

# PART A: SEX/GENDER-BASED DISCRIMINATION AND HARASSMENT, SEXUAL MISCONDUCT, AND RETALIATION POLICY<sup>1</sup>

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## 1. PURPOSE AND POLICY STATEMENT

Saint Mary's College of California (also referred to as "SMC" and "the College") is a student-centered learning community committed to transformative, equitable, and inclusive teaching, the passionate pursuit of knowledge, and expansive access to a practical education that empowers students to make lasting change in the world.

We strive to provide a safe environment in which students and employees can pursue and thrive in their education and employment. We recognize laws and regulations create a baseline; the College affirms its commitment to positive compliance with such laws and the Lasallian Core Principles. It will continue to build above that baseline, creating and sustaining a safe, inclusive, and respectful environment free from sex-based discrimination, sex-based harassment, sexual violence, and retaliation. The Sex/Gender-Based Discrimination and Harassment, Sexual Misconduct, and Retaliation Policy (hereafter, "Policy") has been developed to reaffirm these principles, educate members of our campus community about these issues, and provide a means of recourse for SMC community members who believe they have experienced such behavior.

### *Title IX of the Education Amendments of 1972*

Saint Mary's College of California does not discriminate in its admission practices except as permitted by law, in its employment practices, or in its educational programs or activities based on sex/gender.

As a recipient of federal financial assistance for education activities, the College is required by Title IX of the Education Amendments of 1972 to ensure that all its education programs and activities do not discriminate based on sex/gender. The College also prohibits retaliation against any person opposing discrimination or participating in any investigation or complaint process, internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and College policy.

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<sup>1</sup> This Policy and the procedures within are implemented on an interim basis. Should a court strike down, either temporarily or permanently, any terms or provisions of these policies and procedures, the College reserves the right to make immediate modifications to the policies and procedures that take effect upon publication on our website. Further, should any court strike down any portion of the 2020 Title IX Regulations (34 C.F.R. Part 106), or should an administration order them suspended or withdrawn, the College reserves the right to withdraw these interim policies and procedures and change the policies and/or procedures or review them accordingly informed by appropriate consultation.

Any member of the SMC community who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities, and/or benefits of any member of the College community based on sex is in violation of the Sex/Gender-Based Discrimination and Harassment, Sexual Misconduct, and Retaliation Policy.

The College will act on all notices of allegations of discrimination or harassment based on sex/gender, and other forms of sexual misconduct. It will take necessary measures to end conduct that is in violation of this Policy, prevent its recurrence, and remedy its effects on individuals and the community. Within any process related to this Policy, the College provides reasonable accommodations to persons with disabilities and reasonable religious accommodations, when that accommodation is consistent with state and federal law.

Situations involving other behavior that may be in violation of other College student or employee handbook conduct policies should be reported to the Office of Community Life for matters involving students, and Human Resources for matters involving employees. For further information on Title IX, please contact the Saint Mary's College of California Title IX Coordinator or Assistant Secretary of Education within the Office for Civil Rights (OCR).

## **2. APPLICABLE SCOPE**

Saint Mary's College's primary concern is student and employee safety, and the core purpose of this Policy is the prohibition of discrimination based on sex/gender. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admissions, athletics, or employment. At other times, discrimination takes the form of harassment, or in the case of sex-based harassment, it can encompass sexual assault, dating violence, domestic violence, sexual exploitation, or stalking. When an alleged policy violation is reported, the allegations are subject to resolution using the College's Resolution Processes outlined within this Policy.

When the Respondent is a member of the SMC community, a Formal Complaint may be filed and a resolution process may be available regardless of the status of the Complainant, who may or may not be a member of the SMC community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, vendors, and contractors. The procedures below may be applied to incidents, to patterns, and/or to the institutional climate/culture, all of which may be addressed and investigated in accordance with this Policy.

The College recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of discrimination and/or harassment, as well as violations of other College policies; may involve various combinations of students, employees, and other members of the College community; and may require the simultaneous attention of multiple College departments. Accordingly, College departments may share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with

other applicable College policies, to provide uniform, consistent, efficient, and effective responses to the alleged discrimination, harassment, other misconduct, or retaliation.

### **3. DISSEMINATION**

Saint Mary's College provides this policy and procedures on its website and a link in each handbook or catalog provided to applicants for admission and employment, students, employees, and all unions holding collective bargaining agreements with the College. Saint Mary's College also provides this policy and procedures to each volunteer who regularly interacts with students and each individual or entity under contract with the College to perform any service involving regular interaction with students at the institution.

The College provides training to all employees on the identification of sexual harassment, including the person to whom it should be reported.

### **4. TITLE IX SUPPORT AND COMPLIANCE OFFICE AND COORDINATOR**

The Title IX Coordinator oversees the Title IX Support and Compliance Office ("TIXSCO") and implementation of Saint Mary's College of California's Sex/Gender-Based Discrimination and Harassment, Sexual Misconduct, and Retaliation Policy.

The Title IX Coordinator has the primary responsibility for coordinating the College's efforts related to intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent sex/gender-based discrimination and harassment, sexual misconduct, and retaliation prohibited under this Policy. The Title IX Coordinator understands how the institution's grievance procedures operate and has received training on what constitutes sexual harassment and trauma-informed investigatory and hearing practices.

Saint Mary's College of California's Title IX Coordinator's name and contact information is below.

**JESS VARGA** (*she/her*)

Title IX Coordinator and Compliance Officer

Title IX Support and Compliance Office

**Mailing Address:** 1928 St. Mary's Road, Moraga, CA 94575

**Office Location:** Dante Hall 112

**Direct Phone:** (925) 631-4055

**Direct Email:** [jev7@stmarys-ca.edu](mailto:jev7@stmarys-ca.edu)

**Website:** [www.stmarys-ca.edu/about/title-ix](http://www.stmarys-ca.edu/about/title-ix)

All parties will be provided with an electronic copy of this Policy detailing options and resources, which the Title IX Coordinator may also review with parties in person.

### ***Additional Administrative Contact Information***

Complaints or notices of alleged policy violations, concerns, or questions regarding policy and procedures, in addition to the Title IX Coordinator (contact information directly above) may also be made internally to:

**Kami Gray** (*she/her*)

Liaison for Athletics

Deputy Associate Director for Internal Operations/Senior Women's Administrator

*Office Location:* Madigan Gym, 1<sup>st</sup> Floor

*Direct Phone:* (925) 631-4521

*Direct Email:* [kgray@stmarys-ca.edu](mailto:kgray@stmarys-ca.edu)

**Travis Mason** (*he/him*)

Liaison for Students

Associate Dean of Students/Director of Community Life

*Office Location:* Ferroggiaro Hall, 2<sup>nd</sup> Floor, Suite 200

*Direct Phone:* (925) 631-4238

*Direct Email:* [tlm12@stmarys-ca.edu](mailto:tlm12@stmarys-ca.edu)

**Angela Street** (*she/her*)

Liaison for Employees

Director for Employee Relations and Leadership and Development

*Office Location:* Filippi Administration Hall, Garden Level

*Direct Phone:* (707) 415-9780

*Direct Email:* [aas32@stmarys-ca.edu](mailto:aas32@stmarys-ca.edu)

### ***Officials with Authority (OWA)***

In addition to notices or reports made to the Title IX Coordinator, or liaisons, individuals may make a report to the President of Saint Mary's College, to any member of Senior Leadership (persons in the below roles), or to any of the Academic Deans.

- President
- Executive Vice President and Provost
- Vice President for Strategic Partnerships and Advancement
- Vice President for Facilities Services
- Executive Assistance to the President
- Chief Marketing and Communications Officer
- Chief Information Officer
- Vice President for Finance and Administration
- Vice President for Intercollegiate Athletics
- Associate Vice President and Senior Diversity Officer

- Vice President for Student Life
- Vice President of Enrollment Management
- Vice President for Mission
- Academic Deans:** [www.stmarys-ca.edu/about/leadership/academic-deans](http://www.stmarys-ca.edu/about/leadership/academic-deans)

The College has also classified most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing or has experienced discrimination or harassment based on sex or gender, other sexual misconduct, and/or retaliation. The section below on Mandated Reporters details which employees have this responsibility and their duties, accordingly.

***External Reports and Inquiries:***

The College’s resolution procedures are administrative in nature and are separate and distinct from the criminal and civil legal systems. Pursuing resolution through these procedures does not preclude someone from pursuing legal action now or in the future or seeking recourse through state and federal agencies. Reports may be made externally to:

**US Department of Education  
Office for Civil Rights (OCR)**

*Regional Office Address:* 50 United National Plaza, San Francisco, CA 94102  
*Regional Office Phone:* (415) 486-5555  
*Regional Office Email:* OCR.SanFrancisco@ed.gov  
*Website:* [www.ed.gov/ocr](http://www.ed.gov/ocr)

**US Equal Employment Opportunity Commission (EEOC)**

For complaints involving employee-to-employee conduct  
*Regional Office Location:* 1301 Clay St., Suite 680-N, Oakland, CA 94612  
*Regional Office Phone:* (510) 637-3230  
*Website:* [www.eeoc.gov/field-office/oakland/location](http://www.eeoc.gov/field-office/oakland/location)

**CA Department of Fair Employment and Housing (DFEH)**

2218 Kausen Dr., Suite 100, Elk Grove, CA 95758  
*Phone:* (800) 884-1684  
*Email:* contact.center@dfeh.ca.gov  
*Website:* [www.dfeh.ca.gov/complaintprocess](http://www.dfeh.ca.gov/complaintprocess)

**5. INDEPENDENCE AND CONFLICTS OF INTEREST**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures. The members of the Title IX Team are

vetted and trained to ensure they are not biased for or against any party in a specific complaint, or for or against Complainants and/or Respondents, generally.

Concerns of bias, conflicts of interest, misconduct, or discrimination by a member of the Title IX Team should be shared directly to the Title IX Coordinator (information above). To raise a concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact Corey Cook, Executive Vice President and Provost (Filippi Administration Hall, 2<sup>nd</sup> Floor, [cdc13@stmarys-ca.edu](mailto:cdc13@stmarys-ca.edu)).

## **6. NOTICE/COMPLAINTS OF SEX/gender-BASED DISCRIMINATION AND HARASSMENT, OTHER SEXUAL MISCONDUCT, AND/OR RETALIATION**

Notice or complaints of sex-based discrimination and harassment, sexual misconduct, and/or retaliation may be made using any of the following options:

### **1. Title IX Coordinator, Liaison, Official with Authority, or Mandated Reporter (including Resident Advisors)**

A report may be made to any of these persons, which will be shared with the Title IX Coordinator. Reports may be made in-person, via email, or telephone.

### **2. Online, using the Incident Referral Form**

**LINK**

Anonymous reports are accepted but can limit the response by the College. The office will investigate to determine if parties can be identified, if not, no formal action is taken, though measures intended to protect the community may be enacted. The College tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant.

Because reporting carries no obligation to initiate formal action, and because the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.

### **3. Campus Safety**

Available 24/7/365, reports can be made in person at the Campus Safety and Transportation office in Assumption Hall, or by phone (925) 631-4282. If immediate response is needed or wanted, or assistance in reporting to local law enforcement in an emergency or urgent situation, we encourage calling Campus Safety for support.

