

POLICY ON SEXUAL MISCONDUCT

ARCHDIOCESE OF NEW YORK

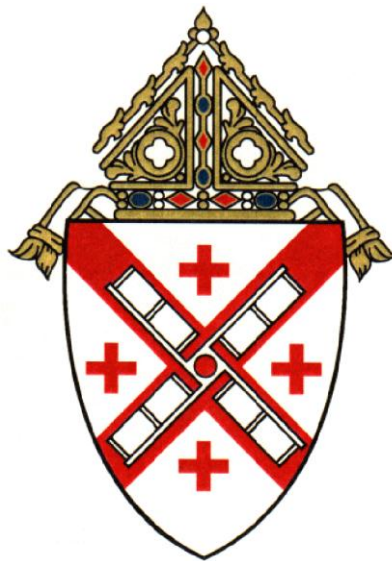


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1.0 INTRODUCTION.

The gift of human sexuality is a fundamental component of human nature. God has created us in his own image and likeness, as male and female, with a vocation to love. The proper expression of the gift of sexuality is one of the most significant ways in which we express and receive love in our relationships.

The Archdiocese of New York holds all who work in its parishes, programs, institutions, and related organizations to a high standard of virtue in their conduct, rooted in the command of Jesus Christ Himself that we love one another as He loved us (John 13:34). The Archdiocese expects its workers to be examples of the virtue of chastity -- "the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual being". *Catechism of the Catholic Church*, par. 2337.

Sadly, the gift of sexuality can be misused, which causes great harm to ourselves, to others, and to society as a whole. In particular, the sin and crime of child sexual abuse is a terrible betrayal of trust. It is utterly reprehensible, and we are dedicated to eliminating and preventing it. Other forms of sexual misconduct are also always unacceptable.

The Archdiocese is unconditionally committed to ensuring a safe environment in all of its institutions and programs. This policy is intended to establish guidelines in an effort to prevent sexual misconduct of all kinds and to define how the archdiocese will respond to any allegations brought to its attention. The archdiocese is also determined to offer assistance, support, and aid in healing to those who have been victims of these offenses, particularly when they have been committed by members of the clergy.

In the implementation of this policy, the archdiocese will be guided by the moral teachings and doctrines of the Catholic Church. It will also rely on and comply with all relevant provisions of civil and criminal laws, the *Code of Canon Law*, the *Bishops' Charter for the Protection of Children and Young People*, the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, and any directives and decrees from the competent authorities of the Holy See.

We entrust our efforts to the patronage and prayers of Saint Joseph, Guardian of the Redeemer, who, together with the Blessed Virgin Mary, protected their holy child from all manners of harm, nurturing Him with love, fidelity, and steadfastness.

2.0 DEFINITIONS.

The following definitions are for the purposes of this policy only:

- 2.1 "Child Sexual Abuse" shall include, but not be limited to:
- a. any sexual act between an adult and a minor;
 - b. soliciting sexual acts or sexual materials from a minor;
 - c. possession of child pornography;

- d. providing sexual materials to a minor;
 - e. performing a sexual act or the indecent exposure of the private or intimate parts of the body under circumstances where it is reasonably likely that the act may be witnessed by a minor; and
 - f. any offense involving sexual conduct committed against a minor that is prohibited by civil or canon law.
- 2.2 "Sexual Misconduct" shall mean any action(s) or word(s) of a sexual nature, other than child sexual abuse as defined in this policy, contrary to the moral doctrine and teachings of the Catholic Church and that cause harm to others, including, but not limited to:
- a. any sexual act with another person without consent;
 - b. any sexual conduct that is a violation of civil law;
 - c. sexual harassment as defined in this policy;
 - d. the use of archdiocesan computers or other equipment, including internet connections, to possess, obtain, or transmit sexual materials; and
 - e. sexual conduct in violation of appropriate professional standards within a pastoral or counseling relationship.
- 2.3 "Sexual Act" shall include, but not be limited to the touching or attempted touching of the sexual, private, or intimate parts of a person's body in a manner that a reasonable person would consider to be for the purpose of gratifying sexual desire or for the purpose of degrading or abusing a person.
- 2.4 "Sexual Materials" shall include, but not be limited to any kind of image, text, writing, or audio in any medium, including images that are simulated, computer-generated, altered, or animated that:
- a. depict nudity, actual or simulated sexual acts, or an explicit description of sexual subjects, and
 - b. when considered as a whole by a reasonable person, is for the purpose of sexual gratification and lacks any legitimate literary, artistic, political, educational, or scientific value.
- 2.5 "Child Pornography" shall include, but not be limited to any image of sexually explicit conduct in any medium, including images that are simulated, computer-generated, altered, or animated that depict or purport to depict a minor for purposes of sexual gratification, including, but not limited to:
- a. images of actual or simulated sexual acts in which a minor is a participant; or
 - b. lascivious exhibition of the genitals or pubic area of a minor.
- 2.6 "Sexual Harassment" is defined in accordance with applicable federal and state law, and shall be any unwelcome sexual advance(s) or request(s) for sexual favor(s) or any conduct of a sexual nature when:
- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education;
 - b. submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual; or

