



SAINT MARY'S
COLLEGE OF CALIFORNIA

**Sex-Based Discrimination and Harassment,
Sexual Misconduct, and Retaliation
Policy**

Effective September 15, 2024

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PART A: SEX-BASED DISCRIMINATION & HARASSMENT, SEXUAL MISCONDUCT, & RETALIATION POLICY¹

1. Purpose and Policy Statement

Saint Mary's College of California (also referred to as "SMC" or "the College" throughout) is committed to providing an educational and employment environment that is free from discrimination based on sex,² sex-based harassment, sexual misconduct, and retaliation for engaging in a protected activity.

Saint Mary's College values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, the College has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of sex discrimination, sex-based harassment, sexual misconduct, or allegations of retaliation.

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.

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. The College also prohibits retaliation against any person opposing discrimination or participating in any discrimination 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 by College policy.

¹ 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 2024 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.

² Throughout this policy, "sex" is to be read and includes discrimination on the basis of sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

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 this Sex-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, 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 SMC 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.

2. Title IX Support and Compliance Office and Title IX Coordinator

The Title IX Coordinator oversees the Title IX Support and Compliance Office (“TIXSCO”) and the implementation of Saint Mary’s College of California’s Sex-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 discrimination, harassment, 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 resolution 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

Website: 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, or designee, may also review with parties in person.

Additional Administrative Contact Information

Complaints or notices of alleged policy violations, 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, 1st Floor

Direct Phone: (925) 631-4521

Direct Email: kgray@stmarys-ca.edu

Travis Mason (*he/him*)

Liaison for Students

Associate Dean of Students/Director of Community Life

Office Location: Ferroggiaro Hall, 2nd Floor, Suite 200

Direct Phone: (925) 631-4238

Direct Email: 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

The College recognizes that reports and/or complaints under this Policy may include multiple forms of discrimination and 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.

Situations involving behavior that may be in violation of other College student or employee handbook 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).

3. External Compliance Agency Contact Information

Concerns about the College's application of this Policy and compliance with certain federal civil rights laws may also be addressed 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

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

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

4. Mandated Reporting and Confidential Resources

All Saint Mary's College of California employees (faculty, staff, and administrators, including student-employees), other than those deemed 'Confidential Resources,' are Mandated Reporters and are expected to promptly report all known details of actual or suspected sex-based discrimination, sex-based harassment, sexual misconduct, and/or retaliation to appropriate officials, although there are some limited exceptions. Supportive measures may be offered as a result of such disclosures without formal College action.

Complainants 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.

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 will immediately pass Notice to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the Saint Mary's College reporting options for a Complainant or third party (including parents/guardians when appropriate):

A. Confidential Resources

To enable Complainants to access support and resources without providing Notice to the Title IX Coordinator, the College has designated specific employees as Confidential Resources. Those designated by Saint Mary's College as Confidential Resources are not required to report actual or suspected sex-based discrimination, sex-based harassment, sexual misconduct, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or a College official unless the Complainant has requested the information be shared.

There are three categories of Confidential Resources:

- 1) Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and counselors.
- 2) Those whom Saint Mary's College has specifically designated as confidential for purposes of providing support and resources to the Complainant.
- 3) Those conducting human subjects research as part of a study approved by the College's Institutional Review Board (IRB).

For those in category (1) above, to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These individuals will maintain confidentiality except in extreme cases of immediate threat or danger, abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Resources:

Confidential Resources

- On-campus professional counselors and staff at the Counseling and Psychological Center (CAPS) when acting in their role as a counselor
- On-campus health service providers and staff at the Student Health Center, when acting in their role as a health service provider
- Clergy/Chaplain working within the scope of their licensure or ordination

Designated Confidential Resource for Students

- Megan Gallagher, Director of the CARE (Campus Assault, Response, and Education) Center

The Employee Assistance Program (EAP) is available, free of charge, for employees.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sex-based discrimination or harassment, sexual misconduct, or retaliation of which they become aware is a violation of Saint Mary's College Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is an alleageable offense under this Policy.

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.

In addition, Complainants may speak with individuals unaffiliated with Saint Mary's College without concern that Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

5. Scope

This Policy is applicable to alleged incidents that **occur after August 1, 2024**. For alleged incidents of sex discrimination or sexual harassment occurring *prior* to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and online.

This Policy applies to all students, employees (faculty, staff, and administrators), and other individuals participating in or attempting to participate in Saint Mary's College of California programs or activities, including education and employment.

This Policy prohibits all forms of sex discrimination. Procedures may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

For policy and procedures on other forms of discrimination on the basis of protected characteristic(s), please refer to the Student Handbook for incidents involving students, and Employee Handbook for incidents involving employees.

6. Jurisdiction

This Policy applies to the College's education programs and activities (defined as including locations, events, or circumstances in which the College exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where the College has disciplinary authority, and to misconduct occurring within any building owned or controlled by a college-recognized student organization.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to the College's education program or activities. The College may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial College interest.

A substantial College interest may include:

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

For disciplinary action to be issued under this Policy, the Respondent must be a Saint Mary's College of California student or employee (faculty member, staff, or administrator) at the time of the alleged incident. If the Respondent is unknown or is not a member of the Saint Mary's College community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The College can also assist in contacting local law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers and/or to these Policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled or employed by another institution, the Title IX Coordinator can assist a Complainant in contacting 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 sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may

give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment, those effects can often be addressed remedially by the Title IX Coordinator if brought to their attention.

7. Supportive Measures

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

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, the College will inform the Complainant, in writing, they may file a Complaint with the College either at that time or in the future. The Title IX Coordinator will work with a party to ensure their wishes are considered with respect to any planned and implemented supportive measures.

The College will maintain the confidentiality of the supportive measures, provided that 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 any party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program (*for employees*)
- Referral to community-based service providers
- Referral to visa and immigration assistance
- Referral to student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation safety information and resources
- Implementing contact limitations (No Contact Directives) between the Parties

- Academic support, e.g., extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely Warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of campus
- Any other actions deemed appropriate by the Title IX Coordinator, with consultation with appropriate campus offices when applicable and necessary

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

The Parties are provided with a timely opportunity to seek modification or reversal of the College's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator.

An impartial employee other than the employee who implemented the supportive measure(s), who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measure(s) if they are inconsistent with the Title IX regulatory definition of supportive measures. The College will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances change materially. The College typically renders decisions on supportive measures within five (5) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

8. Online Harassment and Misconduct

Saint Mary's College policies are written and interpreted broadly to include online manifestations of any of the behavior prohibited in Part B of this Policy, when those behaviors occur in or have an effect on the College's education program and activities, or when they involve the use of the College's networks, technology, or equipment.

Although the College may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects. These means may include use of a resolution process to address off-campus and/or online conduct whose effects contribute to limiting or denying a person's access to Saint Mary's College education programs or activities.

