



## **SEXUAL MISCONDUCT POLICY**

(Amended September 2022)

### **PART I: GENERAL POLICY CONSIDERATIONS ..... 3**

I.	NOTICE OF NON-DISCRIMINATION AND STATEMENT OF POLICY .....	3
II.	TITLE IX COORDINATOR .....	3
III.	SCOPE OF POLICY .....	4
IV.	JURISDICTION .....	5
V.	DEFINITIONS.....	6
VI.	SEXUAL HARASSMENT .....	13
VII.	PROHIBITION AGAINST RETALIATION .....	16
VIII.	IMMEDIATE RESOURCES .....	17
IX.	OPTIONS FOR REPORTING INCIDENTS OF SEXUAL MISCONDUCT.....	19
X.	STUDENT AMNESTY POLICY .....	26
XI.	SUPPORTIVE MEASURES, EMERGENCY REMOVALS, AND NO-CONTACT ORDERS .....	26
XII.	RECORDKEEPING.....	28
XIII.	PREVENTION AND AWARENESS EDUCATION PROGRAMS .....	29
XIV.	REVISONS AND DESIGNATION .....	29
XV.	INVESTIGATIONS, FORMAL GRIEVANCE PROCESS, AND RESOLUTION PROCESSES, GENERALLY	29

### **PART II: PROCESS A—FORMAL GRIEVANCE PROCESS FOR ALLEGATIONS OF TITLE IX SEXUAL HARASSMENT ..... 33**

I.	FORMAL COMPLAINTS.....	33
II.	INITIAL NOTICE OF ALLEGATIONS .....	34
III.	INFORMAL GRIEVANCE PROCESS.....	35
IV.	INVESTIGATION OF FORMAL COMPLAINTS .....	35
V.	THE HEARING .....	37

### **PART III: PROCESS B—RESOLUTION PROCESSES FOR ALL OTHER ALLEGATIONS OF SEXUAL MISCONDUCT ..... 40**

I.	INITIAL STEPS .....	40
II.	INFORMAL RESOLUTION PROCESS.....	41

III. FORMAL RESOLUTION PROCESS .....	42
<b>PART IV: APPEALS PROCESS FOR DETERMINATIONS REGARDING RESPONSIBILITY (PROCESS A OR PROCESS B), DISMISSAL OF A COMPLAINT OR FORMAL COMPLAINT, OR ANY ALLEGATIONS THEREIN .....</b>	<b>46</b>
APPENDIX A: STUDENTS' BILL OF RIGHTS.....	47
APPENDIX B: EMPLOYEE COMPLAINT FORM FOR REPORTING SEXUAL HARASSMENT .....	48

## **PART I: GENERAL POLICY CONSIDERATIONS**

### **I. NOTICE OF NON-DISCRIMINATION AND STATEMENT OF POLICY**

St. Francis College (the “College” or “St. Francis”) seeks to maintain a safe learning, living and working environment. In furtherance of the Franciscan Spirit, and in accordance with Title IX of the Education Amendments of 1972 and its implementing regulations (“Title IX”), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act of 2013 (“VAWA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), Article 129-B of the New York State Education Law (“Article 129-B”), the New York State and New York City Human Rights Laws (“NYSHRL” and “NYCHRL”), and all other applicable law, the College is committed to maintaining a community free from all forms of sex discrimination, including sexual harassment. In accordance with Title IX, the College does not discriminate on the basis of sex in its educational programs or activities that it operates, including admissions and employment. Title IX requires the College not to discriminate in such a manner. Under Title IX, discrimination on the basis of sex includes sexual harassment, as defined below.

Any inquiries about the application of Title IX and related issues of sex discrimination, may be referred to the College’s Title IX Coordinator, the U.S. Department of Education’s Assistant Secretary for Civil Rights, or both.

Kamla Holland  
St. Francis College  
Interim Title IX Coordinator  
179 Livingston Street, Suite 6101  
Brooklyn, NY 11201  
Telephone: 718-489-2019  
Email: [kholland@sfc.edu](mailto:kholland@sfc.edu)

U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Telephone: 1-800-421-3481  
Fax: 202-453-6012; TDD: 1-800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

The College has established this Sexual Misconduct Policy (the “Policy”), to promptly and equitably address allegations of “sexual misconduct” including: all forms of sex/gender-based discrimination, sex/gender-based harassment, all forms of sexual harassment, sexual assault, dating violence, domestic violence, stalking, and any other form of non-consensual sexual activity or related misconduct prohibited by this Policy, as well as retaliation as defined herein (collectively referred to as “sexual misconduct”). This Policy: (i) defines prohibited conduct; (ii) sets forth available resources and reporting options; (iii) describes the College’s processes for responding to reports, complaints, and formal complaints, as defined herein; and (iv) describes programs implemented by the College to educate and increase awareness among the College community.

### **II. TITLE IX COORDINATOR**

Notice of alleged Policy violations, reports, complaints, formal complaints, and/or inquiries or concerns regarding this Policy and/or the state, federal, and local laws covered in this Policy may be made to the College’s Title IX Coordinator. Any member of the College who believes that they have been a victim of sexual misconduct is encouraged to immediately report it to the College’s Title IX Coordinator using the contact information listed above.

The Title IX Coordinator is responsible for, among other things: ensuring the College’s compliance with Title IX, overseeing the College’s response to reports, complaints, or formal complaints of

sexual misconduct and/or retaliation, identifying and addressing any patterns or systemic problems of sexual misconduct that arise during the investigation of a complaint or formal complaint of sexual misconduct, and assessing the effects of sexual misconduct on the campus climate. The Title IX Coordinator is also responsible for the implementation of supportive measures provided to the Parties upon notice of sexual misconduct and addresses all reports of sexual misconduct and/or retaliation in an equitable and neutral manner.

The Title IX Coordinator is available to meet with any member of the St. Francis community, as defined below, to discuss this Policy and the procedures set forth herein. The Title IX Coordinator is free from bias and conflicts of interest. Concerns involving bias or conflicts of interest, misconduct, or discrimination by the Title IX Coordinator, may be reported to Yadira Moran at [ymoran@sfc.edu](mailto:ymoran@sfc.edu). Any concerns of bias or a potential conflict of interest, misconduct, or discrimination by any other individual involved in the processes set forth in this Policy should be reported to the Title IX Coordinator.

### **III. SCOPE OF POLICY**

This Policy is effective as of August 14, 2020 and governs all reports, complaints, and formal complaints of sexual misconduct made on or after such date. Any reports or complaints made prior to the effective date of this Policy will be reviewed under the prior Policies and Procedures for Reports of Student and Employee Sexual Misconduct. Other forms of discrimination and harassment, including discrimination and harassment based on race, religion, disability, and any other protected class other than sex/gender are governed by the College's Non-Discrimination and Anti-Harassment Policy.<sup>1</sup> An individual who has a question about which policy applies may contact the College's Title IX Coordinator. Any requests for accommodations due to a disability can be raised with Yadira Moran at [ymoran@sfc.edu](mailto:ymoran@sfc.edu) for employees and Grace Henry, Interim Director of Accessibility and Accommodations at [oaa@sfc.edu](mailto:oaa@sfc.edu) for students.

The fundamental objective of this Policy is to address all forms of sexual misconduct, including sex discrimination, and retaliation, as defined herein. Allegations of a violation of this Policy are addressed under "Process A" or "Process B" as determined by the College's Title IX Coordinator. Process A only applies to qualifying allegations of sexual harassment under Title IX ("Title IX sexual harassment"), including sexual assault, dating violence, domestic violence, and stalking, as defined by Title IX. Process B applies to all other forms for sexual misconduct and retaliation, including sexual harassment that the Title IX Coordinator determines does not fall within Process A. Both Process A and Process B contain an informal process.

This Policy governs all reports, complaints, and formal complaints, involving members of the St. Francis community. In this Policy, the "St. Francis community" or "College community" includes the College's students, employees, including faculty, administrators and staff, prospective students and employees, contractors, subcontractors, vendors, or other third parties, visitors and guests, and other parties affiliated with the College by reason of employment or education and within the College's control. Each member of the St. Francis community is expected to assist in maintaining a working and learning environment that is free of sexual misconduct at the College.

Sexual misconduct may occur between members of the same or different sex, or any combination of members of the St. Francis community. This Policy applies regardless of an individual's race,

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<sup>1</sup> This Policy supersedes any information contained in that policy, if applicable, with respect to the definitions or procedures relating to sexual misconduct.

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, criminal conviction, part-time or full-time status, or other status protected by law. While sexual misconduct can constitute a criminal offense under state or federal law, an individual's conduct may violate this Policy even if it does not violate the law.<sup>2</sup>

With respect to adjunct faculty only, inasmuch as their employment with the College is subject to the terms and conditions of a Collective Bargaining Agreement ("CBA") between the College and the St. Francis College Adjunct Faculty Union ("SFCAFU"), either the College or SFCAFU may at any time elect to utilize the grievance procedures available pursuant to the CBA in the administration of this Policy and any conduct that would be subject to Process B, but not Process A. In the event that there is a conflict between the CBA and this Policy, this Policy will control as required by law if Process A applies; but the CBA will control if Process B applies. For information about the CBA, please contact Yadira Moran at [ymoran@sfc.edu](mailto:ymoran@sfc.edu) or (718) 489-5442.

#### **IV. JURISDICTION**

This Policy applies to sexual misconduct that occurs during the College's education programs and activities, and therefore covers all of the operations of the College,<sup>3</sup> such as academics, extracurricular activities, and may also include computer and internet networks, digital platforms, and computer hardware or software owned by, operated by, or used in the operations of the College. This Policy covers conduct that occurs on-campus, in College provided housing, and any other property owned or controlled by the College, as well as off-campus at programs and activities sponsored by the College, including study abroad.<sup>4</sup> Any online postings or other electronic communications will be in violation of this Policy the same as any other verbal, written, or physical conduct addressed in this Policy. Irrespective of where the sexual misconduct took place, the College will assess all reports, complaints, and formal complaints to determine whether the sexual misconduct took place during its education program or activity or has a continuing effect on campus or in an off-campus sponsored program or activity.

Members of the St. Francis community are subject to this Policy. When the Respondent is not a St. Francis community member or the Respondent's identity is not known, the Title IX Coordinator will provide appropriate resources and support options to the Complainant, and/or assist the Complainant in contacting law enforcement if the allegations include conduct that is criminal and the Complainant wishes to file a report with the police. The College may also prohibit individuals from College programs or activities in order to protect the Complainant or its community.

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<sup>2</sup> Conduct that violates College policy may also violate New York State laws and subject the Respondent to criminal prosecution. Sex Offenses under New York law are described in Sections 130.00 to 130.96 and prohibited Stalking Offenses in Sections 120.45 to 120.60 of the New York State Penal Code, available at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWs>.

<sup>3</sup> For the purposes of Title IX sexual harassment (34 CFR §§ 106.30, 106.44 and 106.45), "education program or activity" includes locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and any building owned or controlled by a student organization that is officially recognized by the College.

<sup>4</sup> Conduct that is prohibited by Article 129-B that is not covered by Title IX sexual harassment is addressed under Process B of this Policy. To the extent applicable, students maintain the rights set forth in the Students' Bill of Rights during resolution of a complaint or formal complaint under Process A or Process B. N.Y. Educ. Law § 6440(6). A copy of the Students' Bill of Rights is attached hereto as Appendix A.

