

# SEXUAL MISCONDUCT AND TITLE IX GRIEVANCE POLICY

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## **1. PURPOSE**

Mount Saint Mary College is committed to providing an educational environment free from any form of discrimination and harassment. In accordance with applicable federal and state laws, the College strives to eliminate any form of discrimination, harassment, or sexual misconduct. The policies and procedures that follow specifically address sexual misconduct.

The purpose of this policy is to help Mount Saint Mary College protect the safety, rights, and dignity of all students, faculty, administrators, staff, and visitors without regard to person or position. The purpose of this policy is to establish a clear, fair, and predicable grievance policy for addressing both formal complaints of sexual harassment under Title IX regulations and those grievances involving violations of campus policy that involve sex-based offenses falling outside Title IX jurisdiction.

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex, including sexual orientation or gender identity, in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

The Title IX Grievance process is included in this policy.

This Sexual Misconduct and Title IX Grievance Policy defines certain behavior as a violation of campus policy, including, but not limited to, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and related sex-based offenses. To the extent that alleged misconduct falls outside the formal Title IX Grievance procedure, or misconduct falling outside the Title IX Grievance procedure is discovered in the course of investigating covered Title IX misconduct, the College retains authority to investigate and adjudicate the allegations as non-Title IX sexual misconduct via the steps outlined in this policy.

## 2. POLICY

This policy applies to all conduct occurring on campus or at College-sponsored events or other College education programs or activities. Behaviors cited in this policy that occur off campus, on private property, or online, including calls, texts, emails and social media or business travel, even if they occur on private devices or during non-work hours, may still be addressed by the

College when the off-campus behavior/conduct affects a substantial College interest. This is defined by:

- Any action that constitutes criminal offense as defined by Federal or NYS law.
- Any situation when it appears the accused individual may present a danger or threat to the health or safety of self or others.
- Any situation that significantly infringes upon the rights, property of self or others or creates a significant disruption and/or
- Any situation that is detrimental to the educational interests of the College.
- This policy applies to all students, employees, paid or unpaid interns, vendors, and non- employees and all must follow and uphold this policy. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

For the purposes of a Title IX grievance, the College's "education program or activity" includes:

- Any on-campus premises
- Any off-campus premises that the College 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 College's programs and activities over which the College has substantial control.

The policies set out here reflect the College's commitment to a safe and nondiscriminatory educational environment consistent with Title IX, the Violence Against Women Act ("VAWA"), and New York State Education Law 129-B. In accordance with NYS Education Law Section 6443 of Article 129-B, students have a "Bill of Rights" that are provided to them in conjunction with the rights and privileges afforded to them in this policy. Addendum "A" is located at the end of this policy and provides a complete list of these rights.

#### NONDISCRIMINATION STATEMENT

In accordance with its obligations pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Educational Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973 and other federal, state and local laws, Mount Saint Mary College does not discriminate on the basis of race, color, sex, disability, age, religion, creed, national or ethnic origin, sexual orientation,

gender identity or any other characteristic or classification protected by federal, state, or local law, in the administration of any of the College's educational programs or activities, admissions policies, athletics or other school administered programs, scholarship or loan programs.

Pursuant to, and consistent with its obligations under Title IX and New York State law, the College prohibits sexual harassment, sexual misconduct, and sexual violence, in connection with any of its educational programs, activities or employment practices.

Mount Saint Mary College has designated a Title IX Coordinator, who is primarily responsible for coordinating the College's compliance with Title IX and other federal, state, and local laws relating to sex-based discrimination, as well as handling inquiries and questions regarding the College's non-discrimination policies. The College's Title IX Coordinator is also responsible for overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. Mount Saint Mary College Title IX Coordinator(s) and Section 504 Compliance Officer, who is responsible for handling disability-related issues, are:

**Title IX Coordinator:** Matthew Byrne, Garden Apartments 1, Room 205, 845-569-3597, [Matthew.Byrne@msmc.edu](mailto:Matthew.Byrne@msmc.edu) or [titleixcoordinator@msmc.edu](mailto:titleixcoordinator@msmc.edu)

**Deputy Title IX Coordinator:** Margaret Kemp, Aquinas Hall, Room 100c-3, 845-569-3638/3652 [Margaret.Kemp@msmc.edu](mailto:Margaret.Kemp@msmc.edu)

**Section 504 Compliance Officer:** Margaret Kemp, Director of Disability Services, 845-569-3638/3652 [Margaret.Kemp@msmc.edu](mailto:Margaret.Kemp@msmc.edu)

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.

