



*Celebrating 130 Years*

## **Article 129 B Policy**

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## **General Provisions:**

A certificate of compliance with the provisions of Article 129 B will be submitted on or before the first day of July each year.

The St. Paul's School of Nursing has filed a copy of all written rules and policies adopted as required in Article 129 B with the department on or before the first day of July, two thousand sixteen, and will submit a filing once every ten years thereafter, except that the second filing shall coincide with the required filing under article one hundred twenty-nine-A of this chapter, and continue on the same cycle thereafter.

St. Paul's School of Nursing understands that if it fails to file a certificate of compliance on or before September first beginning in two thousand sixteen, it shall be ineligible to receive state aid or assistance until it files such a certificate.

A copy of Article 129 B rules and policies is provided to all students enrolled and is posted on the school's website.

The protections in Article 129 B apply regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

The provisions of Article 129 B shall apply regardless of whether the violation occurs on campus or off campus.

St. Paul's has, where appropriate, utilized applicable state and federal law, regulations, and guidance in writing the policies required pursuant to this article.

St. Paul's School of Nursing understands that Article 129 B does not create a new private right of action for any person.

## **Affirmative Consent to Sexual Activity:**

St. Paul's School of Nursing has adopted the following definition of affirmative consent as part of its code of conduct: "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 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."

*a.* 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.

*b.* Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

*c.* Consent may be initially given but withdrawn at any time.

*d.* 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.

*e.* Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

*f.* When consent is withdrawn or can no longer be given, sexual activity must stop.

Consent must be knowing, voluntary and mutual.

Voluntary consent means that consent under coercion such as a threat of violence is not consent. Mutual means that all parties must consent.

There is no requirement under the definition of consent that there be "verbal" consent or a specific statement of yes. To require a verbal statement would be to exclude hearing and speaking impaired students from consenting to sexual activity. Consent

can be given through words or actions so long as the word or action is clear regarding willingness to engage in the sexual activity. Silence “in and of itself” is not consent; a reporting individual failing to say no or actively resist is not a defense to a charge of sexual activity without consent.

Whether through words or actions that clearly display consent, each party must affirmatively consent to participating in each sexual act or sexual contact. Consenting to one type of sexual act or contact is not blanket consent to any and all types of sexual contacts. Mutual consent is required for each and may be withdrawn at any time by either party. When consent is withdrawn, the activity must stop. The phrase “[w]hen consent...can no longer be given” refers to a party to a sexual act or sexual contact who initially consents to the activity but during the course of the activity falls asleep or otherwise becomes unconscious or incapacitated. At that point, the other party must stop sexual activity or contact and stopping at the point that consent is withdrawn or can no longer be given, can be asserted as a defense to a charge of sexual activity or contact without consent.

Intoxication is not a license to engage in sexual activity with another person without their consent. Students who are charged in student judicial or conduct process with initiating sexual activity or contact without the consent of another party cannot use as a defense that they themselves were under the influence of drugs and/or alcohol at the time they committed the violation.

Individuals who are incapacitated cannot consent to sexual activity or contact. Incapacitation is to be determined by a student conduct or investigation process based on available evidence. There is no single standard or number of drinks that leads to incapacitation. This level varies for different people, and may depend in part on their age, gender, height, weight, metabolism and whether and how much they have recently eaten. Individuals can affirmatively consent to sexual activity or contact when they have been drinking or using drugs. Such individuals may still affirmatively consent through words or actions that clearly indicate interest in engaging in the activity.

Someone who is unconscious, asleep, or involuntarily restrained cannot consent to sexual activity.

Minors who cannot consent under New York’s laws covering age of consent are considered incapacitated.

Whether all parties consented to sexual activity or contact is to be determined through the student conduct or grievance process. **Respondents have a “right to a presumption that the respondent is ‘not responsible’ until a finding of responsibility is made.** This

means that the burden of showing that a student had sexual activity or contact with another without affirmative consent as defined here is on the institution, not on the respondent to prove a negative. **Note that the burden is on the institution to develop these facts, not on the reporting individual, who may participate at the level to which he or she is comfortable.**

## **Alcohol and/or Drug Use Amnesty:**

The health and safety of every student at the St. Paul's School of Nursing is of utmost importance. St. Paul's recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. St. Paul's strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to St. Paul's officials or law enforcement will not be subject to the St. Paul's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## **Student Bill of Rights:**

All students have a right to:

1. Make a report to local law enforcement and/or state police.
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously.
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution.
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
5. Be treated with dignity and receive from the institution courteous, fair, and respectful advising services.
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed or should have acted in a different manner to avoid such crimes or violations.
7. Describe the incident to as few institution representatives as practicable and students will not be required to unnecessarily repeat a description of the incident.