9. Standard of Proof

The College uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means the College will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

10. Reports/Complaints

A **Report** provides notice to the College of an allegation or concern about sex-based discrimination or harassment, sexual misconduct, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures.

A **Complaint** provides notice to the College that the Complainant would like to initiate an investigation or other appropriate resolution procedures.

A Complainant, or individual, may initially make a report and may decide at a later time to make a Complaint.

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

- 1) **Direct to Title IX Coordinator.** File a Complaint with, or give verbal Notice directly to, the Title IX Coordinator or to any Title IX Liaison. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator or Liaison listed in this Policy. Disclosures and reports to Mandated Reporters are also considered making a Report as that information will be shared with the Title IX Coordinator.
- 2) **Online Report Form.** Submit online Notice at [Online Reporting Form](#)
 - a. Anonymous Reports are accepted, but this may give rise to a need to try to determine the Parties' identities. Anonymous Reports typically limit the College's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of an Anonymous Report.
 - b. Reporting carries no obligation to initiate a Complaint, and in most situations, the College is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as a pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the College may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, the College will maintain the privacy of the information to the extent possible. The Complainant should not fear a loss of

confidentiality by giving Notice that allows the College to discuss and/or provide supportive measures, in most circumstances.

- 3) **Campus Safety.** Contact Campus Safety as the College's 24/7/365 resource, 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 assistance with reporting to police in an emergency or urgent situation, we encourage calling Campus Safety for initial support.

11. Time Limits on Reporting

There is no time limitation on providing Notice/Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, 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 Title IX Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

12. 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 determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official investigating or supporting a resolution process can be subject to discipline under appropriate College policies.

13. Confidentiality/Privacy

The College makes every effort to preserve the Parties' privacy. The College will not share the identity of any individual who has made a Complaint of sex discrimination, sex-based harassment, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination, sex-based harassment, or retaliation; any Respondent; or any witness, **except** as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any

investigation, or resolution proceeding arising under these policies and procedures.^{3 4} Additional information regarding confidentiality and privacy can be found in Appendix C.

Unauthorized Disclosure of Information

Parties and Advisors are prohibited from unauthorized disclosure of information obtained by the College through the Resolution Process to the extent that information is the work product of the College (meaning it has been produced, compiled, or written by the College for purposes of its investigation and resolution of a Complaint). It is also a violation of College Policy to publicly disclose work product or a party's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

14. Emergency Removal/Interim Actions/Leaves

The College can act to remove a student Respondent accused of sex discrimination or sex-based harassment from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any student or other individual justifies removal. This risk analysis is performed by the Executive Director of Campus Safety and Transportation and may be done in conjunction with the Title IX Coordinator using a violence risk assessment procedure. Employees are subject to existing procedures for interim actions and leaves. See more information on these actions in Part C: Resolution Processes section 7.

15. Federal Timely Warning Obligations

The College must issue Timely Warnings for reported incidents that pose a serious or continuing threat of harm or danger to members of the Saint Mary's College community. The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

16. Amnesty

The College encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants and witnesses are hesitant to report to the College, or participate in resolution processes, because they fear 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.

³ 20 U.S.C. 1232g

⁴ 34 C.F.R. § 99

It is in the best interests of the College community that Complainants choose to report misconduct to college officials, 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 alcohol consumption or the use of illicit drugs, related to the incident, with some exceptions. Granting amnesty is a discretionary decision made by the College, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

A. Students

The College maintains an amnesty policy for students who offer help to others in need, for example, calling for medical support for overconsumption of alcohol or other drugs. Educational follow-up may take place in lieu of a disciplinary process if those assisting in obtaining help are in violation of minor policy violations. Amnesty for Respondents is at the Title IX Coordinator's discretion on a case-by-case basis.

B. Employees

Sometimes, employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. The College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

17. 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.

18. 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, sexual assault, 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) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking⁵
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

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

⁵ VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. § 13701 through § 14040.

Authorities include student affairs/student conduct staff, campus law enforcement/public safety/security, local police, 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.

19. Independence and Conflicts of Interest

The Title IX Coordinator manages all persons involved in matters to implement this Policy 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 Resolution Pool 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, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the Title IX Coordinator.

To raise a concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the Executive Vice President and Provost Corey Cook (cdc13@stmarys-ca.edu).

20. Revision of this Policy

This Policy succeeds previous policies addressing sex discrimination, sex-based harassment, sexual misconduct, and/or retaliation, though previous policies and procedures remain in effect for sexual harassment incidents occurring before August 1, 2024. The Title IX Coordinator reviews and updates these policies and procedures regularly. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws 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, or court holdings.

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

This Policy is effective September 15, 2024.

PART B: PROHIBITED CONDUCT

Prohibited Conduct

Students, staff, administrators, and faculty are entitled to an educational and employment environment that is free of sex-based discrimination and harassment, all other forms of sexual misconduct, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited sex discrimination, sex-based harassment, and retaliation that are also prohibited under Saint Mary's College of California Policy. When speech or conduct is protected by academic freedom, it will not be considered a violation of College Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be alleged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be alleged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice-versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

Violation of any other College policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s) within the scope of this Policy, and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

A. Discrimination

Discrimination is different treatment with respect to an individual's employment or participation in an education program or activity based, in whole or in part, upon the individual's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for pregnancy or pregnancy-related conditions.

Discrimination can take two primary forms:

1) **Disparate Treatment Discrimination:**

- Any intentional differential treatment of a person or persons that is based on an individual's actual or perceived protected characteristic(s) and that:
 - Excludes an individual from participation in (except as permitted by law),
 - denies the individual benefits of, or
 - otherwise adversely affects a term or condition of an individual's participation in a Saint Mary's College program or activity.

2) **Disparate Impact Discrimination:**

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
 - Excludes an individual from participation in (except as permitted by law),
 - denies the individual benefits of, or
 - otherwise adversely affects a term or condition of an individual's participation in a Saint Mary's College program or activity.

B. Discriminatory Harassment:

- Unwelcome conduct on the basis of actual or perceived protected characteristic(s), within the scope of this Policy, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from Saint Mary's College's education program or activity.

C. Sex-Based Harassment (Applicable under Title IX, Title VII, and Fair Housing Act)

Sex-Based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex,⁶ including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

1) **Quid Pro Quo:**

- An employee agent, or other person authorized by the College,
- to provide an aid, benefit, or service under the College's education program or activity,
- explicitly or impliedly conditions the provision of such aid, benefit, or service,

⁶ Throughout this Policy, "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of their actual or perceived sex or gender identity.

- on a person's participation in unwelcome sexual conduct.

2) **Hostile Environment Harassment:**

- Unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the College's education program or activity.

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 a protected characteristic. 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 Informal Resolution mechanisms.

