

Mandatory Reporting: A policy for Salve Regina University Faculty and Staff *

Purpose: The purpose of this document is to outline the University's policy mandating that employees report concerning behaviors, harassment, discrimination and crimes. It explains briefly the meaning and purpose of mandatory reporting, outlines the legal context, and articulates a straightforward set of guidelines for all employees to follow.

Effective Date: September 18, 2015

Mandatory Reporter: Why and What?

There are two federal laws that establish responsibilities for employees of colleges and universities to report sexual discrimination, sexual harassment, sexual violence, and certain types of campus crimes and incidents relating to employees and students: the Jeanne Clery Act (Clery Act) and Title IX.

There are additional federal laws that establish responsibilities for employees of colleges and universities to report incidents relating to employment discrimination and harassment based on an employee's sex, national origin, race, color or religion (Title VII of the Civil Rights Act of 1964); an employee's age (the Age Discrimination in Employment Act); or an employee's disability (the Americans with Disabilities Act).

Each of these areas of federal law has a different purpose, but generally the laws are intended to protect members of the campus community, visitors and guests from criminal, harassing, and discriminatory behavior. The responsibilities established by these laws give rise to the term "mandatory reporter." Reporting of concerning and disruptive behavior is not legally mandated, but is a policy mandate to assist the Behavioral Intervention Team in early identification and detection of at-risk situations.

The Legal Context

The Clery Act requires educational institutions to report certain campus crimes, which are listed on pages 3-4 below. Campus crimes include incidents which occur on campus, adjacent to campus, or on non-campus buildings or property. It is the University that has the duty to report these crimes, and failure to do so can result in substantial fines being imposed on the institution by the Department of Education. Guided by the language of the Clery Act and subsequent amendments, the University is required to define which employees must report crime information they receive.

The Clery Act would allow the University to exclude some faculty some of the time and many professional staff from obligation to report. Such an approach, however, risks creating confusion for faculty and staff, takes a minimalist approach to the ethical obligation to inform our community about serious crimes, and makes the institution more vulnerable to enforcement action.

Title IX prohibits discrimination on the basis of sex in education programs and applies to all participants of such programs, including students, parents and faculty/staff members. Title IX creates obligations for the University to investigate and to provide a prompt and effective remedy for incidents of sex-based discrimination and sexual harassment, including sexual violence, relationship violence and abuse.

If the victim is a student, Title IX means among other things that the University must provide a safe environment that does not interfere with the victim's right to pursue an education. The University incurs this obligation when a victim has given notice of gender discrimination, sexual harassment or sexual violence to a "responsible employee," or when the University, in the exercise of reasonable care, should have known about the violation. As with the other laws, the definition of "responsible employee" under Title IX would allow the University to treat only some faculty and staff as mandated reporters but with the same possibility of confusion and risk of institutional exposure.

Title VII, the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA) focus on discrimination and harassment in the workplace based on an employee's membership in a protected category (sex, race, color, religion, national origin, disability or age) and failure to take appropriate action can lead to financial liability for the University. In this case, the law creates a duty to report for employees who supervise other employees, including students being paid by the University. As with the Clery Act and Title IX, this language means that some faculty and staff would be expected to report while others might be exempted. Once again, however, this selective approach may create confusion and risk; and it fails to ask all of us to share the responsibility to create a work place free of harassment and discrimination.

Mandatory Reporting: Guidelines for Employees of Salve Regina University

Salve Regina University has decided to adopt a policy that defines all employees, including faculty and staff, as mandatory reporters under the Clery Act, Title IX, Title VII, the ADA and the ADEA. As a mandatory reporter, you must carry out your responsibilities to report all violations of discrimination and harassment, including sexual violence and child sexual abuse, and to report all campus crimes listed on pages 3-5. You must report incidents you personally observe as well as incidents reported to you. You must report these incidents to the designated officials on campus, described below. By fulfilling these responsibilities, you assist the University in complying with legal requirements and help the University maintain its commitment to fostering a secure, equitable and inclusive community.

Reporting procedures for the various laws are described in detail below. For incidents of sexual harassment or sexual violence, please also refer to the more detailed **Sexual Harassment, Gender-Based Harassment and Sexual Violence Policy and Procedures**, available at <http://www.salve.edu/title-ix>. In some cases, you may be required to report an incident multiple times if it falls under Title IX, Child Abuse/Neglect, and/or the Clery Act.

Reporting Procedure: Title IX, Title VII, ADEA, ADA

If you learn about harassment or discrimination against any student or employee based on that student's or employee's membership in a protected category, or if you learn about an incident of sexual violence (including sexual assault, relationship violence, sexual exploitation, stalking, or other unwelcome sexual conduct) against an employee or student, you are expected to promptly contact the **Title IX Coordinator, (Malcolm Smith, Associate Vice President for Student Affairs and Dean of Students, 401-341-2206)** or the **Deputy Title IX Coordinator for employees, (Nancy Escher, Assistant Director of Human Resources, 401-341-2157)**. The Title IX Coordinator or Deputy Title IX Coordinator may notify Campus Safety and Security (CSS) and other appropriate University officials. The employee should use the Incident Report included in this policy. Alternatively, the employee may call the Title IX Coordinator and then follow up by completing the form.

