

Title IX Policy
Saint Mary’s College of California
Effective August 14, 2020 – Revised February 19, 2021

Table of Contents

General Rules of Application	2
Definitions.....	2
Making a Report Regarding Covered Sexual Harassment.....	7
Non-Investigatory Measures Available	8
Title IX Process	9
Filing a Formal Complaint.....	9
Determining Jurisdiction.....	10
Notice of Allegations	11
Advisors	13
Investigation	14
Hearing.....	15
Determination Regarding Responsibility	19
Appeals.....	22
Retaliation.....	23
Record Retention	23
Alternative Procedures.....	24
Appendix 1: Informal Resolution Process.....	25
Appendix 2: Rules of Decorum.....	29
Appendix 3: Relevance Guide.....	32

GENERAL RULES OF APPLICATION

Effective Date

This Title IX Policy will become effective on August 14, 2020, and will only apply to formal complaints of sexual harassment brought on or after August 14, 2020.

Changes to the Title IX Final Rule

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be changed or modified by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or any invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date. Should the Title IX Policy be revoked in this manner, any conduct covered under the Title IX Policy shall be investigated and adjudicated under the existing Code of Conduct for Students and Faculty or Staff Handbook for employees.

Non-Discrimination

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at: <https://ocrcas.ed.gov/contact-ocr>.

DEFINITIONS

Covered Sexual Harassment - For the purposes of this Title IX Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

1. **Quid Pro Quo** which includes an employee conditioning employment or educational benefits on participation in unwelcome sexual conduct;
2. **Unwelcome conduct of a sexual nature** that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;
3. **Sexual assault** is defined as any sexual penetration (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent. Sexual penetration included, but is not limited to, vaginal or anal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact. For the purposes of this definition, affirmative consent is used.
4. **Dating violence** - Violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.
5. **Domestic violence** - A 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 the state of California 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 state of California.

6. **Stalking** - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.
7. **Sexual Exploitation** - occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person, without that person's consent. Examples of behavior that could rise to the level of sexual exploitation include but are not limited to: prostituting another person; recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent; distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and, viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, re, and for the purpose of arousing or gratifying sexual desire. Sexual exploitation may occur regardless of whether sexual activity takes place.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Code of Conduct for Students and the Employee Handbook for employees.

Affirmative Consent

For the purposes of this Title IX Policy, "consent" is defined as unambiguous and willing participation or cooperation in act or attitude that is commonly understood to be consistent with the exercise of free will. Consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Consent requires participants who are fully conscious, are equally free to act, have clearly communicated their willingness, cooperation, or permission to participate in a specific sexual activity, are positive and clear in their desires, and are able to cease ongoing consensual activity at any time. If you have sexual activity with someone you know to be- or should know to be – mentally or physically incapacitated (for example, by alcohol or other drug use or unconsciousness), you are in violation of this policy. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, where, why or how of their sexual interaction. Expression of nonconsenting does not have to be verbal; it can be communicated with gestures or body language. Silence, in and of itself, cannot be interpreted as consent. A prior sexual history between the complainant and respondent does not constitute consent.

Consent is not freely given if:

- It is obtained through the use of force, through the fear of or the threat of force, intimidation, coercion, or by kidnap; or
- A reasonable person in the position of the alleged respondent at the time the alleged conduct occurred should have known that the other person was unable to give consent for any of the following reasons:
 - The individual is unable to make an informed decision as a result of alcohol or other drugs (including but not limited to predatory drugs or prescribed medications); or
 - The individual is unconscious, asleep, or suffering from shock; or
 - The individual is under the age of eighteen and therefore legally unable to give consent; or
 - The individual has a known mental disorder or developmental or physical disability, and therefore legally unable to give consent.
 - The individual has acted or spoken in a manner which expresses they refuse to give consent.

The foregoing description is what it means to have obtained affirmative consent.

Education Program or Activity

For the purposes of this Title IX Policy, Saint Mary's College of California's "education program or activity" includes:

- Any on-campus premises.
- Any off-campus premises that Saint Mary's College of California has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Saint Mary's College of California's programs and activities over which Saint Mary's College of California has substantial control.

Grievance Process

The grievance process is the fact-finding process from the time of the filing of the Formal Complaint through the final determination of an appeal (if any).

Formal Complaint

For the purposes of this Title IX Policy, "formal complaint" means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Saint Mary's College of California's education program or activity and requesting initiation of the procedures consistent with the Title IX Policy to investigate the allegation of sexual harassment.

Complainant

For the purposes of this Title IX Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

Relevant evidence and questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege. (Legally-recognized privileges include, e.g., attorney client privilege; priest-penitent privilege, physician-patient privilege)
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

Respondent

For the purposes of this Title IX policy, Respondent means any individual who has been reported to be the person engaging in conduct that could constitute covered sexual harassment as defined under this policy.