8. Students will 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. This Policy provides at least one level of appeal of a determination.

10. A reporting individual, accused, or respondent may be accompanied by an advisor of choice who may assist and advise throughout the judicial or conduct process including during all meetings and hearings related to such a process.

11. A reporting individual, accused, or respondent may exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.



## **St. Paul's School of Nursing Process for Responding to Reports:**

If an individual makes a report, he or she will be advised to:

- Notify proper law enforcement authorities.
- The student will be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
- The student may decline to notify such authorities.

A reporting individual will have emergency access to the Title IX Coordinator, or the Title IX Coordinator Designee who shall be available upon the first instance of disclosure by a reporting individual to provide information regarding options to proceed. The reporting individual will also have access to a local law enforcement officer trained in interviewing victims of sexual assault. The law enforcement officer will advise the reporting individual, as applicable, with information on the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible. The law enforcement officer shall provide details on the criminal justice process. The Title IX Coordinator, Title IX Coordinator Designee and law enforcement officer shall explain whether he or she is authorized to offer the reporting individual confidentiality or privacy and shall inform the reporting individual of other reporting options.

St. Paul's School of Nursing does not have an individual on staff, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals.

The Title IX Coordinator or the Title IX Coordinator Designee can offer privacy to the reporting individual and can assist in obtaining resources.

A reporting individual may file a report of sexual assault, domestic violence, dating violence, and/or stalking and has the right to consult the Title IX Coordinator or Title IX Coordinator Designee and other appropriate institution representatives for information and assistance. Reports shall be investigated in accordance with institution policy and the reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy.

St. Paul's School of Nursing will disclose if the respondent is an employee of the institution, and if so, will disclose the incident to the institution's human resources authority. The reporting individual will have the right to request that a private employee assist in reporting to the appropriate human resources authority.

***The above paragraphs are a list of options a reporting individual has in reporting the violation. They are not mutually exclusive. A reporting individual may use any or none of these options.***

The St. Paul's School of Nursing shall provide a reporting individual with the phone number for Legal Aid or other community resources should the reporting individual request assistance in seeking assistance in initiating legal proceedings in family court or civil court.

A reporting individual may withdraw a complaint or report from the institution at any time and should not be penalized. The institution may, consistent with other provisions of this law as well as federal law, still have obligations to investigate and/or take actions. Pursuant to this law, reporting individuals may participate as much or as little as they wish.

At the time an individual wishes to make a report, the following information shall be present to the individual:

***“You have the right to make a report to local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from the local community and your institution if available.”***

When an individual makes a report, the school employee taking the report shall complete an incident report that contains the statement above as well as a list of law enforcement resources and community resources that will be made available to the reporting individual. The reporting individual will receive a copy of the report. (See Appendix A)

The following individuals are authorized to receive a report from a “reporting individual”:

- Title IX Coordinator.
- Title IX Coordinator Designee
- Campus President
- Director of Education or Dean of Nursing
- Program Directors

If a campus employee is not designated to receive a report and he/she is approached by a student, the campus employee will assist the reporting student with contacting a campus employee who is authorized to receive a report. In any case, the campus employee should call 911 if the

reporting individual has been injured or he/she would like to report a crime.

All reporting individuals shall receive information on community resources on mental health counseling, medical services and whether there is a cost or fee for such resources. Information on sexually transmitted infections, sexual assault forensic examinations and resources available through the New York State Office of Victim Services will be made available to the reporting individual.

## No Contact Order

When the accused or respondent is a student, St. Paul's School of Nursing will issue a "no contact order" consistent with the institution's policies and procedures. This means that continued intentional contact with the reporting individual would be a violation of institution policy and will subject the individual to additional conduct charges. If the accused or respondent and a reporting individual observe each other in a public place, it shall be the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual. Both the accused or respondent and the reporting individual shall, upon request and be consistent with institution policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request. Institutions may establish an appropriate schedule for the accused and respondents to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the reporting individual.

### **Either the reporting individual or the accused or respondent may request review of the No Contact Order.**

Both the accused or respondent and the reporting individual shall, upon request and be consistent with institution policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request.

### **Order of Protection:**

St. Paul's School of Nursing shall treat the process and award of an out-of-state protection order as a court document equivalent to a New York State Order of Protection. If St. Paul's School of Nursing has a copy of the Order of Protection, it will provide a copy to the reporting individual and the respondent upon request.

St. Paul's School of Nursing shall recommend that the reporting individual or respondent or accused seek legal counsel for an explanation of the Order of Protection and will provide a phone number for Legal Aid should the reporting individual or respondent or accused wish to consult an attorney from Legal Aid or other community resource offering legal services.