- c. such conduct has the purpose or effect of substantially interfering with an individual's work or educational performance or creating an intimidating, hostile, or offensive work or educational environment.
- 2.7 "Archdiocese" encompasses the Roman Catholic Archdiocese of New York in accord with canon 369 of the *Code of Canon Law*; all parishes and other inferior canonical juridical persons whose competent ecclesiastical superior is the Archbishop of New York; Archdiocese of New York, a New York corporation incorporated pursuant to the Religious Corporations Law of the State of New York; all other corporations including parish corporations having the Archbishop of New York as their presiding officer; and all institutions, agencies, and organizations sponsored by these canonical or civil entities.
- 2.8 "Personnel" includes all persons (clergy, religious, and laity) who are employed by, are under personal contract of employment with, or volunteer in any of the entities encompassed by the archdiocese. Of special concern are those in supervisory capacities or in particularly sensitive areas, such as those who are in regular contact with minors, the elderly, and the physically or mentally infirm; those who counsel others; and, generally, those who work with people who are vulnerable or less capable of protecting themselves.
- 2.9 "Reasonable Cause" means that a prudent person, in the totality of the circumstances, would conclude that there is sufficient semblance of truth that the allegation is credible and that it is not manifestly false or frivolous.
- 2.10 "Substantiated" means that, in the totality of the circumstances, there is enough credible and reliable evidence for a reasonable person to conclude that it is more likely than not that the offense occurred.
- 2.11 "Minor" means:
- a. a person who has not yet attained eighteen years of age;
 - b. an adult who habitually lacks the use of reason; or
 - c. a person of any age who lacks the capacity to give consent due to a mental or developmental condition or disability.
- 2.12 "Code of Conduct" means rules of behavior for laity or clergy that are established by the archdiocese.
- 2.13 "Safe Environment Policies" mean the policies and procedures established by the Safe Environment Office.
- 2.14 "Canon Law" shall mean the *Code of Canon Law*, the *Bishops' Charter for the Protection of Children and Young People*, the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, and directives and decrees from the competent authorities of the Holy See.
- 2.15 "Civil Law" shall mean the laws, statutes, and regulations of the civil authorities of the

United States, New York State, and any other political jurisdiction.

