or designee should consider in evaluating any sanction. The Title IX Coordinator/EOS or designee has the discretion to propose other terms for the resolution that may be appropriate to address the prohibited conduct for which the Respondent has accepted responsibility.

Regardless of whether Respondent accepts all or part of the alleged prohibited conduct, the agreement must adequately address the rights and concerns of the Complainant, and Respondent, and the overall intent of the College to stop, remedy and prevent sexual and gender-based misconduct as outlined in the College's Title IX policy or related policies.

With the approval of all parties, an informal resolution could include but is not limited to, remedies such as:

- Implementing agreed upon measures or sanctions, such as:
 - No contact orders
 - Counseling and/or professional assessment
 - Voluntary personal leave
 - Change in student housing
 - Change in on-campus work schedule or job assignment
 - Change in class schedule or other academic measures (in conjunction with and approval by the appropriate faculty or academic office)
 - Community service
 - One-time or recurring meetings with an appropriate administrator
 - Other specific measures or restrictions, such as
 - Schedules for when certain buildings/facilities/services can be accessed
 - Schedules for when certain off-campus buildings, establishments, and other locations can be accessed
 - Limitations on participating in clubs, activities, sports teams, or other College programs

- Reimbursement for lost or damaged property
- Increasing monitoring or security at specific locations
- Other sanctions as stated in the Title IX policy
- Any other remedy that can be tailored to the parties to achieve the goals of the Policy.

Please note that any type of monetary offering or settlement would be prohibited in any agreement with the exception of a reimbursement of lost or damaged property related to the complaint.

If the Complainant is not in agreement with the outcome of the informal resolution process or chooses to end it and proceed to the formal process, if the issue cannot be resolved informally, or if the Title IX Coordinator/EOS or designee determines that additional inquiry is still appropriate, the Title IX Coordinator/EOS or designee will commence the complaint process. Either party may end the informal resolution process at any time and proceed with the formal process.

The College will not offer to facilitate an informal resolution process in any matter (Title IX Sexual Harassment or Non-Title IX Misconduct) that involves allegations that an employee sexually harassed a student. Any agreement reached is under the purview of Siena College and does not affect or preclude any party's ability to pursue a complaint with law enforcement or another external entity.

XIII. Annual Reporting

The Title IX Coordinator/EOS or designee shall provide the President of the College and the Cabinet with an annual confidential report, detailing the number and disposition of different types of incidents, allegations, reports, and complaints of sexual misconduct that have come to their attention each year. Information that could identify Complainants, or Respondents against whom no finding has been made, shall not be included. A summary may be provided to the College community so long as confidentiality of individuals' identities is not breached. The President shall determine the propriety of a report to the entire College community. In addition, the Title IX Coordinator/EOS or designee shall file a report annually of the aggregate data to the New York State Department of Education as required by New York State law.

XIV. Resolution Through Other Means

Complainants and Respondents have the right to seek resolution through other sources, for example, the New York State Division of Human Rights, the Equal Employment Opportunity Commission, or Office of Civil Rights of the United States Department of Education (1-800-421-3481).

XV. Revocation by Operation of Law

If any portion of the Title IX Final Rule is stayed or held invalid by a court of law, then the invalidated elements of this policy will be deemed revoked as of the publication date of the opinion or order.

XVI. Modifications

Final substantive policy changes are to be approved by the President, President's Cabinet, and Board of Trustees. However, modifications to the policy concerning changes in personnel and routine procedural changes shall only require approval of the President and the President's Cabinet.

Last Modified: June 2022

Appendix I: Student Bill of Rights

The following rights are in accordance with New York law, and are incorporated into the policies above in student cases as applicable. In the application of the College's Sexual Misconduct and Interpersonal Violence policy, no provision of the policy should be interpreted so as to be inconsistent with the Student Bill of Rights as defined in New York law.

A. Student Bill of Rights:

Siena College is committed to maintaining a community environment that fosters respect for the dignity and worth of each individual. The dignity of the individual should never be violated in any way, and the College community views with seriousness offenses against any person. Siena College is committed to providing options, support, and assistance to victims/survivors of sexual misconduct, sexual harassment, domestic violence, dating violence, and/or stalking so that they can continue to participate in college-wide and campus programs, activities, and employment. Siena College is committed to addressing reports of sexual misconduct, sexual harassment, domestic violence, dating violence, and/or stalking in a prompt, fair, equitable, and impartial manner. All victims/survivors of these crimes and violations have the following rights regardless of whether the crime or violation occurs on campus, off-campus, or while studying abroad.

The rights listed below are afforded to all students reporting sexual violence, as well as all students accused of sexual misconduct, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, status as a domestic violence victim, or criminal conviction.

Students have the right to:

1. Make a report to the Campus Title IX Coordinator/EOS or designee and/or Campus Public Safety and/or local law enforcement and/or state police.
2. Have disclosures of domestic violence, dating violence, stalking, and sexual violence treated seriously;
3. Make decision about whether or not to disclose a crime or violation and participate in the conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard; Respondents are presumed not responsible until the grievance process has concluded;
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 institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
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 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 conduct process of the institution.
12. Be provided with a written copy of the College’s policy and procedures regarding sexual misconduct.

Victims/Survivors/Complainants have many options that can be pursued simultaneously, including the following:

- Receive resources, such as counseling and medical attention on or off-campus.
- Confidentially disclose a crime or violation to a Counselor in the Counseling Center, Health Services, or the College Chaplain. Confidential resources can share options and advice without any obligation to tell anyone, and will not share information without the consent of the victim/survivor.
- Anonymously disclose a crime or violation to the Public Safety anonymous tip line. The College does have a duty to investigate anonymous disclosures to the extent possible, based on the information disclosed.
- Make a report with privacy (Victims/Survivors/Complainants have the right of privacy when reporting to College officials, to the extent possible under the circumstances. However, information must be shared with other members of the community if there is a need to know.) to:
 - Any employee with the authority to address complaints, all Faculty, Staff, and Administrators, including the Title IX Coordinator/EOS or designee, Dean of Students Office, Community Living Staff, or a Human Resources employee;
 - Public Safety

Appendix II: Resources

Important Resources for Victim/Survivors:

On-Campus	Off-Campus
Public Safety 24-hour emergency: 518-783-2999 (non-emergency: 518-783-2376) (private, non-confidential)	Police 24-hour: 911
Title IX Coordinator/EOS: 518-782-6673 (private, non-confidential)	Albany County Crime Victims and Sexual Violence Center crisis hotline: 518-447-7716 (main number: 518-447-7100)

Counseling Center: 518-783-2342 (confidential)	St. Peter's Health Partners Sexual Assault & Crime Victims Assistance Program 24 Hour Hotline: 518-271-3257
Health Services: 518-783-2554 (confidential)	In Our Own Voices – LGBT Domestic Violence Support Line: 518-432-4341
College Chaplain: 518-783-2332 (confidential)	New York State Police Campus Sexual Assault Victims Unit Dedicated 24-hour hotline: 1-844-845-7269
Anonymous Tip Line: www.siena.edu/anonymous	Equinox Inc. Domestic Violence Services crisis hotline: 518-432-7865 (main number: 518-434-6135)

Important Resources for Respondents On-Campus:

Public Safety 24-hour emergency: 518-783-2999 (non-emergency: 518-783-2376) (private, non-confidential)

Title IX Coordinator/EOS: 518-782-6673 (private, non-confidential)

Counseling Center: 518-783-2342 (confidential)

College Chaplain: 518-783-2332 (confidential)