

**St. John Fisher University**

**Title IX Gender Discrimination and Harassment Policy and  
Procedures**

*Revised Summer 2024*

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## **NOTICE OF NONDISCRIMINATION**

St. John Fisher University (the “University”) is committed to maintaining a community in which learning and working can be carried out in an environment of respect, open-mindedness, and integrity. The University stands opposed to all forms of discrimination, harassment, and violence and will work to prevent such behavior within the University community.

This Title IX Gender Discrimination and Harassment Policy and Procedures (“Policy”) prohibits behavior that violates Title IX of the Education Amendments of 1972 (“Title IX”). The prohibition of discrimination on the basis of sex in the education program or activity of the University extends to admission and employment.

This Policy serves as the baseline for addressing sex discrimination, including sex-based harassment, and as such the type of behavior prohibited in this Policy includes and extends to the forms of unlawful conduct defined by federal and state law.

The University prohibits sex discrimination in its education program or activity, which includes sexual or gender-based violence, sexual or sex-based harassment, sexual or sex-based discrimination, sexual assault, sexual exploitation, sexual activity without affirmative consent, intimate partner violence including dating violence and domestic violence, stalking, discrimination and harassment based on pregnancy and related conditions, and retaliation. These forms of prohibited behavior are referred to in this Policy interchangeably as “Prohibited Conduct.” The University will respond promptly and equitably to reports of Prohibited Conduct to eliminate hostile environments created by such behavior and provide equal access to educational programs and activities. This Policy authorizes the University’s Title IX Coordinator, or an authorized designee, to conduct an initial review of reported allegations to determine the proper course of the University’s prompt and equitable responsive actions.

Any inquiries about the application of Title IX and its federal regulations to the University (including the Title IX Rule) may be referred to the University’s Title IX Coordinator, the Assistant Secretary of the Department of Education, or both. The Department’s Office for Civil Rights has published its contact information at <https://ocrcas.ed.gov/contact-ocr>.

This Policy covers Prohibited Conduct that occurs:

- On campus;
- Off campus, with a reasonable connection to the University;
- In the context of a University-related or sponsored educational program or activity, regardless of the location, including study abroad, internships, or athletic activities;
- Through the use of University-owned or provided technology resources; or
- When the conduct has continuing adverse effects and creates or continues a hostile environment on campus.

The University recognizes that prohibited sex discrimination includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, parental status, sexual orientation, and gender identity. All protections under this Policy are equitably provided to

individuals regardless of such status.

This Policy applies to conduct alleged to have occurred on or after August 1, 2024. Reports or disclosures of conduct alleged to have occurred prior to August 1, 2024 are subject to the St. John Fisher University Title IX & Sexual Misconduct Policy (revised 2021).

## DEFINITIONS

Affirmative Consent – a knowing, voluntary, and mutual decision among all participants to engage in the sexual activity. Consent can be given by words or actions, as long as those words or action create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, pregnancy status, or gender expression.

Guidance for consent:

- a. Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
  - b. Consent may be initially given but withdrawn at any time.
  - c. A verbal “no” constitutes lack of consent, even if it sounds insincere or indecisive.
  - d. Consent to engage in sexual activity with a person(s) does not imply consent to engage in sexual activity with another person(s).
  - e. Individuals with previous or current intimate relationships do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be voluntary and mutually understandable communication that clearly indicates a willingness to engage in sexual activity each time.
  - f. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - g. Consent cannot be given when a person is incapacitated or when the person initiating the sexual activity should have reasonably known about the incapacitation. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, and other intoxicants may be incapacitated and therefore unable to consent.
  - h. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
  - i. When consent is withdrawn or can no longer be given, sexual activity must stop.
- Force: Force is the use or threat of physical violence, intimidation, or coercion to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity. For this use of force to be demonstrated, there is no requirement that a Complainant resists the sexual advance or request. However, resistance by the Complainant will be viewed as a clear demonstration of non-consent.

- Intimidation: Intimidation includes intentionally directing verbal, written, or electronic threats of violence or other threatening behavior(s) toward another person or group that reasonably leads the targeted person(s) to fear for their physical well-being. Intimidation also includes fear inducing behavior(s) that deter or prevent the targeted person(s) from taking legitimate actions that they may otherwise take.
- Coercion: Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity, or gender expression, or threatening to harm oneself if the other party does not engage in the sexual activity.

Complainant – (1) a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination or Prohibited Conduct under Title IX; or (2) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination or Prohibited Conduct under Title IX and who was participating or attempting to participate in the University's education program or activity at the time of the alleged sex discrimination or Prohibited Conduct.

Complaint – an oral or written request to the University that objectively can be understood as a request for the University to investigate and make a determination about alleged Prohibited Conduct. The following people have a right to make a Complaint of Prohibited Conduct:

- a. A Complainant;
- b. A parent or guardian of a minor, or other authorized legal representative with the legal right to act on behalf of a Complainant;
- c. The University Title IX Coordinator;
  - i. See the Initial Review Prior to a Resolution Process section below for further information on the Title IX Coordinator's assessment and determination whether to initiate a Complaint;
- d. With respect to complaints of sex discrimination other than sex-based harassment, in addition to the individuals described above:
  - ii. Any student or employee; or
  - iii. Any person other than a student or employee who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

Confidential Employee – (1) an employee of the University whose communications are privileged or confidential under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; (2) an employee of the University that has been designated as confidential for the purpose of providing services to persons related to Prohibited



Conduct. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Prohibited Conduct in connection with providing those services; or (3) an employee of the University who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Prohibited Conduct—but the employee's confidential status is only with respect to information received while conducting the study.

Disciplinary Sanctions – consequences imposed on a Respondent following a determination under Title IX that the Respondent violated the University's prohibition on sex discrimination or other Prohibited Conduct under this policy.

Party – a Complainant or Respondent.

Pregnancy or related conditions – (1) Pregnancy, childbirth, termination of pregnancy, or lactation; (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

Relevant – related to the allegations of Prohibited Conduct under investigation as part of the grievance procedures delineated in this Policy. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged Prohibited Conduct occurred.

Remedies – measures provided, as appropriate, to a Complainant or any other person identified as having had their equal access to the University's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the University's education program or activity after the University determines that sex discrimination occurred.

Respondent – a person who is alleged to have violated the University's prohibition on sex discrimination or other Prohibited Conduct under this policy.

Student – a person who has gained admission to the University.

Supportive Measures – individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that party's access to the University's education program or activity, including measures that are designed to protect the safety of the parties or the University's educational environment; or (2) provide support during or after the University's grievance procedures or during or after the informal resolution process. Supportive Measures are more fully described within this Policy.

## PROHIBITED CONDUCT

The following definitions are referred to as “Prohibited Conduct” throughout the Policy.

Sex discrimination – discrimination on the basis of sex that is prohibited under Title IX, which may include discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, parental status, sexual orientation, and gender identity, including but not limited to, sex-based harassment, as defined below.

Sex-based harassment – sex discrimination consisting of sexual harassment and other harassment on the basis of sex in the following forms (quid pro quo harassment, hostile work environment, or a specific offense):

1. ***Quid pro quo harassment.*** An employee, agent, or other person authorized by the University to provide an aid, benefit, or service under the University’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service 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 University’s education program or activity (i.e., creates a hostile environment). The fact that a person is offended is not alone enough to establish a violation of this Policy. The University evaluates complaints based on a “reasonable person” standard, taking into account the totality of the circumstances, including the context of the interaction.

Examples of conduct that may constitute sexual harassment as defined above may include severe or pervasive unwelcome conduct that includes one or more of the following:

- a. *Physical conduct:* Unwelcome touching, physical assault, impeding, restraining, or blocking movements, unwanted sexual advances within the employment context.
- b. *Verbal conduct:* Making or using derogatory comments, epithets, slurs, or humor; graphic verbal commentaries about an individual's body; or sexually degrading words used to describe an individual.
- c. *Visual conduct:* Leering; making sexual gestures; displaying of suggestive objects, pictures, cartoons, or posters in a public space or forum if deemed severe, persistent, or pervasive by a reasonable party.

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- a. The degree to which the conduct affected the Complainant's ability to access the University’s education program or activity;

- b. The type, frequency, and duration of the conduct;
- c. The parties' ages, roles within the University's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- d. The location of the conduct and the context in which the conduct occurred; and
- e. Other sex-based harassment in the University's education program or activity.

**3. *Specific offenses:***

- a. **Sexual assault**, meaning an offense classified as a forcible or nonforcible sex offense, which includes:
  - i. *Forcible Rape* – The carnal knowledge of a person, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).
  - ii. *Forcible Sodomy* – Oral or anal sexual intercourse with another person, forcibly and/or against that persons will; or not forcibly against that persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
  - iii. *Sexual Assault with an Object* – The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that persons will; or not forcibly against the persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical in capacity.
  - iv. *Forcible Fondling* – The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary mental incapacity.
  - v. *Incest* – Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - vi. *Statutory Rape* – Non-forcible sexual intercourse with a person who

is under the statutory age of consent.

- b. **Dating violence** meaning violence committed by a person:
  - i. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - ii. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - I. The length of the relationship;
    - II. The type of relationship; and
    - III. The frequency of interaction between the persons involved in the relationship.
- c. **Domestic violence** meaning felony or misdemeanor crimes committed by a person who:
  - i. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of New York, or a person similarly situated to a spouse of the victim;
  - ii. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - iii. Shares a child in common with the victim; or
  - iv. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.
- d. **Stalking** meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - i. Fear for the person's safety or the safety of others; or
  - ii. Suffer substantial emotional distress.
- e. **Sexual Activity without Affirmative Consent** (as defined above). “Sexual Activity” has the same meaning as “sexual act” and “sexual contact” as provided in 18 U.S.C. § 2246(2) and 18 U.S.C. § 2246(3). Therefore, the term “sexual activity” includes the following:
  - i. contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

- ii. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
  - iii. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
  - iv. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 17 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
  - v. the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- f. **Sexual Exploitation** occurs when one person takes the non-consensual or abusive sexual advantage of others for self-serving advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:
- i. Invasion of sexual privacy;
  - ii. Prostituting another person;
  - iii. Non-consensual digital, video, or audio recording of nudity or sexual activity;
  - iv. Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
  - v. Engaging in voyeurism;
  - vi. Knowingly exposing someone to or transmitting an STI or blood born infection such as Hepatitis or HIV to another person;
  - vii. Intentionally or recklessly exposing one's genitals in non-consensual circumstances, or inducing another to expose their genitals.