3.0 IMPLEMENTATION AND DISTRIBUTION OF POLICY.

- 3.1 This policy shall be binding upon all personnel of the archdiocese, whether clergy, employees, or volunteers. This policy, and any subsequent amendment(s), shall be in effect as of the date of promulgation by the Archbishop of New York.
- 3.2 This policy shall be implemented by way of codes of conduct, safe environment policies, and other rules and procedures. The provisions of these codes, policies, etc. shall be binding upon all archdiocesan personnel.
- 3.3 A copy of this policy shall be distributed to personnel of the archdiocese and shall be published on the website of the archdiocese.
- 3.4 This policy shall be incorporated into all archdiocesan personnel guidelines and printed in the *Pastoral Handbook*.
- 3.5 This policy shall be communicated to the competent ecclesiastical superiors of all members of religious institutes and societies of apostolic life who serve as personnel of the archdiocese.
- 3.6 This policy shall be an item for inclusion in the negotiations of all collectively bargained contracts of employment with the archdiocese, now and in the future.
- 3.7 Acknowledgment of receipt and understanding shall be included in any contracts of employment with the archdiocese.
- 3.8 A signed acknowledgment of receipt and understanding shall be required of all non-contractual employees and all volunteers who are in regular contact with minors. The signed acknowledgments of receipt and understanding of these guidelines will be returned to the superior or supervisor and filed in the appropriate personnel file. The required acknowledgment is attached to this policy as Appendix A.
- 3.9 Failure to execute the acknowledgement specified in section 3.8 shall not affect the obligation to comply with this policy by any archdiocesan personnel.
- 3.10 This policy does not and is not intended to create any contractual obligation, expressed or implied, on the part of the archdiocese.

4.0 EDUCATION AND TRAINING.

- 4.1 All personnel having regular contact with children must receive training in the policies of the archdiocese regarding sexual misconduct and the prevention of child sexual abuse, the relevant codes of conduct, and identifying and responding to potential incidents of sexual misconduct. This training must be completed at the beginning of a person's

volunteer service or employment and at such other intervals as are specified by the Safe Environment Office.

- 4.2 If any person fails to satisfy the training requirement, he/she may not come into contact with minors in any program or activity of the archdiocese or any of its parishes or institutions until they comply with the training requirement.
- 4.3 Education and resources about child sexual abuse and its prevention shall also be provided to minors in archdiocesan schools and religious education programs and to their parents. Parents may choose not to have their child(ren) participate in the child protection training in their school or religious education program. In such cases, resources shall be offered to the parents so that they can instruct their child(ren).
- 4.4 All training and educational materials shall be reviewed to ensure that they fully conform to the moral teachings of the Catholic Church. No educational materials may be used that fail to fully conform to the moral teachings of the Catholic Church.

5.0 SCREENING AND BACKGROUND CHECKS.

- 5.1 All personnel of the archdiocese whose position or duties place them in regular contact with minors must be screened for suitability for service. Due to the religious nature of all archdiocesan institutions, the archdiocese shall evaluate the suitability of persons applying for employment or volunteer service, and those who have already entered into such service, based on the moral teachings of the Catholic Church. The archdiocese reserves the right to make decisions about employment or volunteer service that will promote the religious principles of the Catholic Church.
- 5.2 This screening will include a background check (including checks of criminal history and sex offender registry status), which may be conducted at the time of application for service, and during the course of service, according to policies established by the Safe Environment Office.
- 5.3 All archdiocesan personnel in regular contact with minors must submit to a background check. Failure to submit full and complete information required for a background check, or any false statement made during the screening process, shall constitute grounds for termination of employment and being barred from any contact with minors in any program or activity of the archdiocese.
- 5.4 Results of background checks will be evaluated by the director of the Safe Environment Office to determine if there may be a risk to minors. The information provided and the results will be handled with the highest degree of discretion in order to protect the privacy of all personnel and to ensure that negative information is not improperly revealed. The results of background checks shall be handled according to the policies and procedures established by the Safe Environment Office and in full conformity with all applicable provisions of state and federal law.

5.5 The archdiocese may periodically conduct a new background check for personnel after the passage of not less than six years since the person's last check, or if information is received regarding an incident or criminal conviction.

6.0 REPORTING ALLEGATIONS TO ARCHDIOCESAN AUTHORITIES.

6.1 Any incident of child sexual abuse or sexual misconduct must be reported immediately to the director of the Safe Environment Office or the general counsel of the Office of Legal Affairs. All reports of alleged child sexual abuse or sexual misconduct shall be handled in accordance with the appropriate provisions of civil and canon law, this policy, and any policies or procedures established by the Safe Environment Office.

6.2 Each reported incident will be investigated promptly, with a high level of Christian care, concern and confidentiality for the alleged victim, the family of the alleged victim, the person reporting the incident, and the alleged perpetrator.