Failure by the individual covered by a No Contact Order or Order of Protection to follow the order could result in disciplinary action including dismissal (student) or termination

(employee) from the St. Paul's School of Nursing. Failure to follow a court Order of Protection could also result in arrest by law enforcement.

If an accused or respondent is a student and is determined to present a continuing threat to the health and safety of the community, he/she may be subject to an interim suspension. If this happens, the suspended individual, upon request and consistent with the St. Paul's School of Nursing policies and procedures, will be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of his or her request.

Employees or individuals who are neither students, nor employees, but are members of the institution community who present a continuing threat, as determined by the St. Paul's School of Nursing, are subject to interim measures, and may be banned from School property.

## **Institutional Charges:**

A student may *request* that institutional charges be brought against an individual for sexual discrimination or misconduct. St. Paul's School of Nursing will determine whether to initiate charges or choose not to initiate them where evidence does or does not merit doing so in conformity with the law and the St. Paul's code of conduct and other institution policies.

## **Process:**

A student accused of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate St. Paul's code of conduct is entitled to the following process:

- Notice describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provision(s) alleged to have been violated and possible sanctions.
- The reporting individual, respondent or accused shall have an opportunity to offer evidence during an investigation, and to present evidence. A record of the investigation shall be maintained at least five years after the hearing.
- The reporting individual, respondent or accused shall receive a written notice of findings of fact, the decision, and sanctions, if any, as well as the rationale for the decision and sanction. Rights afforded to the reporting individual, shall be afforded to the respondent or accused.
- A right to appeal a determination before a fair and impartial appeal authority.

In addition to providing the respondent or accused with notice, the reporting individual will receive notice of the date, time, location and factual allegations that have been reported, as well as a reference to the specific code provisions reported to have been violated and their associated sanctions.

The reporting individual and accused or respondent shall receive written or electronic notice of all hearings and meetings they may or are required to attend.

St. Paul's may hold students accountable for violations that are not referenced in the initial notice/charge letter but are learned about from evidence, testimony, or admission at a hearing or during the investigatory process.

The investigation will not consider the reporting individual's prior sexual history with persons other than the accused and respondent or their own mental health diagnosis and/or treatment from admittance in the institution disciplinary stage that

determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.

Notifications and information should be provided to the reporting individual, the respondent or accused at the same time where possible.

The reporting individual, respondent or accused shall have equal access to appeals and will require that the parties will receive simultaneous notice about the outcome. The outcome shall include the underlying decision, sanction, and rationales for decision and sanction. St. Paul's will provide notice to all parties of any changes to the initial outcome and/or any change in the outcome due to appeal. If there is no appeal, institutions must provide notice to the parties when the outcome becomes final because the time for an appeal has expired.

**This Article 129B Policy should be interpreted consistently with the St. Paul's School of Nursing Title IX Policy. Please review the Title IX Policy for additional information regarding how the institution will investigate a complaint and information on the rights afforded to the reporting individual, and the respondent or accused during an investigation and after a determination is made.**

St. Paul's School of Nursing will not require that students sign a non-disclosure agreement prior to learning the results of a conduct process in which they participated as a reporting individual or respondent.

St. Paul's School of Nursing will not share the information obtained during the course of the disciplinary process until final determination, unless compelled to do so, such as by receipt of a lawfully issued subpoena.

### **Transcript Notation:**

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), St. Paul's School of Nursing shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending."

A student, graduate or former student may request that a transcript notation for a

suspension be removed after one year after the conclusion of the suspension. All appeals should be sent to the Campus President.

Transcript notations for expulsion shall not be removed.

If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.



## **DEFINITIONS:**

### **The following definitions apply to the policy:**

- 1. "Institution" shall mean any college or university chartered by the regents or incorporated by special act of the legislature that maintains a campus in New York.*
- 2. "Title IX Coordinator" shall mean the Title IX Coordinator and/or his or her designee or designees.*
- 3. "Bystander" shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.*
- 4. "Code of conduct" shall mean the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.*
- 5. "Confidentiality" may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.*
- 6. "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 institution officials. Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the institution.*
- 7. "Accused" shall mean a person accused of a violation who has not yet entered an institution's judicial or conduct process.*
- 8. "Respondent" shall mean a person accused of a violation who has entered an institution's judicial or conduct process.*
- 9. "Reporting individual" shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to*

*reference an individual who brings forth a report of a violation.*

*10. "Sexual activity" shall have the same meaning as "sexual act" and "sexual contact" as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3).*

*"(2) the term "sexual act" means—*

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

*(3) the term "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, or arouse or gratify the sexual desire of any person."*

*11. "Domestic violence", "dating violence", "stalking" and "sexual assault" shall be defined by each institution in its code of conduct in a manner consistent with applicable federal definitions.*