Academic Freedom

Harassment does not include verbal expression that is relevant to course subject matter, and the College’s procedures for handling harassment complaints shall not abridge academic freedom.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without cost to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to Saint Mary’s College’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Saint Mary’s College’s educational environment, or deter sexual harassment.

Confidentiality and Privacy

Consistent with the requirements of this Policy, Saint Mary’s College of California shall keep confidential the identity of any individual who has made a report or complaint of sex

discrimination, including any individual who has made a report or filed a Formal Complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. This means that Saint Mary's College of California will protect the party's privacy consistent with this Policy but may disclose information to those who have a legitimate need to know and in order to process complaints under this policy.

Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health and/or safety of others in the community may be in danger, it may be necessary for Saint Mary's College of California to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct.

Confidential Resources are identified in the Reporting section of this Policy. In most cases, Confidential Resources at Saint Mary's College of California, unless with the consent of the individual, will not share the substance of any such communications or that such communications occurred. Individuals who wish to talk about issues related to sexual harassment or sexual misconduct confidentially, with the understanding that Saint Mary's College of California will not take any action based on such confidential communications, are encouraged to contact one of the Confidential Resources identified in this Policy.

Confidential resources may, however, have an obligation to disclose otherwise-privileged information where they perceive an immediate and/or serious threat to a person and/or property. This is a limited exception to the privileged nature of communications with Confidential Resources. Reports or records maintained by Saint Mary's College of California (including CAPS records), and other confidential, non-privileged records may, however, be subject to a subpoena if civil or criminal charges are filed in court.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Confidential Resources will not report Clery crimes they learn about through confidential communications for purposes of Saint Mary's College of California's compilation of campus crime statistics.

Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

MAKING A REPORT REGARDING COVERED SEXUAL HARASSMENT

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The College will accept anonymous complaints however the College will be limited in its ability to address the concerns without identifying reporting parties to obtain supporting information.

Contact Information for the Title IX Coordinator:

Laurie Panian
Associate Vice President, Chief Human Resources Officer and Title IX Coordinator
Filippi Administration Building, Garden Level
imp10@stmarvs-ca.edu
(925) 631-4530

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Reporting

The following Officials will provide **privacy**, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator
 - a. Laurie Panian, Associate Vice President, Chief Human Resources Officer
- Deputy Title IX Coordinators
 - a. Evette Castillo Clark, Dean of Students
 - b. Stacy Vander Velde, Director of Community Life
 - c. Erika Roesch, Human Resources Manager
 - d. Kami Gray, Deputy Athletics Director for Internal Operations/Senior Woman Administrator
- Identified Campus Security Authorities
 - a. These people are required to report incidents as defined by the VAWA Amendments of the Clery Act.
- All members of the College Community who are employees are required by the College to report to a Title IX Officer if they observe, encounter or learn of conduct that may be subject to the Title IX Policy.

The following Officials may provide **confidentiality**:

- Confidential Resources (for students)
 1. Megan Gallagher, Director of CARE Center
 2. Counseling and Psychological Services Counselors

3. Clergy during Confession

Individuals are strongly encouraged to report all conduct they believe to constitute intimate partner violence, non-consensual sexual contact, sexual assault, sexual misconduct, and stalking to the police; however, it is the individual's decision whether or not to file a police report. If the individual wishes, the College will provide assistance in contacting the police and accompanying them to the hospital and/or police station. Individuals involved in the report of conduct will have access to support and referral services on-campus regardless of whether or not a report of the conduct is made to the Police. Individuals are strongly encouraged to have both a medical exam to ensure their well-being and a forensic medical exam in order to gather forensic evidence, even if they do not choose to file a police report at this time. Forensic medical exams are available at Contra Costa County Regional Medical Center in Martinez.

NON-INVESTIGATORY MEASURES AVAILABLE

Saint Mary's College shall treat parties equitably by offering Supportive Measures to the Complainant, and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures as against the Respondent. Saint Mary's will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of Saint Mary's College to provide the Supportive Measures. The Title IX Coordinator or designee is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator or designee should record and retain records regarding requests and provision of Supportive Measure in accordance with this Policy.

Supportive Measures

Saint Mary's College of California provides the supportive measures, which may include the following as appropriate:

- *counseling*
- *extensions of deadlines or other course-related adjustments*
- *modifications of work or class schedules*
- *campus escort services*
- *restrictions on contact between the parties (no contact orders)*
- *changes in work or housing locations*
- *leaves of absence*
- *increased security and monitoring of certain areas of the campus*
- *safety planning*

Supportive measures are non-disciplinary and non-punitive.

