



Villa Maria College Sexual Offense Policy and Procedures for Students and Employees

Please Note that a version of this policy was formerly called: Civil Rights Grievance Procedure, and Title IX Policy: Discrimination on the Basis of Sex & Sexual Misconduct.

1. Introduction

- a. Villa Maria College is committed to providing learning and working environment that promotes personal integrity, civility and mutual respect in an environment free of discrimination. The Villa Maria College Civil Rights Grievance Procedure, Title IX and Sexual Misconduct Policy is the method by which Villa Maria College handles the resolution of grievances related to civil rights discrimination pertaining to any member of the college community, including: students, employees, volunteers, and third-party contractors related to discrimination under Title IX and/or any form of sexual misconduct.
- b. Villa Maria College is committed to providing a learning, working and living environment that promotes personal integrity, civility and mutual respect in an environment free of discrimination on the basis of sex, which includes all forms of sexual misconduct. Sex discrimination violates an individual's fundamental rights and personal dignity. Villa Maria College considers sex discrimination in all its forms to be a serious offense. This policy refers to all forms of sex discrimination, including but not limited to: sexual harassment, sexual assault, and sexual violence by employees, students, or third parties.
- c. Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. To ensure compliance with Title IX and other federal and state civil rights laws, the College has developed policies and procedures that prohibit sex discrimination in all of its forms.

2. Definitions

- a. **Sex Discrimination:** behaviors and actions that deny or limit a person's ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities because of a person's sex.
 - i. Examples of sex discrimination under Title IX include, but are not limited to, sexual harassment, failure to provide equal opportunity in education programs and co-curricular programs including athletics, discrimination based on pregnancy, and employment discrimination.
- b. **Sexual Harassment** is unwanted sexual advances, requests for sexual favors, or visual, verbal, or physical conduct of a sexual nature when: (1) submission to such conduct is made a term or condition of employment or the educational relationship; (2) submission to or rejection of such conduct is used as a basis for employment or education decisions affecting the individual; or (3) such conduct has the effect of unreasonably interfering with a student's or employee's work performance or creating an intimidating, hostile, or

offensive working, educational, or living environment. While sexual harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct include:

- i. Promising, directly or indirectly, a student or employee a reward, if the student or employee complies with a sexually oriented request.
 - ii. Threatening, directly or indirectly, retaliation against a student or an employee, if the student or employee refuses to comply with a sexually oriented request.
 - iii. Denying, directly or indirectly, a student or employee an employment or education related opportunity, if the student or employee refuses to comply with a sexually oriented request. Engaging in sexually suggestive conversation or physical contact or touching another student or employee.
 - iv. Displaying pornographic or sexually oriented materials.
 - v. Engaging in indecent exposure.
 - vi. Making sexual or romantic advances toward a student or employee and persisting despite the student or employee's rejection of the advances.
 - vii. Physical conduct such as assault, touching, or blocking normal movement.
 - viii. Retaliation for making harassment reports or threatening to report harassment.
 - ix. Sexual harassment can involve males or females being harassed by members of either sex. Although sexual harassment sometimes involves a person in a greater position of authority as the harasser, individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment.
 - x. Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered separately would not rise to the level of harassment.
- c. **Sexual Misconduct:** Sexual Misconduct is a broad term encompassing any sexual offense that violates Villa Maria College's Code of Conduct and/or Sexual Offense Policy and Procedure. In general, any non-consensual physical contact of a sexual nature may constitute Sexual Misconduct. Sexual Misconduct may vary in its severity and consists of a range of behaviors or attempted behaviors that may be grounds for student conduct action under College policy.
- d. **Sexual Assault:** Sexual assault can be defined as any type of sexual contact or behavior that occurs by force or without consent of the recipient of the unwanted sexual activity. Falling under the definition of sexual assault is sexual activity such as forced sexual intercourse, sodomy, child molestation, incest, fondling, and attempted rape. It includes sexual acts against people who are unable to consent either due to age or lack of capacity.
- e. **Non Consensual Sexual Contact:** Non-Consensual Sexual Contact is any intentional sexual touching, however slight with any object or body part, by a man or a woman upon a man or a woman, without consent.
- f. **Non-Consensual Sexual Intercourse/Non-forcible sex offenses:** Non-Consensual Sexual Intercourse is: any sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a man or woman upon a man or a woman, without consent. This includes non-forcible sex offenses, which is defined as unlawful, non-forcible sexual intercourse.
- g. **Forced Sexual Intercourse/Forcible Sex offenses:** Unwilling or non-consensual sexual penetration (anal, vaginal or oral) with any object or body part that is committed either by force, threat, intimidation, or through exploitation of another's mental or physical

condition of which the assailant was aware or should have been aware. This definition includes: any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

- i. Sexual Activity includes: Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice. Intercourse however slight, meaning vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact).
- h. **Sexual Exploitation:** Occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.
 - i. Examples of sexual exploitation include, but are not limited to: prostituting another student; non-consensual video or audio-taping of sexual activity; going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex); engaging in Voyeurism; knowingly transmitting an STD or HIV to another.
- i. **Domestic Violence:** Any felony or misdemeanor crime committed by a current or former spouse of the victim; a person the victim has a child with; an individual who lives or has lived with the victim as a spouse, or a person similarly situated to a spouse; and any other person committing an act against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- j. **Dating Violence:** Violence committed by a person who is or has been in a relationship — of a social, romantic or intimate nature — with a victim. The existence of such a relationship is to be determined by the length and type of relationship and the frequency of interaction.
- k. **Stalking:** Engaging in conduct directed at an individual that would cause any reasonable person to fear for her safety or that of others, or that inflicts emotional distress.
- l. **Affirmative Consent**
 - i. 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.
 1. 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.
 2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 3. Consent may be initially given but withdrawn at any time.
 4. 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.