## **PROHIBITION ON EMPLOYEE/STUDENT SEXUAL RELATIONSHIPS**

Students are not peers of University employees. Therefore, regardless of whether a sexual relationship between a student and a University employee is “consensual,” and regardless of whether or not the relationship constitutes sex discrimination or sex-based harassment, such relationships are prohibited. All University employees, full-time and part-time, must refrain from entering into any inappropriate sexual relationships with students:

<https://www.sjf.edu/media/services/human-resources/documents/EmployeeHandbook.pdf>

Allegations of inappropriate University employee/student sexual relationships should be reported to the Title IX Coordinator or the Office of Human Resources (585-385-8048; [humanresources@sjf.edu](mailto:humanresources@sjf.edu)) located in Kearney Hall 211. In cases where an employee of the University is a Respondent, the procedures detailed in the Employee Handbook apply when allegations do not include sex-discrimination or sex-based harassment.

## **REPORTING PROHIBITED CONDUCT**

After the first disclosure by a Complainant to a University Responsible Employee and upon the Complainant's initial meeting with the Title IX Coordinator, the Complainant will be informed, *"You have the right to make a report to Department of Safety and Security, local law enforcement, and/or state police or choose not to report; to report the incident to St. John Fisher University; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution."*

A Complainant may choose to share information with the University, receive resources and support, and pursue no resolution process at that time. When a Complainant elects not to pursue a resolution process, the Complainant is provided resources and informed of Supportive Measures.

A Complainant can also choose to make a report regarding sexual discrimination to the Title IX Coordinator, Human Resources or the Department of Safety and Security. When this is the expressed preference, the Complainant is provided resources, informed of Supportive Measures, and has the opportunity to discuss resolution options.

1. The **Title IX Coordinator** can be reached Monday-Friday, from 8:30 am - 4:30 pm, Campus Center 229, by phone at 585-385-8232, or by emailing [titleix@sjf.edu](mailto:titleix@sjf.edu). After hours, Complainants can contact the Title IX Coordinator through the Residence Director on duty or through Department of Safety and Security.
2. The **Office of Human Resources** can be reached by calling (585) 385-8048 or emailing [humanresources@sjf.edu](mailto:humanresources@sjf.edu) and is located in Kearney Hall 211. The Title IX Coordinator is available to assist a Complainant in making such a report. The Complainant may also request that a confidential or private employee assist in making the report.
3. The **Department of Safety and Security** can be reached 24 hours a day 7 days a week by phone at (585) 385-8111 or in person at the Haffey Hall Lobby.

If what is reported is a violent felony, New York State law requires the University to report the alleged offense to law enforcement within 24 hours of receiving the report. The University's Director of Safety and Security will determine if an incident requires reporting. If law enforcement is contacted, the Complainant may choose their level of participation with law enforcement.

### **Reporting to Law Enforcement**

A report may be made to Monroe County Sheriff's Department Victim Assistance Program at 585-753-4389 (<http://www.monroecountysheriff.info/>) or by calling 911. A report can also be made with the **New York State Police** at:

New York State Police  
Campus Sexual Assault Victims Unit  
1220 Washington Ave, Building 22  
Albany, New York 12226  
Dedicated 24-hour hotline: 1-844-845-7269

The University will assist any person in contacting law enforcement officials to report an allegation of Prohibited Conduct. Additionally, any campus community member may independently report. Law enforcement follows its own procedures. If you choose to contact law enforcement directly, law enforcement may not inform the University of your report. If you wish to make the University aware and involved, please contact the Title IX Coordinator or the Department of Safety and Security.

Upon reviewing the facts of the case, law enforcement may decide to prosecute the matter and further participation with law enforcement may be required. Once criminal charges are initiated, charges can be withdrawn only with the proper consent of the **District Attorney's Office**. The University will act on any information law enforcement shares with the University if there is a concern for the safety of the University community.

The University fully supports all local, state, and federal laws and will cooperate with law enforcement officials who investigate allegations of Prohibited Conduct to the fullest extent allowed under the law. In all cases reported to law enforcement, the University will coordinate its investigations and responses with those of law enforcement. A concurrent investigation will not prevent the University from conducting its own investigation and conduct processes, except for temporary delays requested by law enforcement.

**In an emergency**, please contact the Department of Safety & Security at (585) 385-8111 or local law enforcement by dialing 911.

### **Additional Reporting Options**

In addition to the reporting choices above, persons may direct information about their allegations to the Office of Civil Rights, U.S. Department of Education:

<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>

The OCR National Headquarters is located at:

U.S. Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: 800-421-3481  
FAX: 202-453-6012; TDD: 800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)



## **Emergency Medical Care Resources**

1. UR Medicine Urgent Care, Pittsford, 585-203-1055
2. Rochester Regional Health Immediate Care, Penfield, 585-388-5280
3. Immediate Care East, Victor, 585-398-1275
4. Urgent Care by Lifetime Health, Rochester, 585-338-1200

Within 96 hours of an assault, an individual can get a Sexual Assault Forensic Examination (or “SAFE,” commonly referred to as a rape kit) at a local hospital. Completing a SAFE will not require a report to the police, but will help an individual preserve evidence in case they decide at a later date to file a police report. Before obtaining a SAFE, a person should avoid showering, washing, changing clothes, combing hair, drinking, eating, or altering their physical appearance. There should be no charge for a rape kit, but there may be charges for medical or counseling services off campus, and in some cases, insurance may be billed for services. An individual should notify hospital personnel if they do not want their insurance policyholder to be notified about their access to these services.

The New York State Office of Victim Services may also be able to assist in compensating you (victims/survivors) for health care and counseling services, including emergency funds. More information may be found here: <https://ovs.ny.gov/forensic-rape-examination-fre-direct-reimbursement-program> or by calling 1-800-247-8035.

*Local Hospitals with a Sexual Assault Forensic Examiner (SAFE) Program and Sexual Assault Nurse Examiner (SANE):*

1. Strong Memorial Hospital – Emergency Department, 601 Elmwood Ave., Rochester, NY 14642
2. Rochester General Hospital – Pediatric Emergency Department, 1425 Portland Ave., Rochester, NY 14621

## **Off-Campus Confidential Resources**

1. Willow Domestic Violence Center  
24-hours a day, Free, Confidential  
585-222-7233(talk) 585-348-7233 (text)  
SERVICES: 24/7 hotline, emergency shelter, counseling, support groups, children's services, court advocacy, Latina services, dating violence education, prevention education
2. Restore: Sexual Assault Services  
24-hours a day, Free, Confidential  
Rochester (Monroe County) Hotline: 585-546-2777  
Genesee, Livingston, Orleans & Wyoming Counties Hotline: 800-527-1757  
114 University Avenue, Rochester, NY 14605

SERVICES: trained counselors provide crisis intervention and support services to women, children, and men who are survivors of sexual assault, provide information to enable informed choices concerning medical, legal and counseling needs, offer advocacy and information about client's rights, provide short-term counseling sessions, and legal and medical accompaniment

3. New York State Police Campus Sexual Assault Victims Unit  
5831 Groveland Station Road  
Mount Morris, New York 14510  
1-844-845-7269  
<https://consentfirst.troopers.ny.gov/>
4. Monroe County Sheriff's Dept. Victim Assistant Program  
585-753-4389 789 Linden Avenue, Rochester 14625  
SERVICES: crisis support, short-term counseling, referrals, advocacy, case status, and court procedure information
5. Center for Dispute Settlement  
Reynolds Arcade Building, Suite 800 (8<sup>th</sup> Floor)  
16 Main St., Rochester, NY  
<http://www.cdsadr.org>  
585-546-5110  
[info@cdsadr.org](mailto:info@cdsadr.org)
6. Trillium Health  
Monday-Friday (hours vary daily)  
585-545-7200  
259 Monroe Avenue, Rochester, NY 14607  
SERVICES: medical care, specialized LGBT Care, on-site pharmacy and lab services, HIV prevention and testing, women's gynecological services, and supportive services
7. New York State Coalition Against Sexual Assault  
24-hours a day, Free, Confidential  
New York State Hotline for Sexual Assault and Domestic Violence: 1-800-942-6906
8. RAINN (Rape, Abuse & Incest National Network)  
24-hours a day, Free, Confidential  
1-800-656-HOPE (4673)  
SERVICES: support from a trained staff member, help finding a local health facility trained to care for survivors of sexual assault that offers services like sexual assault forensic exams, help to talk through what happened, local resources to assist with your next steps toward healing and recovery, referrals for long term support, information about the laws in your community, basic information about medical concerns

9. IGNITE Advocacy Services for Abused Deaf Victims  
VP: 855-812-1001 TTY: 800-787-3224 Voice: 800-799-7233  
SERVICES: supports the needs of Deaf, Deaf Blind, and Hard of Hearing survivors of domestic violence and sexual violence, anonymity and confidentiality are strictly honored

## **False Reports**

The University will not tolerate intentional false reporting of incidents. The University expects truthful and accurate reports as an allegation of Prohibited Conduct is serious and may have severe consequences for the individuals involved. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of Prohibited Conduct. However, when a Complainant or witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant or witness may be subject to disciplinary action. It is a violation of the Code of Student Conduct and the Employee Handbook to make an intentionally false report of any policy violation, and may also be a violation of state criminal statutes and civil defamation laws.