## V. DEFINITIONS

For purposes of this Policy, the following definitions apply:

**“Actual knowledge”** means notice of Title IX sexual harassment or allegations of Title IX sexual harassment to the College’s Title IX Coordinator or any College official who has authority to institute corrective measures on behalf of the College, also known as any Official with Authority as defined below. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. The mere ability or obligation to report Title IX sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the College. Notice includes, but is not limited to, reports, complaints, and formal complaints of sexual misconduct, as defined herein. This standard is not met when the only official of the College with actual knowledge is the Respondent. Once the College has actual knowledge of Title IX sexual harassment in its education program or activity against a person in the U.S., it will respond promptly in a manner that is not deliberately indifferent, as defined herein.

**“Advisor”** means an individual who may be, but is not required to be an attorney, and that is selected by each party or appointed by the College at the party’s request to accompany the party to any related meeting or proceeding, to advise the party, and to conduct cross-examination for the party at the hearing in Process A, if any. If a party does not select an advisor and a hearing under Process A is required based on allegations of Title IX sexual harassment, the College will appoint an advisor for the purposes of conducting cross-examination.

**“Affirmative consent”** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions 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, or gender expression.

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which 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, or other intoxicants may be incapacitated and therefore unable to consent.<sup>5</sup>
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

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<sup>5</sup> In New York, a person under the age of seventeen cannot legally consent to sexual activity and is considered incapacitated.

**“Bystander”** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior or conduct that is in violation of the rules or policies of the College.

**“Coercion”** means unreasonable pressure to engage in sexual activity.

**“Complainant”** refers to an individual who is alleged to be the victim of conduct that could constitute sexual misconduct and/or retaliation for engaging in a protected activity.

**“Complaint”** means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual misconduct, other than Title IX sexual harassment, against a Respondent and requesting that the College investigate the allegation of sexual misconduct and/or retaliation. Complaints apply to Process B of this Policy.

**“Confidentiality”** may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.

**“Covered Non-Employees”** include: (i) applicants for employment; (ii) interns, whether paid or unpaid; (iii) persons who are (or are employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services to the College; and (iv) persons commonly referred to as independent contractors, “gig” workers, and temporary workers, including, but not limited to, persons providing equipment repair, cleaning services, or any other services provided pursuant to a contract with the College.

**“Dating violence”** as defined by VAWA at 34 U.S.C. § 12291(a)(10), means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of the relationship, and (iii) the frequency of interaction between the persons involved in the relationship.

**“Day”** means a business day.

**“Deliberately indifferent”** as defined in 34 C.F.R. § 106.44(a), an institution is deliberately indifferent only if its response to Title IX sexual harassment is clearly unreasonable in light of the known circumstances. Once the College has actual knowledge of Title IX sexual harassment in its education program or activity against a person in the United States, the College will respond promptly in a manner that is not deliberately indifferent.

**“Disciplinary sanction”** means an action imposed by the College on a Respondent where a determination of responsibility has been made and the Respondent has been made and the Respondent has been found to have violated this Policy.

**“Domestic violence”** as defined by VAWA at 34 U.S.C. § 12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of jurisdiction

receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**"Education program or activity"** for purposes of 34 C.F.R. §§ 106.30 and 106.45, includes locations, events or circumstances over which the College exercised substantial control over both the Respondent and the context in which the alleged sexual misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.

**"Final determination"** means that a determination that has become final. A determination is a finding by the College based upon a preponderance of the evidence, regarding whether the Respondent is responsible for the alleged conduct and whether the alleged conduct constitutes a violation of this Policy. A determination indicates whether disciplinary sanctions, if any, are to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity are to be provided to the Complainant. A "final" determination means the written determination containing the information required in 34 C.F.R. § 106.45(b)(7), as modified by any appeal by the Parties. A determination becomes a final determination on the date that the College provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

**"Force"** means the use of physical violence and/or imposing on someone physically to engage in sexual activity. Force can also include threats, intimidation, or coercion used to overcome an individual's freedom of will to choose whether or not to participate in sexual activity.

**"Formal complaint"** means a Process A document filed by a Complainant (meaning a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the individual filing the formal complaint) or signed by the Title IX Coordinator alleging Title IX sexual harassment against a Respondent and requesting that the College investigate the allegation of Title IX sexual harassment. Formal complaints apply to Process A of this Policy. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the College.

**"Grievance process"** refers to the formal and informal grievance processes set forth as "Process A," which is designated by the College to address Title IX sexual harassment that falls within this Policy, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45). Process A only applies to reports and formal complaints of Title IX sexual harassment.

**"Hearing Officer"** refers to an individual who presides over the hearing conducted during the formal grievance process (Process A) and formal resolution process (Process B) of this Policy and issues a determination as to Policy violation(s).

**"Intimidation"** means implied threats that reasonably cause another individual to fear for that individual's safety or well-being.

**"Investigator"** means an individual(s) appointed by the Title IX Coordinator or their designee to investigate the allegations of sexual misconduct and/or retaliation under this Policy. Investigators are also charged with creating an investigative report that fairly summarizes the relevant evidence.

**“No-contact order”** means a directive prohibiting contact between and among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party. Continued intentional contact would be a violation of College policy subject to additional conduct charges.

**“Official with Authority”** means an employee of the College who has the authority to implement corrective action on behalf of the College.

**“Parties”** include the Complainant(s) and Respondent(s), collectively (a “party” is someone directly involved in a proceeding). Others, such as witnesses and advisors, are not considered Parties.

**“Preponderance of the evidence”** is the standard to determinate responsibility under this Policy. This means that it is more likely than not that a violation of this Policy occurred.

**“Privacy”** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with applicable laws, including informing appropriate College officials.

**“Process A”** means the grievance processes defined above and detailed below. Process A only applies to conduct that constitutes Title IX sexual harassment.

**“Process B”** means the resolution processes defined and detailed below. Process B applies to all allegations of sexual misconduct and retaliation that do not constitute Title IX sexual harassment.

**“Prohibited conduct”** means conduct that constitutes a violation of this Policy.

**“Remedies”** means actions taken by the College in favor of a Complainant and/or the College community after a determination of responsibility has been made through Process A or Process B. Remedies are designed to restore or preserve equal access to the College’s education program or activity. Remedies may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

**“Report”** means a report made to the Title IX Coordinator that is verbal or written, by any person, alleging sexual misconduct and/or retaliation as defined herein. Such a report can be made at any time in person, by mail, by phone, or by electronic mail. A report is not the same as a complaint or formal complaint and will not initiate either the grievance processes (Process A) or the resolution processes (Process B).

**“Reporting individual”** means any individual who reports an alleged violation of this Policy to the Title IX Coordinator. This may or may not be the same as the Complainant, a witness, or a bystander.

**“Resolution processes”** refers to the formal and informal resolution processes set forth in “Process B,” and which apply when Process A does not, as determined by the Title IX Coordinator. The resolution processes address all reports and complaints of sexual misconduct as defined herein, except for all reports and formal complaints of Title IX sexual harassment.

**“Respondent”** refers to an individual who has been alleged to be the perpetrator of conduct that could constitute sexual misconduct and/or retaliation for engaging in a protected activity.

**“Responsible employee”** means an employee of the College who must share their knowledge of sexual misconduct with the Title IX Coordinator. A responsible employee who receives knowledge of sexual misconduct does not constitute actual knowledge to the College, unless the Title IX Coordinator or any Official with Authority receive notice of the same.

**“Retaliation”** has various definitions under state and federal laws. See Section VII of Part I.

**“Sex”** includes sex, gender, sexual orientation, gender identity, and/or gender expression.

**“Sex discrimination”** involves treating someone unfavorably because of that person’s actual or perceived sex. It occurs when, on the basis of sex, gender, sexual orientation, gender identity, including transgender status and/or gender expression, an individual or group is excluded from participation in, or denied the benefits of, any College program or activity, including admissions and employment.

**“Sex/gender-based harassment”** is unwelcome conduct based on an individual's actual or perceived sex/gender. It includes slurs, taunts, stereotypes, or name-calling as well as gender-motivated physical threats, attacks, or other hateful conduct. It occurs when one person harasses another person for reasons relating to their gender or the gender with which they identify. The harassing conduct does not need to be based on anything of a sexual nature.

**“Sexual activity”** includes any “sexual act” or “sexual contact.”

- A “sexual act” means (a) contact between the penis and vulva or the penis and the anus where penetration occurs, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (c) the penetration, however slight of the anal or genital opening of another by 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; or (d) the intentional touching, not through the clothing of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- “Sexual contact” means 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.

**“Sexual assault”** as defined at 20 U.S.C. § 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (“FBI”). These offenses are defined<sup>6</sup> as follows:

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<sup>6</sup> The definitions herein are from the most recent Uniform Crime Reporting Program National Incident-Based Reporting System (“NIBRS”) User Manual, dated May 7, 2020, with the exception of Rape, which, in accordance with the Clery Act, is defined pursuant to the FBI’s Uniform Crime Reporting Program Summary Reporting System (SRS), dated June 20, 2013. Once the SRS is retired, the NIBRS definition of rape shall be used.

- “**Sex offenses**<sup>7</sup> include any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
  - **Rape – Completed** [SRS Definition]: penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes either gender of victim or offender. Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.
  - **Rape (except statutory rape)** [NIBRS Definition—to be used only when SRS is retired<sup>8</sup>]: the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Sodomy**: oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - **Sexual assault with an object**: to use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia, e.g., a finger, bottle, handgun, stick.
  - **Fondling**: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- “**Sex offenses**<sup>9</sup> are also unlawful sexual intercourse:
  - **Incest**: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory rape**: sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in statutory rape; the act is not an attack.

**“Sexual exploitation”** means abuse or non-consensual use of another person’s sexuality or nudity without consent, for the Respondent’s own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Specific conduct that constitutes sexual exploitation could constitute Title IX sexual harassment if it meets the definition under Title IX. Examples of sexual exploitation include, without limitation:

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<sup>7</sup> Under the NIBRS User Manual dated 2011, available [here](#), this definition was used to describe “Sex Offenses, Forcible.” The following acts were classified as “Sex Offenses, Forcible”: Forcible Rape (Except Statutory Rape), Forcible Sodomy, Sexual Assault with An Object, and Forcible Fondling.

<sup>8</sup> It is anticipated that the FBI will retire the SRS on January 1, 2021.

<sup>9</sup> Under the NIBRS User Manual dated 2011, available [here](#), the definition of “(except prostitution offenses) unlawful, nonforcible sexual intercourse” was used to describe “Sex Offenses, Nonforcible.” The following acts were classified as “Sex Offenses, Nonforcible”: Incest, Statutory Rape. Moreover, please note that under the most recent NIBRS, failure to register as a sex offender is also considered a sex offense and is defined as failing to register or keep current a registration as required by state and federal laws.

- Causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person thus compromising that person's ability to give affirmative consent (e.g. administering alcohol or drugs to another person for the purpose of making that person vulnerable to non-consensual sexual activity);
- Causing the prostitution of another person;
- Voyeurism (such as non-consensual observations, electronically video or audio recording, watching or taking pictures, videos or audio recordings of another person engaging in sexual activity, in a state of undress, or in a place and time where such person has a reasonable expectation of privacy, such as a bathroom or shower or changing room, each without the affirmative consent of all parties);
- Transmitting intimate or sexual utterances, sounds or images of another person in a state of undress or of a sexual nature;
- Disseminating, streaming, or posting sexual activity of any form on social media or any other public forum without permission from another individual;
- Exceeding the boundaries of consent with another individual such as by allowing third parties to observe you engaging in sexual acts with another individual;
- Exposing one's genitals to another person without affirmative consent;
- Distributing intimate or sexual information about another person; and/or
- Knowingly exposing or transmitting a sexually transmitted infection or virus, including but not limited to HIV, to another person without the other person's knowledge.

**“Sexual harassment”** has various definitions under state and federal laws. See Section VI of Part I.

**“Sexual misconduct”** is a broad term that encompasses a wide range of prohibited behaviors and a term used to refer to any form of sex/gender-based discrimination, sex/gender-based harassment, all forms of sexual harassment, sexual assault, dating violence, domestic violence, stalking, sexual exploitation, and any other form of non-consensual sexual activity or related misconduct prohibited by this Policy, as well as retaliation.

**“Stalking”** as defined by VAWA at 34 U.S.C. § 12291(a)(30), is a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress.

**“Supportive measures”** are non-disciplinary and non-punitive individualized services offered as appropriate and reasonably available, without fee or charge to Complainants and Respondents before or after the filing of a complaint or formal complaint or where no complaint or formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the College’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all Parties or the College’s educational environment, or to deter sexual misconduct. Supportive measures can include various forms or services as set forth in Section XI of Part I.

**“Title IX Coordinator”** means the Title IX Coordinator and/or their designee(s). The Title IX Coordinator may delegate certain responsibilities under this Policy to designees, who will be appropriately trained.

## **VI. SEXUAL HARASSMENT**

Sexual harassment is an unlawful form of discrimination. Sexual harassment may be committed by any individual upon another, regardless of that individual's sex, sexual orientation, gender identity, or gender expression. The term "sexual harassment" has various definitions under applicable laws and by various bodies, including the U.S. Department of Education, the U.S. Equal Employment Opportunity Commission ("EEOC"), and New York State. Reports and formal complaints of sexual harassment that constitute Title IX sexual harassment are addressed under Process A of this Policy.<sup>10</sup> Reports and complaints of conduct that do not constitute Title IX sexual harassment, as well as conduct that may constitute Title VII or NYSHRL sexual harassment are addressed under Process B of this Policy. Note, however, that conduct can meet more than one of these definitions.

### **a. Title IX Sexual Harassment**

Under Title IX, specifically 34 C.F.R. § 106.30, "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. A College employee conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity;<sup>11</sup> or
3. Sexual assault, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), dating violence, as defined in 34 U.S.C. § 12291(a)(10), domestic violence, as defined in 34 U.S.C. § 12291(a)(8), or stalking as defined in 34 U.S.C. § 12291(a)(30). Definitions for these terms are also provided in Section V of Part I.

To fall under Title IX, the sexual harassment must have occurred during the College's education program or activity against a person in the United States. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the College.

### **b. Title VII Sexual Harassment**

It is unlawful to harass a person because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

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<sup>10</sup> Conduct that constitutes sex discrimination, including under Title IX, and which does not constitute Title IX sexual harassment, is addressed under Process B of this Policy.

<sup>11</sup> Categories 1 and 3 do not require elements of severity, pervasiveness, or objective offensiveness. Severity, pervasiveness and objective offensiveness must be evaluated in light of the known circumstances and depend on the facts of each situation but must be determined from the perspective of a reasonable person standing in the shoes of the Complainant.

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

**c. NYSHRL Sexual Harassment<sup>12</sup>**

NYSHRL sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. NYSHRL sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful and can be any harassing conduct that consists of more than petty slights or trivial inconveniences. NYSHRL sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. NYSHRL sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

NYSHRL sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment. Any employee who feels harassed should report so that any violation of this Policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this Policy.

NYSHRL sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Unlawful NYSHRL sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace

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<sup>12</sup> The NYSHRL applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors, and persons conducting business, regardless of immigration status, with the College; all must follow and uphold this Policy. Any employee or individual covered by this Policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action.

harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

i. Examples of NYSHRL Sexual Harassment

The following describes some of the types of acts that may be unlawful NYSHRL sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, name-calling.

Preventing sexual harassment is everyone's responsibility. The College cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or nonemployee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or the Title IX Coordinator. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or the Title IX Coordinator.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy as Appendix B, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf. Employees, paid or unpaid interns or non-employees who believe they have been a victim of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that

sexual harassment is occurring, are required to report such suspected sexual harassment to the Title IX Coordinator. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner and will be confidential to the extent possible. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. All persons involved, including Complainants, witnesses, and Respondents will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation. Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. The College will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this Policy. NYSHRL sexual harassments claims will be handled as outlined below and in accordance with Process B.

## **VII. PROHIBITION AGAINST RETALIATION**

The College will not tolerate any form of retaliation as defined herein. Unless the form of retaliation constitutes Title IX sexual harassment, which would be addressed under Process A, all complaints alleging retaliation under this Policy or the laws covered by this Policy should be addressed under Process B. The following constitutes "retaliation":

### **a. Title IX Retaliation<sup>13</sup>**

The College will not tolerate any intimidating, threatening, coercing, or discriminating behavior against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because an individual has made a report, complaint, or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Title IX sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination or a report or formal complaint of Title IX sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this subsection of the Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation under this subsection of the Policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

### **b. Title VII Retaliation**

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<sup>13</sup> Complaints alleging retaliation may be filed according to the resolution processes for sex discrimination required to be adopted under 34 C.F.R. § 106.8(c), which is Process B under this Policy.

In accordance with Title VII, the College will not discriminate against any of its employees or applicants for employment because of the employee's or applicant's opposition to any practice made an unlawful employment practice by Title VII, or because the employee or applicant made a charge, testified, assisted, or participated in any investigation, proceeding, or hearing under Title VII.

**c. NYSHRL Retaliation (Employees Only)**

No employee covered by this Policy shall be subject to adverse action because the employee reports an incident of NYSHRL sexual harassment, provides information, or otherwise assists in any investigation of a NYSHRL sexual harassment complaint. The College will not tolerate such NYSHRL retaliation against anyone who, in good faith, reports or provides information about suspected NYSHRL sexual harassment. Any employee of the College who retaliates against anyone involved in a NYSHRL sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such NYSHRL retaliation should inform a supervisor, manager, or the Title IX Coordinator. All employees, paid or unpaid interns or non-employees who believe they have been a target of such NYSHRL retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

Under the NYSHRL, unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a NYSHRL sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours). Such retaliation is unlawful under federal, state, and (where applicable) local law. The NYSHRL protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- Made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment under the NYSHRL or other anti-discrimination law;
- Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

**VIII. IMMEDIATE RESOURCES**

There are a number of on-campus and off-campus resources available that can help after an incident of sexual misconduct. For emergency or immediate assistance (24 hours a day, 7 days a week) contact 911.

**a. Immediate Medical Assistance and Counseling**

If you or someone you know is or may be the victim of any form of sexual misconduct and/or retaliation, the College strongly urges you to seek immediate assistance. Seeking assistance promptly may be important to ensure physical safety or to obtain appropriate medical care and emotional support. It may also be necessary to preserve evidence. Assistance is available 24 hours a day, 7 days a week, from:

- Local Police (84th Precinct) and Emergency Assistance – Call 911
- Campus Security – (718) 489-5333 or, if on campus, extension 5333
- Safe Horizon Rape and Sexual Assault Hotline – (866) 689-HELP (4357)
- Safe Horizon Domestic Violence Hotline – (800) 621-HOPE (4673)
- Beth Israel Hospital Emergency Room\*, First Avenue and 16th Street Manhattan

*The College has an MOU with Beth Israel Hospital to provide free SANE exams and counseling for survivors of sexual assault.*

- Maimonides Medical Center Emergency Rm – 4802 10th Ave., Brooklyn, NY, 11219, (718) 283-7222
- NYPD Sex Crimes Report Hotline – (212) 267-7273
- Brooklyn District Attorney's Office Special Victims Bureau – (718) 250-3170
- New York City Gay and Lesbian Anti-Violence Project – (212) 714-1141
- St. Luke's Hospital Crime Victim Treatment Center – (212) 523-905
- Center Against Domestic Violence – (718) 254-9134
- New York State Office of Victim Services Toll Free Number – (800) 247-8035 \* can report anonymously
- New York State Police – (844) 845-7269
- New York State Domestic Violence and Sexual Assault Hotline, provides crisis intervention, shelter services, and referrals (800)-942-6906

**b. Sexual Assault Forensic Examiners**

Being examined as soon as possible is important in the case of sexual assault. Sexual Assault Forensic Examiners (SAFE) are considered the best and most appropriate medical professionals to conduct such an examination and are available at:

- The College has an MOU with Beth Israel Hospital (Manhattan)
- St. Luke's Hospital (Manhattan)
- Roosevelt Hospital (Manhattan)
- Bellevue Hospital (Manhattan)
- Mount Sinai (Manhattan)
- New York Presbyterian – Weill Cornell (Manhattan)
- Woodhull Hospital (Brooklyn)
- Coney Island (Brooklyn)
- King's County Hospital (Brooklyn)

To preserve evidence, do not shower, bathe, brush teeth, change clothing or drink liquids before going to the hospital or the police after experiencing an act of sexual assault or other misconduct.

**c. College Counseling Resources**

Regardless of whether an individual makes a complaint or formal complaint, the following counseling options are available at the College:

Student Health Services  
179 Livingston Street, Room 7205  
Brooklyn, NY 11201  
Phone: 718-489-5366  
Monday – Friday, 9AM – 5PM Nurse  
Liz Giugliano  
Email: egiugliano@sfc.edu

SFC Counseling Center  
179 Livingston Street, Room 7205  
Brooklyn, NY 11201  
Phone: 718-489-5335  
or if on campus, extension 5335  
Natasha Edwards  
Email: nedwards2@sfc.edu

## **IX. OPTIONS FOR REPORTING INCIDENTS OF SEXUAL MISCONDUCT**

The College encourages individuals who experience, witness or become aware of alleged sexual misconduct to report the incident to the Title IX Coordinator. The College will assist individuals in contacting law enforcement, if desired. The College also provides individuals the opportunity to discuss alleged incidents with a trained professional on campus with the assurance that the discussion will be confidential. For more information on how to file a complaint of sexual misconduct or formal complaint of Title IX sexual harassment please see Section I of Part II for formal complaints (Process A) and Section I of Part III for complaints (Process B).

### **a. Law Enforcement Notification and Orders of Protection**

If you are the victim of sexual misconduct, the College strongly encourages you to promptly report the incident to the police. Timing is a critical factor in collecting and preserving evidence that may assist in proving that the alleged misconduct occurred or may be helpful in obtaining a protection or restraining order. College representatives are available to assist you in notifying law enforcement of an incident of sexual misconduct and in contacting law enforcement or legal service organizations. You may also decline to notify law enforcement.

Any internal College process will run concurrently with a criminal investigation and proceeding, except for temporary delays as requested by external entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days, except when law enforcement specifically requests and justifies a longer delay. Not all sexual misconduct under this Policy is a crime<sup>14</sup> and the standard applied in criminal cases (beyond a reasonable doubt) is different than the College's standard (preponderance of evidence) under this Policy. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to law enforcement officials or the District Attorney.