Emergency Suspension (applies to students)

Saint Mary's College of California retains the authority to remove a Respondent from the College's program or activity on an emergency basis, where Saint Mary's College of California (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If Saint Mary's College of California determines such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

Procedure for Emergency Suspension in Title IX allegations

- a. **Notice:** If the Dean of Students or designee imposes an emergency suspension, then the student will receive written confirmation of the emergency suspension. The notice will state the facts and circumstances warranting the emergency suspension, the conditions of the emergency suspension, that a Dean of Students (DS) hold will be placed on the student's account, and the student's review rights.
- b. **Review:** Within five (5) calendar days of the imposition of the emergency suspension, the student may petition the Dean of Students or designee to review the reliability of the information concerning the alleged harm or ongoing threat. The petition for review must be in writing and may include evidence supporting the student's position that the student does not pose or no longer poses an immediate threat to physical health or safety.
- c. **Final Determination:** If, after considering the petition for review and evidence, the Dean of Students or designee affirms the decision to emergency suspend, the matter will proceed promptly through the investigation and hearing process without undue delay, unless additional time is requested by the student. However, if, after considering the petition for review and evidence, the Dean of Students or designee determines that the student has established by a preponderance of the evidence that the student does not pose or no longer poses immediate threat to physical health or safety, the emergency suspension will be lifted and the matter will proceed according to the normal Title IX process, up to and through a hearing and appeal, if required.

Administrative Leave (applies to employees)

Saint Mary's College of California retains the authority to place a non-student employee respondent on administrative leave with pay during the Title IX Process, consistent with the Faculty/Staff Handbook.

Amnesty for Student Code of Conduct Violations

An individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of Saint Mary's College's student conduct policy at or near the time of the incident, unless Saint Mary's College determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty

TITLE IX PROCESS

FILING A FORMAL COMPLAINT

The timeframe for the Title IX Process begins with the filing of a Formal Complaint. The Process will typically be concluded within a reasonably prompt manner, and no longer than 60 calendar days, after the filing of the Formal Complaint, however the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a

witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator or designee a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of Saint Mary's College of California, including as an employee. For complainants who do not meet this criteria, the College will utilize existing policy in the Code of Conduct for Students and the Employee Handbook for employees.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator or designee may determine a Formal Complaint is necessary. Saint Mary's College of California will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Policy, Student Conduct of Conduct or Employee Handbook prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Provided that the conduct is appropriate for informal resolution, a complainant who files a Formal Complaint may elect, at any time, to address the matter through the College's *Informal Resolution Process*. Information about this process is available in Appendix 1.

Multi-Party Situations

The institution may consolidate Formal Complaints alleging covered 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 covered sexual harassment arise out of the same facts or circumstances.

DETERMINING JURISDICTION

The Title IX Coordinator or designee without conflict of interest will determine if the Title IX Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in Saint Mary's College of California education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, Saint Mary's College of California will investigate the allegations according to the Process which is based on whether the respondent is a student or employee.

Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Process will be applied in the investigation and adjudication of all of the allegations.

Mandatory Formal Complaint Dismissal

If any one of these elements are not met, the Title IX Coordinator designee without conflict of interest will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Policy. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

Discretionary Formal Complaint Dismissal

The Title IX Coordinator designee without conflict of interest may dismiss a Formal Complaint brought under the Title IX Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by Saint Mary’s College of California; or,
- If specific circumstances prevent Saint Mary’s College of California from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

Notice of Formal Complaint Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

Notice of Formal Complaint Removal and Referral to Code of Conduct

Upon dismissal for the purposes of Title IX, Saint Mary’s College of California retains discretion to utilize the Code of Conduct, Faculty Handbook, or Employee Handbook to determine if a violation of the Code of Conduct, Faculty Handbook, or Employee Handbook has occurred. If so, Saint Mary’s College of California will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Process and referral to the Office of Community Life or Human Resources for action in accordance with the applicable Handbook.

NOTICE OF ALLEGATIONS

The Title IX Coordinator or designee will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Formal Complaint Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Formal Complaint Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

Contents of Notice

The Notice of Allegations will include the following:

- Notice of the College's Title IX Process including information on informal resolution processes and a hyperlink to a copy of the processes.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source;
- For Students, a statement that *Article III, section 1. Dishonesty* in the Student Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the process.
- For Employees, a statement that Section 2.14 Prohibited Conduct in the Employee Handbook prohibits knowingly making false statements or knowingly submitting false information during the process, or in the Faculty Handbook at 2.9.3.1.3 with respect to Intentionally False Reporting.

Ongoing Notice

If, in the course of an investigation, the institution decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Policy, the College will notify the parties

whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional s.

ADVISORS

The College allows equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

For students, the College has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy (i.e., direct cross examination during a hearing), as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the College.

For Employees, employees participating in this process as witnesses shall participate directly and not through an advocate or representative. Employees participating as a Complainant or Respondent may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend, however the Advisor shall not participate directly in the process with the exception of cross examination during a live hearing or as permitted in the context of union representation.

The College will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Saint Mary's College of California's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and the College cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The College will not be obligated to delay a meeting or hearing under this process more than five (5) calendar days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the College.