## **Responsible Employees**

With the exception of those employees specified as Confidential Resources, all University employees, including faculty, staff, administrators, and students who are Resident Assistants, and Peer Mentors are Responsible Employees. Responsible Employees are mandatory reporters who are required to share fully with the Title IX Coordinator, as promptly as practical, any disclosure of Prohibited Conduct of which they are aware. The information that should be reported includes but is not limited to the identities of the parties involved, if known.

When any student informs any employee of the student's pregnancy or related condition, unless the employee reasonably believes that the Title IX Coordinator has been notified, the employee will promptly provide that person with the Title IX Coordinator's contact information and inform them that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to University education programs or activities.

## **Requests for Anonymity**

Once a report has been shared with the Title IX Coordinator, a Complainant may request that their identity not be shared with the Respondent (request for anonymity), that no investigation occur, or that no disciplinary action be pursued. The University will carefully balance this request in the context of the University's commitment to provide a safe and non-discriminatory environment for all community members, while ensuring equal access to its education program or activity.

## **Alcohol and/or Drug Use Amnesty**

A Complainant or bystander acting in good faith that discloses any incident of Prohibited Conduct to University officials or law enforcement will not be subject to the University's Student Code of Conduct for violation of the alcohol and/or drug use policies occurring at or near the time

of the commission of the domestic violence, dating violence, stalking, sexual harassment, sexual assault or any other Prohibited Conduct.

The health and safety of every student at the University is of the utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether use is voluntary or involuntary) at the time that violence occurs, including but not limited to domestic violence, dating violence, stalking, sexual exploitation, or sexual assault, may be hesitant to report incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report Prohibited Conduct to University officials.

### **Statement of Non-Disclosure**

The University will not require any party involved in activities or processes detailed in this Policy to abide by a nondisclosure agreement, in writing or otherwise, that would prevent re-disclosure of information related to procedures, unless otherwise specified by Federal privacy laws (e.g. FERPA). However, the University encourages all parties to respect the privacy of those involved and the integrity of the process when considering disclosure of information.

## **PROHIBITION AGAINST RETALIATION**

The University prohibits retaliation against anyone for filing a Complaint or participating or declining to participate in any manner in an investigation or hearing in response to an allegation of discrimination or harassment, including allegations of Prohibited Conduct. The University recognizes that retaliation can take many forms including intimidation, threats, coercion, or discrimination, and may be committed by an individual or a group against an individual or a group, between peers, and that a Respondent can also be the subject of retaliation by the Complainant or a third party. Complaints of retaliation for filing a Complaint or participating or declining to participate in any manner in an investigation or hearing in response to an allegation of discrimination or harassment, including allegations of Prohibited Conduct, will be treated the same as a Complaint of Prohibited Conduct under this Policy.

## **PRIVACY AND CONFIDENTIALITY**

The University is committed to protecting the privacy of all individuals involved in a report of Prohibited Conduct. The University will take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the University's applicable Grievance Process, provided that the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the Grievance Process.

At the University, reports of Prohibited Conduct made directly to the Director of Campus Ministry or to a staff member in the Health and Wellness Center are confidential. These are the ONLY resources at the University where confidential reports can be made. Confidential means that the information is protected from being disclosed to anyone else, unless required or permitted by law.

The Director of Campus Ministry can be contacted at [kmannara@sjf.edu](mailto:kmannara@sjf.edu) or (585) 385-8196.

Staff members in the Health and Wellness Center can be contacted at [healthcenter@sjf.edu](mailto:healthcenter@sjf.edu) or (585) 385-8280.

*Privacy* may be offered by an individual when such individual is unable to offer confidentiality under the law but will still not disclose information learned from a Complainant or witness more than necessary to comply with the law, including informing appropriate University officials. Even University officials and employees, including Responsible Employees, who cannot guarantee confidentiality, will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be related only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

## **TITLE IX COORDINATOR**

Pursuant to Title IX and its regulations (34 C.F.R. Part 106), the Title IX Coordinator is the designated University official with primary responsibility for coordinating compliance with Title IX and other federal and state laws and regulations relating to sex-based discrimination.

Anyone may report Prohibited Conduct under this Policy (whether or not the person reporting is the person alleged to be the victim), in person, by mail, by telephone or electronic mail using the below-listed contact information for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving a verbal or written disclosure or report. The University's Title IX Coordinator is available to help students and employees understand their options regarding both receiving Supportive Measures and reporting sex discrimination or other Prohibited Conduct under this Policy. The Title IX Coordinator is unable to guarantee confidentiality but they will maintain privacy to the fullest extent. Additionally, the Title IX Coordinator is responsible for ensuring compliance with Title IX and its regulations, as well as the New York State Education Law 129-B.

The Title IX Coordinator, Meg Flaherty, can be reached Monday-Friday from 8:30 a.m. – 4:30 p.m. by phone at 585-385-8232, by email at [titleix@sjf.edu](mailto:titleix@sjf.edu), or after hours by contacting the Residence Director on duty, or Campus Safety & Security.

The Title IX Coordinator:

- Supports those who assist with Title IX compliance;
- Ensures that the University policies and procedures provide prompt and equitable resolutions to allegations of Prohibited Conduct, including mitigating real or perceived conflicts of interest;
- Annually reviews the University's sexual harassment policies;
- Annually reviews the University's educational programs and opportunities for the campus community regarding the topics of sex discrimination and harassment;
- Informs campus community members about appropriate reporting processes for Prohibited Conduct allegations involving campus community members;
- Tracks/monitors sex discrimination allegations involving campus community members;
- Ensures that training, education, and prevention efforts with respect to sex discrimination allegations are provided for campus community members;
- Provides for mandatory training for those implementing the grievance procedures (Title IX Coordinator, investigators, decisionmakers, Hearing Officers, Hearing Committee members) regarding University policies, Title IX Grievance Processes, the Informal Resolution process, and applicable

non-disclosure requirements;

- Promotes the creation and implementation of policies, procedures, and notifications designed to ensure the University's compliance with Title IX;
- Acts as a liaison to the U.S. Department of Education's Office of Civil Rights and other state and federal agencies that enforce Title IX;
- Oversees matters related to the University's compliance with NYS Education Law 129-B.

Subject to the procedures contained within this Policy, the Title IX Coordinator must:

- Treat the Complainant and Respondent equitably;
- Offer and coordinate Supportive Measures, as appropriate;
- Notify the Complainant or the individual who reported Prohibited Conduct of the University's Grievance Procedures and Informal Resolution Process;
- If a Complaint is made, notify the Respondent of the University's Grievance Procedures and Informal Resolution Process, when applicable;
- In response to a Complaint, initiate the University's Title IX Grievance Procedures and Informal Resolution Process, when applicable;

The Title IX Coordinator maintains broad oversight responsibility but may delegate responsibilities under this Policy to designated administrators or external professionals who will have appropriate training and/or experience.

When used in this Policy, the term "Title IX Coordinator" may include an appropriate designee, including the Assistant Vice President for Human Resources or another representative from Human Resources that has appropriate training and experience. Complaints of employee-employee Prohibited Conduct will be handled and maintained by Human Resources within the same framework and Grievance Procedures contained within this policy, in coordination with the Title IX Coordinator. The Assistant Vice President for Human Resources or another representative from Human Resources will provide all required documentation required to be retained to the Title IX Coordinator.



## **SUPPORTIVE MEASURES**

The University's Title IX Coordinator will offer and coordinate Supportive Measures as appropriate. Supportive Measures may vary depending on what the University deems to be reasonably available. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

Supportive Measures will not unreasonably burden either party and will be designed to protect the safety of the parties, or to provide support during the Title IX Grievance Procedures, or during the Informal Resolution Process. The University will not impose such measures for punitive or disciplinary reasons. The Supportive Measures will intend to preserve equal access to the University's education programs and activities.

Supportive Measures are available to Complainants, Respondents, and witnesses regardless of whether a Title IX Grievance Process or an Informal Resolution Process is initiated. The University has the discretion to modify or terminate Supportive Measures at the conclusion of the Title IX Grievance Process or Informal Resolution Process, or continue them beyond the conclusion.

The University will provide a Complainant or Respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the University's decision to provide, deny, modify, or terminate Supportive Measures applicable to them. The impartial employee will be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision, if the impartial employee determines that the decision to provide, deny, modify, or terminate the Supportive Measure was inconsistent with the definition of Supportive Measures. The University will provide a party with the opportunity to seek additional modification or termination of a Supportive Measure applicable to them if circumstances change materially.

The University will not disclose information about any Supportive Measures to persons other than the person to whom they apply, including informing one party of Supportive Measures provided to another party, unless necessary to provide the Supportive Measure or restore or preserve a party's access to the education program or activity, unless:

- The University has obtained prior written consent from the person receiving Supportive Measures;
- The disclosure is made to a parent, guardian, or authorized legal representative with the legal right to receive disclosures;
- The University must disclose to take action or address conduct that reasonably may constitute sex discrimination under Title IX; or

- As required by Federal Law or Federal regulations.

The Title IX Coordinator may consult, as appropriate, with the Accessibility Services Office, on methods to best comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et. seq., in the implementation of Supportive Measures.

## **THE UNIVERSITY'S PROCESS TO INVESTIGATE AND RESOLVE REPORTS OF PROHIBITED CONDUCT**

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported alleged violations of this Policy. Interim Actions will be communicated in writing to the affected parties, by email or USPS mail, and will be effective immediately. Failure or refusal to take receipt of notification will not negate or postpone the implementation of Interim Action(s).