College representatives are also available to: (i) assist students in initiating legal proceedings in family or civil court and (ii) to assist students in acquiring a New York State court order of protection. If an order of protection is granted, the Parties have the right to receive a copy of the order when the College receives it. The Parties will also have the opportunity to have the College explain the order, the consequences for violating the order, and answer any questions about the order. If the party against whom the order is made violates the order of protection, the protected

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<sup>14</sup> Penal codes and definitions vary by state and federal law. These definitions may also differ from the definitions of violations in this Policy. New York Penal law Article 130 addresses sex offenses and can be accessed at <https://www.nysenate.gov/legislation/laws/PEN/P3THA130>.

party may receive assistance from the College in calling local law enforcement to inform them of the violation.<sup>15</sup>

**b. College Notification**

The College will promptly and equitably respond to all reports of sexual misconduct made to the Title IX Coordinator, as identified above with measures designed to stop such conduct, prevent its recurrence and remediate any adverse effects. Reports of sexual misconduct and/or retaliation may be made using any of the following options:

- Any individual (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual misconduct) may report incidents of sexual misconduct to the Title IX Coordinator at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed herein for the Title IX Coordinator.
- Report online, using the reporting form posted at <https://www.sfc.edu/studentlife/share>.
- Individuals may report anonymously.<sup>16</sup>

Except for those employees designated as confidential, as set forth herein, any incident of sexual misconduct reported to a College employee (a responsible employee as defined herein), must be reported by the employee to the Title IX Coordinator.

The College will confidentially maintain the identities of reporting individuals, Complainants, individuals who have been alleged to be perpetrators of sexual misconduct, including Respondents, and witnesses, except as may be permitted by the Family Educational Rights and Privacy Act (“FERPA”) and its implementing regulations, as required by law, or as necessary to conduct proceedings under this Policy. To the extent possible, information reported to the Title IX Coordinator will be shared only with individuals responsible for handling the College’s response to the report. The Title IX Coordinator will not share information with law enforcement without the Complainant’s consent, except as required by law, the information involves suspected abuse of a minor under the age of 18, or the incident poses a safety risk to the College community.

**i. Initial Assessment**

Upon receiving a report, complaint, or formal complaint of an alleged violation of this Policy, the Title IX Coordinator will commence an initial assessment within 5 to 7 business days:

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<sup>15</sup> The College’s Mutual of Omaha Employee Assistance Program (EAP) provides confidential, cost-free professional consultation and referral services to assist all SFC employees and their family members when faced with any personal or professional challenges. For more information, or to utilize the EAP benefit, please call (800) 316-2796 and please see the attached information sheet. Should you contact the EAP and be asked to provide an SFC group identification number, the number is: G0000BML9.

<sup>16</sup> To the extent possible, the College will investigate anonymous reports in order to determine what actions it may be able to take, including to provide supportive measures. However, the College’s ability to respond to the report may be limited, including the College’s ability to provide supportive measures if the Parties’ identities are unknown. Additionally, a known Complainant cannot remain anonymous during the formal grievance process set forth in Process A regardless of whether the Complainant or the Title IX Coordinator files the formal complaint. If a report is filed anonymously and the Complainant is not identified, the Title IX Coordinator may still proceed with filing a formal complaint, should circumstances warrant. However, like with reports, the College’s ability to respond to a formal complaint will be limited.

- The Title IX Coordinator will contact and provide the Complainant with a written explanation of their rights and options to proceed with respect to their report of sexual misconduct, offer immediate assistance available to the Complainant (e.g., referrals to appropriate law enforcement agencies; and referrals for medical treatment at local hospitals, existing counseling and legal assistance, and trauma centers), and other services available both within the College and in the community.
- A reporting individual will have emergency access to the Title IX Coordinator, or their designee who is properly trained. The Title IX Coordinator will provide the reporting individual information regarding their options to proceed, and other important information about their rights under College policy and the law. Such information includes, 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. The Title IX Coordinator will also explain whether they are authorized to offer the reporting individual confidentiality or privacy, and will inform the reporting individual of other reporting options.<sup>17</sup>
- The Title IX Coordinator will determine whether the scope of the allegations fall within the jurisdiction of this Policy.
- The Title IX Coordinator promptly makes supportive measures available to the Parties upon receipt of a report, complaint, or formal complaint. The Title IX Coordinator will discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a complaint or formal complaint, and explain to the Complainant the process for filing a complaint or formal complaint.<sup>18</sup> At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they may file a complaint or formal complaint with the College either at that time or in the future, if they have not done so already.
- The Title IX Coordinator will work with the Complainant to determine whether the Complainant prefers a supportive response, an informal option, if applicable, or an investigation and formal grievance process (Process A) or resolution process (Process B), if applicable.
- The Title IX Coordinator determines the applicability of a grievance process under Process A and if the complaint does not fall within the scope of Process A, assesses which processes may apply to the complaint (e.g. Process B). If the allegations fall within the scope of Process A, then the Title IX Coordinator will inform the Complainant of the option to file a formal complaint as well as the process for doing so. If the Complainant decides to file a formal complaint, please see Section I of Part II of this Policy.
- If the Complainant wishes to proceed with either process, if applicable, or the College believes it is otherwise necessary, the Title IX Coordinator will ascertain the name of the Respondent, the date, location, and nature of the alleged sexual misconduct, and, in a timely fashion, will notify the Respondent of the allegations and supportive measures available to the Respondent. If a formal complaint is filed, the Title IX Coordinator will provide initial notice to the Parties as further described in Section II of Part II of this Policy. The grievance process and resolution processes outlined in this Policy will be followed before any discipline is imposed on the Respondent.

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<sup>17</sup> For the purpose of this Policy, privacy and confidentiality have distinct meanings. Section V of Part I.

<sup>18</sup> For a period of 7 years, the College will maintain a record of any supportive measures provided to the Parties. This documentation is further explained in Section XII of Part I of this Policy.

### **c. Confidentiality**

College employees have varying levels of responsibility to maintain confidentiality. However, even College offices and employees who cannot guarantee confidentiality will maintain an individual's privacy to the greatest extent possible. The information provided to non-confidential resources will be relayed only as necessary to the Title IX Coordinator for purposes of investigation and/or resolution.

#### **i. Professional and Pastoral Counselors**

Professional, licensed counselors and pastoral counselors (ordained clergy) whose official responsibilities include providing mental-health counseling to College students, including those who act in that role under the supervision of a licensed counselor, are not required to report any information about an incident of sexual misconduct to the Title IX Coordinator without the individual's consent. The College's professional and pastoral counselors include:

Student Health Services  
179 Livingston Street, Room  
7205 Brooklyn, NY 11201  
Phone: 718-489-5366  
Monday – Friday, 9AM – 5PM Nurse  
Liz Giuglano egiuglano@sfc.edu

SFC Counseling Center  
179 Livingston Street, Room 7205  
Brooklyn, NY 11201  
Phone: 718-489-5335  
or if on campus, extension 5335  
Natasha Edwards  
nedwards2@sfc.edu

#### **ii. Non-Professional Counselors and Advocates**

Certain non-professional counselors and advocates may generally talk to an individual without incurring an obligation to disclose personally identifying information about an incident to the College. A Complainant or Respondent can seek assistance and support from these individuals without triggering the College's response that could reveal the party's identity or that the party disclosed the incident.

#### **iii. Responsible Employees**

A "responsible employee" is a College employee who is obligated by this Policy to share their knowledge of sexual misconduct with the Title IX Coordinator. This definition encompasses virtually every College employee, including all faculty, staff and administrators, except those who are acting as pastoral and professional counselors and non-professional counselors and advocates at the College. A responsible employee must immediately report all relevant details about the alleged sexual misconduct shared by the reporting individual to the Title IX Coordinator. A responsible employee will strive to maintain privacy and information reported to the responsible employee will be shared only with those having a need to know such information in order to respond in accordance with College policy.<sup>19</sup>

#### **iv. When a Complainant Does Not Wish to Proceed**

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<sup>19</sup> Providing notice of sexual misconduct to a responsible employee does not provide actual notice to the College under Title IX. The College has actual knowledge when the Title IX Coordinator or Official with Authority, as defined herein, has notice of sexual misconduct.

If a Complainant wants a report to remain confidential, such that the Complainant's identity will not be disclosed to the Respondent, and chooses not to file a complaint or formal complaint, the Complainant may receive supportive measures without an investigation, or formal grievance process or resolution process being conducted. A Complainant may also report the alleged incident for the purpose of receiving supportive measures, and later decide to file a complaint of sexual misconduct or formal complaint of Title IX sexual harassment.

The College will seek consent from Complainants prior to conducting an investigation and hearing. Declining to consent to an investigation may be honored unless the Title IX Coordinator determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the Complainant or ensure the safety of other members of the College community, would be clearly unreasonable in light of the known circumstances, or violates state or federal law. Honoring such a request may limit the College's ability to meaningfully investigate and pursue conduct action against a Respondent. Factors used to determine whether to honor such a request include but are not limited to:

- Whether the Respondent has a history of violent behavior, a pattern of misconduct or is a repeat offender;
- 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, violence or force;
- Whether the Complainant is a minor; and
- Whether the College possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

The Title IX Coordinator has ultimate discretion to determine whether the College will proceed when the Complainant requests otherwise. The Title IX Coordinator may sign a complaint or formal complaint to initiate a formal grievance process or resolution process upon completion of a good faith determination. If the Title IX Coordinator signs the complaint or formal complaint, they do not become the Complainant.

A Complainant may withdraw a report, complaint, or formal complaint from the College at any time. The College may, however, still have an obligation to investigate and/or take action.

v. FERPA

FERPA permits institutions to share information with parents when: (i) there is a health or safety emergency, or (ii) when the student is a dependent on either parent's prior year federal income tax return. Generally, the College will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual or Complainant.

d. **Time for Reporting**

There is no time limit for reporting sexual misconduct. Nevertheless, any member of the College community who believes that they have been a victim of sexual misconduct is encouraged to report the alleged sexual misconduct immediately in order to maximize the College's ability to meaningfully respond. If the Respondent is no longer subject to the College's jurisdiction and/or

significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Under no circumstances will the College allow an impending graduation to compromise its resolution of a sexual misconduct complaint or formal complaint. The conferral of a degree may, therefore, be withheld, if necessary, until proper resolution of any sexual misconduct charges, provided that an opportunity will be scheduled for the earliest practicable date that can accommodate the Parties and their witnesses.

**e. Clery Reporting and Federal Timely Warnings**

Pursuant to the Clery Act, the College will make reports of certain crimes in the College's Annual Security Report in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual, including a Complainant. The College will issue timely warnings of crimes enumerated in the Clery Act that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual or Complainant. A reporting individual or Complainant will not be identified in a timely warning.

**f. Minors**

Certain members of the College community who interact with, supervise, chaperone, or otherwise oversee minors in programs or activities at the College or sponsored by the College are required to report immediately to the NYS Maltreatment Hotline if they have reasonable cause to suspect abuse or maltreatment of individuals under the age of 18. If there is suspected abuse or maltreatment of a minor on campus, contact the College's Security Desk at (718) 489-5333, the Title IX Coordinator and call the NYS Child Maltreatment Hotline at 800-342-3720. For more information regarding minors and reporting obligations, please refer to the [College's Minors on Campus Policy](#).