Notice of Meetings and Interviews

Saint Mary's College of California will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Delay Requests

Each party may request a one-time delay in the Process of up to five (5) calendar days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of

Community Life, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

The Title IX Coordinator, Director of Community Life, or designee shall have sole judgment to grant further pauses in the Process.

INVESTIGATION

General Rules of Investigations

The Title IX Investigator designated by the Title IX Coordinator will perform an investigation of the conduct alleged to constitute covered sexual harassment under a reasonably prompt timeframe after the issuance of the Notice of Allegations

Saint Mary's College of California and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from Saint Mary's College of California and does not indicate responsibility.

Saint Mary's College cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. Saint Mary's College of California will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

The College will send the evidence made available for each party and each party's advisor, if any, to inspect and review. The College is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion to determine format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report.

The College will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any. Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX process.

The parties and their advisors agree not to photograph or otherwise copy the evidence.

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be relevant to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of an involved party. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any.

Investigative Report

The investigator designated by the Title IX Coordinator or designee will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the parties at least ten (10) calendar days prior to the hearing for each party's review and written response. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence. (See Appendix 3 for additional information.)

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report. The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are not otherwise relevant.

Post Investigation/ Pre-Hearing Meeting

At the conclusion of the investigation meeting, parties will be invited to participate in individual post investigation meetings to review and prepare for the live hearing. During this meeting, parties may review opportunities for an agreed resolution as outlined in the informal resolution process (see appendix 1). It should be noted that the facilitator if this meeting is not a decision maker but rather is responsible for negotiating a resolution as well as providing pertinent process information about the live hearing.

HEARING

General Rules of Hearings

Saint Mary's College of California will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing unless otherwise resolved

through an informal resolution process. The live hearing may be conducted with all parties physically present in the same geographic location, or, at Saint Mary's College of California's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through a Video Conferencing platform. This technology will enable participants simultaneously to see and hear each other. At its discretion, Saint Mary's College of California may delay or adjourn a hearing based on technological errors not within a party's control. All proceedings will be recorded through audio recording. That recording will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Process. Once signed, this Agreement may not be withdrawn.

Continuances or Granting Extensions

Saint Mary's College of California may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Newly-discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing. If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The DHB or decision-maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the DHB or decision-maker in employee cases answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

Participants in the live hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)

The parties cannot waive the right to a live hearing. The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.

- For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement.
- Saint Mary’s College of California will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party’s participation.
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party (such during the investigation process) in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions.
- The parties shall be subject to the institution’s Rules of Decorum (Appendix 2).

The Decision-maker

- The hearing body for student will consist of a panel of three (3) decision makers known as the Disciplinary Hearing Board (DHB) and one of these panelists will serve as the Chair.
- The hearing body for employee will consist of a single Decision-Maker.
- The status of the respondent determines who will serve as the decision maker. If the respondent has a dual status of student and employee of the College, the decision-maker will be determined by the context of the incident.
- No member of the DHB or the decision-maker will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the DHB or decision-maker serve on the appeals body in the case.
- No member of the DHB or decision-maker will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The members of the DHB or decision-maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a DHB member’s or decision-maker’s actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Advisor of choice

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.

- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination or consistent with union representation.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, the College will provide an advisor to appear on behalf of the non-appearing party.
- Advisors shall be subject to the institution's Rules of Decorum (Appendix 2), and may be removed upon violation of those Rules.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation.
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.
- Witnesses shall be subject to the institution's Rules of Decorum (Appendix 2)

Hearing Procedures

For all live hearings conducted under this Title IX Process, the procedure will be as follows:

- The DHB Chair or decision-maker will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- DHB panelists or the decision-maker will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the DHB panel or decision-maker conducts its initial round of questioning; During the Parties' cross-examination, the DHB panel or decision-maker will have the authority to pause cross-examination at any time for the purposes of asking the DHB panel's or decision-maker's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral

statement to the DHB or decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the DHB panel or decision-maker to use statements made by the Party.

Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the DHB panel or decision-maker will determine if the question is relevant. See Appendix 3 for *Relevance Guide*. Cross-examination questions that are duplicative of those already asked, including by the DHB panel or decision-maker may be deemed irrelevant if they have been asked and answered.

Review of Audio Recording

The recording of the hearing will be available for review by the parties within 10 calendar days, unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

DETERMINATION REGARDING RESPONSIBILITY

Standard of Proof

Consistent with California law, Saint Mary's College of California uses the preponderance of the evidence standard for determinations regarding responsibility for formal complaints covered under this Policy. This means that the hearing determines whether it is more likely than not that a violation of the Policy occurred to a neutral decision maker.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the DHB or decision-maker.

DHB panelists or the decision-maker shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the plausibility of an individual's testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

DHB panelists or the decision-maker will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed.