### **Interim Actions & Supportive Measures**

The Title IX Coordinator may assign an Interim Action or Actions at any time following the receipt of information of an allegation of Prohibited Conduct that is apparently reliable and relates to the safety and/or welfare of any person, University property, or any University function. The assignment of an Interim Action does not assume that the Respondent is responsible for the alleged Prohibited Conduct. No action shall impair any rights of disabled individuals under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

The evaluation of an Interim Action must treat the Complainant and Respondent equitably and consider all reasonable and appropriate alternatives to limiting an individual's participation in the University's education program or activity, while protecting the University's community pending an investigation and determination regarding the alleged conduct.

Interim Actions may include appropriate Supportive Measures, no contact orders, an emergency removal of a Respondent based upon the process and requirements stated below, or the placement of an employee Respondent on administrative leave during the pendency of a grievance process. Interim Actions may also include reasonable limitations, based upon the totality of the circumstances, that may limit or preclude a person's access to certain aspects of the University's education program or activity or certain locations on campus.

If an employee Respondent challenges an Interim Action, the decision will be reviewed by the Assistant Vice President for Human Resources, or an applicable Human Resources designee. If a student Respondent challenges an Interim Action, the decision will be reviewed by the Title IX Coordinator, or an applicable designee. The University representative tasked with the review of a challenge to an Interim Action shall be a different University representative than the individual who issued the Interim Action.

An Interim Action is in effect from the time of issuance until the Title IX Coordinator or their designee determines that the reason for imposing the Interim Action no longer exists and the party receives written notice that the Interim Action is no longer applicable or until the resolution of the matter or a determined expiration date. The University will be responsible to conduct periodic reviews of an Interim Action to assess the necessity of its continuation and any appropriate modifications based upon changed circumstances.

Both the Respondent and the Complainant shall upon request, be afforded a prompt review, as reasonable under the circumstances, of the need for and terms of Interim Action(s), including an emergency removal and administrative leave and modification of duties, and shall be allowed

to submit a request in writing and evidence in support of the request to the Title IX Coordinator. The other party may be notified regarding any requests made for changes or modifications. The Title IX Coordinator or their designee will conduct a prompt review, as reasonable under the circumstances, of the need for and terms of the Interim Action(s), and will notify both parties of the decision to modify or not.

### **Emergency Removal**

The University may remove a Respondent from the University's education program and activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, 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 Prohibited Conduct justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal by providing written notice to the Title IX Coordinator.

Emergency removal, pending the outcome of the processes detailed in this Policy will occur only when the Respondent (either a student or an employee) is determined to present an imminent and serious threat to the health and safety of a Complainant or any students, employees, or other persons among the University community.

If an employee Respondent challenges the issuance of an Emergency Removal, the decision will be reviewed by the Assistant Vice President for Human Resources, or an applicable Human Resources designee. If a student Respondent challenges the issuance of an Emergency Removal, the decision will be reviewed by the Title IX Coordinator, or applicable designee. The University representative tasked with the review of a challenge to an Emergency Removal shall be a different University representative than the individual who issued the action.

Both the Respondent and the Complainant shall, upon request, be afforded a prompt review, as reasonable under the circumstances, of the need for and terms of Emergency Removal, and shall be allowed to submit a request in writing and evidence in support of the request to the Title IX Coordinator. The other party may be notified regarding any requests made for changes or modifications. The Title IX Coordinator or their designee will conduct a prompt review, as reasonable under the circumstances, of the need for and terms of the Emergency Removal and will notify both parties of the decision to modify or not.

### **Administrative Leave or Modification of Duties**

The University has the discretion to place an employee on administrative leave, interim suspension from employment responsibilities, or modify a Respondent's employment duties, during the pendency of the University's Title IX Grievance Procedures.

### **No Contact Order**

Upon receipt of a Complaint, the University may issue a No Contact Order whereby continued intentional contact with one party by another would be a violation. The conditions of a No Contact Order are as follows:

- As the University deems appropriate, a No Contact Order separates two or more parties from each other in the interest of safety and/or the well-being of the community.
- A party with a No Contact Order should have:
  - No physical contact with the other party
  - No verbal, written, telephone, or electronic contact with the other party
  - No contact with the other party/parties via third parties
- Should a party who is the subject to a No Contact Order (the Respondent or a third party) find themselves in the same location as the protected party (the Complainant), it is the responsibility of the covered person to remove themselves in a reasonable time and manner without directly contacting the protected party.

If contact is made in violations of the No Contact Order, the following steps should be taken:

- Immediately report the contact to either the Office of Safety & Security (585-385-8111 or Haffey Hall Lobby) or the Title IX Coordinator (585-385-8232 or [titleix@sjf.edu](mailto:titleix@sjf.edu), 206 Campus Center);
- If the contact is written or electronic, attempt to save and not delete it. Please bring this information with you when you report to the Office of Safety and Security or the Title IX Coordinator;
- Do not respond to the contact. Whether it is in person, verbal, writing, electronic, third party, etc. responding to the contact may be considered a violation of the policy and could result in additional interim or student conduct action.

Both the Respondent and the Complainant shall, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a No Contact Order, including potential modification, and shall be allowed to submit evidence in support of the request. The other party will be notified regarding any requests made for changes or modifications. The Title IX Coordinator will conduct a prompt review, reasonable under the circumstances, of the need for and terms of the No Contact Order, and will notify both parties of the decision to modify or not.

### **Orders of Protection**

A Complainant can get assistance from the Office of Safety & Security (585-385-8111) and the Title IX Coordinator to obtain an order of protection or equivalent protection order. The Complainant will have an opportunity to receive a copy of the order or protection when received by the University. They further will have an opportunity to meet or speak with the Department of Safety & Security officials who can explain the order and answer questions about it (including

information from the order about the Respondent’s responsibility to stay away from the protected person(s) and the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension). Complainants can receive assistance from the Department of Safety & Security to call on and assist local law enforcement in order to effect an arrest.

## **Resolution Processes**

The University uses three resolution processes to resolve reports of Prohibited Conduct under this Policy, as applicable:

- **Informal Resolution:** a voluntary framework upon mutual agreement of the parties that includes informal or restorative options for resolving reports that typically do not involve disciplinary action against a Respondent.
- **Level One Grievance Process:** applies to complaints of sex discrimination, as defined above, other than a sex-based harassment complaint involving a student Complainant or a student Respondent.
- **Level Two Grievance Process:** applies to sex-based harassment complaints involving a student party as a Complainant or a Respondent
  - The procedures under the Level One Grievance Process apply to the Level Two Grievance Process. Additional procedures are implemented under the Level Two Grievance Process for a sex-based harassment complaint involving a student party.

The Level One Grievance Process and Level Two Grievance Process are referred to throughout this Policy as a “Title IX Grievance Process.”

If a party is a student-employee then the University will consider whether the party's primary relationship to the University is to receive an education and if the alleged sex-based harassment occurred while the party was performing employment-related work.

The Title IX Coordinator or appropriate designee will determine whether the Level 1 or Level 2 Grievance Process applies based upon an initial review of the reported information, consulting with the Complainant and Respondent as appropriate, considering campus safety, and evaluating the University’s obligation to maintain an environment free from harassment and discrimination.

## **Standard of Proof**

In all stages of procedure under either Grievance Processes, the University applies the preponderance of the evidence standard of proof (more likely than not) when determining whether the Policy has been violated.

## **Time Frame for Resolution**

The University will seek to complete the appropriate resolution process as promptly as possible, consistent with the need to conduct sensitive and informed fact-gathering to ensure an equitable and unbiased resolution. This Policy designates reasonably prompt timeframes for the major stages of the investigation and resolution process (typically set forth in business days), but the University may extend any timeframe in this Policy for good cause. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; or for other legitimate reasons, such as intervening breaks in the University calendar, University finals periods, the complexity of the investigation, the volume of information, number of witnesses, length of the written record, and/or the severity and extent of the alleged misconduct.

While requests for delays by the parties may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a report under this Policy. Reasonable requests for delays by the parties may serve to extend the time period for resolution of the report. The Title IX Coordinator has the authority to determine whether an extension is required or warranted by the circumstances. The unavailability of a party's advisor or conflicts in the advisor's schedule will not be presumed to constitute good cause and will be subject to a fact-specific review of the circumstances. The University will notify the parties in writing of an extension of the timeframes for good cause, the reason for the extension, and the length of the extension.

## **INITIAL REVIEW PRIOR TO A RESOLUTION PROCESS**

The Title IX Coordinator is responsible for an Initial Review of disclosures and/or reports of potential violations of this Policy. The goal of this Initial Review is to provide an integrated and coordinated response to reports of Prohibited Conduct. The Initial Review will consider the nature of the report, the safety of the individual and of the campus community, and the Complainant's expressed preference for resolution. The Initial Review will proceed to the point where a reasonable assessment of the safety of all involved parties and the community can be made. The Title IX Coordinator must seek to ensure that no acts of sex discrimination are denying equal access to its education program or activity.

In order to protect the safety of the campus community and ensure equal access to the University's education program or activity, the Title IX Coordinator may need to proceed with an investigation even if a Complainant specifically requests that the matter not be pursued. The Title IX Coordinator may also initiate an investigation of potential violations of this Policy even absent an identified Complainant or Respondent and even if a report has been withdrawn. In such a circumstance, the Title IX Coordinator will take into account the Complainant's articulated concerns, the safety of the campus community, fairness to all individuals involved, and the University's obligations under Title IX. The Title IX Coordinator will balance the Complainant's request against the following factors in reaching a determination on whether the request can be honored:

- The totality of the known circumstances;
- Whether the Respondent has a history of violent behavior or is a repeat offender;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or the conduct is alleged to have impacted multiple individuals;
- Whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
- The increased risk that the Respondent will commit additional acts of violence;
- Whether the Respondent used a weapon or force;
- The age and relationship of the parties, including whether the Complainant is a minor and whether the Respondent is an employee; and
- Whether the University possesses other means to obtain relevant evidence such as security footage;
- Whether available information reveals a pattern of perpetration at a given location or by a particular group;



- Fairness considerations for both the Complainant and the Respondent;
- The University's obligation to provide a safe and non-discriminatory environment and equal access to its education program or activity;
- The severity of the alleged misconduct or sex discrimination, including whether, if established, it would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- Whether the University could end the alleged misconduct or discrimination and prevent its recurrence without initiating an informal resolution or grievance procedure; and
- Any other available and relevant information.