**g. Bad Faith Reporting**

Submitting a false report of sexual misconduct or providing false or misleading information in bad faith in connection with an incident of sexual misconduct is prohibited and subject to disciplinary action under the Cord for students and Employee Handbook for employees, up to and including dismissal from the College. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are determined not to be accurate.

**h. Public Awareness and Advocacy Events**

If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public events, the College is not obligated to begin an investigation based on such information, unless a report, complaint, or formal complaint of sexual misconduct is filed with the Title IX Coordinator because the Complainant clearly indicates that they desire a report to be made or seek a specific response from the College. The College will use the information provided at such an event to inform its efforts for additional education and prevention efforts.

**i. External Reporting Options**

i. Office of Civil Rights Notification

Individuals may also report sexual misconduct to the U.S. Department of Education's Office for Civil Rights (OCR) at <https://www2.ed.gov/about/offices/list/ocr/index.html>.<sup>20</sup>

ii. Legal Protections and External Remedies for Employees

Sexual harassment is not only prohibited by the College, but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal processes at the College, employees and covered non-employees, as defined herein, may also choose to pursue legal remedies with the following governmental agencies. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

1. *New York State Human Rights Law*

The NYSHRL, codified as N.Y. Executive Law, art. 15, § 290 *et seq.*, applies to all employers in New York State with regard to sexual harassment, and protects employees and covered non-employees regardless of immigration status. A complaint alleging violation of the NYSHRL may be filed either with the Division of Human Rights ("DHR") or in New York State Supreme Court.

Complaints with DHR may be filed any time within three (3) years of the harassment. If an individual did not file at DHR, they can sue directly in state court under the NYSHRL, within three (3) years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a NYSHRL complaint in state court.

Complaining internally to the College does not extend your time to file with DHR or in court. The three years are counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit [www.dhr.ny.gov](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

2. *Civil Rights Act of 1964*

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<sup>20</sup> Please see the contact information for the OCR in Section I of Part I of this Policy.

The United States Equal Employment Opportunity Commission (“EEOC”) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e *et seq.*). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief but may take other action including pursuing cases in federal court on behalf of complaining Parties. Federal courts may award remedies if discrimination is found to have occurred.

An employee alleging discrimination at work, can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)) or visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov). If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### *3. Local Protections and Contacting the Local Police Department*

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml). If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

## **X. STUDENT AMNESTY POLICY**

The health and safety of every student at the College is of utmost importance. St. Francis recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to the College’s officials or law enforcement will not be subject to the College’s code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## **XI. SUPPORTIVE MEASURES, EMERGENCY REMOVALS, AND NO-CONTACT ORDERS**

### **a. Supportive Measures**

Supportive measures are non-disciplinary and non-punitive, individualized services to a party, which are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all Parties or the College's educational environment, or deter sexual misconduct under this Policy. Supportive measures can range from referral to supportive services such as counseling or medical services to class/housing/office modifications, withdrawals, leaves of absence, and no-contact orders.

Provided it has notice, before or after a complaint or formal complaint is filed, or where no complaint or formal complaint has been filed, the College (through the Title IX Coordinator) will provide supportive measures to all Parties. When offering supportive measures, the Title IX Coordinator will inform the Complainant, in writing, that they may file a complaint or formal complaint at any time.

The determination of appropriate supportive measures must be based on the facts and circumstances of that situation. Supportive measures, include but are not limited to:

- Providing campus escort services;
- Modifications to work or class schedules;
- Extensions of deadlines or other course-related adjustments;
- Changes to work, housing, living, transportation, or other applicable situations including changes in residence hall assignments or office locations;
- Providing counseling and academic support services, such as tutoring;
- Referral to counseling, medical and/or other healthcare services;
- Proving course-related adjustments such as extensions of deadlines;
- Providing leaves of absence;
- Providing increased security, supervision or monitoring of certain areas of the campus;
- Establishing restrictions on contact (no-contact orders) between the Parties; and
- Other similar measures or any other actions the Title IX Coordinator deems appropriate.

The College will review the facts and circumstance of each case and will implement measures in a way that does not unreasonably burden the other party. Upon written request and in accordance with College policies, a student may seek prompt review of the need for or terms of supportive measures to the extent the relevant supportive measure has a direct impact on them. This request should include the basis for the request and any supporting evidence. A student may also ask for review of a request for additional supportive measures and submit evidence in support of the request. Such requests should be submitted in writing to the Title IX Coordinator. The other party will have the right to respond to the request for review to the extent the relevant supportive measure has a direct impact on them.

#### **b. Emergency Removals**

If the Title IX Coordinator, in consultation with other College administrators, based on an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any individual justifies removal, including but not limited to an interim suspension, then the College will remove such Respondent from its education program or activity on an emergency basis. In determining whether an interim suspension is appropriate, the College will consider, *inter alia*, the following factors:

- Whether there have been other sexual misconduct reports, complaints, or formal complaints about the same Respondent;
- Whether the incident involves a weapon or violence;
- Whether the Respondent has a history of arrests or disciplinary records;
- Whether the incident represents an escalation in and unlawful conduct on behalf of the Respondent from previously noted behavior; and
- Whether there is an increased risk that the Respondent will commit additional acts of violence.

The College will provide the Respondent with written notice and an opportunity to challenge the College's decision immediately following the removal. The Parties may request a review of the need for, and terms of, an emergency removal, reasonable under the circumstances, including potential modification, and may submit evidence in support of their request to the Title IX Coordinator. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond in writing and submit relevant evidence.

The Title IX Coordinator has sole discretion to implement or stay an emergency removal and to determine the conditions and duration, if the emergency removal is to end before a determination is made by the Hearing Officer. Violation of an emergency removal under this Policy will be grounds for discipline under the Cord for students and the Employee Handbook for employees, including but not limited to expulsion/termination from the College. The College may also place a non-student employee Respondent on administrative leave at its discretion and/or in accordance with federal and state laws.

#### **c. No-Contact Orders**

All no-contact orders will be mutual – i.e. neither party involved will be permitted to contact the other party -- unless the Title IX Coordinator determines, in their discretion and after a fact-specific analysis, that a non-mutual order is appropriate. The Title IX Coordinator will issue any no-contact order in writing, specifying the terms of the no-contact order, including the Parties' responsibilities. The Parties may request a review of the need for, and terms of, the no-contact order, including potential modification, and may submit evidence in support of their request. Any such requests should be submitted to the Title IX Coordinator who will then notify the other party and conduct a prompt review in response to such request. Violation of a no-contact order under this Policy will be grounds for discipline under the Cord for students and the Employee Handbook for employees, including but not limited to expulsion/termination from the College.

## **XII. RECORDKEEPING**

For a period of 7 years, the College will maintain records generated in connection with sexual misconduct reports, investigations, disciplinary proceedings, hearings, informal resolutions, appeals, and the audio, audiovisual recording, or transcript, as well as any determinations regarding responsibility including any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant. All materials used to train (in connection with Process A) the Title IX Coordinator and their designees, Investigators, Hearing Officers, and any individual who facilitates informal resolution processes will also be maintained for at least 7 years.

For a period of 7 years, the College will also maintain records of any responses, including supportive measures, that the College took in response to a report, complaint, or formal complaint of sexual misconduct. In each instance, the College must document the basis for its conclusion

that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College's education program or activity. If the College does not provide a Complainant with supportive measures, the College must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.

### **XIII. PREVENTION AND AWARENESS EDUCATION PROGRAMS**

To promote and maintain a safe and respectful environment, the College engages in comprehensive educational programming. The College provides prevention and awareness programs for all incoming students and employees, and ongoing prevention and awareness campaigns for all students and employees. Student leaders and officers of student organizations recognized by or registered with the College and those seeking recognition by the College, as well as student-athletes, must complete certain training prior to receiving recognition from the College or participating in intercollegiate athletic competition. The College educates the student community about sexual misconduct through its mandatory freshman orientation program, certain required courses, and ongoing program initiatives throughout the students' time at the College.

As a condition of continued employment with the College, every employee must participate in and complete annual sexual misconduct prevention training. New hires must complete this training within 30 days of hire, unless they received training within the same annual cycle from a prior employer. For information about the College's sexual misconduct prevention, training, and awareness programming, please contact the Title IX Coordinator.

### **XIV. REVISIONS AND DESIGNATION**

The most current revision of this Policy supersedes all previously issued revisions and inconsistent verbal or written policy statements. The College reserves the right at any time to change, modify, delete, or add to any of the provisions of this Policy. The College may, at its discretion, designate a trained and experienced individual(s) to act in the place of the Title IX Coordinator, Investigators, Hearing Officers, Appeals Panel members, and/or facilitators in this Policy. If there is such a designation, the Parties involved will be promptly informed.

### **XV. INVESTIGATIONS, FORMAL GRIEVANCE PROCESS, AND RESOLUTION PROCESSES, GENERALLY**

The provisions in this section of the Policy apply to all investigations, the formal grievance process (Process A), and the resolution processes (Process B), as well as all appeals.

#### **a. Standard of Evidence, Presumption of Non-Responsibility, and Burdens of Proof and Gathering Evidence**

The standard for decisions under this Policy is a preponderance of the evidence, meaning that it is more likely than not that a violation of this Policy occurred. There is a presumption that a Respondent is not responsible for the alleged sexual misconduct until a determination of responsibility is made. The burdens of proof and of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not the Parties.

Members of the College community are expected to cooperate and be honest in their interactions with the College under this Policy. In this regard, community members are expected to acknowledge and respond to requests for information from College officials or their designees in a timely fashion and be available for discussions with such individuals.

**b. Promptness, Notice, and Timeframes**

The College will promptly resolve all reports, complaints, formal complaints, investigations, grievance and resolution processes, excluding appeal, within 60 to 90 business days of the filing of a report, complaint, or formal complaint of sexual misconduct with the Title IX Coordinator, unless the College has good cause for any temporary delays or limited extensions. Good cause may include, but is not limited to, absence of a party, advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. In the case of any delays past the timeframes set forth in this Policy, the College will provide written notice to the Parties of the delay, the cause of the delay, and a calculation of the additional time that the College expects is necessary resulting from the delay.

The College will provide clear written notice to the Parties before every interview or other meeting they are invited or expected to attend, including the date, time, location, participants, and purpose of the investigative interview, hearing or meeting, whose participation is invited or expected, including the Complainant and Respondent. Through the notice, the College will provide sufficient time for the party to prepare to participate.

**c. Advisor of Choice**

The Parties may have an advisor present during any grievance process or resolution process, including the opportunity to be accompanied to any related meeting, interview, or hearing by the advisor of their choice who may advise and assist the Parties. A party's advisor of choice may be, but is not required to be, an attorney. Each party is permitted one advisor who must sign an advisor acknowledgement form and comply with the College's advisor rules.

Throughout the process, the role of the advisor is narrow: they may attend meetings or interview at which the party is entitled to be present, and may help the party prepare for each meeting, however, the Parties should anticipate asking and responding to questions on their own account. Except for cross-examination during a hearing in Process A, as described below, advisors cannot actively participate or speak on behalf of the Parties or act as a proxy for any party, though, as reasonably needed, they may confer privately with the party during the proceedings. Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisors if they unduly delay the process, as determined by the Title IX Coordinator. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the Title IX Coordinator.