3) **Sexual Assault:**⁷

a. **Rape:**

- Penetration, no matter how slight,
- of the vagina or anus,
- with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

b. **Fondling:**

- The touching of the private parts (breasts, buttocks, groin) of the Complainant,
- for the purpose of sexual gratification,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

c. **Incest:**

- Sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by California law.

⁷ This would include having another person touch you sexually, forcibly, and/or without their consent.

d. **Statutory Rape:**

- Sexual intercourse,
- with a person who is under the statutory age of consent, which is 18 in California.

4) **Dating Violence:**

- Violence,
- on the basis of sex,
- committed by a person,
- who is, or has been, in a social relationship of a romantic or intimate nature with the Complainant.
 - o 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. For purposes of this definition –
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

5) **Domestic Violence:**⁸

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

6) **Stalking:**

- Engaging in a course of conduct,
- on the basis of sex,
- directed at the Complainant, that

⁸ To categorize an incident as Domestic Violence under this Policy, 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.

- would cause a reasonable person to fear for the person's safety, or
- the safety of others; or
- suffer substantial emotional distress.

For the purpose 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 familiar 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.

D. Sexual Misconduct

1) Sexual Exploitation:⁹

- A person taking non-consensual or abusive advantage of another, that does not constitute Sex-Based Harassment as defined above,
- for the benefit of the Respondent or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- 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
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures/videos without the photographed/videoed person's consent), including making or posting of non-consensual pornography
- Prostituting another person

⁹ This offense is not classified under Title IX as "Sex-Based Harassment," but is included in this Policy as a tool to address a wider range of behaviors.

- 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, other 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)
- Forcing a person to take an action against that 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
- Engaging in the sex trafficking of another person
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings, or other such material
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)

Sanction Ranges

Sanctions for the above categories of Prohibited Conduct may fall within a range from a warning up to and including expulsion or termination. Sanctions can be assigned outside precedent ranges based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.

E. Other Prohibited Conduct

1) 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 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 process 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.

2) Unauthorized Disclosure:¹⁰

- 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
- Publicly disclosing institutional work product that contains personally identifiable information without authorization or consent

3) Failure to Comply/Process Interference:

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

¹⁰ 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 Advisor; or otherwise prepare for or participate in the Resolution Process.

4) **Bullying:**¹¹

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

5) **Endangerment:**

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

6) **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.

For the purposes of this definition:

- It is not necessary that a person's initiation or continued relationship is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or student organization, for an allegation of hazing to be upheld.
- It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained.
- The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered hazing.
- Hazing is not confined to the student group or student organization with which the person subjected to the hazing is associated.

Sanctions for the above-listed Other Prohibited Conduct range from warning through expulsion or termination.

F. Affirmative Consent, Force, Coercion, and Incapacitation

¹¹ For Bullying, Endangerment, and Hazing, these offenses can be applied when the conduct is on the basis of protected characteristics within this Policy but is not a form of Sex-Based Harassment, or used as collateral misconduct allegations.

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

1) **Affirmative Consent:**¹²¹³

Consent is defined as:

- 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 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.
 - 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).

¹² 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.

¹³ 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.

- 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.¹⁴

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.

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.

¹⁴ 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.

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/or 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.

PART C: RESOLUTION PROCESS FOR ALLEGED VIOLATIONS

1. Overview

Saint Mary's College of California will act on any Notice, Complaint, or Knowledge of a potential violation of the Sex-Based Discrimination and Harassment, Sexual Misconduct, and Retaliation Policy ("the Policy") that is received by the Title IX Coordinator,¹⁵ or any other Mandated Reporter by applying a resolution process as outlined below.

The procedures below apply to all allegations of sex-based discrimination, including sexual harassment, sexual violence, and retaliation, or other prohibited conduct outlined in Part B of this Policy involving students, staff, administration, faculty members, or third parties.

2. Notice/Complaint

Upon receipt of Notice, a Complaint, or Knowledge of an alleged Policy violation, the Title IX Coordinator will initiate a prompt initial evaluation to determine the College's next steps. The Title IX Coordinator will contact the Complainant/source of the Notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

3. Collateral Misconduct

Collateral misconduct is defined to include potential violations of other College policies not incorporated in this Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be included along with potential violations of this Policy, to be resolved jointly under these Procedures.

In such circumstances, the Title IX Coordinator may consult with College officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what allegations should be included, but the exercise of collateral allegations under these procedures is within the discretion of the Title IX Coordinator. All other allegations of misconduct unrelated to incidents covered by this Policy will typically be addressed separately through procedures described in the student and employee handbooks.

¹⁵ Anywhere this Policy indicates "Title IX Coordinator" should be read as, "or designee."

4. Initial Evaluation

The Title IX Coordinator¹⁶ conducts an initial evaluation typically within three (3) business days of receiving Notice/Complaint/Knowledge of alleged misconduct. The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of this Policy.
 - If the conduct may not reasonably constitute a violation of this Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another College process, if applicable.
- Determining whether the College has jurisdiction over the reported conduct, as defined in this Policy.
 - If the conduct is not within Saint Mary's College's jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate College office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the resolution process, including supportive and remedial response, an Informal Resolution option, and/or the Administrative Resolution option described below.
- Determining whether the Complainant wishes to make a Complaint.
- Notifying the Respondent of the resolution processes, including a supportive and remedial response, an Informal Resolution option, or the Administrative Resolution option described below, if/when a Complaint is made.

Helping a Complainant to Understand Options

If the Complainant indicates they wish to initiate a Complaint (in a manner that can reasonably be construed as reflecting intent to make a Complaint), the Title IX Coordinator will help to facilitate the Complaint, which will include:

- Working with the Complainant to determine whether the Complainant wishes to pursue one of three options:
 - A supportive and remedial response, and/or
 - Informal Resolution, or
 - Formal Resolution

¹⁶ If circumstances require, the President will designate another person to oversee the Resolution Process should an allegation be made about the Title IX Coordinator or the Title IX Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

The Title IX Coordinator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation. If the Complainant elects for a resolution process, and the Title IX Coordinator has determined this Policy applies and the College has jurisdiction, they will route the matter to the appropriate Resolution Process, will provide the Parties with a Notice of Investigation and Allegation(s) ("NOIA"), and will initiate an investigation consistent with these Procedures.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Title IX Coordinator will assess whether the matter is suitable for Informal Resolution and refer the matter, accordingly.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Title IX Coordinator), though the Complainant can elect to initiate one later, if desired.

Title IX Coordinator Authority to Initiate a Complaint

If the Complainant does not wish to file a Complaint, the Title IX Coordinator, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the Title IX Coordinator will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if the College cannot ensure equal access without initiating a Complaint. The Title IX Coordinator will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to proceed with initiation of a Complaint,
- The Complainant's reasonable safety concerns regarding initiation of a Complaint,
- The risk that additional acts of discrimination would occur if a Complaint were not initiated,
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence,
- The age and relations of the Parties, including whether the Respondent is a Saint Mary's College employee,
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals,
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred,
- Whether the College could end the alleged discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Title IX Coordinator may consult with appropriate College employees, and/or conduct a violence risk assessment to aid their determination whether to initiate a Complaint.