If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents the University from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a Complaint.

Based upon the Title IX Coordinator's Initial Review, if a Complaint is issued, the University will proceed with one of the following options:

1. Proceed with **Informal Resolution**. This will always require the parties' voluntary written consent to participate in this form of a resolution process.
2. Proceed under the **Level 1 Grievance Process**.
3. Proceed under the **Level 2 Grievance Process** (only in complaints alleging sex-based harassment involving a student Complainant or a student Respondent).
4. If **outside the scope of this Policy**, refer the matter to another appropriate office or department for resolution under the relevant policy.
  - a. In the event that a report alleges violations of both the St. John Fisher Code of Conduct and Title IX sex discrimination (in accordance with amnesty for alcohol and drug use as specified in this Policy), the allegations will be separated and documentation will be appropriately redacted to preserve the privacy of individuals involved. The charges relevant to the Code of Conduct will be referred to the Student Conduct Office or Office of Human Resources for resolution.
5. If the Complainant expresses a preference to share information, but not pursue any action at this time, and the Title IX Coordinator finds that no threat to an individual or the campus community exists, the disclosure will be documented with the Title IX Coordinator only.

The University has adopted its two levels of grievance procedures that provide for the prompt and equitable resolution of Complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations. If any provision in this Policy may be deemed to be inconsistent with the Title IX Regulations, the Title IX Rule's requirements supersede and control the application of the University's Title IX Grievance Process.

Throughout their participation and responsibilities in either process, the Title IX Coordinator, the investigator, the decisionmaker, the Hearing Officer, members of the Hearing Committee, or any other person designated to facilitate the Grievance Process, may not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Respondent is presumed to be not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the applicable Grievance Process. The University will treat Complainants and Respondents equitably throughout the Grievance Process.

### **Consolidation of Complaints**

The University may consolidate complaints of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, when the allegations arise out of the same facts or circumstances. If one of the Complaints to be consolidated is a Complaint of sex-based harassment involving a student Complainant or student Respondent, the Level Two Grievance Process will apply in addition to the requirements of this section. In the evaluation of whether to consolidate complaints, the University shall conduct such evaluation and make its determination consistent with its obligations under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1292g and its related regulations, 20 CFR Part 99.

## **DISMISSAL OF A COMPLAINT**

In certain instances, the University may dismiss a Complaint and not proceed further with an Informal Resolution Process or Title IX Grievance Process. In the event that the University dismisses a Complaint, it still retains the right to take all appropriate actions and process under any other code of conduct or policy, including the Employee Handbook.

The University may dismiss a Complaint, but is not required to do so, if at any time during the investigation or hearing processes or Informal Resolution Process: (i) the Complainant notifies the Title IX Coordinator or appropriate designee in writing that the Complainant would like to withdraw the Complaint or any of its allegations and the Title IX Coordinator or designee declines to initiate a complaint, and the alleged conduct, even if proven would not constitute misconduct or Prohibited Conduct, (ii) the Respondent is not or no longer participating in the University's education program or activity or a University employee, (iii) the University is unable to identify the Respondent after taking reasonable steps to do so; (iv) the University determines the conduct alleged in the Complaint, even if proven, would not constitute Prohibited Conduct under Title IX; or (v) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Complaint or its allegations, including if the University is unable to identify the Respondent after taking reasonable steps to do so.

### **Right to Appeal the Dismissal of a Complaint**

The Complainant will receive written notice of the dismissal of a Complaint and decision not to proceed further with a Resolution Process, which will state the University's reasons for the action. If the Complaint is dismissed after the Respondent has been notified of the allegations, both parties will be notified. Either party may appeal the dismissal of a Complaint. Within five (5) business days after the written notice of the dismissal, an appeal may be submitted in writing to the Vice President of Student Affairs and Dean of Students, Campus Center 206, or [mthornton@sjf.edu](mailto:mthornton@sjf.edu) in cases involving a student Respondent. In any case involving an employee Respondent, the appeal must be submitted to the Assistant Vice President of Human Resources or Provost, as designated by the Title IX Coordinator.

The limited grounds for an appeal of the dismissal of a Complaint are as follows:

- A procedural irregularity affected the outcome of the dismissal determination;
- New evidence that was not reasonably available at the time of the dismissal determination that could have affected its outcome;
- The Title IX Coordinator or the person who made the dismissal determination had a conflict of interest or bias against an individual party, or for or against Complainants or Respondents in general, that affected the outcome.

If a Dismissal is appealed:

- Both parties will be notified of the appeal, including a notice of allegations if the notice was not previously provided to the Respondent;
- Appeal procedures will be implemented equally for the parties;
- The trained decisionmaker for the appeal will not have had a role in an investigation of the allegation or the dismissal of the complaint;
- Both parties will have a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- The parties will be notified of the result of the appeal and the rationale for the result.

If a Complaint is dismissed, the Title IX Coordinator will still assess appropriate prompt and effective steps to ensure that Prohibited Conduct does not occur or continue. The Title IX Coordinator will offer Supportive Measures to the Complainant as appropriate. If the Respondent is notified of the dismissal, the Title IX Coordinator will offer Supportive Measures to the Respondent as appropriate.

## **INFORMAL RESOLUTION**

If all parties voluntarily agree in writing to participate in an Informal Resolution and if the University determines that the particular Complaint is appropriate for such a process, the University may facilitate an Informal Resolution, including mediation, to assist the parties in reaching a voluntary resolution. Before the parties agree to participate in an Informal Resolution, the University shall inform them in writing of the extent of confidentiality parameters that will apply to the process and whether any statements or evidence discussed or exchanged during the process may be used in a Title IX Grievance Process. Upon its completion, the result of an Informal Resolution may not be appealed by either party. An Informal Resolution is available any time up to a final decision under a Title IX Grievance Process.

Throughout the Informal Resolution Process, the University's Title IX Coordinator will take other appropriate prompt and effective steps as appropriate to ensure that sex discrimination does not continue or recur within the University's education program or activity.

### **Notice**

Before initiation of the Informal Resolution Process, the University will provide notice to the parties 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 the Informal Resolution Process and to initiate or resume the University's Title IX Grievance Process;
- That the parties' agreement to a resolution at the conclusion of the Informal Resolution Process would preclude the parties from initiating or resuming a Title IX Grievance Process arising from the same allegations;
- The potential terms that may be requested or offered in an Informal Resolution Process agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information the University will maintain and whether and how the University could disclose such information for use in the University's Title IX Grievance Process, if the Title IX Grievance Process is initiated or resumed.

### **Facilitator**

The University will designate the Title IX Coordinator (or their designee) for Complaints involving students and the Assistant Vice President for Human Resources (or their designee) for employee Complaints as the facilitators in the Informal Resolution Process. The facilitator for the Informal Resolution Process must not be the same person as the investigator, decisionmaker, or

Hearing Officer in the University's Title IX Grievance Processes. The facilitator will not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. Any person facilitating Informal Resolution will receive proper training.

### **Potential Terms in an Informal Resolution Agreement**

Potential terms that may be included in an Informal Resolution agreement include but are not limited to:

- Restrictions on contact between the parties;
- The submission of an impact statement or restorative statement;
- The completion of educational trainings;
- Attendance of an asynchronous restorative conference;
- Modification of University housing;
- Modification of coursework or academic schedule;
- Relocation of work location or changes to work schedule;
- A mental health and/or substance use assessment and follow up; and
- Restrictions on the Respondent's participation in one or more of the University's programs or activities or attendance at specific events.

Informal Resolution will not be required as a condition of continued enrollment, or participation in a University program or activity. Informal Resolution is not permitted in situations in which such a process would conflict with Federal, State, or local law.

## **LEVEL ONE GRIEVANCE PROCESS<sup>1</sup>**

*Scope:* The University's Level One Grievance Process applies to Complaints of sex discrimination, other than a sex-based harassment Complaint involving a student Complainant or a student Respondent.

- Complaints of sex-based harassment involving an employee Complainant and an employee Respondent will be addressed under the University's Level One Grievance Process.
- Complaints of sex-based harassment involving a student party will be addressed under the University's Level Two Grievance Process.

### **Notice of Allegations**

At the outset of the investigative process, the University shall provide a written notice to all parties who are known, which will include the following information:

- Notice of the applicable process, including information about the availability of an Informal Resolution;
- Notice of the allegations potentially constituting a policy violation, and sufficient details known at the time the notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant, the conduct alleged to constitute the Prohibited Conduct, and date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process;
- A statement that before the conclusion of the investigation, the parties will provide an accurate description of the evidence, which the parties may inspect and review upon request;
- A statement that retaliation is prohibited; and
- Who will serve as the investigator(s) in the Grievance Process.

If, in the course of an investigation, the University decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a complaint that is consolidated, the University must provide notice of the additional allegations to the parties whose identities are known.

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<sup>1</sup> The following procedures also apply to the Level Two Grievance Process.

## **Dismissal of a Complaint**

The procedures outlined in the Dismissal of a Complaint section above apply to complaints in the Level One Grievance Process.

## **Complaint Investigation**

For the Level One Grievance Process, the University will designate the Title IX Coordinator, the Assistance Vice President for Human Resources, or an appropriately trained University representative or outside party as the investigator(s).

The University will conduct a prompt and equitable investigation to gather relevant but not otherwise impermissible evidence to the determination, by a preponderance of the evidence, whether Prohibited Conduct occurred. The investigation will be impartial and will be conducted by trained individuals who have no actual bias or conflict of interest against any party or against Complainants or Respondents generally. The University has the discretion to have the investigation conducted by either a trained internal or external investigator.