As used in this Policy, the term “Formal Complaint” means a document or electronic submission (such as by electronic mail or through an online portal provided by the College for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations. If notice is submitted in a form that does not meet this

standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

### ***What to Expect After Reporting***

Upon receipt of a report or notice to the Title IX Coordinator, a prompt initial assessment is initiated to determine the next steps. The College recognizes that each case is unique. The goal of assessment is to provide a consistent, equitable, integrated, and coordinated response to all reports and to ensure that individuals have access to information they need about resources for support, College policies, and resolution options for resolving their concerns.

After an initial assessment, the Title IX Coordinator, or designee, will contact the Complainant (if identified) to discuss the options for next steps, including submitting a Formal Complaint (when applicable) to investigate the allegations (if not already received), and share information on resources and supportive measures.

Deciding whether to make a report and choosing how to proceed are personal decisions. At the time a report is made, an individual does not need to decide whether to request any particular course of action, nor does an individual need to know how to label what happened. Complainants do not need to submit a Formal Complaint to receive supportive measures.

The offer to meet with the Title IX Coordinator in no way represents a finding of fact or responsibility. This meeting is conducted to:

- Gain a better understanding of the nature and circumstances of the allegations.
- Assess the safety of the individual(s) and the campus community.
- Provide information about resources, procedural options for resolution, and supportive measures.
- Identify what form of resolution is desired, reasonably available, and appropriate.
- Refer the party to another office for assistance if this Policy does not apply to the incident(s) reported.

In a situation when there is a serious threat to the College community, but the Complainant cannot or does not wish to proceed with the formal resolution process, the Title IX Coordinator may initiate a Formal Complaint.

### ***Brief Overview of Resolution Processes (see Part B for additional information)***

The resolution processes outlined in Part B of this Policy have been developed to ensure fairness and consistency in the College's response and resolution of alleged sex/gender-based discrimination and harassment, and sexual misconduct involving all students and

employees (faculty *and* staff). No person's academic or employment status shall be adversely affected in any way because of participating in these procedures, nor shall any retaliatory action taken against a person using these resolution procedures be tolerated.

Following the Initial Assessment, the Title IX Coordinator will then initiate one or more of the following responses:

- Offer Supportive Measures in all cases (see Part A, Section 9)
- Offer Supportive Measures Only** because the Complainant does not want to proceed with a Formal Complaint and the College can honor this request.
- Initiate an **Informal Resolution Process** (e.g., facilitated dialogue, restorative practices, education, mediation, negotiated resolution), as appropriate and permitted by law. A Formal Complaint is required to engage in this process for Title IX Sexual Harassment.
- Initiate a **Formal Investigation and Formal Resolution Process** (upon submission of a Formal Complaint). The College uses the Formal Resolution Process to determine whether policy has been violated and is the only mechanism which the College is pursue disciplinary action. When so, the College will promptly implement effective remedies and sanctions designed to ensure that it is not deliberately indifferent to discrimination or harassment, their potential recurrence, or their effects.

Based on the facts of the report, the Title IX Coordinator may refer the party to another department for assistance if the concern does not fall under the scope of this Policy.

### ***Brief Overview of an Investigation***

Upon receiving a Formal Complaint, the Title IX Support and Compliance Office will be responsible for investigating the complaint in a manner that is prompt, equitable, thorough, reliable, and impartial. All allegations of sex/gender-based discrimination and harassment and sexual misconduct will be investigated and addressed by a trained Title IX Investigator, and may include, depending on the circumstances, an investigation conducted by an external investigator not employed by the College.

The Investigator, not the parties, is responsible for gathering relevant evidence, such as physical evidence, documentary evidence, police reports, hospital records, emails, social media posts, text messages, phone records, video recordings, etc. If a party declines to provide material information voluntarily, the College's ability to conduct a prompt, thorough, and equitable investigation may be impacted.

During the investigation and formal resolution process, both the Complainant and Respondent will have the opportunity to receive a written notice of investigation and allegations; participate in the investigation; review and present information and evidence, such as documents, communications, and other evidence, if available; suggests questions they would like asked of the other party and witnesses; be accompanied by an Advisor of



their choice to any meeting; be afforded equal access to information that will be used in resolution proceedings; receive timely notice of meetings at which their presence will be requested or required; receive written notice of the outcome, sanction(s), and rationale(s); and appeal the finding.

The Investigator has the authority and responsibility to determine which witnesses to interview and which documents to consider.<sup>2</sup> Information gathered during an investigation shall remain private and not disclosed to others who do not have a legitimate need to know.

Following the completion of the investigation, the Investigator will prepare a draft written report that contains the pertinent information obtained from the investigation and analysis of evidence. A copy of this draft report will then be provided to the Complainant and Respondent for review. Within ten (10) business days of providing the report, any additional information, questions, or information needed to correct or clarify what is written in the report may be submitted verbally or in writing by the Complainant and Respondent to the Investigator. The Title IX Coordinator may also provide recommendations for further question-asking and/or information gathering prior to a final report being completed.

Once there has been an opportunity to review the report and any additional/correcting/clarifying information has been submitted within the time allotted, a final report will be prepared by the Investigator and shared with the parties, the Title IX Coordinator, and appropriate decision-maker(s).

If, in the event, during the investigation it becomes known that either the Respondent is not the correctly alleged individual, or the behavior being alleged no longer or does not fall within the scope of this Policy, the Title IX Coordinator will communicate with the parties that the matter is being referred to the appropriate office for continued follow-up and/or that the case is being dismissed. A rationale for the referral and/or dismissal will be shared in the communication.

## **7. PREVENTION AND OUTREACH PROGRAMS**

Saint Mary's College has implemented comprehensive prevention and outreach programs to address issues of sexual harassment, sexual violence, domestic violence, dating violence, and stalking. These programs include, but are not limited to, information about the College's policies and procedures, rights and responsibilities of community members, the practical implications of an affirmative consent standard, empowerment programming, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction programs. Prevention and outreach programs are included as part of incoming student and new

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<sup>2</sup> Evidence will not be considered if it is neither relevant nor directly related to the complaint. Evidence about the Complainant's sexual predisposition or prior sexual behavior will not be considered unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

employee orientations. In addition, all employees must complete ongoing prevention and intervention training and education.<sup>3</sup>

## 8. SUPPORTIVE MEASURES

The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sex/gender-based discrimination and harassment, other sexual misconduct, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the parties, to restore and preserve access to the College's education program and activity, including measures designed to protect the safety of all parties and/or the College's educational environment and/or to deter discrimination, harassment, other misconduct, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time supportive measures are offered, the College will also inform the Complainant they may file a Formal Complaint with the College either at that time or in the future, if they have not already done so. The Title IX Coordinator, or designee, works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The College will maintain the confidentiality of all supportive measures, provided confidentiality does not impair the College's ability to provide those supportive measures. The College will act to ensure as minimal an academic/occupational impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to confidential counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program (*for employees*)
- Referral to community-based organizations and service providers
- Education to the College community and/or community subgroup(s)
- Campus housing adjustments
- Altering work arrangements for employees or student-employees
- Safety planning, such as increased security and monitoring areas
- Implementing contact limitations between parties (No Contact Directives)
- Trespass, Persona Non Grata (PNG), or "Be-On-the-Lookout" (BOLO) notices for non-affiliated/banned persons

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<sup>3</sup> California harassment law AB 1825 requires employers to provide supervisory employees (including faculty) with at least two hours of sexual harassment prevention training every two years, and non-supervisory employees at least one hour of training every other year in compliance with SB 1343.

- ❑ Transportation safety planning
- ❑ Academic support (e.g., requesting extensions of time, make-up work, or other course-related adjustments, allowing students to withdraw or take an Incomplete without financial penalty, in consultation with the instructor and department chair or dean's office)
- ❑ Timely Warnings (Clery) to address concerns about broader campus safety
- ❑ Any other actions deemed appropriate by the Title IX Coordinator

### ***Further Information on No Contact Directives***

When requested by a Complainant or otherwise determined to be appropriate, the College may issue an interim No Contact Directive (NCD) prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The College will not issue an interim mutual No Contact Directive automatically, but instead consider the specific circumstances of each situation to determine whether a mutual No Contact Directive is necessary or justifiable to protect the non-alleging party's safety or well-being, or to respond to interference with an investigation. A No Contact Directive issued *after* a decision of responsibility has been made as a remedy will be unilateral and only apply against the party found responsible.

Upon issuance of a mutual No Contact Directive, the College will provide the parties with a written justification for the directive and an explanation of the terms of the directive.

Violations of No Contact Directives or other restrictions may be referred to appropriate student and employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing complaint under this Policy.

## **9. EMERGENCY REMOVAL (formerly Interim Suspension) AND SAFETY MEASURES**

The College may become aware of a situation where an individual may pose an immediate threat or when there is a need to protect the health, safety, or welfare of other members of the campus community. The College can act to remove a **student** Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. Where the Respondent is an **employee**, existing provisions for interim action are applicable as provided in the Employee Handbook.

Violence risk analyses are performed by the Executive Director for Campus Safety and Transportation, in consultation with appropriate offices as needed. In situations where emergency removal and safety measures are used, the College will use the least restrictive emergency actions possible in light of the known circumstances and safety concerns and conduct an individualized assessment.

When an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator and Executive Director of Campus Safety and Transportation prior to such action/removal being imposed, or as soon as reasonably possible thereafter, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within two (2) business days of the notice, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted in this meeting if the Title IX Coordinator determines it equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator and Executive Director of Campus Safety and Transportation for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator, in consultation with the Executive Director of Campus Safety and Transportation, has sole discretion to implement or modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this Policy will be ground for discipline within the student or employee conduct processes, which may include expulsion or termination. As determined by the Title IX Coordinator, these actions include, but are not limited to: removing or relocating a student from a residence hall, temporarily reassigning an employee, restricting access to or use of facilities or equipment, allowing a student to withdraw or take an Incomplete grade without financial penalty, authorizing a leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/club/recreational athletics.

At the discretion of the Title IX Coordinator, in consultation with the appropriate Dean and/or Department Chair, alternative work may be pursued to ensure as minimal an academic impact on the party as possible.

When the Respondent is an employee, or a student-employee, alleged of misconduct in the course of their employment, existing provisions for interim action in the Staff, Faculty, and/or Employee Handbooks are applicable instead of the above emergency removal process.

## 10. PROMPTNESS

Once the Title IX Support and Compliance Office has received notice or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a process to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolutions outlined in the College procedures will be delayed, the College will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed because of the delay.

## 11. CONFIDENTIALITY/PRIVACY

The College wholly respects the need for privacy and discretion in the handling of all reports. Some resources can provide confidential support and information, whereas others can offer privacy and discretion when they receive a report. Individuals should make sure they have informed expectations concerning privacy and confidentiality. Below further explains levels of confidentiality and privacy.