5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 6. When consent is withdrawn or can no longer be given, sexual activity must stop.
- m. **Incapacitation:** Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Such things that can influence choice include: force, coercion, intimidation, threat of harm, intoxicants. This policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called “date-rape” drug. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student for the purpose of inducing incapacity is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>

3. Non-Discrimination Statement:

- a. Villa Maria College does not discriminate on the basis of age, race, religion, creed, color, national or ethnic origin, gender, disability, sex, sexual orientation, domestic violence victim status, marital status, veteran status, military status, predisposed genetic carrier status and any other characteristics or protected status recognized by applicable federal, state or local law. This policy applies to admissions, all terms and conditions of employment, and any other aspect regarding the conduct of College programs and activities Villa Maria College is an Equal Opportunity Employer.

4. Policy and procedure for responding to a sexual offense

- a. **Introduction:** Villa Maria College encourages those who have experienced any form of discrimination to report the incident promptly, to seek all available assistance, and to pursue Student Conduct charges and/or criminal prosecution of the offender when desired. The College takes complaints of discrimination and sexual offenses very seriously and will work with those making a report to ensure their safety and to remedy the situation.
- b. **Seek a safe place.** Villa Maria College Title IX officers, Campus Security officers, Local police officers (typically Cheektowaga or Buffalo Police Departments), and the New York State Police can help you do this. Officers at the local police and New York State Police are specifically trained to respond to the needs of a victim of a sexual offense. They can also make you aware of support and advocacy services and advise you about reporting procedures and requirements.
- c. **Consider seeking medical assistance.** Those who seek a medical examination may obtain one for free, paid by the office of victim services (<https://ovs.ny.gov/>). The College recommends that students seek medical examination at one of the following facilities that has a trained SANE nurse available:
 - i. Buffalo General Medical Campus
 - ii. DeGraff Memorial Hospital

- iii. Kenmore Mercy Hospital
 - iv. Mercy Ambulatory Care Center
 - v. Mercy Hospital
 - vi. Millard Fillmore Suburban Hospital
 - vii. Sisters of Charity Hospital – Main Campus
 - viii. Sisters of Charity Hospital – St. Joseph Campus
 - ix. The closest location to Villa Maria College to have an exam is Sisters of Charity Hospital – St. Joseph Campus located at 2605 Harlem Rd, Cheektowaga, NY 14225 (716) 891-2400. More information about SANE/SAFE program through Crisis Services can be found on-line: <http://crisisservices.org/rape-domestic-violence/what-is-sexual-violence/>
 - x. Consider taking a full change of clothing, including shoes, for use after a medical examination.
 - xi. When seeking medical attention, a person may choose whether or not to speak to the police at the hospital or any other time. If they do, the option to choose whether to file charges against the respondent will exist.
 - xii. Private physicians are not required to notify the police. If a survivor desires police involvement, they may request this contact. Also, with a private physician, survivors may have to ask for a rape kit to be completed. Please keep in mind: having a rape exam does not mean that survivors are mandated to press charges. This action only keeps the survivor's options open.
- d. **Preserve evidence.** In the event that sexual assault or sexual violence occurred, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. (The decision to press charges does not have to be made at this time. However, following these procedures will help preserve this option for the future.) Survivors should not bathe, urinate, douche, brush teeth, or drink liquids. Clothes should not be changed but if they are bringing all the original clothing to the hospital in a paper bag. (Plastic bags damage evidence.)
- e. **Report the incident.** Villa Maria College encourages, but does not require, victims, survivors, complainants, claimants, and witness with victim status of sexual offenses (reporting individuals) to report the incident to one or more of the following resources:
- i. **Law enforcement.** You may, but are not required, to report a sexual offense to local law enforcement for the purposes of documentation or investigation. You may contact local law enforcement as follows:
 1. **Cheektowaga Police (Villa Maria College campus is in Cheektowaga, NY).** 3223 Union Road, Cheektowaga, New York 14227. Emergencies 9-1-1. Non-Emergency Phone: (716) 686-3500. <http://cpdny.org/>
 2. **Buffalo Police.** 74 Franklin Street, Buffalo, NY 14202. Emergencies 9-1-1. Non-Emergencies (716) 851-4444. <https://www.bpdny.org/>
 3. **New York State Police Campus Sexual Assault Victims Unit.** Non-emergency- toll free hotline to report Campus Sexual Violence to the New York State Police: 1-844-845-7269. Specific contact: S/Inv Thomas Gibbons, Troop A (north). Non-Emergencies 716-239-0298 Thomas.Gibbons@troopers.ny.gov.
 4. Villa Maria College Campus Security staff can assist you in contacting local law enforcement at any time.