When the Title IX Coordinator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy and can choose what level of participation they have in a resolution process.

5. Complaint Dismissal

The College **may** dismiss a Complaint if, at any time during the initial evaluation or a resolution process, one or more of the following grounds are met:

- 1) the College is unable to identify the Respondent after taking reasonable steps to do so,
- 2) the College no longer enrolls or employs the Respondent,
- 3) a Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Title IX Coordinator declines to initiate a Complaint, and/or
- 4) the College determines that conduct alleged in the Complaint would not constitute a Policy violation, even if proven.

The Decision-maker(s) can recommend dismissal to the Title IX Coordinator, if they believe the grounds are met. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Upon any dismissal, the College will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, the College will also notify the Respondent of the dismissal.

The dismissal is appealable by any party.

6. Appeal of Complaint Dismissal

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed in writing within **three (3) business days** of the notification of the dismissal.

The Title IX Coordinator will notify the Parties of any receipt of appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Title IX Coordinator must then provide the Respondent with a NOIA and will inform the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, the College will:

- Implement dismissal appeal procedures equally for the Parties,
- Assign a trained Dismissal Appeal Decision-maker who did not take part in an investigation of the allegations or dismissal of the Complaint,
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal, and
- Notify the Parties of the result of the appeal and the rationale for the result.

The grounds for dismissal appeals are limited to:

- 1) Procedural irregularity that would change the outcome
- 2) New evidence that would change the outcome and that was not reasonably available when the dismissal was decided
- 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 individual Complainant or Respondent that would change the outcome.

Upon receipt of a dismissal appeal in writing from one or more Parties, the Title IX Coordinator will share the petition with the other party and provide **three (3) business days** for other Parties to respond. The appeal should specify at least one of the grounds above and provide any reasons and/or supporting evidence for why the ground is met. This appeal will be provided in writing to the other Party(ies), and the Title IX Coordinator, who will be invited to respond in writing. At the conclusion of the response period, the Title IX Coordinator will forward the appeal, as well as any response provided by the other Party(ies) to the Dismissal Appeal Decision-maker for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Dismissal Appeal Decision-maker, and the Parties, their Advisors, and the Title IX Coordinator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in this Policy, then the Dismissal Appeal Decision-maker will notify all Parties and their Advisors, and the Title IX Coordinator, of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Decision-maker has **three (3) business days** to review and decide on the appeal, though extensions can be granted at the discretion of the Title IX Coordinator, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

7. Emergency Removal of a Student

The College may emergency remove a student accused of Sex Discrimination or Sex-Based Harassment upon receipt of Notice/Knowledge/Complaint, or at any time during a resolution process. Prior to an emergency removal, the College will conduct an individualized risk assessment and may remove the student if that assessment determines that an *imminent and serious* threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action.

When an emergency removal is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal within **two (2) business days** of the notification. Upon receipt of a challenge, the Title IX Coordinator will meet with the student (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal should not be implemented or should be modified. The Executive Director of Campus Safety and Transportation, Dean of Students, or designee(s), may be invited to attend this meeting.

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, should be modified, or lifted. When this meeting is not requested within two (2) business days, objections to the emergency removal will be deemed waived. A student can later request to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator for review.

An emergency removal may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing, typically within two (2) business days of the review meeting.

8. Placing an Employee on Leave

When the Respondent is an employee, or a student-employee, accused of misconduct in the course of their employment, existing provisions for interim action are typically applicable instead of the above emergency removal process.

9. Counter-Complaints

The College is obligated to ensure that resolution processes are not abused for retaliatory purposes. Although the College permits the filing of Counter-Complaints, the Title IX Coordinator will use an initial evaluation, described above, to assess whether the allegations in the Counter-Complaint are made in good faith. When Counter-Complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of this Policy.

Counter-Complaints determined to have been reported in good faith will be processed using a Resolution Process below. At the Title IX Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

10. Advisors in the Resolution Process

The parties may each have one (1) Advisor of their choice present with them for all meetings and interviews within the Resolution Process, if they so choose. The parties may select whomever they wish to serve as their Advisor so long as the Advisor is eligible and available.¹⁷

More information about the role, responsibilities, and expectations of Advisors in meetings or any other steps in a resolution process can be found in Appendix D.

11. Resolution Options Overview

This Resolution Process, consisting of Informal Resolution and Administrative Resolution, is the College's chosen approach to addressing forms of Sex Discrimination, Sex-Based Harassment, other forms of Sexual Misconduct, and Retaliation related to such cases. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator's discretion.

Resolution proceedings are confidential. All individuals present, or communicated with, at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings and communications in accordance with College Policy.

¹⁷ "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 Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

A. Informal Resolution

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a final determination, or the Title IX Coordinator may offer the option to the Parties, in writing. 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.

Before initiation of Informal Resolution, the College will provide the Parties with a NOIA that explains:

- The allegations,
- The requirements of the Informal Resolution process,
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume the College's Administrative Resolution process,
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution will preclude the Parties from initiating or resuming the Administrative Resolution process arising from the same allegations,
- The potential terms that may be requested or offered in an Informal Resolution Agreement, including notification that an Informal Resolution Agreement is binding only on the Parties, and
- What information the College will maintain, and whether and how it could disclose such information for use in its Resolution Process.

The College offers four (4) categories of Informal Resolution:

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
- 2) **Educational Conversation.** When the Title IX Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct.
- 3) **Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and the College are agreeable to the resolution terms.
- 4) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to,

mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker for the matter.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution. Any party participating in Informal Resolution can withdraw from the Informal Resolution at any time and initiate or resume an Administrative Resolution.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution, should Informal Resolution not be successful, unless agreed to by all Parties.

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

Further Information on Categories of Informal Resolution

(1) Supportive Resolution

The Title IX Coordinator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to the College's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Title IX Coordinator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Title IX Coordinator does not initiate a Complaint.

(2) Educational Conversation

The Complainant may request that the Title IX Coordinator address their allegations by meeting (with or without the Complainant) with the Respondent to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Title IX Coordinator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of recurrence of any behaviors that may not align with Policy.

(3) Accepted Responsibility¹⁷

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Title IX Coordinator will determine whether all Parties and the College are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of College Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of the resolution, the Administrative Resolution Process will either commence or resume.¹⁸

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the conduct, both on the Complainant and the College community.