**d. Conflicts of Interest, Bias, and Training**

The College's Title IX Coordinator, Investigators, Hearing Officers, Appeal Panel members, and any person who facilitates an informal process, are trained to serve impartially and must be free from conflicts of interest and bias against Complainants or Respondents generally or an individual Complainant or Respondent. These individuals also receive training on, *inter alia*, topics set forth in Article 129-B (N.Y. Educ. Law § 6444(5)(c)(ii)) and Title IX (34 C.F.R. § 106.45 (b)(1)(iii)).

#### **e. General Disciplinary Considerations**

The College policies or contracts may require the College to use additional processes before taking certain employment-related actions with respect to faculty and certain other employees. Where a person covered by such a policy or contract has allegedly engaged in conduct prohibited by this Policy, the investigation and formal grievance process or resolution process will proceed in accordance with the procedures set forth herein, except that the Hearing Officer will not impose any discipline that would require the use of additional processes. Instead, the Hearing Officer will impose all appropriate discipline that does not require the use of additional processes and then refer the matter, if appropriate, for action under the additional process. The College's disciplinary action will be considered complete with the Hearing Officer's imposition of discipline and referral, subject to any appeals. For information, please contact the Title IX Coordinator.

#### **f. Disciplinary Sanctions and Remedies**

There is a broad range of possible disciplinary sanctions and remedies that the College may implement as part of a determination of responsibility. All remedies are designed to restore or preserve equal access to the College's education programs or activities and may include the same individualized services as supportive measures, described herein. However, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. The Hearing Officer may also identify additional remedies to address the effects of the conduct on the Complainant. Thus, the range of remedies is broad and may include supportive measures as described in Section XI of Part I of this Policy, as well as remedial sanctions, as described in Section XV of Part I of this Policy. If a Complainant declined or did not take advantage of a specific service or resource previously offered, the College may re-offer the service as applicable or necessary. The Title IX Coordinator may also consider broader remedial action for the campus community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. The Title IX Coordinator is responsible for effective implementation of any remedies.

The range of disciplinary sanctions that the Hearing Officer may consider for any individual found responsible for a violation of this Policy span from a warning up to and including expulsion or termination or revocation of a student's degree. The Hearing Officer may impose any of the following disciplinary sanctions that are determined to be fair and proportionate to the violation of the Policy under Process A or Process B:

- Reprimand or warning;
- Changing the Respondent's work or academic schedule;
- Disciplinary probation;
- Revocation of honors or awards or a degree;
- Community service and/or training;
- Restricting the Respondent's access to College facilities or activities;
- Issuing a no-contact order or requiring that such an order remain in place;
- Changing the Respondent's work or housing assignment;
- Dismissal from or restricting or reassignment of College employment;
- Removing the Respondent from student housing;
- Suspension (limited time or indefinite);
- Forfeiture of a benefit, honor, leadership position, promotion, or other privilege enjoyed by virtue of the person's membership as adjunct faculty, staff, or administration;

- Reassignment of College employment;
- Respondents who are non-student employees may also be placed on administrative leave during the pendency of a formal grievance process or resolution process;
- Expulsion or termination; and/or
- Any other actions deemed appropriate by the Title IX Coordinator.<sup>21</sup>

In addition, the College reserves the right to withhold a student's diploma where a report of sexual misconduct is pending. It may also revoke any degree awarded for an individual who is found to have engaged in sexual misconduct prior to conferral of the degree.

In determining appropriate disciplinary sanctions, the Hearing Officer may consider any record of past violations of College policies, including the nature and severity of such past violation(s),<sup>22</sup> as well as previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate disciplinary sanction upon a determination of responsibility. This information is only considered at the disciplinary sanction stage of the process. As part of the deliberations, the Hearing Officer will also consider whether the Respondent poses a continued risk to the Complainant and/or the College community. The College will implement disciplinary sanctions and remedies when the determination of responsibility becomes a final determination, as defined above.

#### **g. Transcript Notations**

If a Respondent is found responsible through the College's conduct process for crime(s) of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. § 1092(f)(1)(F)(i)(I)-(VIII), the College will make one of the following notations on the transcript of such student:

- "Suspended after a finding of responsibility for a code of conduct violation"; or
- "Expelled after a finding of responsibility for a code of conduct violation"; or
- If a student withdraws from the College while such conduct charge(s) is pending and declines to complete the disciplinary process, the College will note on the student's transcript that they "withdrew with conduct charges pending."

For more information, please see the College's Transcript Notation Policy.

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<sup>21</sup> Please note that this is a non-exhaustive list.

<sup>22</sup> Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines disciplinary sanctions. N.Y. Educ. Law § 6444.

## **PART II: PROCESS A—FORMAL GRIEVANCE PROCESS FOR ALLEGATIONS OF TITLE IX SEXUAL HARASSMENT**

Process A applies only to qualifying allegations of Title IX sexual harassment as defined above in Section VI of Part I. If a dismissal of a formal complaint occurs under Process A, please see Process B, if applicable. Process B may also apply to Title IX sexual harassment if the Title IX Coordinator determines that the allegations fall outside the jurisdiction of Process A. Unionized or other categorized employees are subject to the terms of their agreements or employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

Under Title IX, the College's response to reports or formal complaints of sexual harassment must treat Complainants and Respondents equitably by offering supportive measures to a Complainant, and by following a grievance process that complies with Title IX before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a Respondent.

### **I. FORMAL COMPLAINTS**

Reports of Title IX sexual harassment may be made using any of the following options as set forth in Section IX of Part I.

A formal complaint, as defined herein, may be filed with the Title IX Coordinator at any time (even during non-business hours) in person, by mail, or by electronic mail, by using the contact information in Section I of Part I. The College will promptly investigate formal complaints and follow a formal grievance process that complies with 34 C.F.R. § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in 34 C.F.R. § 106.30, against a Respondent with the Title IX Coordinator or if the Title IX Coordinator signs such a formal complaint. The Complainant must be participating in or attempting to participate in the College's education program or activity at the time the formal complaint is filed alleging Title IX sexual harassment against a Respondent and requesting that the College investigate the allegations.

If the Complainant files the formal complaint, the formal complaint must contain the Complainant's physical or digital signature or provide an indication that the Complainant is the individual filing the formal complaint. The Title IX Coordinator may also sign a formal complaint. However, where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party to the formal complaint.

#### **a. Dismissal of Formal Complaints**

The College *must* dismiss a formal complaint or any allegations therein, if, at any time during the investigation or hearing, it is determined that: (1) the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in 34 C.F.R. § 106.30, even if proved; (2) the conduct did not occur in the College's education program or activity; (3) the conduct did not occur against a person in the United States; or (4) at the time of filing a formal complaint, the Complainant is not participating in or attempting to participate in the education program or activity of the College. Such dismissal does not preclude the College from acting under Process B of this Policy or College policy. The Title IX Coordinator will determine whether a formal complaint must be dismissed in accordance with this section.

The College *may*, in its discretion, dismiss a formal complaint or any allegations therein, if at any time during the investigation or hearing the: (1) Complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the formal complaint or any allegations therein; (2) Respondent is no longer enrolled at or employed by the College; or (3) specific circumstances prevent the College from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein.

In the event of the dismissal of a formal complaint, the Title IX Coordinator will promptly and simultaneously send the Parties written notice of the dismissal and the reasons for such dismissal. Both Parties may appeal the decision to dismiss a formal complaint or any allegations therein under the procedures for appeal below.

#### **b. Consolidation of Formal Complaints**

The College may consolidate formal complaints regarding allegations of Title IX sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX sexual harassment arise out of the same facts or circumstances.

### **II. INITIAL NOTICE OF ALLEGATIONS**

Upon receipt of a formal complaint of Title IX sexual harassment, the Title IX Coordinator will provide written notice to the Parties who are known. The notice will include:

- Notice of the formal grievance process, including any informal resolution process;
- Notice of the allegations of sexual harassment potentially constituting Title IX sexual harassment, as well as sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
  - Sufficient details include the identities of the Parties involved in the incident, if known, the conduct allegedly constituting Title IX sexual harassment under 34 C.F.R. § 106.30, and the date, time, location, and factual allegations of the alleged incident, if known;
- The specific section(s) of this Policy alleged to have been violated;
- A statement about the College's prohibition on retaliation;
- A description of the range of possible disciplinary sanctions and remedies or a list the possible disciplinary sanctions and remedies that the College may implement following any determination of responsibility;
- 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 informs the Parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
- A statement informing the Parties that they may inspect and review the evidence collected in an investigation; and
- A statement informing the Parties that this Policy prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

During the course of the investigation, the College may investigate allegations about the Parties that are not included in the initial written notice of allegations. If this is the case, the College will provide additional allegations to the Parties whose identities are known.

### **III. INFORMAL GRIEVANCE PROCESS**

At any time prior to reaching a determination of responsibility, the College may offer the Parties the option to resolve the formal complaint through an informal grievance process, without completing a full formal grievance process. However, the College will only offer an informal grievance process if it determines, in its sole discretion, that such informal grievance process may be appropriate, and after the College has obtained the Parties' voluntary, written consent to an informal grievance process. The informal grievance process may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice. The Title IX Coordinator will be responsible for determining whether an informal grievance process is appropriate by assessing the totality of the circumstances including, but not limited to, the severity of the alleged Title IX sexual harassment, the Parties' wishes, and the potential risks to the St. Francis community. The College will promptly resolve an informal grievance process within 30 business days of the filing of a formal complaint of Title IX sexual harassment with the Title IX Coordinator.

The informal grievance process may not be used to: (i) resolve an allegation of Title IX sexual harassment unless a formal complaint is filed, or (ii) to resolve an allegation of Title IX sexual harassment against a College employee where the Complainant is a student.

In order to proceed with an informal grievance process, the Title IX Coordinator must provide the Parties with written notice disclosing: (i) the allegations; (ii) the requirements of the informal grievance process, including the circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal grievance process and resume the formal grievance process with respect to the formal complaint; and (iii) any consequences resulting from participating in the informal grievance process, including the records that will be maintained or could be shared.

The Title IX Coordinator or their designee will serve as the facilitator(s) of the informal grievance process and may elect to be assisted by another member of the senior staff of the College or a trained outside expert. The informal grievance process is designed to obtain an expedient, mutually acceptable solution, which may include an acceptance of responsibility and disciplinary sanctions by the Respondent, without the necessity of conducting a formal grievance process. The informal grievance process may result in the imposition of protective actions agreed upon by the Parties, or (with or without such agreement) based on information derived from the informal grievance process taken together with any other relevant information known to the College at the time of the informal grievance process.

Participation in the informal grievance process is voluntary. The College will not compel the Parties to engage in an informal grievance process and will allow the Parties to withdraw from the informal grievance process at any time and resume the investigation and formal grievance process with respect to the formal complaint. There is no appeal option after the Parties reach a resolution through informal means.

### **IV. INVESTIGATION OF FORMAL COMPLAINTS**

The Title IX Coordinator will appoint a trained investigator(s) to conduct the investigation (the "Investigator"). A party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the name and contact information

of the Investigator, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as the Investigator(s) at any time.

Formal complaints of Title IX sexual harassment will be investigated promptly, thoroughly, and impartially by the Investigator, and normally within 30 business days of filing a formal complaint with the Title IX Coordinator.