5. If you choose to contact law enforcement, you may have the further option, but are not required to, pursue the case through the criminal justice system.
- ii. **Campus Security.** You may, but are not required to, report the sexual offense to Villa Maria College Campus Security. Campus Security personnel is not a law enforcement agency, and will communicate the report to College Administration responsible for responding to sexual offense incidents.
- iii. **Campus Compliance Officers.** When you disclose an incident to a representative of Villa Maria College, you will be directed to one of the following individuals listed below, who will assist you. You will be presented a copy of this policy, and will be made aware of your rights and options. All who make a report will be informed that they have the right to make a report to local law enforcement, and/or NYS Police, or choose not to report; to report the incident to Villa Maria College Compliance Officers; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from Villa Maria College. You may, but are not required to, report the sexual offense to a **Villa Maria College Compliance Officer** identified below:
 1. Brian Emerson, Vice President for Enrollment (VP EM). Civil Rights Compliance Officer: Title IX Coordinator, Section 504 Coordinator.
 - a. Location: Villa Maria College, 240 Pine Ridge Rd. Buffalo, NY 14225. Office Location: Felician Hall, Room 119. Phone: 716.961.1838. E-mail: bemerson@villa.edu
 - b. Emergency Access to the Title IX Coordinator. You will have the right to emergency access to the Title IX Coordinator to provide emergency assistance. The Title IX Coordinator is generally available for emergency access on weekdays between the hours of 9am and 4pm. Please contact Campus Security for assistance in reaching the Title IX Coordinator if they are not available in their office, or it is after normal business hours. Campus Security will contact the Title IX Coordinator to assist you.
 2. Dr. Carrie Florea, Director of Human Resources, Civil Rights Compliance Officer: Deputy Title IX Coordinator.
 - a. Location: Villa Maria College, 240 Pine Ridge Rd., Buffalo, NY 14225. Office Location: Human Resources – First floor of the Main Building. Phone: 716. 961.2864. E-mail: cflorea@villa.edu
 3. Dr. Agnes Zak-Moskal, Dean of Student Success, Deputy Title IX Coordinator.
 - a. Location: Villa Maria College, 240 Pine Ridge Rd., Buffalo, NY 14225. Office Location: Student Success Center – Ground floor of the Library Building. Phone: 716. 961.1861. E-mail: azakmoskal@villa.edu
- iv. **Employees who report** - Employees of the College can also make an initial report to their immediate supervisor or the Director of HR. Employees who believe they have either witnessed or been subjected to discrimination or a sexual offense may notify one of the following: The Vice President for Enrollment Management and Student Services and/or the Director of Human Resources. If for any reason the employee is unable or unwilling to report the

matter to any one of the individuals listed above, he/she may report the matter to the President of the College.

f. Understanding Confidentiality

- i. 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 and pastoral counselors are examples of Villa Maria employees who may offer confidentiality.
- ii. The obligation to keep information in confidence is inherent for certain Villa Maria professionals on campus, such as licensed social workers, licensed psychologists, and pastoral and professional counselors (including licensed mental health counselors). Many off-campus resources such as rape crisis centers are also confidential, and with the exception of certain child abuse and imminent threats, individuals working in such organizations have no obligation to report information back to the reporting individual's campus.
- iii. It is important to note that all other Villa Maria employees who do not fall within the categories listed above are required to report known incidents of sexual assault or other crimes, so they are NOT confidential resources. However, even Villa Maria 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 to investigate and/or seek a resolution.
- iv. **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 applicable laws, including informing appropriate VILLA MARIA officials.
 1. Although most Villa Maria employees are not confidential resources, they can still offer “privacy.” This means that an employee may have to share information pursuant to federal or state law or college policy with certain other Villa Maria employees, but they will not share the private information beyond what is required or needed to comply with law and policy, and will otherwise limit re-disclosure as much as possible.
 2. Privacy of the records specific to the investigation is maintained in accordance with New York State law and, with respect to student records, the federal Family Educational Rights and Privacy Act of 1974 (FERPA) statute. Any public release of information to comply with the timely warning provisions of the Jeanne Clery Act (Clery Act) will not release the names of victims or information that could easily lead to a victim's identification.
- v. Be aware that certain Villa Maria officials with significant responsibility for student and employee activities may be required by law to disclose the occurrence of the event. If you make a report to an official who is required by law to disclose the occurrence of the event, but you request confidentiality, the Title IX coordinator will evaluate the confidentiality request, by weighing the request against the College's obligation to provide a safe, non-discriminatory environment for all members of its community. If it is determined that the

incident must be disclosed, your name will be kept confidential, and you will be offered privacy to the greatest extent possible. If it is determined that the incident must be kept confidential, Villa Maria will still assist with academic, housing, transportation, employment, and other reasonable and available accommodations.