*Confidential – Privileged* – Conversations with these resources are privileged, and absent special circumstances, may not be disclosed without consent even in a criminal or other external proceeding. Examples include:

- Licensed counselors
- Mental Health clinicians
- Attorneys providing legal advice to clients
- Ordained Clergy providing pastoral counsel



*Confidential* – These resources are designated by Saint Mary’s College as confidential and do not need to notify the Title IX Coordinator when they learn about potential incidents of sexual harassment or other sexual misconduct. However, they may be required to review information that was shared with them in a criminal or other external proceeding.



*Private* – Staff with specialized training and expertise in addressing issues of sexual harassment or other sexual misconduct, who are positioned to help students and employees, and who protect privacy and sharing information only on a need-to-know basis.<sup>4</sup> At SMC, this includes:

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<sup>4</sup> The Title IX Coordinator will inform all individuals involved in an investigation and/or hearing process of the critical importance and expectation of privacy. The College will not share the identity of a reporting party, Complainant, Respondent, or any witnesses, except as permitted by the Family Educational Rights and Privacy Act (FERPA), or as required by law to carry out the purposes of Title IX 34 C.F.R. Part 106, and/or this Policy.

- a. The College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall within this Policy, pursuant to FERPA.
- b. The privacy of employee records will be protected in accordance with Human Resources policies.

- Title IX Coordinator and Liaisons
- Title IX Team and Resolution Process Pool members

Only a small group of officials who need to know will typically be told about a complaint. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

## 12. JURISDICTION<sup>5</sup>

This Policy applies to Saint Mary's College of California's education programs and activities,<sup>6</sup> to conduct that takes place on property owned or controlled by the College, at college-sponsored events, and in buildings owned and controlled by the College's recognized student organizations. The Respondent must be a member of the SMC community for this Policy to apply.

This Policy is also applicable to the effects of off-campus misconduct that effectively deprives a person of access to the College's education program or activities. The College will extend jurisdiction to off-campus and/or online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest.

Regardless of where the conduct occurred, Saint Mary's College will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus (including virtual learning and employment environments) or in an off campus sponsored program or activity. A substantial College interest may include:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of local, state, or federal laws.
- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- Any situation that significantly imposes upon the rights, property, or achievements of others, significantly breaches the peace, and/or cause social disorder.
- Any situation that substantially interferes with the educational interests, operations, or mission of the College.

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c. The College may contact a student's parent/guardian to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

<sup>5</sup> CA Educ. Code § 66281.1 requires institutions take reasonable steps to respond to each incident of sexual harassment. The institution shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the institution's policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on- or off-campus, if, based on the allegations, there is reason to believe that the incident could contribute to a hostile environment or otherwise interfere with a student's access to education.

<sup>6</sup> Which includes the College's employees' work environment.

### ***Unknown or Unaffiliated Respondents***

If the Respondent reported is unknown, or is not a member of the SMC community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options. If criminal conduct is alleged, the College can assist in contacting local law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of the SMC community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator.

In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from the College property and/or events.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers, and to this Policy and procedures when a contract states as such.

### ***Respondent Enrolled or Employed at Another College/University***

When a Respondent is enrolled in, or employed by, another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program or other environment external to the College where nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse.

### ***Academic Freedom and Free Speech***

This Policy is not meant to inhibit or prohibit educational contact or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters protected by academic freedom. This College protects community members' expression of ideas in their teaching, learning, and research, including advocacy that may be controversial, provocative, or unpopular. Though not unlimited, this protection extends to the expression of ideas, however controversial, in the classroom, residential life, and other campus-related activities. Allegations of discrimination or harassment involving speech must be carefully considered considering students' free speech rights under California law and the College's commitment to academic freedom and free speech.

As a protected right under California law, currently enrolled students may not be subject to discipline based on speech, *unless that speech rises to a legal standard of being unprotected*. When speech or conduct is protected by academic freedom and/or the First

Amendment, though not considered a violation of this Policy, supportive measures will be offered to those impacted.

### **13. TIME LIMITS ON REPORTING**

There is no limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer within the College's jurisdiction and/or significant time has passed, the ability to investigate, and/or provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When a notice/complaint is affected by significant time delay the College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the notice/complaint (except where limited by law). Typically, this Policy is only applied to alleged incidents that occurred after August 14, 2020. Allegations occurring prior to August 1, 2024, but do not meet the 2020 Title IX Regulations jurisdiction will be handled under the 2024 Title IX Regulations resolution procedures but definitions of prohibited conduct in effect at the time of the alleged misconduct will be applied.

### **14. MANDATED REPORTING**

#### ***Duty to Report***<sup>7</sup>

The College encourages all SMC community members to report incidents of sex/gender-based discrimination or harassment and sexual misconduct to the Title IX Coordinator or any Mandated Reporter identified below. Mandated Reporters are required to share **all** details of any report of alleged sex/gender-based discrimination, harassment, or sexual misconduct that they observe or have knowledge of, even if not reported directly to them.

Individuals may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Title IX Coordinator.

**Effective January 1, 2022: Faculty and associate faculty, teachers, instructors, or lecturers (including graduate student instructors) while performing the duties of employment by the institution and Laboratory directors, coordinators, or principal investigators are considered Mandatory Reporters under CA Senate Bill No. 493.**

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<sup>7</sup> This Policy does not affect other mandated reporting obligations under CANRA (Child Abuse and Neglect Reporting Act), the Clery Act as a Campus Security Authority (CSA), or other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.



The following College employees are mandated to report possible sex-based discrimination, sex-based harassment, and other sexual misconduct incidents to the Title IX Coordinator:

- All staff and administrators, with the few exceptions listed below under *Confidential Resources*
- All Athletics Department staff, coaches, assistant coaches, and volunteer staff
- All Residential Experience staff, including Resident Directors and Resident Advisors
- Campus Recreation staff, including student staff and volunteer coaches/staff while performing the duties of employment/volunteering
- Campus Safety officers and staff
- Faculty and associate and adjunct faculty, teachers, instructors, and lecturers, including graduate student instructors, while performing the duties of employment by the institution and Laboratory directors, coordinators, or principal investigators.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or policy violations, and these employees shall immediately pass reports to the Title IX Coordinator, who will then act when an incident is reported to them.

**A. Confidential Resources<sup>8</sup>** (see section *Confidentiality/Privacy* for descriptions of the levels of privacy and confidentiality)

If a Complainant would like the details of an incident/situation to not be documented and shared with the College (and will not result in college response), they may speak with:

- On-campus licensed professional counselors at Counseling and Psychological Services (CAPS)
- On-campus health services providers
- On-campus CARE Center Director
- Ordained Clergy working within the scope of their designation or ordination
- Off-campus community-based resources
  - Licensed professional counselors or other medical providers
  - Local sexual assault crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains

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<sup>8</sup> California Educ. Code, Sect. 66281.8 (SB 493) requires on-campus confidential resources to inform students who provide information about sexual harassment of their ability to report the alleged sexual harassment to a responsible employee and direct the student to those specific reporting resources. Individuals who have a confidential relationship with a student by law is exempt from having to report sexual harassment concerns to the Title IX Coordinator, or other designated employee, unless otherwise required by law.

- Attorneys

The above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designations, except in extreme cases of immediacy of threat or danger or abuse of a minor, or when required to disclose by law or court order.

### ***Disclosures at Public Awareness Events***

Disclosures of discrimination, harassment, or sexual violence frequently are made in climate surveys, classroom writing assignments or discussions, human subjects research, or at public awareness events, such as “Take Back the Night” marches, speak-outs, or other forums. Such disclosures are *not* considered to be reportable events, nor as ‘Notice’ to the College. Such disclosures will not trigger mandatory reporting or for the College to act concerning the information. However, such events inform education and prevention efforts, and the College will continue to provide information about support, resources, and options for resolution.

## **B. Mandated Reporters and Formal Notice/Complaints**

All College employees (including student employees acting within the scope of their employment), except for those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator **all** known details made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Failure of a Mandatory Reporter to report an incident of sex-based discrimination or harassment, other sexual misconduct, or retaliation of which they become aware is a violation of the College Policy and can be subject to disciplinary action for failure to comply/failure to report.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though the College is not technically on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

It is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is **not** required to report **their own experience**, though they are, of course, encouraged to do so.

### **C. Mandated Reporting Requirements for Health Practitioners in California<sup>9</sup>**

Any licensed health care provider in the State of California providing services in a health facility, clinic, or physician's office is required to make a report if they provide *medical treatment for a physical condition* to a patient whom they know, or reasonably suspect, is the victim of assaultive or abusive conduct or a firearm injury. The health practitioner is required to make a report by telephone as soon as practically possible and send a written report to a local law enforcement agency within two working days. The report must be made to the enforcement agency that has jurisdiction over the location in which the injury was sustained. This includes any health care practitioners in the Saint Mary's College Student Health Center.

### **D. Timely Warnings – Clery Act**

Federal regulations associated with the Jeanne Clery Act require every college and university to provide “timely warnings” to their campus community after designated employees (CSAs) or Campus Safety receive notice of specified crimes that appear to pose a serious or continuous threat to students and employees. The purpose of issuing a timely warning is to alert the campus community to the occurrence of a crime and heighten safety awareness of students and employees to enable to protect themselves. When Campus Safety issues a timely warning, they will ensure that the reporting party/Complainant's name and other identifying information is not disclosed, while still providing enough information for the campus community to make important safety decisions considering the potential danger.

### **E. Federal Statistical Reporting Obligations**

Certain institutional officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

1. All “primary crimes,” which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson.
2. Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property.
3. VAWA-based crimes,<sup>10</sup> which include sexual assault, domestic violence, dating violence, and stalking.

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<sup>9</sup> See California Penal Code §§ 11160-11163.2

<sup>10</sup> VAWA is the Violence Against Women Act, enacted in 1994 and codified in 42 U.S.C. §§ 13701-14040.

4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations.

All personally identifiable information is kept private, but statistical information must be shared with Campus Safety regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include student life/student conduct staff, campus security staff, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## **15. NOTICE TO LAW ENFORCEMENT**

There may be circumstances where the College is obliged to report an incident of violent crime, hate crime, or sexual assault immediately, or as soon as practicably possible, to local law enforcement.

### ***Requests for Confidentiality with Respect to Reporting to Law Enforcement***

Complainants have the right to decide if they want to make a report to the police and/or speak with the police. Saint Mary's College will honor requests for confidentiality unless there is a significant threat to health and/or safety to an individual or the community. Institutional and local law enforcement agencies are prohibited from disclosing information about most sexual assaults if the Complainant requests anonymity. When information is shared with law enforcement, such reports will include (when the Complainant has consented to being identified):

- The name and characteristics of the reported victim
- The name and characteristics of the alleged perpetrator, if known
- Description of the incident, including location, date, and time, if known
- Any report number assigned to the police incident report documenting the investigation being conducted by the jurisdictional agency

## **16. WHEN A COMPLAINANT DOES NOT WISH TO PROCEED**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want to pursue a Formal Complaint, they may make such a request to the Title IX Coordinator, who will evaluate the request considering the duty to ensure the safety of the College community and to comply with state and/or federal law.