The parties may call "expert witnesses" for direct and cross examination whose testimony may be considered with respect to the subject matter of their expertise. The College does not provide for expert witnesses in other proceedings.

The parties may call character witnesses to testify. The College does not provide for character witnesses in other proceedings.

The DHB may admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes.

Components of the Determination Regarding Responsibility

For Students, the written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. If the alleged victim is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph, and upon request, Saint Mary's will disclose the Determination Regarding Responsibility to the victim's next of kin. The Determination will include:

- A. Identification of the allegations potentially constituting covered sexual harassment;
- B. 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;
- C. Findings of fact supporting the determination;
- D. Conclusions regarding which section of the Code of Conduct, if any, the respondent has or has not violated.
- E. For each allegation:
 - i. A statement of, and rationale for, a determination regarding responsibility;
 - ii. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
 - iii. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- F. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

For Employees, disciplinary sanctions for employee Respondents will not be issued by the decision-maker at the conclusion of the Live Hearing.

The written Determination Regarding Responsibility will be provided to the Title IX Coordinator and Human Resources. Human Resources will submit findings to the Responsible Administrator. The Responsible Administrator is the line administrator (for example, the dean, director, vice president, or president), who is responsible for acting on the findings and for making a decision regarding discipline of the person accused in consultation with Human Resources. If the finding is that discrimination or harassment occurred, Human Resources will discuss or provide information about appropriate remedies to the responsible administrator.

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Saint Mary's College of California within ten (10) calendar days of the completion of the hearing.

Disciplinary Sanctions

For Students, sanctions are assessed in response to the specific conduct, the disciplinary history of the Respondent as well as the impact to the community. The list of commonly used sanctions can be located in the *Student Code of Conduct, Article IV, section G*.

For Employees, the College may consider properly established records of previous conduct and the seriousness of the violation. Where there are allegations of discrimination or harassment and a longer pattern or practice of discrimination or harassment exists, Saint Mary's College of California shall consider the totality of events in determining appropriate discipline.

The following list of sanctions may be imposed upon any employee (faculty or staff) found to have violated the Title IX Policy. More than one of the sanctions listed may be imposed for a single violation.

- **Written Warning** – a notice in writing to the employee that they have violated policy.
- **Required Education or training** – Activities designed to help the employee understand the inappropriateness of the conduct and designed to assist the employee in becoming more aware of the policies.
- **Performance Improvement Plan** – a formal agreement between the supervisor and employee that outlines specific performance standards that need to be met and potential consequences if they are not met in a specified timeframe.
- **Suspension without Compensation** - a set period of time which an employee is not permitted to report to work or conduct duties related to their position at the College for which the employee will not be compensated and may not use annual leave or sick time.
- **Mandated Transfer to another position/department** – a reassignment to another department or position.

- **Demotion of current position to an alternative role/responsibilities** – a removal of current title and/or responsibilities as a result of being found responsible for a violation of policy.
- **Termination of Employment** – a discontinuation of employment with the College.
- **Ineligibility for a period of time for Faculty Development Funds or Sabbatical Leave**

Finality

The determination regarding responsibility becomes final either on the date that Saint Mary’s College of California provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

APPEALS

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within 5 calendar days of being notified of the decision via the link included in their outcome letter, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- A process or procedural error was made that that was significantly prejudicial to the outcome of the matter (i.e. a failure to follow the institution’s own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter.
- The severity of the sanction imposed was not appropriate based on the section of the Code or other College policy which the individual was found to have violated.

The submission of a request for appeal places any sanctions on hold for the duration of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, Saint Mary’s College of California will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than 10 pages (including attachments). Appeals should be submitted via the web form provided in the outcome letter using 12 point font, and double-spaced. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by an appellate hearing body who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or decision-maker or DHB panelist in the same matter.

Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

RETALIATION

Saint Mary's College of California will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment. (see Good Samaritan Policy regarding amnesty from disciplinary action)

Complaints alleging retaliation may be filed according to the Student Conduct of Conduct for students and the Faculty/Staff Handbook for Employees.

RECORD RETENTION

Saint Mary's College of California shall maintain for a period of seven years records of: (A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this policy, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to Saint Mary's College of California's education programs or activities; (B) Any appeal and the result therefrom; (C) Any informal resolution and the result therefrom; and (D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. Saint Mary's College of California shall make these training materials publicly available through its website.

Saint Mary's College of California shall create, and maintain for a period of seven years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, Saint Mary's College of California will 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 Saint Mary's College of California's education program or activity. If Saint Mary's College of California does not provide a Complainant with Supportive Measures, then Saint Mary's College of California will 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 Saint Mary's College of California in the future from providing additional explanations or detailing additional measures taken.