1. Even Villa Maria officers 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 to investigate and/or seek a resolution. Your identity will remain private at all times if you wish to maintain privacy.
- vi. Villa Maria will make every effort to ensure that you are asked to describe the incident to as few representatives of Villa Maria as possible, and are not required to unnecessarily repeat a description of the incident.
 - vii. If you would like to report an incident or speak to someone about something that happened and you desire that details of the incident be kept confidential, you should speak with staff members of the Counseling Center, the Campus Minister, or off-campus resources, who will maintain confidentiality. Campus counselors are available to help you free of charge, and can be seen on an emergency basis. In addition, you may speak on and off campus with clergy and chaplains, who will also keep reports made to them confidential.
 1. The Villa Maria Counseling Center is located on the ground floor of the Library Building. The Director is OPEN, who can be reached at (716) 961-1821 or OPEN@villa.edu
 2. The Campus Ministry office is located on the first floor of the administration building near the main lobby. The Director is OPEN, who can be reached at (716) 961-1813 or OPEN@villa.edu
 3. The College recommends the following off-campus resources:
 - a. Crisis Services (716) 834-3131 <http://crisisservices.org/>
 - b. 24 Hour Erie County Domestic Violence Hotline (716) 862-HELP Shelter: 716-884-6000
 - c. 24 Hour NYS Domestic & Sexual Violence Hotline 1-800-942-6906
 - viii. **Anonymous Reporting** - Students and employees may make an anonymous report that will be sent to campus security and the Campus Compliance officers at: <https://www.villa.edu/campus-life/campus-security/anonymous-reporting/>
- g. **Request to file Student Conduct charges** - If the accused or respondent is a student, you may request to file student conduct charges against the accused or respondent according to the Student Conduct System (Student Handbook, section 8). All students have the right to request to initiate student conduct charges against another student. Requests to file charges should be prepared in writing and directed to the Dean of Student Affairs. Written requests may be emailed to the Dean of Student Affairs at azakmoskal@viall.edu, or mailed or delivered in person to the Dean of Student Affairs at: Villa Maria College, Dean of Student Affairs, Library Ground Floor, 240 Pine Ridge Rd, Buffalo, NY 14225.
 - i. Additional details regarding Student Conduct charges can be found in the Student Handbook, available at <https://www.villa.edu/campus-life/student-services/>

- ii. You should be aware that there are significant differences between Villa Maria’s Student Conduct System and the criminal justice system, because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. Villa Maria’s Student Conduct System seeks to determine whether an individual has violated college policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated College policy may be suspended, expelled or otherwise restricted from full participation in the College community.

h. Seek an Order of Protection or No Contact Order

i. Order of Protection

1. Victims of Sexual Offenses may have a right to obtain a court order to protect themselves from the perpetrators. Villa Maria will enforce all applicable no contact orders, restraining orders, and similar lawful orders issued by a criminal, civil, or tribunal court, to the extent required by law.
2. An order of protection is issued by the court to limit the behavior of someone who harms or threatens to harm another person. It is used to address various types of safety issues, including, but not limited to situations involving domestic violence. Family Courts, criminal courts, and Supreme Courts can all issue orders of protection. An order of protection may direct the offending person not to injure, threaten or harass you, your family, or any other person(s) listed in the order.
3. You may learn more about obtaining an Order of Protection in New York State here: <https://www.nycourts.gov/fag/orderofprotection.shtml>
4. If you have obtained an Order of Protection, please present the information to Campus Security, a Title IX Officer, or the Dean of Student Affairs for assistance on campus.

ii. No Contact Order

1. You can request the College to issue a “no contact order” to protect you from the respondent or accused. When a student is accused of a Sexual Offense, Villa Maria will automatically issue a mandatory “no contact order” to protect you from the respondent or accused. This “no contact order” is a College document that does not have the legal effect of an order of protection, which is obtained through a court. Under the no contact order: (1) the accused’s continued intentional contact with the reporting individual is a violation of College policy that is subject to additional conduct charges; and (2) if the accused or respondent and a reporting individual observe each other in a public place, it is the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual. This may include establishing a schedule of attendance for the accused or respondent to access certain locations at the College, such as academic buildings, libraries, athletics or fitness facilities, lounges, and the dining hall.

2. To make a request to impose a “no contact order,” you can contact: Dr. Agnes Zak-Moskal, Dean of Student Affairs, at azakmoskal@villa.edu.
 - a. Responsibility to stay away falls upon the person subject to the no contact order (“covered person”), not the protected individual. A covered person may be a respondent or accused or a third party who is the subject of a no contact order. If the covered person and protected person are in the same place accidentally, it is incumbent upon the covered person to remove himself or herself in a reasonable time and manner.
3. Upon request, both the accused (or respondent) and the reporting individual are entitled to a prompt review, reasonable under the circumstances, of the need for and terms of the no contact order, including potential modification, in which they are allowed to submit evidence in support of their requests. Requests to review a no contact order should be submitted to: Dr. Agnes Zak-Moskal, Dean of Student Affairs, at azakmoskal@villa.edu. If a request for review is received from one party, the other party will be notified of the request for review. The Dean of Student Affairs will issue a determination in response to the request, and notify both parties of the determination.

i. Withdrawing a report

- i. You have the right to withdraw your report and/or to withdraw from involvement in the College’s investigation of the complaint at any time. If you choose to withdraw, however, the College may still have obligations to investigate and/or take actions under state or federal law. If the College continues an investigation or takes action after you withdraw participation, you have the right to participate as much or as little as you wish.

5. Policy for Alcohol and Drug Use Amnesty for Students

- a. The health and safety of every student at Villa Maria College is of utmost importance. Villa Maria College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that a sexual offense occurs, including but not limited to domestic violence, dating violence, stalking, or sexual assault, may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Villa Maria College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith that disclose any incident of domestic violence, dating violence, stalking or sexual assault to Villa Maria officials or law enforcement will not be subject to Villa’s officials or law enforcement will not be subject to the Villa Maria 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.