In the investigation process, a Complainant and Respondent should expect that:

- The investigation will be prompt, and equitable;
- The investigation will include interviews with all reasonably available involved parties, including witnesses and other persons with first-hand knowledge;
- The Complainant and Respondent shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- There will be a complete review of any related, relevant documents;
- The disclosure of facts to parties and witnesses will be limited to what is reasonably necessary to conduct a fair and thorough investigation;
- Participants in the investigation will be advised of the importance of maintaining privacy throughout the process, but the University shall not restrict the ability of each party to discuss the allegations under investigation or to gather or present relevant evidence;
- At any time during the investigation, the investigator will make recommendations to appropriate University officials for Supportive Measures for the Complainant, Respondent, and/or witnesses;
- An investigation will result in a written report that, at a minimum, includes a statement of the allegations, the issues, and a summary of the information being forwarded to the decisionmaker; and
- The University will inform the parties at regular intervals of the status or



progress of the process.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests with the University, not the Complainant and Respondent. The University cannot access, consider, disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision to the party, unless the University obtains that party's voluntary, written consent to do so.

Each party will be provided an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible. The University will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The University will exclude the following types of evidence, and questions seeking that evidence, as impermissible (i.e., must not be accessed or considered, except by the University to determine whether an exception exists; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in the University's grievance procedures; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

The University will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- The University will provide an equal opportunity to access an accurate description of the relevant and not otherwise impermissible evidence. The University will provide the parties with an equal opportunity to access the

relevant and not otherwise impermissible evidence upon the request of any party;

- The University will provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence; and
- The University will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the Grievance Procedures.

When credibility is both in dispute and relevant to evaluating allegations of sex discrimination, the investigator or decisionmaker will have the ability to question parties and witnesses to adequately assess credibility.

### **Timing of the Investigation**

The goal of the University is to complete the fact-gathering portion of the investigation within approximately fifty (50) business days after the issuance of the notice of allegations, depending upon the complexity of the case and the availability of witnesses and relevant evidence.

### **Determination Whether Sex Discrimination Occurred**

When the investigation is complete, the parties will be informed of who will serve as the decisionmaker charged with determining whether sex discrimination or sex-based harassment occurred. The University has the discretion to designate a decisionmaker as an appropriately trained University representative or outside party. The University has the discretion to designate a committee of trained impartial representatives as the collective decisionmaker. The parties will be given the opportunity to appeal the decision by the University to name an individual or committee as the decisionmaker. An appeal can be made under the basis that the decisionmaker is improperly biased and unfit to serve in the role. The appeal will be heard by an impartial University representative who has not served as the investigator or been named as the decisionmaker or on the committee in the current proceeding.

Upon completion of the investigation, the investigator(s) complete a Report of Investigation for the decisionmaker. The investigator will notify the Respondent and the Complainant of the conclusion of the Investigation phase and their right to review an accurate description of the evidence, (subject to appropriate redaction, including as permitted and/or required by law) and review and comment on their respective statements and evidence prior to the report being finalized. The parties will have five (5) business days to review and comment on the Investigation Report prior its finalizing. Following receipt and consideration of the written responses, the investigator(s) will finalize the report and it will be made available again to the parties and provided to the decisionmaker(s).

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the University will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred;

- Notify the parties in writing of the determination whether sex discrimination occurred including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal, if applicable.

The University will not impose discipline on a Respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the Grievance Procedures that the Respondent engaged in prohibited sex discrimination.

In order to determine responsibility regarding any alleged violations, the decisionmaker will review all relevant information (inculpatory and exculpatory) and not otherwise impermissible evidence presented through the investigation. The decisionmaker will not consider a Respondent's previous findings of responsibility when determining responsibility in the current matter. The determination of responsibility for a violation of this Policy and/or the student code of conduct will be made if in the judgment of the decisionmaker, that the conduct was more likely than not to have occurred.

The University will not discipline a party, witness, or others participating in the Title IX Grievance Procedures for making a false statement or for engaging in consensual sexual conduct based solely on the University's determination of whether sex discrimination occurred.

Past findings of responsibility through University or law enforcement processes may be admissible at the disciplinary stage that determines sanctions (if applicable). Similarly, previous findings of responsibility for false reporting as defined in this Policy may be taken into consideration at the time of deliberation and sanctioning (if applicable).

### **Potential Outcomes**

When there is a finding of responsibility, University remedies and/or sanctions will be assigned by the appropriate University administrator. These may include, but are not limited to: written warnings, disciplinary probation, suspension, expulsion, termination, as well as educational assignments and referrals. The complete list of University sanctions applicable to students is listed on the [Student Code of Conduct website](#).

Disciplinary action and sanctions for staff employees and faculty members will be determined by the Assistant Vice President of Human Resources, the employee's manager, and/or higher administration. Sanctions against a faculty member are subject to the Faculty Statutes as applicable.

If a student Respondent is suspended, the student may not re-enroll at the University for a prescribed period of time. Before re-enrollment at the University, the student will need to meet with the Title IX Coordinator to discuss the student's progress in completing any assigned sanctions associated with the suspension and eligibility to resume enrollment at the University. Upon any re-enrollment, the student will be placed on Disciplinary Probation for the remainder of the academic career. The student's transcript will reflect "W" (withdrawn) for all courses in which the student was enrolled for the semester. Tuition, room and board charges, as applicable, will be prorated based on the University Refund Policy. The date used to determine any refund is the date of this finding or the date of any interim action related to this finding, whichever date is earlier.

Persons suspended from the University are considered to be Persona Non Grata (PNG) from the University until any successful re-enrollment at the University.

## **Appeals**

Both parties have the right to one level of appeal. Requests for an appeal should be made by completing an [Appeal Request Form](#).

The Appeal Request Form must be received within five (5) business days of the delivery of the written notification of outcome letter.

When requesting an appeal, the appealing party must demonstrate in writing that one or more of the following applies to their situation:

- Procedural irregularity that affected the outcome of the matter (i.e. the University's failure to follow its procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, the investigator(s), or decision-maker(s) had a conflict of interest or bias against for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter; or
- The sanction imposed was not in keeping with the gravity of the violation.

Both parties are notified when an appeal is requested, and notified again within five (5) business days if the appeal request has been granted. From the time of the notification that the appeal is requested, parties have five (5) business days to review and respond to the request.

An impartial reviewer, free from conflicts of interest, reviews the Appeal Request Form. The reviewer will be an individual who has not served as an investigator or decisionmaker in the proceeding. The reviewer can dismiss the appeal for failing to state a grounds for appeal, affirm the original findings, amend the original sanctions, send the case back to the decisionmaker, or convene a new decisionmaker. In cases where sanction(s) are amended or rejected, a rationale will be specified. The Respondent and Complainant will be notified simultaneously of the written outcome of the appeal request within a prompt timeframe, reasonable under the circumstances. The reviewer does not rehear cases.

The determination regarding responsibility becomes final either on the date the University provides the parties with the written notification of the outcome of the appeal, or, if no party appeals, the sixth business day following the delivery of the written notification of the outcome.

## **LEVEL TWO GRIEVANCE PROCESS**

The procedures outlined above for a Level One Grievance Process apply to a Level Two Grievance Process. The procedures contained below are in addition thereto.

*Scope:* The Level Two Grievance Process applies to Complaints of sex-based harassment, as defined above, involving a student Complainant or a student Respondent.

### **Notice of Allegations**

The Notice will contain all of the requirements listed under the Level One Grievance Process. In addition, the University will notify the parties that:

- The parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- The Respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures under this section;
- Prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Hearing Officer or Hearing Committee;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes the evidence, and the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party; and
- The University's Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedure.

If the University has reasonable concerns for the safety of any person as a result of providing this notice, the University may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns will be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

### **Dismissal of a Complaint**

The procedures outlined in the Dismissal of a Complaint section above apply. In addition, when dismissing a complaint alleging sex-based harassment involving a student Complainant or a student Respondent, the University will:

1. Provide the parties, simultaneously, with written notice of the dismissal and the basis for the dismissal, except if the dismissal occurs before the Respondent has been notified of the allegations, in which case the University will provide such

written notice only to the Complainant; and

2. Obtain the Complainant's withdrawal in writing if dismissing a complaint based on the Complainant's voluntary withdrawal of the complaint or allegations.

### **Complaint Investigation**

For the Level Two Grievance Process, the University will designate the Title IX Coordinator, the Assistance Vice President for Human Resources, or an appropriately trained University representative or outside party as the investigator(s).

The University will conduct a prompt and equitable investigation to gather relevant but not otherwise impermissible evidence to the determination, by a preponderance of the evidence, whether Prohibited Conduct occurred. The investigation will be impartial and will be conducted by trained individuals who have no actual bias or conflict of interest against any party or against Complainants or Respondents generally. The University has the discretion to have the investigation conducted by either a trained internal or external investigator.

In the investigation process, a Complainant and Respondent should expect that:

- The investigation will be prompt, and equitable;
- The investigation will include interviews with all reasonably available involved parties, including witnesses and other persons with first-hand knowledge;
- The Complainant and Respondent shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- There will be a complete review of any related, relevant documents;
- The disclosure of facts to parties and witnesses will be limited to what is reasonably necessary to conduct a fair investigation;
- Participants in the investigation will be advised of the importance of maintaining privacy throughout the process, but the University shall not restrict the ability of each party to discuss the allegations under investigation or to gather or present relevant evidence;
- At any time during the investigation, the investigator will make recommendations to appropriate University officials for Supportive Measures for the Complainant, Respondent, and/or witnesses;
- An investigation will result in a written report that, at a minimum, includes a statement of the allegations, the issues, and a summary of the information being forwarded to the Hearing Officer or Hearing Committee; and
- The University will inform the parties at regular intervals of the status or

progress of the process.

The University will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- The University will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the issuance of the draft Investigative Report;
- The University will provide a reasonable opportunity to respond to the evidence; and
- The University will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the Grievance Procedures.