Investigations generally entail interviews with relevant Parties and witnesses and follow up interviews, if necessary. The Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, such as documents, communications, photographs, and other evidence. Parties and witnesses are expected to provide all available relevant evidence to the Investigator during the investigation. The Parties will have the ability to discuss the allegations under investigation and gather and present relevant evidence. The Parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.

Unless the Investigator obtains a party's voluntary, written consent, the Investigator will not 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 or assisting in such capacity, and which are made or maintained in the connection with the provision of treatment to the party. In addition, the College will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognizable privilege, unless the person holding such privilege has waived the privilege.

At the conclusion of the investigation, the Investigator will prepare a case file, which will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination of responsibility and any inculpatory or exculpatory evidence, whether obtained from a party or other source as part of the investigation. The Investigator will also prepare an investigative report that fairly summarizes the investigation and all relevant evidence. Prior to completion of the investigative report, the Investigator will send to each party and party's advisor, if any, the case file, subject to review in an electronic format or hardcopy.<sup>23</sup> The Parties will have 10 business days to submit a written response. The Investigator will consider the written responses before completing the investigative report.

The Investigator will finalize the investigative report that summarizes relevant evidence and, at least 10 business days prior to the hearing, send the investigative report to each party and the party's advisor, if any, in an electronic format or hard copy, for their review and written response. The Parties and their advisors, if any, will be provided with the other party's written response to the investigative report, if any, in electronic format or hard copy prior to the hearing.

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<sup>23</sup> Whether included as relevant in the investigative report or not, the College will make all directly related evidence subject to the Parties' inspection and review available at any hearing to give each party an equal opportunity to refer to the evidence during the hearing, including for purposes of cross-examination.

## **V. THE HEARING**

### **a. Hearing Officer**

After the investigative report is shared with the Parties, the Title IX Coordinator will assign the matter to be heard by the Hearing Officer from a group of specially trained College personnel. The Title IX Coordinator may determine that a trained individual who is external to the College will be assigned as the Hearing Officer. The assigned Hearing Officer will not participate in the grievance process until this stage of the proceeding.

### **b. Hearing Process**

The hearing cannot be less than 10 business days from the conclusion of the investigation, which is when the final investigative report is transmitted to the Parties. The Title IX Coordinator will provide written notice at least 5 business days before the hearing date to the Parties. The written notice will include:

- The date, time, and place of the hearing;
- The participants in the hearing (including but not limited to the Parties, witnesses, etc.);
- The purpose of the hearing; and
- The name and contact information of the Hearing Officer. A party wishing to challenge the participation of the Hearing Officer must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the notice of hearing, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the Hearing Officer at any time.

#### **i. Conduct of the Hearing**

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the College will provide the Parties with written notice explaining the reason for such change. The College will create an audio or audiovisual recording, or transcript, of all live hearings under this Policy and will make it available to the Parties for inspection and review.

The Hearing Officer may consider all evidence that they determine is relevant. The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or advisor. During the hearing, the Parties may: speak on their own behalf, including providing an opening and closing statement; be accompanied by an advisor, who may be, but is not required to be, an attorney; have an advisor cross-examine the other party and any witnesses; and the opportunity to attend the entire hearing or proceeding, except for the deliberation phase. The Hearing Officer will determine the order of witnesses and answer any procedural questions. During any hearing, the College will make all directly related evidence available for the Parties' inspection and review to give each party an equal opportunity to refer to the evidence during the hearing.

Live hearings may be conducted with all Parties physically present in the same geographic location, or under the discretion of the College, any or all Parties, witnesses, and other participants

may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other. The Parties may request that the live hearing occur in this manner.

ii. Cross Examination

During the live hearing, cross-examination will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. At no point shall the Parties be entitled to question each other. If a party does not have an advisor present at the live hearing, the College will provide to that party, without fee or charge, an advisor of the College's choice, who may be but is not required to be an attorney, to conduct cross-examination on behalf of that party.

At the live hearing, the Hearing Officer must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility of the opposing party or any witnesses. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer shall determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Hearing Officer may invite explanations regarding relevance with the advisors if they so choose. Once the Hearing Officer determines the relevance of the question, the Hearing Officer will allow or preclude the question.

The Hearing Officer will limit or preclude any irrelevant questions. The Hearing Officer's determination that a question is not relevant is made by applying logic and common sense. The Hearing-Officer is not required to give a lengthy or complicated explanation; it is sufficient, for example, for a Hearing Officer to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions outlined below, is duplicative, or because the question asks about a detail that is not probative of any material fact.

The Parties have the right to exclude their own mental health diagnosis and/or treatment from admittance in the hearing. Both parties also have the right to exclude their own prior sexual history with persons other than the other party in the judicial or conduct process, subject to the exceptions in 34 C.F.R. § 106.45(6)(i), which states that questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence about the Complainant's prior sexual behavior are (1) offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (2) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer shall not rely on any statement of that party or witness in reaching a determination of responsibility. The Hearing Officer shall not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

iii. Impact Statements

The Parties will be offered an opportunity to provide impact statements to the Hearing Officer while they are deliberating on appropriate disciplinary sanctions, if any. The impact statements must be provided to the Title IX Coordinator. The Title IX Coordinator will provide the impact statements to the Hearing Officer only once the Hearing Officer is deliberating on appropriate disciplinary sanctions. Impact Statements cannot and will not be considered by the Hearing

Officer when reaching a determination of responsibility. The impact statement may be up to five (5) pages single spaced.

### **c. Determinations Regarding Responsibility**

The Hearing Officer will evaluate the allegations under a “preponderance of the evidence” standard. The Respondent will be found to be responsible for the alleged Title IX sexual harassment if the Hearing Officer concludes, based upon careful review of all information presented, that such Title IX sexual harassment more likely than not occurred. The Hearing Officer will determine any disciplinary sanctions imposed on the Respondent and the Title IX Coordinator will implement any remedies. Please see above Section XV of Part I of this Policy, which sets forth the non-exhaustive range of possible disciplinary sanctions and remedies that may be implemented.

#### **i. Written Notice of Determination**

Within 7 business days from the hearing, the Hearing Officer will simultaneously issue a written notice of its determination regarding responsibility to the Parties. The written notice of determination will contain the following information:

- Identification of the conduct constituting Title IX sexual harassment under this Policy as defined in 34 C.F.R. § 106.30;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including:
  - A determination regarding responsibility;
  - Any disciplinary sanctions the College will impose on the Respondent; and
  - Whether remedies will be provided to the Complainant; and
- The College’s procedures and permissible bases for the Parties to appeal.
- When the determination becomes final.

The College will implement disciplinary sanctions and remedies when the determination becomes final. The determination regarding responsibility becomes final either on the date that the College provides the Parties with the written determination of the result of the appeal, as described below, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Part IV of this Policy.*

## **PART III: PROCESS B—RESOLUTION PROCESSES FOR ALL OTHER ALLEGATIONS OF SEXUAL MISCONDUCT**

Process B is a prompt and equitable resolution process, which is applicable when the Title IX Coordinator determines that Process A does not, or offenses subject to Process A have been dismissed.<sup>24</sup> If the Title IX Coordinator determines that Process A applies, then Process A must be applied and not Process B. Process B applies to all allegations of sexual misconduct that do not constitute Title IX sexual harassment including sex/gender-based discrimination or harassment that does not qualify as Title IX sexual harassment, involving students, employees, or third parties and other related misconduct prohibited by this Policy. Process B also applies to all allegations of retaliation covered by this Policy.

### **I. INITIAL STEPS**

#### **a. Intake Meeting with Complainant**

As stated in Section IX of Part I of this Policy, upon filing of a complaint of any allegation of sexual misconduct and/or retaliation, the Title IX Coordinator will promptly contact the Complainant and provide the Complainant with a general understanding of this Policy, and identify the Complainant's rights and any available supportive measures and resources. At the initial intake meeting or at a subsequent time thereafter, the Title IX Coordinator will seek to determine how the Complainant wishes to proceed; in other words, whether the Complainant wishes to pursue formal resolution, informal resolution, or does not wish to pursue resolution of any kind.

If the Complainant does not wish to pursue formal resolution or informal resolution, and either requests that their complaint remain confidential, or refuses to participate in the initial intake meeting with the Title IX Coordinator, the Title IX Coordinator will inform the Complainant that the College's ability to respond may be limited. In such scenarios, the College will nonetheless evaluate the Complainant's request(s) for no action in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment for the entire College community.

If the College determines that an investigation is required, it shall notify the Complainant, and take immediate action as necessary to protect and assist them. As indicated in Section IX of Part I of this Policy, the College will seek the Complainant's consent prior to initiating an investigation and the Complainant's decline to consent will be honored unless the College determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the Complainant or other members of the St. Francis community.

#### **b. Complaints**

Reports may be made using any of the options set forth in Section IX of Part I. A Complaint means a document filed by the Complainant or signed by the Title IX Coordinator alleging sexual misconduct by a Respondent and requesting that the College investigate the allegation(s). If a Complainant files or the Title IX Coordinator signs a complaint, the College will initiate its complaint process, including investigation into the Complainant's allegations. A complaint may be filed with the Title IX Coordinator at any time (including non-business hours) in person, by mail,

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<sup>24</sup> The provisions of Article 129-B apply regardless of whether the conduct occurs on campus, or off campus, or while studying abroad. N.Y. Educ. Law § 6440(6).

or by electronic mail, by using the contact information in Section I of Part I. If the Complainant is filing the complaint, it must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the complaint. The Title IX Coordinator does not become the Complainant if they sign the complaint.

The Complainant reserves the right to withdraw a complaint or their involvement in the College's investigation or process at any time. However, in such instances, the College's ability to respond will be limited and Title IX may nevertheless require the College to complete the investigation processes.

Dismissal of a complaint from the Process B grievance process does not preclude action under another provision of the College's policies and/or handbooks. If a complaint and/or any allegations therein are dismissed, the Title IX Coordinator will promptly and simultaneously send written notice of the dismissal and the reasons therefore to the Parties.

The College may consolidate complaints regarding allegations of sexual misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual misconduct arise out of the same facts or circumstances.

#### **c. Notice and Intake Meeting with Respondent**

If the Complainant wishes to proceed with either formal or informal resolution, or the College believes it is otherwise necessary, the Title IX Coordinator will schedule an individual intake meeting with the Respondent, if known. The College will notify the Respondent that a complaint has been filed and provide the date, time, location, and factual allegations concerning the alleged violation, a reference to the specific Policy provisions alleged to have been violated, and possible disciplinary sanctions. The Title IX Coordinator will provide the Respondent with a general understanding of this Policy, identify any available supportive measures, and inform the Respondent that they may have an advisor of their choice, who may be, but is not required to be, an attorney.

## **II. INFORMAL RESOLUTION PROCESS**

If all Parties voluntarily agree to participate in an informal resolution and the College determines that the complaint is appropriate for such a process, the College may facilitate an informal resolution of the complaint. While the informal resolution process is not as structured as the formal resolution process, it can be an effective and appropriate means to deal with certain complaints. Informal resolution is applicable when the Parties voluntarily agree to resolve the matters through alternative resolution (e.g. mediation, restorative practices, arbitration), or when the Respondent accepts responsibility for violating the Policy, or when the Title IX Coordinator can resolve the matter informally by providing remedies and supportive measures to resolve the situation.