6. Procedure Following a Report of Sexual Offense

- a. **Mandatory No Contact Order** - When the accused or respondent is a student, Villa Maria will issue a mandatory “no contact order” mandating that (1) the accused’s continued intentional contact with the reporting individual is a violation of College policy that is subject to additional conduct charges; and (2) if the accused or respondent and a reporting individual observe each other in a public place, it is the responsibility of

the accused or respondent to leave the area immediately and without directly contacting the reporting individual.

- b. **Mandatory Interim Suspension** - When the accused or respondent is a student determined to present a continuing threat to the health and safety of the College community, the accused or respondent will be subject to an interim suspension pending the outcome of the Student Conduct process.
 - i. Upon request, the College will provide both the accused or respondent and the reporting individual a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, in which they are allowed to submit evidence in support of their request. Requests to review an interim suspension should be submitted to: Dr. Agnes Zak-Moskal, Dean of Student Affairs, at azakmoskal@villa.edu. If a request for review is received from one party, the other party will be notified of the request for review. The Dean of Student Affairs will issue a determination in response to the request, and notify both parties of the determination.
- c. **Mandatory Interim Measures** - When the accused or respondent is not a student, but is a member of the College community and presents a continuing threat to the health and safety of the College community, the College will subject the accused or respondent to interim measures in accordance with applicable employee handbooks, and policies of Villa Maria College.
- d. **Additional Interim Measures and Accommodations** – Villa Maria will offer reasonable and available interim measures and accommodations that effect changes in academic, employment, transportation or other applicable arrangements in order to help ensure safety, prevent retaliation, and avoid an ongoing hostile environment, consistent with the College’s policies and procedures. These interim measures may include:
 - 1. support services (victim advocacy, housing assistance, academic support, counseling, health and mental health services, legal assistance);
 - 2. changing work assignments and situations (for employees);
 - 3. changing course schedules, assignments, or test schedules (for students);
 - 4. no contact orders, campus escorts, transportation assistance, or targeted interventions;
 - 5. providing increased monitoring, supervision, or security; and/or
 - 6. providing an escort.
 - ii. Villa Maria is obligated to comply with a student’s reasonable request for a academic situation change following an alleged Sexual Offense.
 - iii. Villa Maria will protect the confidentiality of accommodations or protective measures provided to a complainant or accuser, to the extent that doing so will not impair the College’s ability to provide the accommodations or protective measures. The complainant or accuser will be informed before the College shares any personally identifying information that the College believes is necessary to provide an accommodation or protective measure. If this occurs, the complainant or accuser will be told what information will be shared, with whom it will be shared, and why it will be shared.
 - iv. Upon request, Villa Maria will provide both the accused or respondent and the reporting individual a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that

directly affects him or her, in which he or she is allowed to submit evidence in support of his or her request. In the event that an accommodation or interim measure granted to or against one party impacts another party, both the directly impacted party and the secondarily impacted party may request a review of the terms or totality of the accommodation and/or measure by the College and may submit information as to the reasoning for requesting a change. Requests to review interim measures and accommodations should be submitted to: Dr. Agnes Zak-Moskal, Dean of Student Affairs, at azakmoskal@villa.edu. If a request for review is received from one party, the other party will be notified of the request for review. The Dean of Student Affairs will issue a determination in response to the request, and notify both parties of the determination.

7. Investigation and Response Procedures for Sexual Offense Cases

When Villa Maria becomes aware of a Sexual Offense by or against an employee or student or that has a reasonable connection to the College, it will take prompt and appropriate action.

The Title IX Coordinator will make an initial assessment regarding the validity of any information received about the incident. This initial determination will be made within five (5) business days of the College becoming aware of the suspected Sexual Offense.

If the College determines that an investigation is required, it must seek consent from reporting individuals prior to conducting an investigation. If a reporting individual does not consent to the request to initiate an investigation, the Title IX Coordinator will weigh the request against the College's obligation to provide a safe, nondiscriminatory environment for all members of its community.

Villa Maria will honor a request to decline to consent to an investigation, unless the College determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community, based on the Title IX Coordinator's consideration of factors that include, but are not limited to, the following:

- a. Whether the accused has a history of violent behavior or is a repeat offender;
- b. Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- c. The increased risk that the accused will commit additional acts of violence;
- d. Whether the accused used a weapon or force;
- e. Whether the reporting individual is a minor; and
- f. Whether the institution possesses other means to obtain evidence such as security footage, and
- g. Whether available information reveals a pattern of perpetration at a given location or by a particular group.

If the Title IX Coordinator determines that the request to decline to consent to an investigation can be honored, the College will still assist with academic, transportation, employment, and other reasonable and available accommodations.

If the Title IX Coordinator determines that a request to decline to consent to an investigation cannot be honored, and an investigation is necessary, the College will notify the reporting individuals and take immediate action as necessary to protect and assist them.

When an investigation begins, and the accused is a student, the student will be informed, as promptly as possible, of (1) the specific policy, expectations, laws, and/or code of conduct provisions alleged to have been violated; (2) the date, time, location and factual allegations concerning the violation; (3) in what manner the specific policy, expectations, laws, and/or code of conduct provisions are alleged to have been violated, and (4) the sanction or sanctions that may be imposed on the respondent based upon the outcome of any conduct process.