The Title IX Coordinator has the ultimate discretion over whether the College proceeds when the Complainant does not wish to do so and may require a violence risk assessment to help determine whether to proceed. The Title IX Coordinator may sign a Formal Complaint to initiate a resolution process after reviewing any violence risk assessment results and weighing the following factors:

- a. Multiple or prior reports alleging sexual misconduct against the Respondent.
- b. If the Respondent reportedly used a weapon, physical restraints, or engaged in battery.
- c. If the Respondent is a faculty or staff member with oversight of students.
- d. If there is a power imbalance between the Complainant and Respondent.
- e. The Complainant believes the Complainant will be less safe if the Complainant's name is disclosed, or an investigation conducted.
- f. The College can conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

In instances where the Complainant's request for confidentiality or no investigation is granted, the College will provide supportive measures to the Complainant and take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment, and prevent its recurrence without initiating formal action against the alleged Respondent or revealing the identity of the Complainant. These steps may include, but are not limited to:

- Increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred,
- Providing additional training and education materials for students and employees,
- Conducting climate surveys regarding sexual violence.

The College will also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential, as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests dates. The Complainant will be notified that the steps the College will take to respond to the complaint will be limited by the request for confidentiality.

When the Title IX Coordinator executes a written Formal Complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When the College proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in this process as they wish. The Complainant retains all rights of a Complainant under the Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony. The

College will inform the Complainant prior to initiating the Formal Resolution Process and take immediate steps to provide for the safety of the Complainant, where appropriate. In the event the Complainant requests the College inform the Respondent that the Complainant asked the College not to investigate or seek discipline, the College will honor this request.

Note that the College's ability to remedy and respond to a report may be limited if the Complainant does not want the College to proceed with an investigation and/or resolution process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow for the College to honor that request, the College may offer Informal Resolution options and supportive measures to the Complainant and the community but will not otherwise pursue formal action.

If the Complainant elects to take **no** action, they may **change** that decision and pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College and to have incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **17. FALSE ALLEGATIONS AND EVIDENCE**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This **does not** include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence; tampering with, or destroying, evidence; or deliberately misleading an official who is conducting an investigation, hearing, or informal resolution can be subject to discipline under appropriate College policies.

## **18. AMNESTY<sup>11</sup>**

Saint Mary's College encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants and witnesses are hesitant to report to college

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<sup>11</sup> CA Educ. Code, Section 66281.8 requires any disciplinary measures imposed by the institution for violations of the institution's student conduct policy at or near the time of the incident being investigated shall be consistent with paragraph (10) of subdivision (b) of Section 67386, which provides that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons. It is in the best interests of the SMC community that Complainants choose to report misconduct to the College, that witnesses come forward to share what they know, and that all parties be forthcoming during a resolution process.

To encourage reporting and participation in the process, the College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty **does not** apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive accountability system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to a Respondent with respect to a Complaint.

## 19. PRESERVATION OF EVIDENCE

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. The College will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

### Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if done.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container (if provided on by law enforcement).
- Seeking medical treatment can be essential, even if it is not for the purposes of collecting forensic evidence.

### Stalking/Dating Violence/Domestic Violence/Sex-based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.

- Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of all call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

## **20. RECORDKEEPING**

See Appendix E for Records Maintenance and Access Policy

## **21. REVISIONS OF THIS POLICY AND PROCEDURES**

This Policy and procedures supersede any previous policies addressing sex-based discrimination and harassment, other sexual misconduct, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

If government law or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, and/or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective August 1, 2024.



## PART B: PROHIBITED CONDUCT

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The sections below describe the specific forms of legally prohibited discrimination and discriminatory harassment based on sex/gender and other conduct that are prohibited under Saint Mary's College policy. When speech or conduct is protected by academic freedom and/or protected speech, it will not be considered a violation of college policy, though supportive measures will be offered to those impacted. All policies encompass actual and/or attempted offenses.

### DISCRIMINATORY HARASSMENT POLICY

#### A. Discriminatory Harassment

Discriminatory harassment – defined as *unwelcome conduct by any member or group of the community based on actual or perceived characteristics protected by this Policy or law* – is a form of prohibited discrimination under college policy.

The College will act to remedy all forms of harassment based on sex or gender, and sexual harassment, when reported, whether or not the harassment rises to the level of creating a “hostile environment.” A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities.<sup>12</sup> This discriminatory effects results from harassing verbal, written, graphic, and/or physical conduct that is severe and objectively offensive.<sup>13</sup>

When discriminatory harassment rises to the level of creating a hostile environment, the College may also impose sanctions on the Respondent through application of the appropriate resolution process.

In determining whether a hostile environment exists, the College will evaluate the totality of known circumstances include, but not limited to:

- Frequency, nature, and severity of the conduct
- Effect of the conduct on the Complainant
- Whether the conduct was directed at more than one person
- Whether the conduct arose in the context of other discriminatory conduct
- Whether the conduct unreasonably interfered with the Complainant’s educational or work performance and/or programs or activities access

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<sup>12</sup> Examples include, but are not limited to, verbal innuendos, epithets, derogatory slurs, off-color jokes, threats, suggestive or insulting sounds; visuals/non-verbals such as posters, cartoons, or drawings; offensive emails, objects, or pictures; graphic commentaries; obscene gestures; physical conduct such as unwanted physical contact including touching; interference with an individual’s normal work or movement; assault.

<sup>13</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights. Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance.](#)

- Whether the conduct implicates academic freedom or protected speech
- Other relevant factors that may arise from considerations of the reported facts and circumstances

The College reserves the right to address offensive conduct and/or harassment that:

1. Does not rise to the level of creating a hostile environment, or
2. That is of a generic nature and not based on protected status.
  - a. Addressing such conduct will not result in the imposition of discipline under college policy but may be addressed through respectful conversation, remedial actions, education, and/or effective alternate and informal resolution mechanism.

## B. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of California regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Two definitions are required by federal law, and the other by state law. While they overlap, they are not identical, and they apply as noted.

The College has adopted the following definitions of sexual harassment to address the unique environment of an academic community.

**California Sexual Harassment** definition applies to all complaints within the College's jurisdiction:<sup>14</sup>

- a. unwelcome sexual advances, or
- b. requests for sexual favors, or
- c. other verbal, visual, or physical conduct of a sexual nature,
- d. made by someone from in the work or educational setting,
- e. under any of the following conditions:
  - submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or

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<sup>14</sup> CA Educ Code § 212.5 This definition of sexual harassment will be used in addition to and when formal complaints of Title IX Sexual Harassment are mandatorily dismissed. See section on **Dismissal** outlined below.

- submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
- the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or
- submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

**Sexual Violence**, defined as:

- a. physical sexual acts,<sup>15</sup>
- b. perpetrated against a person without the person's affirmative consent.

**Title VII/FHA Sexual Harassment** applies to situations where an employee is subjected to workplace sexual harassment, or where a situation involves a residential Complainant in College-provided housing.

- a. unwelcome verbal, written, graphic, and/or physical conduct,
- b. that is so severe or pervasive and objectively offensive,
- c. on the basis of sex/gender, that
- d. unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.

**Title IX Sexual Harassment**, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This definition applies to all formal complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator. Sexual harassment includes:

Conduct on the basis of sex,<sup>16</sup> or that is sexual in nature, that satisfies one or more of the following:

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<sup>15</sup> "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30). A "sexual act" is specifically defined to include one or more of the following:

- a. Forcible Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
- b. Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable or giving consent because of age or because of temporary or permanent mental or physical incapacity.
- c. Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d. Forcible Fondling: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>16</sup> Including gender identity, gender expression, sexual orientation, and sex stereotypes.

**1) Quid Pro Quo:**

- a. an employee of the recipient,
- b. conditions, implicitly or explicitly, the provision of an aid, benefit, or service of the recipient,
- c. on an individual's participation in unwelcome sexual conduct.

**2) Sexual Harassment - Hostile Environment:**

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and,
- d. pervasive, and
- e. objectively offensive,
- f. that it effectively denies a Complainant equal access to the College's education program or activity.<sup>17</sup>

**3) Sexual Assault, defined as:**

- a. Any sexual act directed against a Complainant,<sup>18</sup>
  - without their consent, or
  - instances in which the Complainant is incapable of giving consent.
- b. **Incest:**
  - Non-forcible sexual intercourse,
  - between persons who are related to each other,
  - within the degrees wherein marriage is prohibited by California law.
- c. **Statutory Rape:**
  - Non-forcible sexual intercourse,
  - with a person who is under the statutory age of consent (18 years of age in California).

**4) Dating Violence, defined as:**

- a. Violence,

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<sup>17</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent, which is 18 in California). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspectives of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

<sup>18</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

- b. on the basis of sex,
- c. committed by a person,
- d. who is or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.
  - ii. For the purposes of this definition – (a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse, and (b) Dating violence does not include acts covered under the definition of domestic violence.

**5) Domestic Violence,<sup>19</sup> defined as:**

- a. Violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California, or
- g. by any other person against an adult or youth Complainant who is protected from that persons' acts under the domestic or family violence laws of California.

**6) Stalking<sup>20</sup> defined as:**

- a. Engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. suffer substantial emotional distress.

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<sup>19</sup> To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

<sup>20</sup> The state definition of stalking is "any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for [their] safety, or the safety of [their] immediate family is guilty of the crime of stalking," which is applicable to criminal prosecutions, but may differ from the definition used on campus to address policy violations.

For purposes of this definition –

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

The College reserves the right to impose any level of sanction, ranging from a warning up to and including suspension or expulsion/termination, for any offense under this Policy. The most serious offenses are likely to result in suspension/expulsion/termination.

C. Consent, Force, Coercion, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

1) **Affirmative Consent:**<sup>2122</sup>

- Knowing (conscious), and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

- If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
- For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions.

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<sup>21</sup> The state definition of consent is “positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act and the transaction involved.” A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is an issue. This definition of consent is applicable to criminal prosecutions for sex offenses in California but may differ from the definition used on campus to address policy violations.

<sup>22</sup> CA Educ. Code § 67386/SB 967 establishes an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity.

- Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.
- Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.
- Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
- Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse).
- A current or previous intimate relationship is not sufficient to constitute consent.
- If a person expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.
  - If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.
- Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its Policy has been violated. The existence of consent is based on the totality of the facts and circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.
- Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.<sup>23</sup>

## 2) Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

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<sup>23</sup> Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

### 3) **Coercion**

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

### 4) **Incapacitation**

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew or should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

### D. Other Prohibited Conduct<sup>24</sup>

In addition to the forms of sexual harassment described above, which are covered by Title IX, the College additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant’s actual or perceived protected characteristic.

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<sup>24</sup> The definitions in this section may apply when formal complaints of Title IX Sexual Harassment are mandatorily dismissed but may also apply in addition to the Title IX offenses listed above. See the section on Dismissal outlined below.