ALTERNATIVE PROCEDURES

Employees are encouraged to use Saint Mary's College Internal Complaint Procedure to address any complaints of discrimination or harassment based on protected class status. However, a student or an employee may elect to file a complaint with the following, as relevant:

- U.S. Equal Employment Opportunity Commission (EEO), <http://www.eeoc.gov/>, 800-669-4000, 800-669-6820, TTY
- U. S. Department of Education, Office for Civil Rights (OCR), 50 Beale Street, Suite 7200, San Francisco, CA 94105-1813, telephone (415) 486-5555, fax (415) 486-5570, or email: OCR.SanFrancisco@ed.gov.
- California Department of Employment and Housing, <http://www.dfeh.ca.gov/> 800-884-1684

Any complaint of discrimination or harassment filed under the College's procedures shall be processed even if the Complainant also files a complaint or suit with an outside agency, including the California Department of Employment and Housing, U.S. Equal Employment Opportunity Commission, or U.S. Department of Education Office of Civil Rights (OCR).

APPENDIX 1 – INFORMAL RESOLUTION PROCESS

Elements of an Informal Resolution Process

Procedures for Entering and Exiting Informal Resolution Process

Parties who do not wish to proceed with an investigation and live hearing, and instead seek Saint Mary's College of California's assistance to resolve allegations of Title IX-covered misconduct, may elect to enter the informal resolution process. Generally speaking, these resolution options are less time intensive than an investigation and live hearing, while still affording students an opportunity to actively participate in a process led by the College for resolution of their complaints.

The Parties may elect to enter Saint Mary's College of California's informal resolution process at any time after the filing of the Formal Complaint through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and the College may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the formal resolution process recommences. In participating in the informal resolution process, the Parties understand that the timeframes governing the formal process temporarily cease, and only recommence upon reentry into the formal process.

Determination to Approve Entry into Informal Resolution Process

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or designee may approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator or designee may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the respondent is a repeat offender, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution is only permitted to address allegations of student-on-student sexual harassment, and is never allowed as an option to resolve allegations that an employee sexually harassed a student.

At any time after the commencement of the informal resolution process, the Title IX Coordinator may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the formal process. This determination is not subject to appeal.

Role of the Facilitator

Informal resolution processes are managed by facilitators, who may not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific Parties in the matter.

All facilitators must have training in the definition of sexual harassment under 34 C.F.R. § 106.30(a), the scope of the institution's education program or activity, how to conduct informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

Confidentiality

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Formal Complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent formal resolution process or institutional appeal.

Title IX Informal Resolution Options

Saint Mary's College of California offers the following informal resolution procedures for addressing Formal Complaints of sexual harassment covered under this Policy:

Agreed Resolution

Should the Parties mutually determine to enter the informal resolution process, and the respondent elects to accept responsibility for the allegations of the Formal Complaint at any point during the informal resolution process, the institution may resolve the Formal Complaint via an Agreed Resolution.

Where the respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a facilitator will convene to determine the respondent's sanction and other remedies, as appropriate and consistent with institutional policy.

In situations that have been investigated and are to be heard by the Disciplinary Hearing Board (DHB), the Dean of Students or designee and the Respondent may agree on the facts and, if warranted, identify mutually agreeable sanction(s) to be imposed. In such a case, the agreed upon facts and sanction(s) shall be reduced to writing, dated, and signed by the Respondent.

An Agreed Resolution shall be final and not subject to subsequent proceedings unless the Complainant submits a written objection to cancel the Agreed Resolution within 3 calendar days of the date it was signed by the Respondent.

In situations where the Dean of Students or designee and the Respondent cannot agree to the facts and sanctions to be imposed, the case shall be referred to the DHB for a determination in accordance with outlined procedures.

Restorative Justice

A Party may request to engage in Restorative Justice (RJ) Practices at any stage of the Title IX process, however, restorative justice may not be an appropriate mechanism for all conflicts. The College utilizes practices derived from Restorative Justice Principles to address instances of conflict that arise in the community and violations of the Code of Conduct and College Policy. The purpose of a Restorative Justice process is to bring together all parties involved and/or impacted, to address the harms associated with the incident. This fosters opportunities for discussion from diverse points of view and an opportunity to gain a better understanding of those involved. Central to Restorative Justice, is collaborative decision making that includes those who have been impacted and those who have caused harm along with others impacted. Restorative Justice Practices and outcomes are dependent upon the willingness of those that have been impacted to choose to participate and in those who have caused harm, to acknowledge responsibility for the impact they have had on others and to the best of their ability repair the harm they caused to impacted parties and the community.

Additionally, all involved parties must agree to and abide by measurable and timely actions within the scope of the Title IX Policy and directives. The Office of Community Life will review any request for RJ, and may decline to initiate RJ based on the facts and circumstances of the particular case.