Within two (2) business days of determining that an investigation is necessary, the Title IX Coordinator will designate a Compliance Officer or other trained investigator, who does not have a conflict of interest, to promptly conduct a fair, complete, thorough, and impartial investigation, that provides a meaningful opportunity to be heard. For most employee reports, however, the Director of Human Resources will conduct the investigation.

Each of the Compliance Officers, and any other designated investigators, receive annual training on: (1) issues related to sexual assault, relationship violence, and stalking, (2) how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability, (3) how to conduct investigations of sexual violence, (4) the effects of trauma, (5) impartiality, (6) the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, (7) Villa Maria’s policies and procedures, and other issues.

If the Title IX Coordinator is implicated in the report, the President will be responsible for designating a Compliance Officer or other trained investigator to conduct the investigation. If it would be inappropriate for the Title IX Coordinator or President to designate a Compliance Officer or other trained investigator to conduct the investigation, then the Chair of the Board of Trustees will make this designation.

The standard of evidence used to evaluate a report of a Sexual Offense by or against an employee or student is a “preponderance of the evidence.” Under this standard, a determination must be made on the basis of whether it is more likely than not that the accused student or employee violated the Sexual Offense Policies & Procedures for Students and Employees

In investigating the complaint, the designated Compliance Officer or other trained investigator shall:

- Meet with the appropriate individuals and review all appropriate records that bear on the case.
- Provide the accuser and the accused with copies of the Sexual Offense Policies & Procedures for Students and Employees.
- Discuss the allegations in the complaint with the accuser and accused at separate meetings, and provide the accuser and accused with equal opportunities to identify witnesses and present evidence supporting their respective positions at these meetings.
- Provide the accuser and the accused with the same opportunities for a support person or advisor of their choice throughout the process, including any meeting, conference, hearing or other procedural action. An attorney for either the accuser or the accused, however, may be present but may not have a speaking role during such meeting, conference, hearing, or other procedural action.

- Where the reporting individual or accused are students, provide the students with:
 - a. reasonable advance written or electronic notice of any meeting they are required to or are eligible to attend,
 - b. an opportunity to submit evidence during an investigation concerning a report of a Sexual Offense, and
 - c. the opportunity to exclude (1) their own prior sexual history with persons other than the other party in the conduct process and (2) their own mental health diagnosis and/or treatment from the Compliance Officer or other investigator's consideration when determining responsibility. (However, the Compliance Officer or other investigator may consider past findings of a Sexual Offense when determining the sanction to be imposed).
- Attempt, where appropriate, to resolve the complaint by exploring and suggesting possible solutions to the problem with all involved parties, provided, however, that the complainant or accuser will not be required to participate in mediation with the accused.
- If the preceding step does not resolve the problem, make a preponderance of the evidence determination in the matter of the allegation of the Sexual Offense to the accused, accuser, and the Title IX Coordinator.

The time necessary to complete an investigation will vary depending upon the facts of a particular case. In most cases, investigations will be completed within 60 days of receipt of a report. The Compliance Officer or other trained investigator who conducted the investigation shall prepare written findings of fact and recommendations, with respect to whether it is more likely than not that the Sexual Offense occurred, appropriate Student Conduct actions, if any, and/or other appropriate remedial measures.

Once the investigation is complete, the parties will be informed, in writing, of the outcome within two (2) business days of the issuance of the determination. When the victim or accused is a student, this written notice will include the result of the investigation, any recommended Student Conduct sanctions, the rationale for the result and any recommended sanctions, the findings of fact, and a notification if conduct charges will be pursued and/or continued. Delivery of this outcome will not be delayed to either party, and should occur as nearly simultaneously as possible, without unnecessarily bringing those in conflict into close proximity to each other. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.

If the Compliance Officer or other trained investigator concludes that the accused student or employee did not violate the Sexual Offense Policies & Procedures for Students and Employees, the College will not pursue discipline or conduct action against the student or employee. The parties will be informed of their potential rights to exercise a request for an appeal of the determination, if applicable. Pursuant to the Student Code of Conduct, available in the Student Handbook at <https://www.villa.edu/campus-life/student-services/>, if a Compliance Officer or other trained investigator determines that a student did not violate TSC's Sexual Offense Policies & Procedures for Students and Employees, the reporting individual has the right to appeal the Compliance Officer's finding of no violation to an Appellate Board within two (2) business days of the decision.

If the Compliance Officer or other trained investigator concludes that it is more likely than not that the accused student or employee violated the Sexual Offense Policies & Procedures for Students and Employees, the College will take the matter very seriously, and will pursue (or continue to pursue)

internal disciplinary proceedings against the accused or respondent. The Title IX Coordinator will refer the matter to the Director of Human Resources (for employees) or the Dean of Student Affairs (for students) to determine disciplinary charges, within five (5) business days of the investigator's determination. The disciplinary proceedings will then be commenced within (15) business days of the decision to pursue disciplinary charges.

Information regarding internal disciplinary proceedings for students can be found in the Student Code of Conduct, available in the Student Handbook at <https://www.villa.edu/campus-life/student-services/> Information regarding internal disciplinary proceedings for employees can be found in the Employee Handbook.