1) **Sexual Exploitation**, defined as:

- a. A person taking sexual advantage of another person,
- b. for the benefit of anyone other than that person,
- c. without that person's consent,
- d. including, but not limited to, any of the following acts:
  - the prostituting of another person,
  - the trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion,
  - the recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent,
  - the distribution of images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure, or
  - The viewing of another person's sexual activity or intimate parts, in a place where the other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.
  - Invasion of sexual privacy (e.g., doxing)
  - Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing, using Deepfakes)
  - Forcing a person to take an action against the person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Knowingly creating, possessing, or disseminating child pornography

## 2) **Retaliation:**

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by the College, a student, employee, or a person authorized by the College to provide aid, benefit, or service under the College's education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under this Policy, including an Informal Resolution process, or in any other appropriate steps taken by the College to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the College to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under this Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## 3) **Unauthorized Disclosure:**<sup>25</sup>

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the College; or
- publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

## 4) **Failure to Comply/Process Interference:**

- Intentional failure to comply with the reasonable directive of the Title IX Coordinator, or designee, in the performance of their official duties, including with the terms of a No Contact Directive
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an agreement achieved through informal resolution
- Intentional failure to comply with mandated reporting duties as defined by this Policy

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<sup>25</sup> Nothing in this section restricts the ability of the Parties to obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy), consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the Resolution Process.

- Intentional interference with the Title IX Resolution Process, including but not limited to:
  - Destruction of or concealing of evidence
  - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
  - Intimidating or bribing a witness or party

5) **Bullying:**<sup>26</sup>

- Repeated and/or severe aggressive behavior
- that is likely to intimidate or intentionally hurt, control, physically, or mentally diminish the Complainant,
- that is not speech or conduct that is otherwise protected by the First Amendment.

6) **Endangerment:**

- Threatening or causing harm,
- extreme verbal, emotional, or psychological abuse, or
- other conduct which threatens or endangers the health or safety of any person or damages their property.

7) **Hazing:**

- Any act or action
- which does or is likely to endanger the mental or physical health or safety of any individual
- as it relates to an individual's initiation, admission into, or affiliation with any Saint Mary's College group or organization.

Violation of any other College policies may constitute Civil Rights Offense when a violation is motivated by actual or perceived protected characteristic(s), and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from warning through expulsion/termination.

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<sup>26</sup> For Bullying, Endangerment, and Hazing, these offenses can be applied when the conduct is on the basis of protected characteristics but is not a form of Sex-Based Harassment or used as collateral allegations.

## PART C: RESOLUTION PROCEDURES

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### 1. Overview

Saint Mary's College will act on any formal notice/complaint of violation of the Sex/Gender-Based Discrimination and Harassment, Sexual Misconduct, and Retaliation Policy ("the Policy") that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The procedures below apply to all allegations of discrimination or harassment on the basis of the actual or perceived sex or gender involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations may proceed using these same grievance procedures, clarifying which Policy provisions above are applicable. Although the effect of the Title IX regulations can be confusing, these resolution procedures apply to **all** Policy offenses.

The procedures below may be used to address alleged collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. In such cases, the Title IX Coordinator may consult with the institution officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs, etc.) to provide input as needed. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the employee and student handbooks.

### 2. Notice/Complaint

Upon receipt of a Formal Complaint or notice of an alleged policy violation, the Title IX Coordinator<sup>27</sup> initiates a prompt initial assessment to determine the next steps the College needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint.

The Title IX Coordinator will then initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a Formal Complaint
- 2) An Informal Resolution (upon submission of a Formal Complaint)
- 3) A Formal Resolution Process including an investigation and a hearing (upon submission of a Formal Complaint)

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<sup>27</sup> Anywhere these procedures indicate "Title IX Coordinator," the reader should interpret that to include, "or designee."

The College uses a Formal Resolution Process as described below to determine whether the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

### 3. Initial Assessment

Following receipt of notice or a Formal Complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>28</sup> engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response,<sup>29</sup> an Informal Resolution option, or a formal investigation and resolution process.
  - If a **supportive and remedial response** is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determine appropriate supports, and implements accordingly. No Formal Resolution Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an **Informal Resolution** option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution,<sup>30,31</sup> which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If a **Formal Resolution Process** is preferred by the Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the 2020 Title IX regulations:

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<sup>28</sup> If circumstances require, the Executive Vice President and Provost will designate another person to oversee the Resolution Process should an allegation be made about the Title IX Coordinator or the Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

<sup>29</sup> Per CA Educ. Code § 66281.8, an institution will not require a Complainant enter a voluntary resolution agreement or any other form of resolution as a prerequisite to receiving remedial measures from the institution which safeguard the Complainant's access to education.

<sup>30</sup> Per the 2020 Title IX regulations, recipients are prohibited from Informal Resolution of a complaint by a student against an employee.

<sup>31</sup> Per CA Educ. Code § 66281.8, an institution may not mandate mediation to resolve allegations of sexual harassment, and will not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence. Other forms of informal resolution that are not mediation are permitted.

- If it does, the Title IX Coordinator will initiate the formal investigation and resolution process, directing the investigation to address, based on the nature of the complaint:
  - an incident, and/or
  - a pattern of alleged misconduct, and/or
  - a culture/climate issue

**A. Dismissal (Mandatory and Discretionary)<sup>32</sup>**

The College must dismiss a Formal Complaint or any allegations therein if, at any time during the resolution process, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above, even if proved
- 2) The conduct did not occur in an educational program or activity controlled by Saint Mary's College (including buildings or property controlled by recognized student organizations), and/or the College does not have control of the Respondent
- 3) The conduct did not occur against a person **in** the United States
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the College's education program or activity, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of the College<sup>33</sup>

The College may dismiss a Formal Complaint or any allegations therein if, at any time during the resolution process:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
- 2) The Respondent is no longer enrolled in or employed by Saint Mary's College
- 3) Specific circumstances prevent the college from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a Complaint may later request to reinstate it or refile it.

Upon any dismissal, the College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

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<sup>32</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR § 106.45

<sup>33</sup> Such a Complainant is still entitled to supportive measures, but the formal resolution process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

The dismissal decision is appealable by any party under the procedures for appeal. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

Please note that dismissing a complaint under the 2020 Title regulations is solely a procedural requirement under Title IX, which does not limit the College's authority to address a complaint with an appropriate process and remedies.

#### **4. Counterclaims**

The College is obligated to ensure the resolution process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Processes below. Investigations of such claims may take place after resolution of the underlying initial complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an (1) Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>34</sup>

More information about the role, responsibilities, and expectations of Advisors in meetings, interviews, and at a hearing can be found in Appendix C.

#### **6. Resolution Processes**

All resolution proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accordance with Saint Mary's College Policy.

Although there is an expectation of privacy around what investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence

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<sup>34</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

with others if they so choose, except for information the parties agree not to disclose as part of an Informal Resolution. Parties are encouraged to discuss any sharing of information with their Advisor before doing so.

The Formal Resolution Process is the College's primary approach unless Informal Resolution is elected by all parties and the College.

## **A. Informal Resolution**

If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for this type of resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in informal resolution.

It is not necessary to pursue Informal Resolution first in order to pursue the Formal Resolution Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Resolution Process. If both parties agree, the parties involved may participate in an informal resolution.

Informal resolution can include the following different approaches as described below:

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- 2) **Alternative Resolution.** When the parties agree to resolve the matter through an alternative resolution mechanism (e.g., mediation, restorative practices, facilitated dialogue, etc.), as described below, often before a formal investigation takes place.
- 3) **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the Resolution Process (similar to above, but usually occurs post-investigation).
- 4) **Negotiated Resolution.**

In all cases, the Title IX Coordinator will have the discretion to determine whether or not Informal Resolution or mediation is appropriate to the circumstances, and the particular form of Informal Resolution. The College generally will not pursue Informal Resolution in cases of sexual assault, domestic or dating violence, and stalking.

To initiate **Informal Resolution**, a Complainant needs to submit a **Formal Complaint**, as defined in this Policy. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution Process will not be considered in the Formal Resolution Process unless all parties consent.



The parties may not enter into an agreement that requires the College to impose specific sanctions, though the parties can agree to certain restrictions or other courses of action. For example, the parties cannot require a student be suspended, but the parties can agree that the Respondent temporarily or permanently withdraw. The only Informal Resolution Process that can result in sanctions levied by the institution is “Accepted Responsibility.”

The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of “Accepted Responsibility”) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

The College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

#### Alternative Resolution Approaches

Where appropriate an Alternative Resolution process can be used to resolve allegations. The Title IX Coordinator will consult with the Complainant and Respondent to determine appropriate methods of resolution. This may include counseling, training, mediation, restorative practices, or any other method appropriate to aid in resolving the complaint. All parties must agree and consent to the use of an Alternative Resolution mechanism.

The Title IX Coordinator may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties’ amenability to Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties’ motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed

- Skill of the Alternative Resolution facilitation with the type of complaint
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral to formal resolution, referral to the conduct process for failure to comply).

Results of complaints resolved by Alternative Resolution are not appealable.

#### Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Saint Mary's College policy and implements agreed-upon restrictions and remedies and determines the appropriate sanction(s) in coordination with other appropriate administrator(s), as necessary.

This result is **not** subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Resolution Process will resume at the same point where it was paused.<sup>35</sup>

#### Negotiated Resolution

The Title IX Coordinator, with the consent of the parties and in consultation with the Office of Community Life, Provost, or Human Resources, as appropriate, may negotiate

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<sup>35</sup> The parties may not want discussions that take place within Informal Resolution to be admissible in a later Formal Resolution Process, but essential facts must and do transfer from the informal process to the formal.

and implement an agreement to resolve the allegations that satisfies all parties and the College. Negotiated Resolutions are not appealable once agreed upon.

## **B. Formal Resolution Process**

The Title IX Coordinator will provide written Notice of Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Resolution Process. This facilitates the Respondent’s ability to prepare for the investigation interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that the investigation and hearing are not adversarial processes between Complainant(s), Respondent(s), and witnesses, but rather a process the College uses to comply with its obligations under existing law
- A statement that the Complainant does not have the burden to prove, nor does the Respondent have a burden to disprove, the underlying allegation(s) of misconduct
- A statement that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing if intentionally withheld
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement about the College’s policy on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor of their choosing for the hearing and suggestions for ways to identify an Advisor

- A statement informing the parties that the College’s policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how the party may request disability accommodations during the Resolution Process
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- An instruction to preserve any evidence that is directly related to the allegations

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Saint Mary’s College records, or emailed to the parties’ College-issued or designated accounts. Email is the primary method of delivery and is an official method of communication by the College. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **7. Resolution Timeline**

The College will make a good faith effort to complete the Resolution Process within a sixty to ninety (60-90) business-day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

The College will not unreasonably deny a student party’s request for an extension of a deadline related to a complaint during periods of examinations or school closures.

## **8. Appointment of Investigator(s)**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an investigator(s) to conduct the inquiry usually within two (2) to three (3) business days of determining that an investigation should proceed. The investigator(s) may be college-trained and appointed personnel, **or** an external investigator engaged by the College. All investigations will be thorough, reliable, impartial, prompt, and fair.

## **9. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another person will be assigned and the impact and the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Executive Vice President and Provost, Dr. Corey Cook ([cdc13@stmarys-ca.edu](mailto:cdc13@stmarys-ca.edu)).