The RJ Conference proceeds only if all parties agree to participate willingly. Upon doing so, the RJ process typically commences within 10 calendar days after the Office of Community Life receives written agreements from all involved parties. The conference will continue until the conference is successfully concluded or until it is determined that the conference will not be successful. If successful, an agreeable resolution is reached by all involved parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the Dean of Students or designee to re-evaluate other options for resolution. The Office of Community Life will monitor the parties' adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.

Restorative Justice Outcomes are practices that represent a variety of educational and trust-building actions and/or measures that a student must complete to show growth, remorse, and a desire to restore trust in them from the community. Restorative Justice Outcomes may be assigned alone or in combination with one or more other restorative outcomes or Sanctions.

A Restorative Justice process can be requested by students, faculty/staff, organizations, and/or community members. Typically, before parties come together for a restorative justice process, a pre-conference meeting will be held in which a facilitator will determine whether the incident and the participant(s) are a good fit for a restorative justice process and if so, the most appropriate method of response. There are numerous methods of restorative justice processes that can engage all parties involved in the incident, including apology letters, conflict coaching, facilitated dialogue, restorative conferences or restorative circles. The context and the needs of those involved will be taken into consideration when determining how best to repair and address the impact by a given incident reported to the Dean of Students or designee.

Alternative Conflict Resolution

Alternative Conflict Resolution processes such as mediation, facilitated dialogue, shuttle negotiation, and informal agreements allow individuals involved in a conflict to have significant influence over the resolution process. If all persons directly affected by the misconduct or conflict agree to attempt resolution through one of these processes, and the Dean of Students or designee believes the process is an appropriate form of resolution, arrangements will be made for this type of resolution pathway. Please note, the nature of some misconduct or conflicts, especially those involving violence may render this option inappropriate. If a resolution is not achieved through this process, a matter may be referred to another option for resolution including a Title IX live hearing. Also, resolutions reached through this process may not be appealed.

APPENDIX 2 – RULES OF DECORUM

Purpose of the Rules of Decorum

Title IX hearings are not civil or criminal proceedings, and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule “purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.” The Department has determined that institutions “are in a better position than the Department to craft rules of decorum best suited to their educational environment” and build a hearing process that will reassure the parties that the institution “is not throwing a party to the proverbial wolves.” Id.

To achieve this purpose, institutions may provide for reasonable rules of order and decorum, which may be enforced through the removal of an advisor who refuses to comply with the rules. As the Department explains, the removal process “incentivizes a party to work with an advisor of choice in a manner that complies with a recipient’s rules that govern the conduct of a hearing, and incentivizes colleges and universities to appoint advisors who also will comply with such rules, so that hearings are conducted with respect for all participants.” Id.

At base, these Rules of Decorum require that all parties, advisors of choice, and institutional staff treat others who are engaged in the process with respect.

The rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

Rules of Decorum

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the complainant and respondent) and advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
5. The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Disciplinary Hearing Board (DHB) or decision maker.
6. The advisor may not use profanity or make irrelevant *ad hominem* attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the DHB or decision maker, the advisor in cross-examination, or the party or advisor in direct testimony. When the DHB or decision-maker determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.

8. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

Warning and Removal Process

The DHB or decision-maker shall have sole discretion to determine if the Rules of Decorum have been violated. The DHB or decision-maker will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the DHB or decision-maker shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the DHB or decision-maker removes a party's advisor, the party may select a different advisor of their choice, or accept an advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A party cannot serve as their own advisor in this circumstance.

The DHB or decision-maker shall document any decision to remove an advisor in the written determination regarding responsibility.

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis. Evidence of violation(s) of this agreement will be gathered by the Title IX Coordinator, Director of Student Conduct, or a designee of either and presented to the Vice Provost of Student Life for cases involving students/Director of Human Resources for cases involving employees or designee. The Advisor accused may provide an explanation or alternative evidence in writing for consideration by the Vice Provost of Student Life for cases involving students/Director of Human Resources for cases involving employees or designee. Such evidence or explanation is due within fifteen (15) calendar days of receipt of a notice of a charge of re-disclosure or improper access to records. There shall be no right to a live hearing, oral testimony, or cross-examination. The Vice Provost of Student Life for cases involving students/Director of Human Resources for cases involving employees or designee shall consider the evidence under a preponderance of the evidence standard and issue a finding in writing and, if the finding is Responsible, shall include a Sanction. The finding shall be issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) calendar days unless extended for good cause. There is no appeal of this finding. Sanctions shall be higher for intentional re-disclosure of records than for negligent re-discourse. In the event that an Advisor is barred permanently or for a term from serving in the role as Advisor in the future, they may request a review of that bar from the Vice Provost of Student Life for cases involving students/Director of Human Resources for cases involving employees or designee no earlier than three-hundred and sixty-five (365) days after the date of the findings letter.

Relevant Questions Asked in Violation of the Rules of Decorum

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the DHB or decision-maker simply because of the manner it was delivered. Under that circumstance, the DHB or decision-maker will notify the advisor of the

violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).