(4) Alternative Resolution

The institution offers a variety of Alternative Resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative Resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Title IX Coordinator or other appropriate College officials; and other

¹⁷ In Section 20 below, there is a description of a process to waive the decision-making step of the Resolution Process if a Respondent decides to admit to violating the alleged Policies. That section and this one are similar, but there are meaningful differences. In this section, the Parties must agree to the resolution, and the Respondent in essence self-sanctions as part of the Informal Resolution by agreeing to voluntarily comply with whatever the terms are to which the Parties agree. Section 20, in contrast, is unilateral. Neither the Complainant nor the Title IX Coordinator determine eligibility. It is simply a waiver of steps in the process by the Respondent, who can admit violations and accept sanctions assigned by the Decision-maker(s), if they choose to. No Complainant approval is sought or needed. Under Section 20, the outcome involves sanctioning imposed by the College, rather than an agreement to self-sanction, as outlined in this section.

¹⁸ Essential facts must and do transfer from any informal process to subsequent resolution proceedings.

forms of resolution that can be tailored to the needs of the Parties. Some Alternative Resolution mechanisms will result in an agreed-up outcome, while others are resolved through dialogue. All Parties must consent to the use of an Alternative Resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an Alternative Resolution process.

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
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the Alternative Resolution facilitator 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 (e.g., time, staff, etc.)

The Title IX Coordinator has the authority to determine whether Alternative Resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the Alternative Resolution process. The Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the Alternative Resolution.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive or disciplinary actions (e.g., dissolution of the Agreement and resumption of the Administrative Resolution Process, referral to a conduct process for failure to comply, application of the enforcement terms of the Agreement, etc.).

The results of Complaints resolved by Alternative Resolution are not appealable.

If an Informal Resolution option is not available or selected, the College will initiate or continue an investigation and subsequent Administrative Resolution Process to determine whether the Policy has been violated.

B. Administrative Resolution Process (see Section 22 below)

12. Resolution Process Pool

The Resolution Process relies on a pool of staff and administrators (“the Pool”) to carry out the process.¹⁹

A. Pool Member Roles

Members of the Pool are trained annually, and may serve in the following roles, at the discretion of the Title IX Coordinator:

- Intake of and initial guidance pertaining to Complaints
- College-Appointed Advisor
- Informal Resolution Facilitator
- Perform or assist with initial evaluation
- Investigator
- Emergency Removal Challenge Decision-maker
- Supportive Measures Challenge Decision-maker
- Administrative Resolution Decision-maker
- Complaint Dismissal Appeal Decision-maker
- Resolution Appeal Decision-maker

B. Pool Member Appointment

The Title IX Coordinator, in consultation with senior administrators as necessary, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed in different Complaints, the College can also designate permanent roles for individuals in the Pool.

13. Notice of Investigation and Allegation(s)

Prior to an investigation, the Title IX Coordinator will provide the Parties with a detailed written Notice of Investigation and Allegation(s) (“NOIA”). Amendments and updates to the NOIA may be made as an investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. For climate/culture

¹⁹ Externally contracted, trained third-party professionals may also be used to serve in any of these roles.

investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA typically includes:

- 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/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- 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 the Investigator(s) may have
- 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 determinations of responsibility are made at the conclusion of the process and the Parties will be given an opportunity during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share College work product obtained through the Resolution Process
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
- 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 a party may request disability accommodations or language assistance during the Resolution Process
- A link to the College's VAWA Brochure
- An instruction to preserve any evidence directly related to the allegations

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(es) of the Parties as indicated in official College records, or emailed to the Parties' College-issued email or designated account. Email is the primary method of delivery and is considered an official method of communication for the College. One mailed, emailed, and/or received in person, notification will be presumptively delivered.

14. Resolution Timeline

The College will make a good faith effort to complete the Resolution Process within **sixty to ninety (60-90) business days**, including any appeals, which can be extended as necessary for appropriate cause by the Title IX Coordinator. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within **sixty (60) business days**, though some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, the College reserves the right to continue without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

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 delay the investigation temporarily, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The College will promptly resume its Resolution Process as soon as feasible. During such a delay, the College will implement and maintain supportive measures for the Parties 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.

The College will make a good faith effort to complete the Resolution Process as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the process.

15. Ensuring Impartiality

Any individual materially involved in the administration of the Administrative Resolution Process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s), 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), Decision-maker(s), and Resolution Appeal Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the

Administrative 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 and uncurable, another Pool member may be assigned, and the impact of 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 Executive Vice President and Provost Corey Cook (cdc13@stmarys-ca.edu).

The Administrative Resolution Process involves an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that 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. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

16. Investigator Appointment

Once an investigation is initiated, the Title IX Coordinator appoints an Investigator(s) to conduct it. The Investigator(s) may be members of the Resolution Process Pool, or any other properly trained individual, either internal or external to the College's community.

17. Witness Role and Participation in the Investigation

Employees (not including Complainant and Respondent) are required to cooperate with and participate in the College's investigation and Administrative Resolution Process. Student witnesses and witnesses from outside the College community cannot be required to participate but are encouraged to cooperate with college investigations and to share what they know about a Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx, etc.), or, in limited circumstances, by telephone. The College will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and 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.

18. Interview and Investigation Meeting Recordings

It is standard practice for the Investigator(s) to create a record of all interviews pertaining to the Administrative Resolution Process. The Parties may review copies of their own interview records, upon request.

All interviews are recorded, and all involved persons shall be made aware of the audio and/or video recording. No other unauthorized audio or video recording of any kind is permitted during investigation meetings.

The recording and/or a transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent interviews/meetings are also recorded and/or transcribed and shared with the Parties.

19. Evidentiary Considerations

The Investigator(s) and the Decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible.

'Relevant Evidence' is that which may aid in determining whether the allegation occurred, and/or whether the behavior constitutes a violation of Policy.

'Impermissible Evidence' is defined as evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged misconduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent.

The fact prior consensual sexual conduct may have occurred between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex-based harassment occurred.

Previous disciplinary action of any kind involving the Respondent may not be considered 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. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

20. Respondent Admits Responsibility

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker(s) are authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct alleged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

21. Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties and witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

The College may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

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

- Determine the identity and contact information of the Complainant.
- Identify all offenses implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
- Work with the Title IX Coordinator, as necessary, to prepare the initial NOIA. The NOIA may be amended with additional or dismissed allegations.
- 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 the Parties and witnesses.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.

- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witness. Document which questions were asked with a rationale for any changes or omissions in the investigation report.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the Parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
- Ask the Parties to provide a list of questions they would like asked of the other party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes party and witness interviews, the investigation, and provides all relevant evidence.
- Provide the Parties and their respective Advisors an electronic copy of the Draft Investigation Report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of **ten (10) business days** so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
- The Investigator(s) will share the investigation report with the Title IX Coordinator, and may share with legal counsel, for their review and feedback.