The Formal Resolution Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports the Respondent engaged in a policy violation and evidence that supports the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

## **10. Investigation Timeline**

Investigations are normally completed within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **11. Investigation Process Delays and Interactions with Law Enforcement**

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

The College will communicate the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary. The College will

promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, the College will implement supportive measures as deemed appropriate.

College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **12. Investigation Process Steps**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

Complainants and Respondents will have a full and equitable opportunity, through the investigation process, to respond to the allegations, identify witnesses and questions they want to be asked of the other party/witnesses, provide evidence, and to thoroughly review and respond to all evidence on the record. The Investigator(s) and/or Title IX Coordinator will communicate regularly with the parties to update them on the progress and timing of the investigation.

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take the following steps, if not already completed (not necessarily in this order):

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties.
- Interview the Complainant and Respondent, and all available, relevant witnesses and conduct follow-up interviews as necessary; make a good faith effort to notify the parties of any meetings or interview involving the other party, in advance when possible.
- When participation of a party or witness is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Ask and allow each party the opportunity to suggest witnesses and provide documentary evidence.
- Ask and allow each party the opportunity to suggest questions they wish the investigator(s) to ask of the other party and witnesses, and document in the investigation report which questions were asked, with a rationale for any changes or omissions.

- Provide each interviewed party and witness an opportunity to review and verify the investigator's summary notes of the relevant evidence/testimony from their respective interviews and meetings.
- During the investigation, identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated; the NOIA may be amended with any additional or dismissed allegations.
- Provide regular status updates to the parties throughout the investigation.
- Provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding before the conclusion of the investigation.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Write a comprehensive draft investigation report fully summarizing the investigation, all interviews, and addressing all relevant evidence. Appendices including relevant physical, or documentary evidence will be included. The Investigator(s) will synthesize and assess evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Share the draft report with the Title IX Coordinator who will review the report and may request further investigation or review from the Investigator(s).
- Provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination. The parties will be afforded the opportunity to pose follow-up questions for any witness and the other party, submit new or additional evidence or names of witnesses, request a follow-up interview with the Investigator(s) to clarify or provide additional information that such party believes is relevant to the investigation, or to seek clarification from the Investigator(s) on aspects of the investigation report.
- Parties will have ten (10) business days to review and comment so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.
- Each copy of materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after their review and comment period.

- Share the finale report with the Title IX Coordinator for their review and feedback.
- Share the final report with all parties and their respective Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report.

### **13. Witness Role and Participation in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the College are strongly encouraged to cooperate with and participate in the College's investigation and Resolution Process. Student witnesses and witnesses from outside the Saint Mary's College community are encouraged to cooperate with college investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., externally contracted Investigator(s), study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine the timeliness, efficiency, or other reasons dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

### **14. Interview Recording**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of and consent to audio and/or video recording.

### **15. Evidentiary Considerations<sup>36</sup>**

Neither the investigation nor the hearing will consider: (1) incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; (2) the character of the parties; or (3) questions and evidence about the Complainant's sexual predisposition or prior or subsequent sexual behavior unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the

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<sup>36</sup> CA Educ. Code, Section 66281.8 provides that parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the decision-maker(s) have discretion to accept for good cause, or exclude, such new evidence offered at the hearing.



Complainant's prior sexual behavior concerning the Respondent and are offered to prove consent.

#### **16. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will assess the status of the parties to ensure continued jurisdictional coverage and refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker(s) – unless all parties and the Decision-maker(s) agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker(s) and provide a copy of the final investigation report and the file of directly related evidence.

#### **17. Hearing Decision-maker Assignment**

The Title IX Coordinator will designate the Decision-maker(s), one which will be designated as the Chair, or in when a single Decision-maker that person shall hold the position of Chair. The Decision-maker(s) will not have had any previous involvement with the complaint. The Title IX Coordinator may elect to have an alternate person sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as a Decision-maker for that complaint. Those who are serving as Advisors for any party may not serve as a Decision-maker in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator, or designee.

#### **18. Additional Evidentiary Considerations in the Hearing**

Previous disciplinary action of any kind involving the Respondent may not be used unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact and/or mitigation statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy.

## **19. Hearing Notice**

No less than ten (10) business days prior to the hearing,<sup>37</sup> the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing. Hearings may be held fully remote without compromising the fairness of the hearing.
- A list of all those who attend the hearing, along with an invitation to object to any Decision-maker based on demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least five (5) days prior to the hearing.
- Information on how the hearing will be recorded and how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of one (1) Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and the College will appoint one. Each party must have an Advisor present if they intent to cross-examine others. There are no exceptions.
- A statement that questions that are repetitive, irrelevant, or harassing are prohibited.
- A statement that parties may note an objection to questions posed.<sup>38</sup>

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<sup>37</sup> Unless an expedited hearing is agreed to by all parties.

<sup>38</sup> CA Educ. Code, Section 66281.8 provides that institutions may limit such objections to written form, and neither the Decision-maker nor the institution are obligated to respond, other than to include any objection in the record. The Decision-maker has the authority and obligation to discard or rephrase any question they deem to be repetitive, irrelevant, or harassing. In making these determinations, the Decision-maker is not bound by, but may take guidance from, the formal rules of evidence.

- ❑ A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.<sup>39</sup>
- ❑ An invitation to each party to submit to the Title IX Coordinator an impact and/or mitigation statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- ❑ An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of the academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of the term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeframe followed by the College and remain within the 60-90 business-day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in Resolution proceedings that occur during months between contracts.

## **20. Pre-Hearing Preparation**

After any necessary consultation with the parties, the Title IX Coordinator, or Chair, will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answer written questions, unless all parties and the Decision-maker(s) assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Decision-maker(s) do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.<sup>40</sup>

The Notice of Hearing will provide the name of the Decision-maker(s) and all objection to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than five (5) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

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<sup>39</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

<sup>40</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern with the Title IX Coordinator as soon as possible.

During the ten (10) business-day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair, with the assistance of the Title IX Coordinator as needed.

## **21. Pre-Hearing Meetings**

The Decision-maker(s), or solely the Chair, may convene a pre-hearing meeting(s) with the parties and invite them to submit the questions or topics they (the parties) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude an Advisor from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the same time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

## **22. Hearing Procedures**

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within this Policy.

Participants at the hearing may include the Chair, additional Decision-makers, a substitute Decision-maker, hearing facilitator, the Investigator(s) who conducted the investigation (may remain present for the duration of the hearing), the parties, the Advisor to each respective party, any called witnesses (only for the portion of time they are provided testimony), the Title IX Coordinator, College legal counsel, and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Title IX Coordinator will answer all questions of procedure but may consult with the Chair and/or legal counsel as necessary.

## **23. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

## **24. Order of the Hearing**

### *Introductions and Explanation of Procedure*

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of a Decision-maker based on bias or conflict of interest. The Title IX Coordinator will review the challenge and decide.

The Chair then conducts the hearing according to the hearing script. The hearing facilitator (who may be the Title IX Coordinator) may attend to recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process.

### *Investigator Presentation of Final Investigation Report*

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors).

Neither the parties nor the Decision-maker should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for Investigators about these assessments. If such information is introduced, the Chair will direct that to be disregarded.

### *Testimony and Questioning*

Once the Investigator(s) present(s) the report and respond(s) to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.<sup>41</sup>

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or a Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal

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<sup>41</sup> If a dismissal occurs under Title IX, and the hearing process continues, CA law does not permit questioning by Advisors. All questions must be submitted by the parties/Advisors to the Decision-maker, who will pose them if the questions are relevant.

counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

#### *Refusal to Submit to Questioning; Inferences*

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared. It is otherwise considered off-limits, and an Advisor who is an institutional employee is temporarily alleviated from mandated reporter responsibilities related to their interaction with their advisee during the Resolution Process.

#### *Hearing Recordings*

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings, and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the College will be permitted to review the recording upon request to the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **25. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. The Decision-maker(s) may consult with the hearing facilitator for procedural inquiry, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker(s) will also review any pertinent conduct history provided by the Title IX Coordinator and will determine the appropriate sanction(s), in consultation with other appropriate administrators, when necessary.

The Chair will then prepare a written statement detailing the findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

This statement is typically three to five (3-5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of the deliberations unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

## **26. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. The Title IX Coordinator will then share the letter, which includes the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors within two (2) business days of receiving the deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Saint Mary's College records, or emailed to the parties' college-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding for each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanction(s) issued which the College is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the College's educational or employment program or activity.



The Notice of Outcome will also include information on when the results are considered final by the College, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

## **27. Statement of Rights of the Parties (See Appendix B)**

### **28. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-makers(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be ground for re-opening a resolution process at any time, and/or referring that information to another process for resolution.

#### **A. Student Sanctions**

The following are the common sanctions that may be imposed upon students singly or in combination:<sup>42</sup>

- Written Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.

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<sup>42</sup> College policies on transcript notation(s) will apply to these proceedings.

- *Loss of Privileges:* Denial of specified privileges for a designated period of time. Examples include, but are not limited to, guests, computer use, housing selection, dining, participation in athletics, leadership positions, cocurricular activities, on-campus student employment, recreational, and/or social activities.
- *Required Counseling:* A mandate to meet with and engage in external counseling to better comprehend the misconduct and its effects.
- *No Contact Directive:* A directive to refrain from contact with a specific person(s) and/or location(s), includes direct or indirect communication; including, but not limited to, in-person or electronic communication, and/or through a third party.
- *Fines:* As appropriate to the violation, a fine may be imposed.
- *Restitution:* A required payment to the College and/or Complainant for loss, damage, or injury incurred as a result of a violation.
- *Disciplinary Probation:* A written reprimand for violation of institutional policy. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to violate any institutional policy, procedure, or directive during the probationary period. Probation may include denial of specified social privileges, exclusion from cocurricular activities, exclusion from designated areas of campus, no contact directives, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation for a defined period of time or through the remainder of their tenure as a student at Saint Mary's College. Readmission is not guaranteed and during the suspension period, the student is not permitted on campus and shall not participate in any off-campus College-sponsored/affiliated activity.
- *Expulsion:* Permanent termination (without refund) of student status and revocation of rights to be on campus for any reason or to attend College-sponsored/affiliated events. The College may rescind a degree following the awarding of a diploma or may withhold the awarding of a degree pending the outcome of the resolution process for a violation of this Policy, that does, or would have the potential to, result in the sanction of Expulsion. The sanction of Expulsion is noted on the student's academic transcript. Expulsion is not considered to be punitive or a deterrent in the criminal or civil sense, but rather a determination by the College that the student has demonstrated by their conduct that they are unqualified to continue as a member of the Saint Mary's College community.
- *Withholding Diploma:* The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating policy.
- *Revocation of Degree:* The College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentations, and/or other violation of

college policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

- Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate. For example, residence hall relocation, suspension, or expulsion; parent/guardian notification; programs/projects/activities.