The Parties may each bring an advisor to any meeting that is held pursuant to the informal resolution process, subject to the same restrictions set forth herein. During all phases of the informal resolution process, the Parties will be provided with advance notice of any meeting they are required or eligible to attend.

The Title IX Coordinator or designee will preside over the informal resolution and may elect to be assisted by another member of the senior staff of the College or outside trained official. Informal

resolution is designed to obtain an expedient, mutually acceptable solution, which may include an acceptance of responsibility and disciplinary sanctions by the Respondent, without the necessity for conducting further investigation or hearing.

If, in the course of the informal resolution, the Respondent admits to violating this Policy, that admission will serve as a finding of responsibility after an assessment into the matter by the College. The Title IX Coordinator will recommend one or more disciplinary sanctions, which the Respondent can accept or reject. If the Title IX Coordinator's recommended disciplinary sanction is accepted, the process is concluded. If it is rejected, the complaint will proceed to the formal resolution process. Informal resolution may result in the imposition of remedies agreed upon by the Parties, or (with or without such agreement) based on information derived from the informal resolution taken together with any other relevant information known to the College at the time of the informal resolution.

Participation in the informal resolution process is voluntary. The College will not compel the Parties to engage in informal resolution and will allow the Parties to withdraw from the informal resolution process at any time. The College may, at any time, elect to end such proceedings and initiate formal resolution instead. Pursuing informal resolution does not preclude later use of formal resolution if the informal resolution fails to achieve a resolution acceptable to the Parties and the College. Statements or disclosures made by the Parties in the course of the informal resolution may be considered in the formal resolution. There is no appeal if a resolution is achieved using the Informal Resolution Process.

### **III. FORMAL RESOLUTION PROCESS**

#### **a. Investigation**

Once the decision to commence a resolution process is made and the Parties have received notice, the Title IX Coordinator will determine whether the Title IX Coordinator, or their designee, will act as the investigator. The Title IX Coordinator may also designate a specially trained investigator or investigators to conduct the interviews and/or investigation (collectively, the "Investigator"). A party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as the Investigator at any time. If the Investigator is the Title IX Coordinator, the party may contact Yadira Moran at [ymoran@sfc.edu](mailto:ymoran@sfc.edu) or (718) 489-5442.

Complaints of sexual misconduct will be investigated promptly, thoroughly, and impartially by the Investigator, normally within 30 business days of notice filing a complaint with the Title IX Coordinator. The College will make a good faith effort to complete investigations as promptly as possible and will communicate regularly with the Parties to update them on progress, the timing of the investigation and delay for good cause, if necessary.

The Investigator will collect, and review evidence deemed necessary or helpful to the investigation. The investigation will include individual interviews with the Parties involved and with individuals who may have observed the alleged conduct or may have any other relevant knowledge. The investigation may also include examination of medical records, surveillance video, cell phone and other electronic records, and other evidence. The Complainant and the Respondent will be given an equal opportunity to present information in the context of the

investigation, the opportunity to suggest witnesses and review and present available evidence in the case file.

At the conclusion of the investigation, the Investigator will prepare an investigative report that fairly summarizes the investigation and all relevant evidence. The Investigator makes no conclusions, engages in no policy analysis, and renders no recommendations as part of their report. The Investigator will provide access to the investigative report to the Parties for their review and written response. In response to the investigation report, both the Complainant and the Respondent will be given the opportunity to submit a written statement and a list of proposed witnesses for the hearing. The written statement and list of proposed witnesses will be provided to the Title IX Coordinator, the opposing party, and the Hearing Officer.

**b. The Hearing**

i. Hearing Officer

After the investigation is complete, the Title IX Coordinator will promptly prepare a formal letter to the Hearing Officer notifying the Hearing Officer of the matter. The letter will provide the names of the Complainant and Respondent and the date, location, and nature of the alleged sexual misconduct. The Hearing Officer is designated from a pool of specially trained College personnel. The Title IX Coordinator may determine that a Hearing Officer external to the College will be assigned. The Hearing Officer receives training, at least annually, on the issues relating to sexual misconduct. The Hearing Officer will also be trained on how to conduct an investigation and on a hearing process that promotes accountability and protects the safety and rights of the Parties; including the right to a presumption that the Respondent is not responsible until a finding of responsibility is made under this Policy.

ii. Notice of the Hearing

The College will provide written notice at least 5 business days before the hearing date to the Parties stating the date, time, and place of the hearing and the name and contact information of the Hearing Officer. A party wishing to challenge the participation of the Hearing Officer must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the notice of hearing, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the assigned Hearing Officer. The notice will also inform the Parties that they may have the assistance of an advisor of their choosing at the hearing and may request to see and review evidence collected in the investigation.

iii. Conduct of the Hearing

The hearing will be conducted within 10 business days from the conclusion of the investigation. The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the College will provide the Parties with written notice explaining the reason for such change. The College will arrange for the hearing to be recorded and may arrange for the preparation of any transcript of the recording that the College deems appropriate.

As a non-adversarial process, the hearing will not follow a courtroom model, and formal rules of evidence will not be observed. The Parties will have the opportunity present evidence and

testimony during the hearing. This may be done as necessary to accommodate a witness who cannot be present, or whom the Hearing Officer determines may remain anonymous.

Only the Hearing Officer may question the individual Parties and any witnesses, unless permission is granted to modify the questioning process. After all witnesses have been questioned, each party may make a closing statement.

In order to comply with FERPA and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, the College will not disclose documents prepared in anticipation of the hearing, documents, testimony, or other information introduced at the hearing, and any transcript of the hearing itself may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law and/or College policy.

The Parties may have advisors present to support and assist them during any meeting, the hearing, and appeal stages of the formal resolution process. An advisor may not direct questions to the Hearing Officer or witnesses at the hearing. The Hearing Officer will not allow an advisor's presence to inhibit the Parties' sharing of information or the conduct of the hearing.

The Parties are expected to cooperate at the hearing. If either party fails to appear at the scheduled hearing, the Hearing Officer may postpone the proceedings if there is a legitimate documented reason for the absence, or proceed and determine the complaint on the basis of the evidence available, provided the absent party was duly notified of the scheduled hearing date.

In general, any information or questioning about the prior sexual history of the Complainant or Respondent with individuals other than the other party is precluded and will not be admitted at the hearing. Additionally, any information or questioning about either party's mental health history diagnosis, and/or treatment is precluded and will not be admitted at the hearing. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the stage that determines disciplinary sanctions.

If the Hearing Officer determines that unresolved issues exist that would be clarified by the presentation of additional information, the Hearing Officer may suspend the hearing and reconvene it in a timely manner to receive such information. A delay may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents, which were readily available at the time of the hearing.

#### iv. Determination Regarding Responsibility

The Respondent will be found to be responsible for the alleged sexual misconduct if the Hearing Officer concludes, based upon careful review of all information presented, that under a preponderance of the evidence, such sexual misconduct more likely than not occurred in violation of the Policy. The Hearing Officer will determine any disciplinary sanctions imposed on the Respondent and the Title IX Coordinator will implement any remedies. Please see above Section XV of Part I of this Policy which sets forth the range of possible disciplinary sanctions and remedies that may be implemented.

#### v. Impact Statements

The Parties will be offered an opportunity to provide impact statements to the Hearing Officer while they are deliberating on appropriate disciplinary sanctions, if any. The impact statements must be provided to the Title IX Coordinator. The Title IX Coordinator will provide the impact statements to the Hearing Officer only once the Hearing Officer is deliberating on appropriate disciplinary sanctions. Impact Statements cannot and will not be considered by the Hearing Officer when reaching a determination of responsibility. The impact statement may be up to five (5) pages single spaced.

vi. Notice of Determination

Within 5 business days from receipt of the impact statements, the Hearing Officer will simultaneously issue written or electronic notice of its decision to the Parties. The notice of determination will detail the factual findings supporting the determination, the rationale for the disciplinary sanction(s) imposed or any remedies provided, if any, and appeal procedures. The College will implement disciplinary sanctions and remedies when the determination becomes final. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Part IV of this Policy.*

**PART IV: APPEALS PROCESS FOR DETERMINATIONS REGARDING RESPONSIBILITY  
(PROCESS A OR PROCESS B), DISMISSAL OF A COMPLAINT OR FORMAL  
COMPLAINT, OR ANY ALLEGATIONS THEREIN**

Either party may appeal a determination regarding responsibility reached under Process A or Process B, a dismissal of a complaint or formal complaint, or any allegations therein, on any of the following bases: (1) a procedural irregularity that affected the outcome of the matter; (2) 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; and/or (3) the Title IX Coordinator, Investigator, and/or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

Within 5 business days of the delivery of the written determination of responsibility or from dismissal of the complaint or formal complaint or any allegations therein, the Respondent and/or Complainant may file a notice of intent to appeal. The notice of intent to appeal must be submitted in writing (either email or hard copy) to the Title IX Coordinator. The notice of intent to appeal must contain the party's grounds for the appeal. The Title IX Coordinator will notify the non-appealing party about the notice of intent to appeal in writing and will implement appeal procedures equally to the Parties.

If the appeal is accepted, within 7 business days of filing a notice of intent to appeal, the party's formal appeal must be filed with the Title IX Coordinator stating why the party requesting the appeal believes the dismissal, or determination of responsibility were inappropriate. The appealing party must set forth, in detail, the grounds for review and must attach all materials that they wish to have considered in the appeal process. The Title IX Coordinator will notify the non-appealing party of the appeal in writing and that party will have 7 business days from the date of notification to submit a written statement.

An Appeals Committee will review the formal appeal. The Appeals Committee shall not include the Title IX Coordinator, the Hearing Officer, or Investigator. The Appeals Committee shall be fair and impartial and will not have any conflicts of interest. The Appeals Committee will simultaneously issue a written decision to the Parties describing the result of the appeal and the rationale for the result within 20 business days of receipt of receipt of the complete record, including the Parties' written submissions. This decision is final.

## **APPENDIX A: STUDENTS' BILL OF RIGHTS<sup>25</sup>**

Under this Policy, all students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

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<sup>25</sup> To the extent applicable, students maintain the rights set forth in the Students' Bill of Rights during resolution of a complaint or formal complaint under Process A or Process B. N.Y. Educ. Law § 6440(6).

## **APPENDIX B: EMPLOYEE COMPLAINT FORM FOR REPORTING SEXUAL HARASSMENT**

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form for employees and covered non-employees to report in writing alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to the Title IX Coordinator. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, the College is still required to follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

**For additional resources, visit: <https://www.ny.gov/programs/combatting-sexual-harassment-workplace>**

### **COMPLAINANT INFORMATION**

Name:

Department:

Home Address:

Work Phone:

Home Phone:

Job Title:

Email:

Select Preferred Communication Method:

Email  Work  Home  In person

### **SUPERVISORY INFORMATION**

Immediate Supervisor's Name:

Title:

Work Phone:

Department:

### **COMPLAINT INFORMATION**

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Department:

Work Phone:

Relationship to you:

Supervisor  Subordinate  Co-Worker  Other

2. Date(s) sexual harassment occurred: \_\_\_\_\_

Is the sexual harassment continuing?       Yes       No

3. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.
4. Please list the name and contact information of any witnesses or individuals that may have information related to your complaint:

If you have retained legal counsel and would like us to work with them, please provide their contact information.

*I request that St. Francis College investigate this complaint of sexual harassment in a timely manner as outlined in the College's policy, and advise me of the results of the investigation.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_