6.3 Reports will be evaluated by competent, objective persons exercising due diligence to ensure that all relevant information is obtained and considered.

6.4 Reports of child sexual abuse and sexual misconduct must be made in writing, or, if made orally, written down by an archdiocesan official and signed by the person making the complaint. The allegation should contain the following:

- a. the name and signature of the complainant;
- b. the name of the person accused or sufficient information that the accused can be identified with accuracy;
- c. a detailed description of the facts and circumstances of the incident; and
- d. whenever possible, the names and contact information of other persons who may have relevant information regarding the incident.

6.5 Anonymous reports are given due consideration and the allegations are promptly evaluated. All reasonable efforts shall be made to encourage an anonymous complainant to identify himself/herself and to cooperate with the investigation of the report.

6.6 When a report is received alleging child sexual abuse by a member of the clergy, notice shall be promptly given by the general counsel of the Office of Legal Affairs or the director of the Safe Environment Office, to the archbishop, vicar general, chancellor, and victims' assistance coordinators.

6.7 Nothing in this policy shall require or permit a priest to violate the priest/penitent relationship of the Sacrament of Confession (see *Code of Canon Law*, canons 983 and 984), or the privilege of confidential communication made to a priest in confession "or a confidence made to him in his professional character as spiritual advisor." (New York State Civil Practice Law and Rules section 4505).

6.8 Persons who report alleged incidents pursuant to this policy, and those who cooperate with investigations of such reports, shall be entitled to the protections of the archdiocesan

"whistleblower" policy. The archdiocese expressly prohibits any form of retaliation, including harassment, intimidation, or adverse employment actions against personnel who raise suspected violations of law, cooperate in inquiries or investigations, or identify potential violations of archdiocesan policies.

7.0 INITIAL EVALUATION OF ALLEGATIONS OF CHILD SEXUAL ABUSE.

- 7.1 After receiving a report of child sexual abuse, an initial evaluation shall be immediately undertaken by the Safe Environment Office or the Office of Legal Affairs, or by persons designated by them.
- 7.2 If this initial evaluation concludes that there is reasonable cause to believe the allegation, the accused person shall be relieved from the exercise of any function or responsibility or ministry, volunteer service, and/or employment in the archdiocese and placed on administrative leave pending the outcome of the internal or outside investigation, with such leave to be without pay and/or benefits as competent archdiocesan authorities may decide.
- 7.3 This initial evaluation shall not delay the reporting of an incident of child sexual abuse to the civil authorities, if required by law or this policy.

8.0 REPORTING CHILD SEXUAL ABUSE TO CIVIL AUTHORITIES.

- 8.1 Whenever there is reasonable cause to suspect that a minor has been the victim of child sexual abuse, the Office of Legal Affairs will make an immediate report to the appropriate civil authorities. If the alleged child sexual abuse was committed by a priest or deacon, this report will be made to the appropriate District Attorney's office(s).
- 8.2 Full cooperation shall be given by the archdiocese and its personnel to any investigation conducted by civil authorities. The archdiocese will suspend any internal investigation of an allegation of child sexual abuse until civil authorities either conclude their investigation or authorize the archdiocese to proceed with its own investigation. The archdiocese will not interfere in any way with any investigation being conducted by civil authorities.
- 8.3 If archdiocesan personnel receive a report of alleged child sexual abuse by any archdiocesan personnel, or a report of an alleged incident that takes place at any archdiocesan institution or program, they shall:
- a. strongly urge the alleged victim (or their parent or guardian) to immediately report the incident to the appropriate District Attorney's office or the police;
 - b. immediately notify the Office of Legal Affairs or Safe Environment Office; and
 - c. refer the alleged victim (or their parent or guardian) to the Victims' Assistance Coordinators.
- 8.4 If archdiocesan personnel receive a report of any form of alleged child abuse or neglect that occurred outside of an archdiocesan institution or program, they shall:

- a. immediately report the incident to the New York Statewide Central Register of Child Abuse and Maltreatment, as well as the appropriate police agency; and
- b. immediately notify the Safe Environment Office or Office of Legal Affairs.