APPENDIX 3 – RELEVANCE GUIDE

Any question posed by the advisors must be evaluated for “relevance” in real time by the hearing officer. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

What is a relevant question?

The Department of Education encourages institutions to apply the “plain and ordinary meaning” of relevance in their determinations. Basically, a relevant question will ask whether the facts material to the allegations under investigation are more or less likely to be true. A question not directly related to the allegations will generally be irrelevant.

Officials should use common sense in this understanding. Things may be interesting or surprising but not be relevant.

Relevance decisions should be made on a question-by-question basis, looking narrowly at whether the question seeks information that will aid the decision-maker in making the underlying determination. The relevance decision should not be based on who asked the question, their possible (or clearly stated) motives, who the question is directed to, or the tone or style used to ask about the fact. Relevance decisions should not be based in whole or in part upon the sex or gender of the party for whom it is asked or to whom it is asked, nor based upon their status as complainant or respondent, past status as complainant or respondent, any organizations of which they are a member, or any other protected class covered by federal or state law (e.g. race, sexual orientation, disability).

If a question is relevant but offered in an abusive or argumentative manner, the decision-maker has the discretion to ask the advisor to rephrase the question in an appropriate manner, consistent with the institution’s decorum policy for hearings.

What if the question is “prejudicial” and concerns sensitive or embarrassing issues?

Much of the content within these hearings may be considered sensitive and/or embarrassing by parties or advisors. However, relevant questions need to be considered *even if* a party or advisor believes the danger of unfair prejudice substantially outweighs their probative value. Only irrelevant questions (detailed below), including about the complainant’s prior sexual history, may be excluded.

What is an irrelevant question?

Question about Complainant’s Prior Sexual Behavior or Sexual Predisposition

Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless:

1. such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
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.

Question regarding Privileged Information

Questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege are irrelevant. Depending on your state, individuals with legal privilege may include medical providers (physician, dentist, podiatrist, chiropractor, nurse), psychologists, clergy, rape crisis counselors, and social workers.

Questions about Undisclosed Medical Records

Questions that call for information about any party's medical, psychological, and similar records are irrelevant unless the party has given voluntary, written consent.

Duplicative Questions

Questions that repeat, in sum or substance, questions already asked by a party's advisor during cross-examination (and if part of your process, during direct examination), may be ruled duplicative, and therefore irrelevant.

How should the decision-maker reach a relevance determination?

If the decision-maker is a single individual, the decision-maker will be solely responsible for determining the relevance of the question before it is asked. If the decision-maker is a panel, the panel's Chair will make all determinations of relevance.

What should the relevance determination consist of?

The Department of Education explains that the Final Rule "does not require a decision-maker to give a lengthy or complicated explanation" in support of a relevance determination. Rather, "it is sufficient, for example, for a decision maker to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions, or because the question asks about a detail that is not probative of any material fact concerning the allegations."

As such, the decision-maker need only provide a brief explanation of the determination, which will ordinarily consist of one of the following statements depending on the situation.

Generally probative questions

- The question is relevant because it asks whether a fact material to the allegations is more or less likely to be true.
- The question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true.

Question about Complainant's Prior Sexual Behavior or Sexual Predisposition

- The question is relevant because although it calls for prior sexual behavior information about the complainant, it meets *one of the two exceptions* to the rape shield protections, and it tends to prove that a material fact at issue is more or less likely to be true [**denote which exception**].
 - Exception one: The question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.

- Exception two: The question concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is asked to prove consent
- The question is irrelevant because it calls for prior sexual behavior information about the complainant without meeting one of the two exceptions to the rape shield protections.

Question regarding Privileged Information

- The question is irrelevant because it calls for information shielded by a legally-recognized privilege [**identify the privilege**].
- The question is relevant because, although it calls for information shielded by a legally-recognized privilege [**identify the privilege**], that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true.

Questions about Undisclosed Medical Records

- The question is irrelevant because it calls for information regarding a party's medical, psychological, or similar record without that party's voluntary, written consent.
- This question is relevant because although it calls for a party's medical, psychological, or similar records, that party has given their voluntary, written consent to including this material, and it tends to prove that a material fact at issue is more or less likely to be true.

Duplicative Questions

- The question is irrelevant because it is duplicative of a question that was asked and answered.

The decision-maker may relay a longer explanation if necessary under the circumstances. The relevance determination will be conveyed orally, except as needed to accommodate a disclosed disability of a hearing participant, and all relevance determinations will be preserved in the record of the proceeding.

May the parties and/or their advisors ask the decision-maker to reconsider their relevance decision?

Any party or their advisor may request that the decision-maker reconsider their relevance determination.

The decision-maker may deny or grant the request to reconsider. This determination is final, but may be subject to appeal under the Title IX Process.

**Saint Mary's College's Title IX Policy is adapted from SUNY Student Conduct Institute*