Do **not** promise confidentiality. When reporting harassment or discrimination or sexual violence, a University employee may initially be able to omit personally identifiable information (the name of the complainant, the name of the respondent, and other identifying details about witnesses, location, etc.). The Title IX Coordinator, Deputy Title IX Coordinator or Campus Safety and Security will guide you with regard to how much detail is needed in an initial report. Subsequent to an initial report, campus officials may need additional information in order to fulfill the University's obligations. In taking these subsequent actions, the University will always be guided by the goals of empowering the complainant and allowing the complainant to retain as much control over the process as possible, but no employee (other than counselors, health care providers or university chaplains) can or should promise confidentiality. Counselors, health care providers and university chaplains are voluntary reporters, not mandated by law, but University policy creates an expectation to report non-personally identifiable information.

When an employee thinks that a student may be about to report an act of sexual harassment, discrimination or assault, the employee should, if at all possible, tell the student that the University will maintain the privacy of the information, but if the student wishes to proceed with the report, the implications of sharing names of the parties involved is that the employee cannot maintain complete confidentiality and is required to report the act and may be required to reveal the names of the parties involved.

If the student wishes to report the incident while maintaining complete confidentiality, rather than speaking to the student about confidential information, the employee should offer to refer or accompany the student to **Counseling Services, Health Services or the University Chaplain at the Mercy Center** during the hours that those office are open.

Do **not** attempt resolution on your own.

Reporting Procedure – Child Abuse/Neglect

Additionally, Rhode Island law requires that all persons report known or suspected cases of child abuse and/or neglect, meaning the physical or mental injury, sexual abuse or exploitation, negligent treatment or maltreatment of a child under the age of eighteen (18). If an employee (faculty or staff member) suspects or witnesses child sexual and/or neglect abuse on campus, the employee must report it to the Rhode Island Department of Children, Youth, and Families within 24 hours of becoming aware of such abuse/neglect. Call the DCYF hotline at 1-800-RI-CHILD (1-800-742-4453). **In emergency situations, call 911 first.**

Reporting Procedure – The Clery Act

If you learn about any crime listed as a reportable crime under the Clery Act (see below), including sexual assault, you must promptly report the crime to **Campus Safety and Security (CSS), 401-341-2325. In emergency situations, call 911 first.**

The Clery Act does not establish an obligation for CSS to conduct an investigation of the reported crime, only to report the crime as a statistic following Clery Act guidelines. In some case, CSS may also be required to release a timely warning to the community about an ongoing threat to the campus community. In such cases, an initial investigation or determination of the nature of the threat may be conducted, after which a warning will be issued immediately.

Under the Clery Act, University employees are mandatory reporters for campus crimes which include any of the following:

- 1) Murder & Non-Negligent Manslaughter – The willful killing of one human being by another.
- 2) Negligent Manslaughter – The killing of another person through gross negligence.
- 3) Sex Offenses
 - a. Forcible – 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.
 - b. Nonforcible – Unlawful, nonforcible sexual intercourse.
 - i. Incest – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - ii. Statutory Rape – Nonforcible sexual intercourse with a person who is under the statutory age of consent.
- 4) Robbery – The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or putting the victim in fear.
- 5) Aggravated Assault – An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)
- 6) Burglary – The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit the same.
- 7) Motor Vehicle Theft – The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by person not having lawful access even if the vehicles are later abandoned, including joyriding.)
- 8) Arson – Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.
- 9) Hate Crimes – for Clery Act purposes include any crime listed in points (1) through (8) above and, as of 2008, larceny-theft; simple assault; intimidation; and destruction, damage, or vandalism of property in which the victim is intentionally selected because of his or her actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

- 10) Domestic Violence, including Dating Violence – Rhode Island General Statutes define domestic violence as any of the following crimes when committed by one family member or household member against another or by people who are in a substantive dating relationship.
- a. Physical assault
 - b. Sexual assault
 - c. Trespass
 - d. Kidnapping
 - e. Vandalism
 - f. Stalking
 - g. Violation of a protective order
 - h. Homicide
- 11) Stalking - Any behavior or activities occurring typically on more than one occasion that collectively instill fear and/or threaten a person’s safety, mental health or physical health.
- 12) Arrests for Weapon Law Violations – The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; and all attempts to commit any of the aforementioned.
- 13) Arrests for Drug Abuse Violations – Violations of State and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (Demerol, methadone); and dangerous nonnarcotic drugs (barbiturates, Benzedrine).
- 14) Arrests for Liquor Law Violations – The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor, maintaining unlawful drinking places, bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all other attempts to commit any of the aforementioned. (Drunkenness and driving under the influence are not included in this definition.)
- 15) Disciplinary referrals, for Weapons Law Violations, Drug Abuse Violations and Liquor Law Violations

*This policy has been drafted with the help of the Association of Title IX Administrators (ATIXA).



CONFIDENTIAL

**DISCRIMINATION/HARASSMENT/SEXUAL VIOLENCE
COMPLAINT/INCIDENT REPORT FORM**

Name: _____

Your Role at Salve Regina: Student Faculty Staff Other: _____

Your relationship to incident: Victim/Complainant Other: _____

Contact information of complainant:

Name (if different from above): _____

Telephone: _____

E-mail address: _____

Employees (other than counselors, health care providers or university chaplains) must report all details of incidents of discrimination/harassment/sexual violence/retaliation, including personally identifiable information. Others are empowered to make an initial “Jane Doe” or “John Doe” report, but may be required to disclose the parties’ identities at the Title IX Coordinator’s discretion. If you are unsure how much information you must disclose, contact the Title IX Coordinator (info below) immediately.

- Type of incident: Harassment based on (circle relevant category or categories)
Sex National Origin Race Color Religion Age Disability
- Discrimination based on (circle relevant category or categories)
Sex National Origin Race Color Religion Age Disability
- Sexual violence
- Retaliation for filing a complaint or asserting rights