A student may also file a complaint with the following agencies: United States Department of Education, Office for Civil Rights at 32 Old Slip, 26th Floor, New York, New York 10005 [ocrcas.ed.gov](http://ocrcas.ed.gov); and the New York State Division of Human Rights at 99 Washington Avenue, Albany, New York 12210.

An employee may also file a complaint with the following agencies: Equal Employment Opportunity Commission (EEOC) at the New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10004; the New York State Division of Human Rights at 99 Washington Avenue, Albany, New York 12210; or the United States Department of Education, Office for Civil Rights at 32 Old Slip, 26th Floor, New York, New York 10005.

## 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 Grievance procedures 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, and approved by the Section 504 Compliance Officer/Director of Disability Services, even where the Parties may be receiving accommodations in other College programs and activities.

### MULTI-PARTY SITUATIONS

The College may consolidate Formal Complaints alleging Title IX covered sexual harassment or other 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 Title IX covered sexual harassment or other sexual misconduct arise out of the same facts or circumstances.

### 3. DEFINITIONS OF PROHIBITED CONDUCT UNDER THIS POLICY

The conduct defined below constitutes prohibited conduct under this policy:

**DATING VIOLENCE (INTIMATE PARTNER VIOLENCE)** is 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 shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence. The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, psychological, sexual, technological, or economic abuse directed toward a person who is or has been in a social relationship of a romantic or sexually intimate nature with the victim. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, or physically injure someone. Dating violence can be a single act or a pattern of behavior in relationships.

**DOMESTIC VIOLENCE (INTIMATE PARTNER VIOLENCE)** "includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or

domestic violence laws of the jurisdiction and includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who— “(A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim; “(B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; “(C) shares a child in common with the victim; or “(D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.”; Domestic violence can be a single act or a pattern of behavior in relationships. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, or physically injure someone.

**FONDLING** is the touching of the private 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 his/her age or because of his/her temporary or permanent mental incapacity.

**FORCIBLE TOUCHING** is defined as non-consensual touching sexual or intimate parts of another person for the purpose of degrading or abusing such persons or for gratifying the actor’s sexual desire.

**RAPE** is 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.

**RETALIATION** is defined in this context as punishing or sanctioning a person for being a complainant, respondent or acting as a witness regarding a complaint of prohibited conduct as defined by this policy. Examples of retaliation include intimidation, threats, coercion, or discrimination.

**SEXUAL ASSAULT** involves *sexual intercourse* or *sexual contact* with another person, whether by physical force, threat, or coercion, including when a person is incapacitated, without Affirmative Consent. Sexual intercourse is any vaginal or anal penetration, however slight, with any object or by a penis, tongue, finger, or other body part performed by an individual upon another individual. Sexual intercourse also includes any contact, however slight, between the

mouth of one individual and the genitalia of another individual. Sexual contact is any intentional sexual touching however slight, of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, with any object or body part performed by an individual upon another individual. *Sexual contact* includes making an individual touch another individual with or on the breasts, buttocks, groin, or genitals. The term Sexual Assault includes, but is not limited to, rape, fondling, incest, and statutory rape.

**SEXUAL COERCION** is the act of using pressure, alcohol or drugs, or force to have sexual contact with someone against his or her will and includes persistent attempts to have sexual contact with someone who has already refused. This includes the threat to expose a person's sexual orientation, consensual sexual experiences, sexually explicit photographs or videotapes or other images to family, friends, or the public. Sexual coercion is verbal and/or physical conduct, including manipulation, intimidation, unwanted contact, and express or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is used to compel someone to engage in sexual contact. Coercion may involve the actual infliction of physical pain/injury or psychological harm in order to enhance the credibility of a threat.