22. Administrative Resolution Process

The Administrative Resolution Process is used for all Complaints of sex discrimination, sex-based harassment, sexual misconduct, retaliation, and other prohibited conduct (as related to this Policy), or when Informal Resolution is unavailable, not elected, or unsuccessful.

The Administrative Resolution Process consists of a hand-off of the investigation report and all relevant evidence to the Decision-maker(s) to make a finding and determine sanctions (if applicable).

At the discretion of the Title IX Coordinator, the assigned Decision-maker(s) will be drawn from the Resolution Process Pool, or other trained individuals either internal or external to the institution. Once the Decision-maker(s) receives and reviews the file, they can recommend dismissal to the Title IX Coordinator, if they believe the grounds are met.

The Administrative Resolution Process typically takes approximately **thirty (30) business days** to complete, beginning with the Decision-maker(s)' receipt of the Draft Investigation Report. The Parties will be regularly updated on the timing and any significant deviation from this typical timeline.

Investigator-led Questioning Meetings²⁰

- The Title IX Coordinator provides the Draft Investigation Report to the Decision-maker(s) and the Parties simultaneously for review. The Decision-maker(s) can then provide the Investigator(s) with a list of relevant questions to ask the Parties or any witnesses.
 - To the extent credibility is in dispute and relevant to one or more of the allegations, the questions provided by the Decision-maker(s) may also explore credibility.
- The Investigator(s) will also ask each Party to provide a list of proposed questions to ask the other Party(ies) and any witnesses.
 - To the extent credibility is in dispute and relevant to one or more of the allegations, questions proposed by the Parties may also explore credibility.
 - All party questions must be posed during this phase of the process and cannot be posed later unless authorized by the Decision-maker(s).
 - The Investigator(s) will share all party-proposed questions with the Decision-maker(s), who will finalize the list with the Investigator(s) to ensure all questions are both relevant and permissible.
- The Investigator(s) will then hold individual meetings with the Parties and witnesses to ask the questions posed by the Decision-maker(s), as well as the questions proposed by the Parties that have been deemed relevant and not duplicative, including questions intended to assess credibility. These meetings will be recorded and transcribed.
 - For any question deemed not relevant or duplicative, the Investigator(s) will provide a rationale for not asking the question, either during the recorded meeting, or in writing (typically as an appendix to the Final Investigation Report).
- Typically, within **three (3) business days** of the last of these meetings, the recordings or transcripts of them will be provided to the Parties for their review. The Parties will then have **five (5) business days** to review these recordings or transcripts and propose any follow-up questions for the Investigator(s) to ask.
- The Investigator(s) will review the proposed questions with the Decision-maker(s) to determine relevance and permissibility. If deemed necessary, the Investigator(s) will then meet individually with the Parties or witnesses for whom there are relevant, and not duplicative, follow-up questions. These follow-up meetings will also be recorded and transcribed, and the Parties will receive the recordings or transcripts of these meetings. This final round of questioning is the last round permitted, unless permission is granted to extend by the Decision-maker(s).

²⁰ All timeframes provided during this process, typically denoted by a specific number of business days, may be adjusted to allow for reasonable and/or necessary delays, for example, a health emergency. These delays will be at the Title IX Coordinator's discretion and will be communicated to the Parties.

- The Investigator(s) will then incorporate any new, relevant evidence and information obtained through the Parties' review of the Draft Investigation Report, the questioning, and follow-up meetings into a Final Investigation Report.
- The Investigator(s) will also respond in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report and incorporate relevant elements of the Parties' written responses, additional relevant evidence, and any necessary revisions into the Final Investigation Report.
- The Investigator(s) will then share the Final Investigation Report with the Title IX Coordinator and/or legal counsel for their review and feedback, which will be incorporated as applicable within the Final Investigation Report.
- The Investigator(s) will then provide the Title IX Coordinator with the Final Investigation Report and investigation file.

The Decision-maker(s)' Determination

- The Title IX Coordinator will provide the Decision-maker(s), the Parties, and their Advisors with the Final Investigation Report (FIR) and investigation file, including the evidence and information obtained through the Investigator-led Questioning Meetings.
- The Decision-maker(s) will review the FIR, all appendices, and the investigation file.
- If the record is incomplete, the Decision-maker(s) may direct a re-opening of the investigation, or may direct or conduct additional inquiry necessary, including informal meetings with the Parties or any witnesses, if needed.
- Upon reviewing the relevant evidence, the Decision-maker(s) may also choose to pose additional questions:
 - To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker(s) may meet individually with the Parties and witnesses to question them in order to assess their credibility. These meetings will be recorded, and the recording or transcript will be shared with the Parties.
 - At their discretion, the Decision-maker(s) may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker(s) in making their findings. These meetings will be recorded, and the recording or transcript will be shared with the Parties.
- The Decision-maker(s) will then apply the preponderance of the evidence standard to decide on each of the allegations, and if applicable, any associated sanctions.
- **Timeline.** The Decision-maker(s)' determination process typically takes approximately **five (5) business days**, but this timeframe can vary based on a number of factors and variables. The Parties will be notified of any delays.
- **Impact Statements.** Prior to a determination, the Title IX Coordinator, will also provide the Parties with an opportunity to submit a written impact or mitigation statement. The Title IX Coordinator will review these statements upon receipt to

determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Decision-maker(s) have decided on the allegations. If there are findings of a Policy violation, the Decision-maker(s) will request the impact/mitigation statements from the Title IX Coordinator and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.

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

23. Sanctions/Responsive Actions

Factors the Decision-maker(s) may consider when determining sanctions and responsive actions 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 sex discrimination, sex-based harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sex discrimination, sex-based harassment, and/or retaliation
- The need to remedy the effects of sex discrimination, sex-based harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- The Respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as it is feasible once a determination is final, 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.

A. Student Sanctions²¹

The following are common sanctions that may be imposed upon students singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any Saint Mary's College policy, procedures, or directive may result in more severe sanctions/responsive actions.

²¹ The College's policies on transcript notation apply to these proceedings.

- *Required Counseling:* A mandate to meet with and engage in external (not College-sponsored) counseling to better comprehend the misconduct and its effects.
- *Restrictions:* A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or holding leadership roles in student organizations.
- *Probation:* An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from extracurricular activities, exclusion from designated areas of campus, contact limitation directives, and/or other measures deemed appropriate.
- *Suspension:* Separation from the institution, or one or more of its facilities, for a defined period of time, typically not to exceed two (2) years, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the student. The student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Title IX Coordinator or other appropriate official. During an institution-wide suspension, the student is banned from institutional property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary.
- *Expulsion:* Permanent separation from the institution. The student is banned from institutional property, and the student's presence at any institution-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary.
- *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 violation Policy.
- *Revocation of Degree:* While rarely exercised, the College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, 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 (e.g., on-campus housing probation, suspension, or removal).