## **B. Employee Sanctions/Responsive/Corrective Actions**

Responsive actions for an employee who has engaged in discrimination, harassment, sexual misconduct, and/or retaliation include, but are not limited to:

- Verbal or Written Warning*
- Performance Improvement Plan/Management Process*
- Enhanced Supervision, Observation, or Review*
- Required Counseling*
- Required Training or Education*
- Probation*
- Denial of Pay Increase/Pay Grade*
- Loss of Oversight or Supervisory Responsibility*
- Demotion*
- Transfer*
- Reassignment*
- Delay of (or referral for delay of) Tenure Track Progress*
- Assignment to a New Supervisor*
- Restriction of Stipends, Research, and/or Professional Development Resources*
- Suspension/Administrative Leave with Pay*
- Suspension/Administrative Leave without Pay*
- Termination*
- Other Actions:* In addition to or in place of the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

## **29. Withdrawal or Resignation Before Complaint Resolution**

### **A. Students**

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the Resolution Process typically

ends with a dismissal, as the College has lost primary disciplinary jurisdiction over the withdrawn student. However, the College may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, misconduct, and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged misconduct. The student who withdraws or leaves while the process is pending may be restricted from returning to the College until the matter is resolved. Admissions and Human Resources will be notified, accordingly.

If the student Respondent only withdraws or takes a leave of absence for a specified period of time (e.g., one semester), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to the College unless and until all sanctions, if any, have been satisfied.

## **B. Employees**

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with a dismissal, as the College has lost primary disciplinary jurisdiction over the resigned employee. However, the College may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, misconduct, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged misconduct.

The employee who resigns with unresolved allegations pending is not eligible for academic admission or rehire with the College, and the records retained by the Title IX Coordinator will reflect that status.

## **30. Appeals**

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

An Appeal Decision-maker will be designated by the Title IX Coordinator, and this person will Chair the appeal. No Appeal Decision-maker will have been previously involved in the

Resolution Process for the complaint, including in any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

#### **A. Grounds for Appeal**

Appeals are limited to the following grounds:

- 1) A procedural irregularity affected the outcome of the matter.
- 2) New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meets the grounds in this Policy, then the Appeal Chair will notify all the parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, within three (3) business days. Any such responses will be circulated for review and comment by all parties. If denied, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses and the Chair will render a decision within no more than three (3) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' college-issues email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **B. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e., not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then the emergency removal procedures for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, the College may place a hold on official transcripts, diplomas, graduations, course registration, etc. pending the outcome of the appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator, whose determination is final.

## **C. Appeal Considerations**

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for an Appeal Decision-maker to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where an error cannot be cured by the original Investigator(s) and/or Decision-maker(s), or the Title IX Coordinator (as in cases of bias). The Appeal Chair may order a new investigation and/or a new hearing with new persons serving in the Investigator and Decision-maker roles.
- The result of a remand to Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **31. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the discrimination, harassment, misconduct, and/or retaliation, remedy the effects, and prevent reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program (*for employees*)
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training

- Provision of transportation assistance
- Implementation of long-term contract limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy is found. When no policy violation is found, the Title IX Coordinator will address any remedies the College owes the Respondent to ensure no effective denial of educational access.

The College will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the College's ability to provide these services.

### **32. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College. Supervisors are expected to enforce completion of sanctions/actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **33. Recordkeeping**

The Title IX Support and Compliance Office is responsible for maintaining records relating to all reports and complaints of sex-based discrimination, sexual harassment, sexual misconduct, and the University's response. Files will be kept in accordance with Saint Mary's College record retention policy for a period of at least seven (7) years from the date of report or notice. Records may be maintained longer at the discretion of the Title IX Coordinator in cases where parties have a continuing affiliation with the College. All records pertaining to pending litigation or a request for records will be maintained in accordance with instructions from legal counsel.

The Title IX Support and Compliance Office has implemented the Record Maintenance and Access Policy to guide record management related to all reports and College responses related to reports of sex-based discrimination, sexual harassment, sexual misconduct, any situations specified in this Policy, and any and all records in accordance with state and federal laws. See Appendix E for the policy.



### **34. Disability Accommodations in the Resolution Process**

Saint Mary's College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the College's Resolution Process.

Anyone needing such accommodations or support should contact the Director of Student Disability Services, or Human Resources, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

### **35. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policies addressing sex-based discrimination, sexual harassment, sexual misconduct, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the college website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

Policy effective date: August 1, 2024

## APPENDIX A: GLOSSARY

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- **Advisor:** a person chosen by a party or appointed by the institution to accompany the party to meetings related to a resolution process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- **Appeal Decision-maker:** the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- **Complainant:** an individual who is the victim of conduct that could constitute discrimination, harassment, or misconduct as covered by this Policy.
- **Confidential Resource:** an employee who is not a Mandated Reporter of notice of discrimination, harassment, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- **Day:** means a business day when the College is in normal operation.
- **Decision-maker:** the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- **Directly Related Evidence:** evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker(s). Compared to *Relevant Evidence*, below.
- **Education Program or Activity:** locations, events, or circumstances where Saint Mary's College exercises substantial control over both the Respondent and the context in which the discrimination, harassment, misconduct, and/or retaliation occurs and includes any building owned or controlled by a student organization that is officially recognized by the College.
- **Final Determination:** a conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- **Finding:** a conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").
- **Formal Complaint:** a document submitted and signed by a Complainant or signed by the Title IX Coordinator alleging a Respondent engaged in discrimination, harassment, retaliation, or misconduct as covered by this Policy and requesting that the College investigate the allegation(s).
- **Formal Resolution Process:** a method of formal resolution designated by the College to address conduct that falls within this Policy, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45, 2020) and the Violence Against Women Act § 304 ("VAWA").
- **Informal Resolution:** a complaint resolution agreed to by the parties and approved by the Title IX Coordinator, or designee, that occurs prior to a formal Final Determination being reached.
- **Investigator:** the person(s) authorized by Saint Mary's College of California to gather facts about an alleged violation of this Policy, assess relevance of evidence, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and a file of Directly Related Evidence.
- **Mandated Reporter:** a Saint Mary's College employee who is obligated by policy to share knowledge, notice, and/or reports of sex-based discrimination and harassment, sexual misconduct, and/or retaliation with the Title IX Support and Compliance Office.<sup>43</sup>
- **Notice:** means an employee, student, or third party informs the Title IX Coordinator or other Official with Authority of an alleged occurrence of discriminatory, harassing, and/or retaliatory conduct.

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<sup>43</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandatory reporting responsibility in this Policy.

- **Official with Authority (OWA):** a college employee who has responsibility to implement corrective measures for discrimination, harassment, misconduct, and/or retaliation on behalf of the College.
- **Parties:** Complainant(s) and Respondent(s), collectively.
- **Postsecondary Institution:** a campus of the University of California, the California State University, or the California Community Colleges, a private postsecondary educational institution, or an independent institution of higher education that receives state financial assistance.
- **Recipient:** a postsecondary education program that receives federal funding.
- **Relevant Evidence:** evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- **Remedies:** post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College’s education program.
- **Resolution Process Pool:** includes any Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution support staff, and College-appointed Advisors who may perform any or all these roles (though not at the same time with respect to the same complaint).
- **Respondent:** an individual who has been reported to be alleged of conduct that constitutes discrimination, harassment, retaliation, or misconduct under this Policy.
- **Responsible Employee<sup>44</sup>:** an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority.
- **Resolution:** the result of an Informal Resolution or Formal Resolution Process.
- **Sanction:** a consequence imposed on a Respondent who is found to have violated policy.
- **Sexual Harassment:** an umbrella category including the offenses of sexual harassment, sexual assault, dating violence, domestic violence, and stalking.
- **Student:** any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with the College.
- **Title IX Coordinator:** an official designated by Saint Mary’s College to ensure compliance with Title IX and the College’s Title IX-related programs. References to the Coordinator throughout this policy may also encompass a designee of the coordinator for specific tasks.
- **Title IX Team:** refers to the Title IX Coordinator, liaisons, and members of the Resolution Process Pool, collectively.

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<sup>44</sup> As defined by CA Educ. Code § 66281.8

## APPENDIX B: STATEMENT OF RIGHTS OF THE PARTIES

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1. The right to an equitable investigation and resolution of all credible allegations of prohibited discrimination or harassment (if known) made in good faith to the College officials.
2. The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated College policies and procedures, and possible sanctions.
3. The right to timely written notice of any material adjustments to the allegations and any attendance adjustments needed to clarify potentially implicated policy violations.
4. The right to be fully informed of relevant College policies and procedures as well as the nature and extent of all alleged violations.
5. The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
6. The right to not have any personally identifiable information released to the public, without consent provided, except to the extent permitted by law.
7. The right to be treated with respect by college officials, and any persons serving in a role in the resolution process.
8. The right to have the College policies and procedures followed without material deviation.
9. The right to not be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
10. The right to not be discouraged by the College from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
11. The right to be informed by the College of options to notify proper law enforcement authorities and/or other college officials.
12. The right to have allegations of violations of this Policy responded to promptly by the College.
13. The right to be informed of available resources, such as counseling, advocacy, health care, legal, student financial aid, visa and immigration assistance, or other services, both on-campus and in the community.
14. The right to request a college-implemented No Contact Directive (or a no-trespass order against a nonaffiliated third party) when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.<sup>45</sup>
15. The right to privacy.
16. The right to be informed of available supportive measures in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report or investigation, either campus or criminal, needs to occur before this option is available. The right to have the College maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the College's ability to provide the accommodations or protective measures.

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<sup>45</sup> No Contact Directives are not part of the College disciplinary process, and they do not constitute a finding of or allegation of any violation of College policy. They are not intended to be punitive in any way. They are intended to forestall future interactions that could be interpersonal conflicts or situations that may interfere with an individual's educational or work environment.

17. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
18. The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
19. The right to not have irrelevant prior sexual history or character admitted as evidence.
20. The right to know the relevant and directly related evidence obtained, and to respond to that evidence.
21. A right to a fair opportunity for the parties to provide the Investigator(s) with their account of the alleged misconduct, and have that account be on the record.
22. The right to receive a copy of the investigation report, including all factual analysis performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) days to review the report prior to the hearing.
23. The right to respond to the investigation report, including comments, providing any additional relevance evidence, and identifying any new witnesses after having the opportunity to review the investigation report, and to have those responses on the record.
24. The right to be informed of all the names of all witnesses whose information will be used to make a finding, in advance of the hearing and that finding, where relevant.
25. The right to regular updates on the status of the investigation and/or resolution.
26. The right to have reports of alleged Policy violations addressed by persons who have received relevant and annual training.
27. The right to meetings, interviews, and/or hearings that are closed to the public.
28. The right to petition that any College representative in the process be recused on the basis of a disqualifying bias or conflict of interest.
29. The right to have an Advisor of their choice, or to have an Advisor appointed by the College to accompany and assist the party in all meetings and/or interviews associated with the investigation and resolution process.
30. The right to have an Advisor conduct cross-examination of the other party and witnesses at a hearing, if any.
31. The right to the use of the preponderance of the evidence standard to make a finding after an objective evaluation of all relevant evidence.
32. The right to be present via remote technology, during all testimony given and evidence presented during any formal resolution hearing.
33. The right to submit an impact and/or mitigation statement to be read by the Panel following a determination of responsibility of any allegation, but prior to sanctioning.
34. The right to be promptly informed in a written notice of the finding(s) and sanction(s), if any, and a detailed rationale, delivered simultaneously (without undue delay) to the parties.
35. The right to be informed in writing of when a decision by the College is considered final and any changes to the sanctions that occur before the decision is finalized.
36. The right to be informed of the opportunity to appeal the finding(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the College in this Policy.
37. The right to a fundamentally fair resolution as defined in these procedures.