Internal disciplinary proceedings where a student or employee is accused of a Sexual Offense are fair and impartial, include timely notice of meetings and timely and equal access to information and evidence that will be used, and are conducted by unbiased decision makers who have no conflict of interest. The proceedings are completed within a reasonably prompt, designated timeframe. However, the timeframe may be extended for good cause upon written notice to the accuser and accused. The proceedings provide students with the opportunity to present evidence and testimony at a hearing.

Following any internal disciplinary proceeding for cases of Sexual Offense, the victim and accused will be provided with simultaneous written notice of the result of the proceeding, including any sanctions imposed, and the rationale for the result and sanctions. When the victim or accused in an internal disciplinary proceeding for a Sexual Offense is a student, the student will also receive written notice of the findings of fact. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.

All parties will also be informed of their potential rights to exercise a request for an appeal of the disciplinary determination under the Student Conduct System, or Employee Handbook. Pursuant to the Student Conduct System, all students have a right to an appeal any final disciplinary determination by a Student Conduct Body to an Appellate Body within two (2) business days of the decision. Unless otherwise required by law, Villa Maria will protect all information obtained about students during the course of the student conduct process from public release, until the Appeal Body makes a final determination.

Sanctions for incidents of Sexual Offense may take a variety of forms, depending upon the circumstances of a particular case. The sanctions which may be imposed on students who have been found responsible for committing any of the Sexual Offenses are the following: warning, disciplinary probation, loss of privileges, fines, restitution, sanctions, parental/guardian notification, suspension, expulsion, revocation of degree, withholding degree, prohibition of professional practice, and mandatory assessment/counseling. The disciplinary sanctions which may be imposed on employees who have been found responsible for committing any of the Sexual Offenses are the following: verbal warning, written reprimand, mandatory training session, no contact order, suspension without pay, termination, and/or termination with the issuance of a no-trespass letter.

If the investigation reveals that a Sexual Offense did occur, Villa Maria will take also take appropriate remedial measures necessary to end such conduct, prevent any such future conduct, and correct any personnel or academic decisions made which are related to the prohibited conduct. Remedies

may include, but are not limited to, continuing or commencing any of the above-listed “interim measures.” These remedies are separate from, and in addition to, any interim measures that may have been provided prior to the conclusion of the investigation. Such measures can be requested by a reporting individual or accuser, by contacting the Director of Human Resources (for employees) or the Dean of Student Affairs (for students).

Engaging in a Sexual Offense may also lead to civil and/or criminal action under the New York State Penal Law. Any employee who, in violation of Villa Maria’s policy, engages in a Sexual Offense, is acting outside the scope of his or her employment and may be personally liable for such actions and their consequences. In the event legal proceedings are commenced against such an employee, the College may decline to provide legal, financial, or other assistance.

In any proceeding brought against Villa Maria which seeks to vacate or modify a finding that a student engaged in Sexual Offense, the College (1) will treat the name and identifying biographical information of any student as presumptively confidential, and (2) will not include this information in the pleadings and other papers in such proceeding absent a waiver or cause shown as determined by the court; and (3) will identify student witnesses only as numbered witnesses.

8. Notation on Student Transcripts for Crimes of Violence

- a. If a student is suspended or expelled as a result of being found responsible for a Crime of Violence, Villa Maria must make a notation on the student’s transcript that the student was “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.” If a student withdraws from Villa Maria while such conduct charges related to crimes of violence are pending against the student, and declines to complete the disciplinary process, Villa Maria must make a notation on the student’s transcript that he or she “withdrew with conduct charges pending.”
- b. These transcript notations can be appealed by contacting the Vice President for Enrollment Management, Brian Emerson at bemerson@villa.edu. Transcript notations for violence-related suspensions shall not be removed prior to one year after conclusion of the suspension. Transcript notations for violence-related expulsions shall never be removed from a student’s transcript. A notation for an expulsion may not be removed via an appeal to Villa Maria. If a finding of responsibility is vacated for any reason, however, the transcript notation must be removed. Further, if a court vacates a finding of responsibility for a violation of college policy, the transcript notation memorializing that finding will also be vacated.

9. Prohibition of Retaliation

- a. It is a violation of federal and state law and this policy for any employee or student to retaliate against any student or employee for exercising any rights or responsibilities under the Violence Against Women Act, the Clery Act, and/or Title IX. This includes retaliating against a student or employee who reports a Sexual Offense in good faith, or furnishes information or participates in any manner in an investigation of such a report. Retaliation includes any conduct directed at someone because he or she engaged in such protected activity, which might deter a reasonable student or employee from making or supporting such a report.
- b. Retaliation is unlawful and will not be tolerated. Villa Maria will protect students from retaliation by the College, any student, the accused and/or the respondent, and/or their

friends, family and acquaintances within the College's jurisdiction. Any individual found to have engaged in retaliation will be subject to disciplinary action, up to and including, termination of employment and/or dismissal from Villa Maria.