9.0 MANDATORY REPORTING LAWS.

- 9.1 New York State law requires that specified persons and institutions ("mandated reporters") are required to report certain incidents where there is reasonable cause to suspect child abuse or maltreatment. Specifics of this law can be found in New York State Social Service Law.
- 9.2 Archdiocesan personnel who are mandated reporters under New York law shall fully comply with the requirements of the law. Failure to do so, in addition to any penalties that may be imposed by civil authorities, may also be grounds for disciplinary action by the archdiocese. Mandated reporters do not satisfy their obligation under New York law by reporting incidents to their supervisor.
- 9.3 Archdiocesan institutions that employ mandated reporters shall provide all such current and new employees with written information explaining the reporting requirements and shall otherwise fully comply with any applicable requirements of the mandatory reporting laws.

10.0 INTERNAL INVESTIGATION OF ALLEGATIONS.

- 10.1 An investigation into allegations covered by this policy shall be conducted by the director of the Safe Environment Office or the general counsel of the Office of Legal Affairs, or by persons designated by them. This investigation shall be conducted as expeditiously as is reasonable under the circumstances.
- 10.2 The archdiocese will suspend the internal investigation of an allegation of child sexual abuse until civil authorities either conclude their own investigation or authorize the archdiocese to proceed with its own investigation. The internal investigation of other allegations covered by this policy shall begin promptly upon the filing of a report.
- 10.3 In conducting the internal investigation, any findings and recommendations of civil authorities shall be taken into account.
- 10.4 During the internal investigation, full protection will be given to the due process rights of those who have reported incidents and those who are accused.
- 10.5 Both the complainant and the accused person have the following rights and duties:
- a. the right to have one's good name, rights, and privacy protected;
 - b. the right to offer information relevant to the report, along with the duty that any such information be accurate;
 - c. the right to have assistance of counsel, both civil and canonical; and
 - d. the right to know the status and results of the investigation.

- 10.6 Accused persons have the following additional rights and duties:
- a. the right to notice that a report has been made, provided that such notice does not interfere with any investigation being conducted by civil authorities;
 - b. the right to notice of the nature of the allegation, provided that such notice does not interfere with any investigation being conducted by civil authorities;
 - c. the right to be presumed innocent until the allegation is resolved;
 - d. the right to appeal a determination that the person committed an act of child sexual abuse or sexual misconduct;
 - e. the duty not to interfere with the investigation;
 - f. the duty not to contact the complainant while the investigation is pending;
 - g. the duty not to encourage, request, aid, or approve any of other person making contact with the complainant or any other person who is providing information to the investigation with the intent to influence their cooperation with the investigation; and
 - h. the duty not to engage in, encourage, request, aid, or approve any action that is intended to have a detrimental effect on the reputation of the complainant, or of any other person who is providing information or cooperating with the investigation.
- 10.7 When accusations are made of child sexual abuse involving personnel of the archdiocese, contact with the alleged victim and family should be promptly initiated by a Victims' Assistance Coordinator appointed by the archdiocese. Medical, psychological, and spiritual assistance and, in appropriate instances, economic assistance may be offered in the spirit of Christian justice and charity.
- 10.8 Any media contact or inquiries regarding a report of child sexual abuse by personnel of the archdiocese must be directed to the director of the Office of Communications.
- 10.9 Allegations of sexual harassment will be investigated and evaluated on a case-by-case basis. Factors to be considered in determining appropriate action include:
- a. the nature and degree of the conduct;
 - b. whether lack of consent to physical contact was involved;
 - c. whether any previous complaints of sexual harassment had been made against the person;
 - d. whether the person had been warned about inappropriate conduct prior to the incident;
 - e. the type of harassment involved (i.e., hostile environment versus a demand for sexual involvement in exchange for employment or educational-related benefits); and
 - f. where hostile environment harassment is involved, the view of the victim as to the proper penalty and an objective consideration of the conduct involved and the appropriate penalty.