# APPENDIX C: ADVISOR ROLE, RESPONSIBILITIES, AND EXPECTATIONS

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## **Right to an Advisor**

Individuals bringing forward allegations (“Complainants”), and individuals responding to allegations (“Respondents”) may select any person to be an Advisor<sup>46</sup> of their choice. Parties also have a right to choose to *not* have an Advisor in the initial stages of the resolution process, before the hearing.

The parties are expected to inform the Title IX Coordinator of the identity of their Advisor at least one (1) business day before the date of the scheduled interview or meeting (or as soon as possible if a more expeditious meeting is necessary or desired). A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. A new Release of Information for each Advisor will be required before the Title IX Coordinator, or any person involved in the resolution process, will communicate with someone identified as an Advisor. If Advisors are changes throughout the process, the Release of Information for that Advisor will null any and all prior releases to formerly identified Advisors but may be reinstated if a change back occurs.

Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor will be, at least five (5) business days before the hearing.

The College cannot guarantee equal Advisory rights, meaning that is one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

## **Support Person(s)**

The parties are encouraged to seek guidance from other individuals of their choosing for continued physical, mental, and emotional support throughout the process.

A support person, or advocate, who is **not** designated as the party’s “Advisor” may not attend interviews or be present at the hearing.

## **Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individuals a party chooses to advise, support, and consult with them through a resolution process as long as the Advisor is eligible and available.<sup>47</sup>

Parties may choose an Advisor from inside or outside of the College community.

Advisors are subject to the same College policies and administrative rules, whether they are attorneys or not.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker(s).

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<sup>46</sup> This Policy permits one (1) Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>47</sup> “Available” means the party cannot insist on an Advisor who simply does not have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a member involved in any complaint resolution or other active role in the matter, or a supervisor who must monitor and implement sanctions.

If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with Saint Mary's College policies and procedures.

### **College Process Advisor**

The Title IX Coordinator will offer to assign an Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available, the Advisor will be trained and familiar with the College's resolution processes.

College Process Advisors can provide clarification about Saint Mary's College policies and procedures, and may attend all meetings, investigation interviews, and resolution proceedings, at which their advisee is entitled to be present, and review documents and materials from the investigation, the draft and final investigation report, and any relevant documents related to the outcome of the resolution process. A College Process Advisor cannot provide legal advice.

### **Expectation of an Advisor**

Advisors should assist a party with preparing for any meeting or interview that is associated with the investigation, hearing, and/or appeal process, including accompanying the party to investigation interviews, pre-hearing meetings, and the hearing. Advisors should help their advisee prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The College generally expects an Advisor to adjust their schedule to allow them to attend College meetings/interviews/hearings when planned, but the College may change schedules meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not. The College may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

The parties are expected to respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as need, or quietly passing notes during any resolution process meeting or interview, as long as they do not disrupt the process. For longer or more involved discussions, the parties should ask for a break to allow for private consultation.

Advisors who act outside of their role or who impede or obstruct proceedings, who disseminate information to third party individuals or organizations, who represent themselves to others who are engaged in our process as having any role other than an Advisor in the process may be excluded from investigation and resolution proceedings.

Any Advisor who oversteps their role as defined by this Policy will be warned once and only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the Advisor will be asked to leave the meeting. When an Advisor is removed from a meeting, that meeting will typically continue without the Advisor present. Subsequently, the Title IX Coordinator will determine whether the Advisor may be reinstated or replaced by a different Advisor.

### **Advisor Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisee prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews and meetings to clarify and understand their role and the College's policies and procedures.

### **Advisor/College-Appointed Advisor Role in Hearings**

Under the Title IX Regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses.

If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the parties and witnesses. A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor if they wish to ask questions of the other party, Investigator(s), or witnesses.

The Advisor may not provide testimony and may not speak on behalf of the advisee during cross-examination.

If the party's Advisor will not conduct cross-examination, the party may identify an alternative Advisor, or the College will appoint an Advisor solely for the purpose of cross-examination, regardless of the participation or non-participation of the advised party in the hearing itself.

### **Sharing Information with an Advisor**

The College expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisor. The College provides a release of information form authorizing the College to share such information directly with a party's Advisor. The parties must complete and submit this form to the Title IX Coordinator before the College is able to share records with an Advisor. This form is available from the Title IX Coordinator.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College's privacy expectations.

The College's communication protocol with the Complainant or Respondent does not permit going through a representative or other intermediary because of the importance of direct communication with the Complainant or Respondent during the investigation and resolution process as described in this Policy. The College will **not** approve requests that all communication be made through an attorney Advisor, however, will make every effort to include an Advisor as a "cc" in communications related to the resolution process, if so desired by the party.

### **Assistance in Securing an External Advisor**

Parties can find legal assistance through a number of community resources listed below. A party can choose to hire independent legal counsel to serve as an Advisor. In that event, the individual is solely responsible for any fees related to the representation.

Bay Area Legal Aid may be a resource used to source information and referrals for legal representation.

- Website: <https://baylegal.org/get-help/find-an-office/contra-costa-county/>



- Phone: (510) 233-6846

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>)

For representation, Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association,
- The Times Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

## APPENDIX D: VIOLENCE RISK ASSESSMENT

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In some cases, the Title IX Coordinator may determine that a threat assessment or violence risk assessment (hereafter “VRA”) should occur, with consultation of Human Resources for situations involving an employee, or Dean of Students for those involving a student.

Threat assessment is the process by evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditions, or direct threat.

The VRA will determine whether the reported information and any other available information provides a rational basis for concluding that there is a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence.

The outcome of the VRA will be based upon a review of the totality of the known circumstances, and will be guided by a consideration of any of the following factors:

- Whether the Respondent has threatened to commit violence or any threat to physical health/safety.
- Whether aggravating circumstances or signs of violence, threats of violence, or other predatory behavior are present.
- Whether there is evidence of violence including, but not limited to, hitting, punching, slapping, kicking, restraining, strangling, and/or brandishing or using a weapon.
- Whether the report reveals a pattern or potential conduct or to assess/identify grooming behaviors.
- Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant.
- Whether the alleged conduct involved physical violence.
- Whether the Complainant is (or was at the time of the prohibited conduct) a minor (under 18 years of age).
- Whether to permit a voluntary withdrawal of the Respondent.
- Whether it is reasonable to try and resolve a complaint through informal resolution, and what modality might be most appropriate.
- Whether a Clery Act Timely Warning, and/or Trespass Order is needed.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California) nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in an allegation of failure to comply within the appropriate student or employee conduct process.

In all cases, the initial report, the assessment, and the determination of the Executive Director of Campus Safety and Transportation will be documented and retained by the College in accordance with institutional recordkeeping policies.

Following the completion of the VRA, the Executive Director of Campus Safety and Transportation, Title IX Coordinator, and other appropriate campus officials will reconvene as necessary to continue to evaluate whether any new or additional information received triggers any further obligation(s) under the Clery Act or with respect to any child protective agency and will direct the Title IX Coordinator to take such further actions, as necessary.

## APPENDIX E: RECORD MAINTENANCE AND ACCESS POLICY

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This Policy covers records maintained in any medium that are created pursuant to the College's Sex-Based Discrimination and Harassment, Sexual Misconduct, and Retaliation Policy and the regular business of the College's Title IX Support and Compliance Office. All such records are considered private or confidential by the Title IX Support and Compliance Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to discrimination, harassment, and retaliation. These records may be shared internally with those who have a legitimate educational interest and will be shared with the Parties to a Complaint under applicable federal and/or state law. The Title IX Support and Compliance Office controls the dissemination and sharing of any records under its control.

### Types of Records Covered Under this Policy

Records pertaining to the Sex-Based Discrimination and Harassment, Sexual Misconduct, and Retaliation Policy, include, but are not limited to:

- The Complaint
- NOIAs
- Documentation of notice to the institution, including incident reports
- Anonymous reports later linked to a specific incident involving known Parties
- Any documentation supporting the initial evaluation
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview recordings or transcripts)
- Dismissal-related documentation and appeals
- Documentation related to Emergency Removals, leaves, and interim actions and challenges
- Documentation related to the Resolution Process
- The Final Investigation Report and file
- Remedy-related documentation
- Appeal-related documentation
- Informal Resolution records
- Outcome Notices
- Any other records typically maintained by the College as part of the Complaint file

**Drafts and Working Files:** Preliminary drafts and “working files” are not considered records that the College must maintain, and these are typically destroyed during the course of an investigation or at the conclusion of the Resolution Process. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their author and/or the Title IX Coordinator. An example of a “working file” would be an Investigator’s notes made during an interview on topics that they want to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also not included in this category. All drafts of investigation reports shared with the Parties are maintained.

**Attorney Work-Product:** Communications from the Title IX Support and Compliance Office, or its designees, with the College’s legal counsel may be work product protected by attorney-client privilege. These privileged communications are not considered records to be maintained by the Title IX Support and Compliance Office or accessible under this Policy unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

## **Record Storage**

Records may be created and maintained in different media formats; this Policy applies to all records, irrespective of format. Security protocols will be in place to preserve the integrity and privacy of any parts of any records that are maintained by the Title IX Support and Compliance Office during the pendency of an investigation.

The Title IX Support and Compliance Office will store all records created pursuant to the Policy, regardless of the identities of the Parties. Any extra (non-essential) copies of records (both digital and paper) shall be destroyed.

## **Record Retention**

All records created and maintained pursuant to the Policy will be retained by the Title IX Support and Compliance Office for a minimum of seven (7) years in database, digital, and/or paper form. Except for records pertaining to Title IX and the Clery Act/VAWA, the Title IX Coordinator may authorize destruction or expungement acting under their own discretion, or in accordance with a duly executed and binding claim settlement and/or by court or government order.

## **Record Access**

Access to records created pursuant to the Policy or housed in the Title IX Support and Compliance Office is strictly limited to the Title IX Coordinator and any person they authorize, at their discretion, or via permission levels within the database. Those who are granted broad access to the Title IX Support and Compliance Office records are expected to access only those pertinent to their scope, work, or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this Policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant College policies and procedures.

Student Parties may request access to their complaint file. The College will provide access or a copy within 45 business days of the request. Appropriate redactions or personally identifiable information may be made before inspection, or any copy is shared.

During an investigation, materials may be shared with the Parties using secure file transmission software. The Title IX Support and Compliance Office will watermark any such file with the watermark identifying the role of the person in the process (e.g., Complainant, Respondent, Decision-maker; Complainant's Advisor) before sharing.

## **Record Security**

The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from floods, fires, and other potential emergencies. Clothing, forensic, and other physical evidence (rarely maintained by the College), shall be securely stored in the Campus Safety and Transportation office or another appropriate secure location. A catalog of all physical evidence will be retained with the Complaint file.