10. Education and Training for Students and Employees

- a. Because Villa Maria College recognizes that prevention of Sexual Offenses as an important issue, the College offers educational programming to a variety of groups such as: campus personnel (Campus Safety, faculty, and staff); incoming students participating in orientation; and, members of student organizations, among others.
- b. Awareness and prevention of Sexual Offenses educational programming offered to all first-year and transfer students, during the course of their onboarding, address topics (using a method and manner determined by Villa Maria), such as:
 - i. Villa Maria prohibits sexual and interpersonal violence and will offer resources to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the institution;
 - ii. Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent;
 - iii. Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;
 - iv. The role of the Title IX Coordinator, campus security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response;
 - v. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact;
 - vi. Bystander intervention and the importance of taking action to prevent violence when one can safely do so;
 - vii. Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and
 - viii. Consequences and sanctions for individuals who commit these crimes and code of conduct violations.
- c. Villa Maria requires student leaders and officers of student organizations, as well as student-athletes, to complete training on domestic violence, dating violence, stalking, or sexual assault prevention prior to the start of such activities and/or participating in intercollegiate athletic competition.
- d. Awareness and prevention of Sexual Offenses educational programming offered to all new employees at time of hire, as well as periodically through other employee training venues.

11. Sexual Offender Registry

- a. The federal Campus Sex Crimes Prevention Act enacted in 2000 went into effect October 28, 2002. The law requires institutions of higher education to issue a statement advising

the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained. It also requires sex offenders required to register in a State to provide notice, as required under state law, of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student. The New York State sex offender registry may be accessed at www.criminaljustice.state.ny.us/nsor/index.htm.

12. Climate Surveys

- a. Beginning during the 2016 - 2017 school year, Villa Maria will conduct a biannual or annual anonymous survey of student and employees to examine (1) the prevalence and incidence of Sexual Offense, (2) the perceptions of the campus climate, (3) the general awareness and knowledge of students and employees about the provisions of the New York Enough is Enough law, and (4) student experience with and knowledge of reporting and college adjudicatory processes. Participation in such climate survey shall be voluntary but is encouraged. Villa Maria will take steps to ensure that answers to climate assessments remain anonymous and that no individual is identified. The College will publish an executive summary of the climate assessment survey results on Villa Maria website, provided that no personally identifiable information or information which can reasonably lead a reader to identify an individual is shared.

13. Annual Reporting

- a. Reports of certain crimes occurring in specific geographic locations are included in Villa Maria's annual security report (ASR), in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual.
- b. Villa Maria is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual. A reporting individual shall not be identified in a timely warning.
- c. FERPA allows Villa Maria to share information with parents when (i.) there is a health or safety emergency, or (ii.) when the student is a dependent on either parent's prior year federal income tax return. Generally, however, Villa Maria will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual.
- d. Effective in July 2016, Villa Maria will annually report the following information about reports of domestic violence, dating violence, stalking and sexual assault to the New York State Education Department:
 - i. The number of such incidents that were reported to the Title IX Coordinator.
 - ii. The number of reporting individuals who sought Sage's judicial or conduct process.
 - iii. The number of cases processed through Sage's judicial or conduct process.
 - iv. The number of respondents who were found responsible through Sage's judicial or conduct process.
 - v. The number of respondents who were found not responsible through Sage's judicial or conduct process.
 - vi. A description of the final sanctions imposed by Sage for each incident for which a respondent was found responsible through Sage's judicial or conduct process.

- vii. The number of cases in Sage’s judicial or conduct process that were closed prior to a final determination after the respondent withdrew from Sage and declined to complete the disciplinary process.
- viii. The number of cases in Sage’s judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.

14. Campus Sexual Assault Victims Bill of Rights

- a. All students have the right to: The right to have any and all disclosures of domestic violence, dating violence, stalking, and sexual assault against them treated with seriousness and receive, from the institution, courteous, fair, and respectful health care and counseling services, where available;
- b. The right to have sexual assaults committed against them investigated and adjudicated by the duly constituted criminal and civil authorities of the governmental entity in which the crimes occurred, if the victim so chooses, including make a report to local law enforcement and/or the state police; and the right to the full and prompt cooperation and assistance of College staff in notifying the proper authorities. The foregoing shall be in addition to any campus conduct proceedings;
- c. The right to be free from any kind of pressure from College staff that victims: a. not report crimes committed against them to civil and criminal authorities or to campus safety and other College staff; or b. report crimes as lesser offenses than the victims perceive them to be;
- d. The right to be free from any kind of suggestion that sexual assault victims not report, or underreport, crimes because: victims are somehow ‘responsible’ for the commission of crimes against them; victims were negligent or assumed the risk of being assaulted; or by reporting crimes they would incur unwanted personal publicity;
- e. The right to participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard and in so doing, to describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- f. The same right to legal assistance, or ability to have others present, including an advisor of their choice, in any campus disciplinary proceeding that the institution permits to the accused; and the right to be notified of the outcome of such proceeding;
- g. The right to counseling services from any mental health services previously established by the institution, or by other victim-service entities, or by victims themselves;
- h. After campus sexual assaults have been reported, the victims of such crimes shall have the right to require that appropriate College staff take the necessary steps or actions reasonably feasible to prevent any unnecessary or unwanted contact or proximity with alleged assailants, including immediate transfer of classes, no contact orders, and other remedies if requested by the victims;
- i. Access to at least one level of appeal of a determination;
- j. The right to report any inappropriate action, or lack thereof, in the handling of a reported sexual assault on the part of the College as a Title IX complaint;
- k. 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;
- l. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of Villa Maria College.

- i. This Bill of Rights is distributed annually to students via e-mail and is posted around campus.

Note: This policy is effective January 1st, 2014/Updated: August 2018