11.0 RESOLUTION OF ALLEGATIONS.

- 11.1 At the completion of the internal investigation, the director of the Safe Environment Office or the general counsel of the Office of Legal Affairs shall determine whether or not there is sufficient reliable evidence that the accused person committed the alleged conduct, and shall report their conclusions and recommendations to the vicar general and chancellor.
- 11.2 If the allegation involves child sexual abuse by a clergy member, a report shall also be made by the director of the Safe Environment Office or the general counsel of the Office of Legal Affairs to the Advisory Review Board. These cases will be handled according to canon law and the procedures established for the Advisory Review Board.
- 11.3 A person shall be deemed to have committed an act of child sexual abuse or sexual misconduct if:
- a. the allegation is substantiated by sufficient credible and reliable evidence;
 - b. the accused person admits to, is found responsible for, or declines to contest an allegation of child sexual abuse brought in any civil, criminal, or administrative court, tribunal, or agency;
 - c. the accused person admits to having committed the alleged act; or
 - d. the accused person does not contest the allegation.
- 11.4 A lay person who is found to have committed an act of child sexual abuse or sexual misconduct may appeal that finding to the vicar general or chancellor.
- 11.5 If an allegation is found to have been false or unsubstantiated, the person shall be eligible to return to employment or service, subject to any reasonable conditions as are merited under the circumstances.
- 11.6 If an allegation has become a matter of public knowledge, but is determined to have been false or unsubstantiated, the archdiocese shall take appropriate corrective action to address any harm to the accused person's reputation.

12.0 PENALTIES FOR VIOLATIONS.

- 12.1 Any person who is found to have committed an act of child sexual abuse shall be permanently barred from exercising any employment, volunteer service, or ministry with any institution or program of the archdiocese.
- 12.2 If any priest or deacon is found to have committed an act of child sexual abuse, the offending priest or deacon will be subject to penalties prescribed in canon law, including permanent removal from ecclesiastical ministry and dismissal from the clerical state, if the case so warrants.
- 12.3 Any person who is found to have committed any other act of sexual misconduct shall be sanctioned with a just penalty, which may include termination of employment or

volunteer service, and being permanently barred from exercising any employment, volunteer, or ministry with any institution or program of the archdiocese.

- 12.4 In the case of a person found to have committed an act of sexual harassment, disciplinary action will be taken that is proportional to the seriousness of the offense. Corrective action will also be taken to correct any negative effects of the harassment and to prevent any future harassment.
- 12.5 Any person who is found to have violated a code of conduct or any of the safe environment policies shall be sanctioned with a just penalty, which may include being permanently barred from exercising any employment, volunteer, or ministry with any institution or program of the archdiocese.
- 12.6 A person who knowingly and maliciously makes a false allegation of child sexual abuse or sexual misconduct may be subject to appropriate disciplinary action or canonical penalties.
- 12.7 Any action to be taken against an employee of any archdiocesan institution pursuant to this policy shall be the sole responsibility of the person's legal employer. Nothing in this policy shall create a joint employer relationship of any kind with regard to any employee of any archdiocesan institution or program.

**ADDENDUM TO THE ARCHDIOCESAN
POLICY RELATING TO SEXUAL MISCONDUCT**

Effective May 14, 2002

- A. Sexual abuse of a minor is a crime. Whenever a complaint is received by an archdiocesan official that a priest or deacon has sexually abused a minor, the complainant will be strongly urged to report the complaint immediately and directly to the appropriate District Attorney's office(s).
- B. **When an archdiocesan official has reason to suspect that a priest or deacon has sexually abused a minor, the archdiocese will immediately refer the matter to the appropriate District Attorney's office(s).**
- C. The archdiocese, after consultation with the appropriate District Attorney's office(s), will take appropriate action concerning the priest or deacon as warranted, including removing the priest or deacon from his assignment, to ensure the safety of minors.

APPENDIX A

Acknowledgment of Receipt

On _____, I received a copy of the Archdiocese of New York's *Policy on Sexual Misconduct*. I have read the policy, including the reporting requirements for allegations of child abuse; understand its meaning; and agree to conduct myself in accordance with its terms.

I acknowledge that the policy is not intended to create any contractual obligations, express or implied, on the part of the Archdiocese of New York or its affiliated entities.