B. Employee Responsive/Correction Actions

Responsive actions for an employee who has engaged in sex discrimination, sex-based harassment, and/or retaliation include:

- 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*
- Shift or schedule adjustments*
- 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.

24. Notice of Outcome

Within **five (5) business days** of the conclusion of the Administrative Resolution Process, the Title IX Coordinator provides the Parties with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, all applicable sanctions that the College is permitted to share pursuant to state or federal law, and a detailed rationale, written by the Decision-maker(s), supporting the findings to the extent the College is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Title IX Coordinator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official College records, or emailed to the Parties' College-issued or designated email account. Email is the primary method of delivery and is considered an official method of communication by the College. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

25. 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. If a student Respondent withdraws from the College, the Resolution Process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, the College will still provide reasonable supportive or remedial measures as necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, 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 systemic issues or concerns that may have contributed to the alleged violation(s), and ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

When a student withdraws or leaves while the process is pending, the student may not return to the College in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Title IX Coordinator has discretion to dismiss the Complaint. The Registrar, Office of Admissions, and/or Human Resources may be notified, accordingly.

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

B. Employees

Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent leaves their employment with the College

with unresolved allegations pending, the Resolution Process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, the College may still provide reasonable supportive or remedial measures as necessary to address safety and/or remedy ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

When an employee resigns and the Complaint is dismissed, the employee may not return to the College in any capacity. The Registrar, Office of Admissions, and Human Resources will be notified, accordingly, and a note will be placed in the employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with the College. The records retained by the Title IX Coordinator and/or Human Resources will reflect that status.

26. Appeal of the Determination

The Title IX Coordinator will designate an Appeal Decision-maker – either an individual chosen from the Pool, or other trained internal or external individual, to hear the appeal. No Appeal Decision-maker will have been previously involved in the Resolution Process for that Complaint, including in any supportive measure challenge or dismissal appeal that may have been decided earlier in the process.

A. Appeal Grounds

Appeals are limited to the following grounds:

- 1) A procedural irregularity that would change the outcome.
- 2) New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility was made.
- 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 would change the outcome.

B. Request for Appeal

Any party may submit a written request for appeal ("Request for Appeal") to the Title IX Coordinator within **three (3) business days** of the date of the Notice of Outcome communication.

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

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Decision-maker, and the

Parties, and their Advisors, will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the Request for Appeal meets the grounds in this Policy, then the Appeal Decision-maker will notify 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 Decision-maker(s) will be provided a copy of the Request for Appeal with the approved grounds and then be given **five (5) business days** to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties and the Title IX Coordinator for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in this Policy and will either be 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 Decision-maker(s), as necessary, who will submit their responses, if any, within **five (5) business days**. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified accordingly, in writing.

No party may submit any new Requests for Appeal after this time period. The Appeal Decision-maker will collect additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses, and will then promptly render a decision.

C. Appeal Determination Process

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and assess the merits of the appeal.

Appeal decisions 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. All decisions are made applying the preponderance of the evidence standard of proof.

An appeal is not an opportunity for the 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 Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

D. Appeal Outcome

An appeal may be granted or denied.

Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker(s) and/or the Title IX Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new Pool members servings in the Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which the College is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent the College is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties’ local or permanent address as indicated in official institutional records, or emailed to the Parties College-issued email or otherwise approved account. Email is the primary method of delivery and is considered an official method of college communication. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the three (3) available appeal grounds.

E. Sanction Status During the Appeal

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures for a “show cause” meeting on the justification for doing so must be permitted within **two (2) business days** of implementation.

27. Long-Term Remedies/Other Actions

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the College community that are intended to stop the sex discrimination, sex-based harassment, and/or retaliation, remedy the effects, and prevent recurrence.

These remedies/actions may include, but are not limited to:

- Referrals to counseling and health services
- Referral to the Employee Assistance Program (*for employees*)
- Course and registration adjustments, such as retroactive withdrawals
- 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 or increased security monitoring
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, or other academic support

At the discretion of the Title IX Coordinator, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

When no policy violation is found, the Title IX Coordinator will assess and implement 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, provided confidentiality does not impair the College's ability to provide these services.

28. Failure to Comply with Sanctions/Responsive Actions, or Informal Resolution Terms

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

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or for 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 the completion of sanctions/responsive actions for their employees. Support from the Title IX Coordinator and/or Human Resources will be available to supervisors monitoring sanctions of their supervisee.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's satisfaction.

29. Recordkeeping

The Title IX Support and Compliance Office is responsible for maintaining records relating to all reports and complaints of sex-based discrimination and harassment, sexual misconduct, and retaliation and the College's response to such reports. Files will be kept in accordance with the 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 this policy.

30. Accommodations and Support During the Resolution Process

Disability Accommodations

The 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 Processes.

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with the appropriate disability support offices/persons to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

Other Support

The College will also address reasonable requests for support for the Parties and witnesses including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

31. Revision of these Procedures

These procedures succeed any previous procedures addressing sex discrimination, sex-based or sexual harassment, sexual misconduct, and retaliation for incidents occurring on or after August 1, 2024. The Title IX Coordinator will regularly review and update these procedures. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing laws 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 governing laws, regulations, or court holdings.

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

These procedures are effective September 16, 2024.

APPENDIX A: DEFINITIONS

The following definitions apply to the Sex-Based Discrimination and Harassment, Sexual Misconduct, and Retaliation Policy:

- **Advisor.** Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to a Resolution Process and advise the party within that process.
- **Appeal Decision-maker.** The person who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.
- **Complainant.** A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, or retaliation under this Policy; **or** a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, retaliation or other prohibited conduct under this Policy and who was participating or attempting to participate in the College's education program or activity *at the time of* the alleged sex discrimination, sex-based harassment, retaliation, or other prohibited conduct.
- **Complaint.** An oral or written request to the College that can objectively be understood as a request for the College to investigate and make a finding on alleged Policy violation(s).
- **Confidential Employee.**
 - An employee whose communications are privileged or confidential under federal or state law. The employee's confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
 - An employee whom the College has designated as confidential under this Policy for the purpose of providing services to persons related to sex discrimination, sex-based harassment, sexual misconduct, retaliation, or other prohibited conduct (within the scope of this Policy). If the employee also has a duty not associated with providing those services, the employee's confidential status only applies with respect to information received about sex discrimination, sex-based harassment, sexual misconduct, retaliation, or other prohibited conduct in connection with providing those services; or
 - Any employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination, sex-based harassment, sexual misconduct, retaliation, or other prohibited conduct. The

employee's confidential status only applies with respect to information received while conducting the study.