Upon completion of the investigation, the investigator(s) provide a Report of Investigation. The investigator will notify the Respondent and the Complainant of the conclusion of the Investigation phase and their right to review the entirety of the case file (subject to appropriate redaction, including as permitted and/or required by law) and review and comment on their respective statements and evidence prior to the report being finalized. The parties will have five (5) business days to review and comment on the Investigation Report prior its finalizing. Following receipt and consideration of the written responses, the investigator(s) will finalize the report and it will be made available again to the parties. The final Report of Investigation will then be shared with the Hearing Officer of Hearing Committee.

### **Designation of Hearing Officer or Hearing Committee**

For the Level Two Grievance Process, the University will designate an appropriately trained University representative or outside party as the Hearing Officer. The University has the discretion to designate additional representatives to serve on a Hearing Committee. If a Hearing Committee is assigned, the Hearing Officer will serve as the Hearing Chairperson. When the Hearing meeting or meetings are scheduled, the parties will be informed who the University has designated as the Hearing Officer and members of the Hearing Committee.

### **Live Hearing or Individual Meetings**

For sex-based harassment complaints involving an employee party and a student party, at the conclusion of the investigation phase, the parties will proceed to Individual Meetings conducted by the Hearing Officer or Hearing Committee.

For sex-based harassment complaints involving two or more student parties, at the conclusion of the investigation phase, the parties will proceed to a Live Hearing.

## Notice/Appearence Letter

The Respondent and Complainant will receive an “appearance letter” for a Hearing or Individual Meeting with the following information:

- The date, time, location, and factual allegations concerning the violation;
- The University policies allegedly violated;
- Potential sanctions;
- The time, date, and location of the Hearing or Individual Meeting and contact information of the Hearing Officer;
- The need to be present and prepared for participation in the Hearing or Individual Meeting and that the Hearing will proceed at the scheduled time, date, and location if the parties chooses not to attend or participate in the Hearing or Individual Meeting;
- Information about requesting accommodations for the Hearing or Individual Meeting through the Student Accessibility Services;
- The opportunity to have an advisor present at the Hearing or Individual Meeting;
- The process for requesting witnesses with first-hand knowledge of the relevant facts;
- Options for alternative accommodations for participation in the Hearing, including not being in the same space as the other party; and
- Information regarding community resources, information regarding the prohibition of retaliation, and information regarding nondisclosure of information.

The Respondent’s appearance letter will further contain the option to acknowledge full, partial, or no responsibility for the alleged violations.

Barring unusual or exigent circumstances, the Complainant and Respondent will be served the appearance letter at least five (5) business days prior to the Hearing or Individual Meeting date. Both parties will be served the appearance letter through their University email address. It is the responsibility of the parties involved to check their University email address for this and all official communications from the University.

The University will provide each party and the party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, in the following manner:



- The University will provide this opportunity to review the evidence in advance of the Hearing or Individual Meeting (at least 24 hours prior to the live hearing when possible).

### **Individual Meetings**

#### **(For a Sex-based Harassment Complaint Involving a Student Party and an Employee Party)**

For a Complaint of sex-based harassment involving a student party and an employee party, the parties will not engage in a live hearing. The parties will be sent a notice to attend Individual Meetings with the Hearing Officer or Hearing Committee. In order to determine and consider evidence that is relevant and not otherwise impermissible, the Hearing Officer or Hearing Committee will ask questions during Individual Meetings with a party or requested witness. Parties may request the Hearing Officer or Hearing Committee to schedule an Individual Meeting with a relevant witness.

The Title IX Coordinator and/or University Counsel may be present to monitor Individual Meetings. During the Individual Meeting, each party can propose such questions that the party wants asked of any party or witness and have those questions asked by the Hearing Officer or Committee during one or more Individual Meetings, including follow-up meetings, with a party or witness. These questions will then be asked subject to the Hearing Officer or Committee approving the questions as relevant and not otherwise impermissible. The University will not permit questions that are unclear or harassing of the party or witness being questioned. The Hearing Officer or Committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The Hearing Officer or Committee will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions. Questions and evidence about a Complainant's or Respondent's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about a Complainant's or Respondent's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

The University will provide each party with an audio or audiovisual recording or transcript of Individual Meetings with enough time for the party to have a reasonable opportunity to propose follow-up questions in an additional individual meeting.

#### ***Advisors at Individual Meetings***

**Advisor requests** must be submitted to the Title IX Coordinator or Hearing Officer at least 48 hours before the Individual Meeting. It is the responsibility of the person requesting the advisor to ensure the advisor attends the Individual Meeting. If an advisor does not appear at the scheduled date and time of the Individual Meeting, the Individual Meeting will continue without the participation of the advisor. Although an advisor may be requested to attend the Individual Meeting, they are not required or obligated to attend or participate. Retaliation against any requested advisor is strictly prohibited. The Title IX Coordinator or Hearing Officer will assess

requests by a party for more than one advisor and retains full discretion whether to approve such requests.

The advisor is not permitted to directly address anyone other than their advisee, at any time, including asking any question or speaking on behalf of their advisee. Should an advisor violate the terms of this role they will be asked to leave by the Hearing Officer or by the Hearing Chairperson. The Complainant and Respondent must ensure that their advisor complies with this Policy.

Whenever possible, the advisor will receive written information prior to the Individual Meeting regarding their participation in the Individual Meeting, resources, retaliation, and nondisclosure information.

### ***Individual Meeting Attendance***

The Respondent and Complainant are encouraged, but not required, to attend the Individual Meeting. If the Respondent or Complainant has a conflict with the date and/or time of the Hearing it is their responsibility to contact the Title IX Coordinator or Hearing Officer directly to reschedule. The Title IX Coordinator or Hearing Officer will assess requests by a party for a change in the date and/or time of the Hearing and will grant a change for good cause. The Hearing may take place without the Respondent and/or Complainant if they fail to appear at the scheduled time and place.

### **Live Hearings**

#### **(For a Sex-based Harassment Complaint Involving a Student Complainant and Student Respondent)**

For a complaint of sex-based harassment involving a student Complainant and student Respondent, the University will conduct a live hearing with the parties physically present in the same geographic location or, at the University's discretion or upon the request of either party, will conduct the live hearing with the parties physically present in separate locations with technology enabling the Hearing Office or Committee and parties to simultaneously see and hear the party or witness while that person is speaking. The University will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review. No audio or other recording of a Hearing is permitted by any other person. Hearing Committee deliberations are not recorded.

The Title IX Coordinator and/or University Counsel may be present to monitor the proceedings. Hearings are private and closed to everyone except the involved persons including fact witnesses. At their discretion, the Hearing Officer or Committee may request that a representative from the Department of Safety and Security be present throughout the hearing as well to ensure the safety of the proceedings and participants.

The Hearing Officer/Chairperson, will allow each party to propose such questions that the party wants asked of any party or witness during a hearing and have those questions asked by the decisionmaker. The Hearing Officer/Chairperson will determine whether a proposed question is relevant and not otherwise impermissible, prior to the question being posed, and must explain any decision to exclude a question as not relevant or otherwise impermissible. If the Hearing Officer/Chairperson determines that a party's question is relevant and not otherwise impermissible,

then the question must be asked except that the University will not permit questions that are unclear or harassing of the party or witness being questioned. The Hearing Officer/Chairperson must give a party an opportunity to clarify or revise a question that they have determined is unclear or harassing and, if the party sufficiently clarifies or revises a question to satisfy the terms of this paragraph, the question must be asked. The Hearing Officer or Committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The Hearing Officer or Committee will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

Questions and evidence about a Complainant's or Respondent's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about a Complainant's or Respondent's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If deemed reliable and relevant by the University, and not otherwise excluded under this Policy, the University may consider the statements of persons who were not present at the hearing.

The University may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered pursuant to the Investigation and Hearing processes.

### ***Live Hearing Witnesses***

The Complainant and Respondent may both request that witnesses with first-hand knowledge of relevant facts participate in a Hearing or Individual Meeting. Witnesses may not participate solely to speak about an individual's character. For a Hearing, [requests for witnesses](#) must be made to the Hearing Officer/Chairperson at least 48 hours before the Hearing.

If a witness is unavailable to attend the Hearing, the witness may fill out a statement of fact form through the Department of Safety and Security that will be used in lieu of the witness's testimony at the Hearing or Individual Meeting. Statements for a Hearing must be completed at least 48 hours before the Hearing.

The Title IX Coordinator, Hearing Officer, or Hearing Committee has the discretion to request that witnesses with first-hand knowledge of relevant facts participate in the Hearing even if the witness has not been requested by the Respondent(s) and/or Complainant(s).

It is the responsibility of the person requesting the witness to ensure the witness attends the Hearing. If a witness does not appear at the scheduled date and time of the Hearing, the Hearing will proceed without the participation of the witness. Although a witness may be requested to participate in a Hearing, they are not required or obligated to participate. Retaliation against any witness is a violation of this Policy.

Whenever possible, witnesses will be contacted prior to the Hearing with information and options regarding their participation in the Hearing, resources, retaliation, nondisclosure

information, and information about requesting accommodations for the Hearing through the Student Accessibility Services. Witnesses may also schedule a pre-hearing meeting with the Title IX Coordinator or Hearing Officer to discuss hearing procedures and their participation in the process.

As appropriate, witnesses may be contacted after the Hearing with information regarding resources, retaliation, and non-disclosure information. Witnesses are not notified of the outcome of the Hearing.

### ***Advisors at Live Hearings***

**Advisor requests** must be submitted to the Title IX Coordinator or Hearing Officer at least 48 hours before the Hearing. It is the responsibility of the person requesting the advisor to ensure the advisor attends the Hearing. If an advisor does not appear at the scheduled date and time of the Hearing, the Hearing will continue without the participation of the advisor. Although an advisor may be requested to attend the Hearing, they are not required or obligated to attend or participate. Retaliation against any requested advisor is strictly prohibited. The Title IX Coordinator or Hearing Officer will assess requests by a party for more than one advisor and retains full discretion whether to approve such requests.