- **Day.** A business day when the College is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
- **Decision-maker.** The person(s) who review evidence, determine relevance, and make the Final Determination of whether Policy has been violated and/or assigns sanctions.
- **Education Program or Activity.** Locations, events, or circumstances where Saint Mary's College exercises substantial control over the context in which the sex discrimination, sex-based harassment, sexual misconduct, retaliation, or other prohibited conduct occurs; and also includes any building owned or controlled by a student organization that the College officially recognizes.
- **Employee.** A person employed by Saint Mary's College either full- or part-time, including student employees when acting within the scope of their employment.
- **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").
- **Informal Resolution.** A resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a Final Determination in an Administrative Resolution.
- **Investigation Report.** The Investigator(s)'s summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.
- **Investigator.** The person(s) authorized by the College to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- **Knowledge.** When the College receives Notice of conduct that reasonably may constitute sex discrimination, sex-based harassment, sexual misconduct, retaliation, or other prohibited conduct related to the scope of this Policy in its education program or activity.
- **Mandated Reporter.** A College employee who is obligated by Policy to share Knowledge, Notice, and/or reports of sex discrimination, sex-based harassment, sexual misconduct, or other prohibited conduct with the Title IX Coordinator.²²

²² Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of persons with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

- **Notice.** When an employee, student, or third party informs the Title IX Coordinator of the alleged occurrence of sex discrimination, sex-based harassment, retaliation, or other prohibited conduct covered by this Policy.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions.** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Relevant Evidence.** Evidence that may aid a Decision-maker in determining whether the alleged sex discrimination, sex-based harassment, sexual misconduct, retaliation, or other prohibited conduct occurred, or in determining the credibility of the Parties or witnesses.
- **Remedies.** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the College's education program or activity.
- **Resolution Process.** The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution and Administrative Resolution.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute sex discrimination, sex-based harassment, sexual misconduct, retaliation in a protected activity under this Policy, or other prohibited conduct within the scope of this Policy.
- **Sanction.** A consequence imposed on a Respondent who is found to have violated this Policy.
- **Sex.** Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- **Student.** Any person who has gained admission.
- **Title IX Coordinator.** At least one official designated by the College to ensure ultimate oversight of compliance with Title IX and the College's Title IX program. References to the Coordinator throughout this Policy may also encompass a designee of the coordinator.
- **Title IX Team.** The Title IX Coordinator, any liaisons, and any member of the Resolution Process Pool.

APPENDIX B: STATEMENT OF THE PARTIES' RIGHTS

Under this Policy and procedures, the Parties have the right to:

- An equitable investigation and resolution of all credible allegations of prohibited sex discrimination, sex-based harassment, sexual misconduct, retaliation, and other prohibited conduct, when reported in good faith to college officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any College public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from the College's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by Saint Mary's College officials.
- Have College Policy and these procedures followed without material deviation.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without pressure from the College, if Informal Resolution is approved by the Title IX Coordinator.
- Not be discouraged by college officials from reporting sex discrimination, sex-based harassment, sexual misconduct, retaliation, and other prohibited conduct to both on-campus and off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including local police, and the option(s) to be assisted by the College in notifying such authorities, if the party chooses. This also includes the right to not be pressured to report.
- Have allegations of violations of this Policy responded to promptly and with sensitivity by the Saint Mary's College safety personnel and/or other officials.
- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on-campus and in the community.
- A College-implemented no contact directive, or options for a no trespass order against a non-affiliated third party, when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.

- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of sex discrimination, sex-based harassment, sexual misconduct, retaliation, and/or other prohibited conduct if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be available. Such actions may include, but are not limited to:
 - Relocating a residential student's housing to a different on-campus location
 - Changing an employee's work environment (e.g., reporting structure, office/workspace location)
 - Transportation assistance
 - Visa/immigration assistance
 - Arranging to dissolve a housing contract and provide a pro-rated refund
 - Rescheduling or adjusting an exam, paper, and/or assignment
 - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
 - Transferring class sections
 - Temporary withdrawal/leave of absence (may be retroactive)
 - Campus safety escorts
 - Alternative course completion options
- Have the College maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the College's ability to provide the supportive measures.
- Receive sufficiently advanced written notice of any College meetings or interviews involving another party, when possible.
- Identify and have the Investigator(s) and/or Decision-makers question relevant available witnesses, including expert witnesses.
- Provide the Investigator(s)/Decision-makers with a list of questions that, if deemed relevant and permissible by the Investigator(s)/Decision-makers, may be asked of any party or witness.
- Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-makers.
- Access the relevant evidence obtained and respond to that evidence.
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law, and be given an opportunity to review and comment on the evidence.
- The right to receive a copy of the Final Investigation report, including all factual, Policy, and/or credibility analyses performed.

- Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- Regular status updates on the investigation and/or Resolution Process.
- Have reports of alleged Policy violations addressed by Resolution Process Pool members who have received relevant annual training as required by law.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings and interviews that are closed to the public.
- Petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- Apply the appropriate standard of proof, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
- Have an impact and/or mitigation statement considered by the Decision-makers following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed in writing of when a college decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with the College's grounds for appeal.
- A fundamentally fair resolution as defined in these procedures.

APPENDIX C: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms *privacy*, *confidentiality*, and *privilege* have distinct meanings.

- **Privacy.** Means that information related to a complaint will be shared with a limited number of Saint Mary's College employees, or external contracted persons, who "need to know" in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. All employees who are involved in the College's response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and state law.

- **Confidentiality.** Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by the College as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Title IX Coordinator. The Confidential Resource will, however, provide the Complainant with the Title IX Coordinator's contact information, assist the Complainant in reporting, if desired, and provide them with information on how the Title IX Support and Compliance Office can assist them.
 - With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities.
 - Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.

- **Privilege.** Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court orders the release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege. The College treats employees who have the ability to have privileged communications as Confidential Employees (when acting in that role).

The College reserves the right to determine which College officials have a legitimate educational interest in being informed about student-related incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties' Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties' rights and privacy, and release is governed by the institution's unauthorized disclosure policy.

The College may contact students' parents/guardians 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 prior to doing so.

APPENDIX D: ADVISOR ROLE, RESPONSIBILITIES, AND EXPECTATIONS

Right to an Advisor

Individuals bringing forward allegations (“Complainants”), and individuals responding to allegations (“Respondents”) may select any person to be an Advisor²³ of their choice. Parties also have a right to choose to *not* have an Advisor.

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.

The College cannot guarantee equal Advisory rights, meaning that if 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 meetings unless given exception by the Title IX Coordinator, which will then allow for equitable opportunity for the other party to also have a support person present as well.

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.²⁴

²³ This Policy permits one (1) Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

²⁴ “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.

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).

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-Appointed 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-Appointed 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-Appointed Advisor cannot provide legal advice.

Expectations of an Advisor

Advisors should assist a party with preparing for any meeting or interview that is associated with the investigation, administrative resolution, and/or appeal process. 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 when planned, but the College may change schedules meetings/interviews 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 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.

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 E: VIOLENCE RISK ASSESSMENT

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 F: RECORD MAINTENANCE AND ACCESS POLICY

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.