The advisor is not permitted to directly address anyone other than their advisee, at any time, including asking any question or speaking on behalf of their advisee. Should an advisor violate the terms of this role they will be asked to leave by the Hearing Officer or by the Hearing Chairperson. The Complainant and Respondent must ensure that their advisor complies with this Policy.

Whenever possible, the advisor will receive written information prior to the Hearing regarding their participation in the Hearing, resources, retaliation, and nondisclosure information. The advisor will not receive written notification of the outcome of the Hearing, unless requested by the party.

### ***Hearing Attendance***

The Respondent and Complainant are encouraged, but not required, to attend the Hearing. If the Respondent or Complainant has a conflict with the date and/or time of the Hearing it is their responsibility to contact the Title IX Coordinator or Hearing Officer directly to reschedule. The Title IX Coordinator or Hearing Officer will assess requests by a party for a change in the date and/or time of the Hearing and will grant a change for good cause. The Hearing may take place without the Respondent and/or Complainant if they fail to appear at the scheduled time and place.

### ***Hearing Proceedings***

The following is a general description of procedures for the Hearing. These procedures may vary as appropriate for specific Hearings.

1. Everyone present in the Hearing (including the Hearing Officer, the Committee, Respondent, Complainant, witnesses, and advisors) will be introduced, their role in the process and expectations of behavior will be explained and review Hearing Proceedings.

2. The witnesses will leave the Hearing room.
3. Members of the Committee will review the Hearing materials which include the alleged violations, and the findings of fact from the report(s) of investigation. The review of materials will be sufficient to provide a summary of the investigation phase of the process assuming the Respondent and Complainant have reviewed the case materials prior to the Hearing.
4. The Complainant and Respondent respond to the report(s) of investigation and case materials.
5. Members of the Committee will ask the Complainant and Respondent relevant questions regarding the incident and case materials.
6. Witnesses will be invited into the hearing room individually to provide any relevant first-hand information. At this time, members of the Committee will ask the witness any relevant questions in regard to the incident. The witness will leave the room after sharing their information.
7. The Complainant and the Respondent will have an opportunity to submit questions to the Hearing Committee Chairperson for consideration to present to any witnesses (including each other) for cross-examination purposes.
8. The Complainant and Respondent will be offered an opportunity to make a summary statement.
9. The Hearing Chairperson will review the privacy of the proceedings and case materials, supportive measures, that the Complainant and Respondent will be simultaneously notified of the Committee's decision via their University e-mail, the appeal process, and that any interim actions or measures remain in place until otherwise notified.
10. All persons but the Hearing Committee are dismissed and the Committee considers the case materials and information presented to determine responsibility or non-responsibility for the alleged violation(s) and appropriate sanctions (if applicable).

### **Determination Whether Sex-based Harassment Occurred**

The Hearing Officer or Committee will use the preponderance of the evidence standard of proof to determine whether sex-based harassment occurred. The University will provide the determination whether sex-based harassment occurred in writing to the parties simultaneously.

The written determination must include:

1. A description of the alleged sex-based harassment;
2. Information about the policies and procedures that the University used to evaluate the allegations;

3. The Hearing Officer or Hearing Committee's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred;
4. When the Hearing Officer or Hearing Committee finds that sex-based harassment occurred, any disciplinary sanctions the University will impose on the Respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by the University to the Complainant, and, to the extent appropriate, other students identified by the University to be experiencing the effects of the sex-based harassment; and
5. The University's procedures for the Complainant and Respondent to appeal.

The Hearing Officer or Hearing Committee does not consider a Respondent's previous findings of responsibility when determining responsibility in the current matter.

### **Potential Outcomes**

When there is a finding of responsibility, University remedies and/or sanctions will be assigned by the Hearing Officer or Committee along with the appropriate University administrator. Remedies or sanctions include, but are not limited to: written warnings, disciplinary probation, suspension, expulsion, termination, as well as educational assignments and referrals. The complete list of University sanctions applicable to students is listed on the [Student Code of Conduct website](#).

Disciplinary action and sanctions for staff employees and faculty members will be determined by the Assistant Vice President of Human Resources, the employee's manager and/or higher administration. Sanctions against a faculty member are subject to the Faculty Statutes as applicable.

If a student Respondent is suspended, the student may not re-enroll at the University for a prescribed period of time. Before re-enrollment at the University, the student will need to meet with the Title IX Coordinator to discuss the student's progress in completing any assigned sanctions associated with the suspension and eligibility to resume enrollment at the University. Upon any re-enrollment, the student will be placed on Disciplinary Probation for the remainder of the academic career. The student's transcript will reflect "W" (withdrawn) for all courses in which the student was enrolled for the semester. Tuition, room and board charges, as applicable, will be prorated based on the University Refund Policy. The date used to determine any refund is the date of this finding or the date of any interim action related to this finding, whichever date is earlier. Persons suspended from the University are considered to be Persona Non Grata (PNG) from the University until any successful re-enrollment at the University.

### **Appeals**

The Appeal Procedures for the Level 1 Grievance Process apply to the Level 2 Grievance Process.

## **EFFECT OF WITHDRAWAL AND TRANSCRIPT NOTATION**

For those crimes of violence, as defined by the Clery Act, that the University is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a decision and appeal, if any, shall include the following notation:

- “Suspended after a finding of responsibility for a code of conduct violation”
- “Expelled after a finding responsibility for a code of conduct violation”

Additionally, the transcript of any student who withdraws from the University following the receipt of a notice of investigation and declines to complete the disciplinary process shall include the following notation:

- “Withdrew with conduct charges pending”

### **Transcript Notation Review Process**

When a student is suspended from the University, a notation has been placed on her/his transcript and the student may request a review of the notation for removal.

To request a review, the student must submit a letter to the Title IX Coordinator requesting the removal of the notation which also includes the following information:

- A personal statement detailing the student’s time away from the University and outlining both positive contributions the student has made to the community and personal growth.
- Two (2) character reference letters (letters from family members are not acceptable).

The Title IX Coordinator will review the request and may require additional information. Following a review of the request, the Title IX Coordinator may subsequently require speaking to or meeting with the student regarding the request before making a decision.

If a notation is removed from a transcript this does not erase the student’s conduct history; it modifies the student’s transcript upon the request being granted. In no case shall the transcript notation for suspension be removed prior to one year after the conclusion of the suspension. Notations for expulsion shall not be removed from transcripts.

## **STUDENT CONDUCT RECORDS**

Documentation from all processes and any appeals become part of the students' student conduct file, considered to be part of the student's educational record, and are maintained by the Title IX Coordinator. Outcomes may be released to University officials on a "need-to-know" basis. Student records may be released to persons and agencies external to the University with the student's permission, or in compliance with the law. Records subpoenaed or ordered by a judge may be released without a student's permission. A record may also be released if it is in the University's legal interest to do so.

In cases where the University is the Complainant in an Informal Resolution, the final results of the proceeding may be disclosed to the victim in the allegation, in accordance with FERPA. The final results are defined as the decision or determination made by the decision-makers, the name of the student, the violation committed, and any sanction (if applicable) imposed by the University against the student. Sanction information may include a description of the action, the date of imposition, and its duration. The University is prohibited from re-disclosing the information provided.

All student conduct files are maintained for seven (7) years after the most recent finding of responsibility. These student conduct records are destroyed at the end of the appropriate time period. Records pertaining to students who are suspended or expelled are maintained permanently.



## STUDENT RIGHTS AND INFORMATION

### **Student Bill of Rights Regarding Sexual Misconduct**

The University is committed to providing options, support, and assistance to individuals reporting sexual or gender-based violence, sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in University-wide and campus programs, activities, and employment. All individuals reporting these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights afforded by New York State Education Law 129-B section 6443, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad.

All University Students have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the conduct or criminal justice process free from pressure by the University;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the University courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the Complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few University representatives as practicable and not to be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the University, any student, the Accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the University;
- Access to at least one level of appeal of a determination; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, and/or Title IX Grievance Process of the University.

#### Additional Rights for Complainants:

- Make a report to the Department of Safety & Security, local law enforcement, and/or state police, or choose not to report;
- Report the incident to the University;
- Have emergency access to the University's Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a Complainant to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. Such officials shall also explain whether he or she is authorized to offer the Complainant confidentiality or privacy, and shall inform the Complainant of other reporting options;
- Disclose confidentially the incident to University representatives who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants;
- Disclose confidentially the incident and obtain services from the state or local government;
- Disclose the incident to the University representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for Complainants;
- File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate University representatives for information and assistance. Reports shall be investigated in accordance with institution policy and Complainant's identity shall remain private at all times if said Complainant wishes to maintain privacy;
- Disclose, if the Accused is an employee of the University, the incident to the University's Department of Human Resources or the right to request that a confidential or private employee assist in reporting to the appropriate Human Resources authority;
- Receive assistance from appropriate institution representatives in initiating legal proceedings in family court or civil court;
- To be protected by the University from retaliation for reporting an incident;

and

- To receive assistance and resources from the University, whether or not the Complainant chooses to participate in the University's investigation and/or Title IX Grievance or Disciplinary Resolution Processes.

## **CLERY ACT REPORTING**

Under the Clery Act, the University must report statistics about certain offenses in its annual security report and provide those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. Individuals can access the University's Clery Act annual security report on the Department of Safety and Security website.

If a report of Prohibited Conduct discloses a serious or continued threat to the University community, the University may issue a campus wide timely warning to protect the health or safety of the community. The timely warning can take the form of an email and/or the University's designated emergency notification system. The timely warning will not include any identifying information about the Complainant.

The release of the Respondent's name to the general public is guided by the Family Educational Rights and Privacy Act (FERPA) and the Clery Act.