**SEXUAL EXPLOITATION** occurs when someone takes advantage of another person without the person's consent and exploits or attempts to sexually exploit that person. Taking pictures or video or audio recording of another in a sexual act, or in any other private activity without the consent of all involved in the activity or exceeding the boundaries of consent. Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with sexually transmitted infection (STI) and without informing the other person of the infection. It further includes causing incapacitation of another individual through alcohol, drugs, or any other means, for the purpose of compromising that individual's ability to consent to sexual activity. The following are activities prohibited under this provision:

**VOYEURISM OR PEEPING**, which is purposefully watching, videotaping, or recording another person without that person's consent, while that person is naked, dressing or undressing, or engaging in sexual activity. This also includes allowing others to observe private sexual activity from hidden locations, by electronic means or disseminating sexual pictures without the photographed person's consent.



**SEXUAL EXHIBITIONISM** is when a person engages in sexually explicit activity in public spaces on campus or to be viewed by the public while on campus using computer hardware or software.

**PROSTITUTION OR PROMOTING PROSTITUTION** which involves promoting or soliciting a prostitute to campus or a campus event to engage in prostitution.

**UNLAWFUL DISSEMINATION OF PUBLICATION OF AN INTIMATE IMAGE (REVENGE PORN)** occurs when a person, (a) with intent to cause harm to the emotional, financial or physical welfare of another person, intentionally disseminates or publishes a still or video image of such other person, who is identifiable from the still or video image itself or from information displayed in connection with the still or video image, without such other person's consent, which depicts: (i) an unclothed or exposed intimate part of such other person; or (ii) such other person engaging in sexual behavior with another person; and (b) such still or video image was taken under circumstances when the person depicted had a reasonable expectation that the image would remain private and the accused knew or reasonably should have known the person depicted intended for the still or video image to remain private, regardless of whether the accused was present when the still or video image was taken. For purposes of this section "intimate part" means the naked genitals, pubic area, anus, or female nipple of the person.

**SEXUAL HARASSMENT** is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. 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.

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 academic or work performance or creating an intimidating, hostile or offensive academic or 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 grading or employment; or
- Submission to or rejection of such conduct is used as the basis for grade, education or employment decisions affecting an individual's education or employment.

A sexually harassing hostile academic or 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. 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, and/or which interfere with the recipient's academic or job performance.

Sexual harassment also occurs when a person in authority tries to trade job, academic, athletic, or other benefits for sexual favors. This can include grades, academic standing, hiring, promotion, continued employment or any other terms, conditions or privileges of academics or employment. This is also called "quid pro quo" harassment.

For the purposes of this policy and any formal Title IX Grievance, "Title IX covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct 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;
- Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
- Sex-based Dating violence
- Sex-based Domestic violence
- Sex-based Stalking

Note that all sexual misconduct, including sexual harassment and other misconduct defined in this policy, is prohibited under this Sexual Misconduct and Title IX Grievance Policy and the Student Code of Conduct, even if it does not meet one or more of these criteria for "Title IX covered sexual harassment."

### Examples of Sexual Harassment

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

- Physical acts of a sexual nature, such as:
  - o Touching, pinching, patting, kissing, hugging, grabbing, brushing against another student or employee's body, or poking another employee's body;
  - o Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - o Requests for sexual favors accompanied by implied or overt threats concerning the target's education or job performance evaluation, a promotion or other job benefits or detriments;
  - o 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 academic or work environment.
- Sex stereotyping, which 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 educational environment or workplace, such as:
  - o 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 an educational environment or 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:
  - o Interfering with, destroying, or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to learn or perform their job;
  - o Sabotaging an individual's work;
  - o Bullying, yelling, name-calling.

**SEXUAL MISCONDUCT** is an umbrella term used in this policy to more conveniently refer to any form of conduct prohibited by this policy.

**STALKING** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or

means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. Stalking may occur in person or through communications such as telephone calls, text messages, social media, unwanted gifts, letters, emails, surveillance, or other types of observation.

**STATUTORY RAPE** is sexual intercourse with a person who is under the statutory age of consent.

The College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination of employment, for harassment, discrimination, or an act of sexual misconduct or other gender-based offenses, including those described above based on the facts and circumstances of the particular grievance. Informal resolution and mediation will never be options to remedy any acts of sexual violence and/or non-consensual forcible touching. See Section X, Article II of the Student Handbook for a Full List of Sanctions.

#### 4. DEFINITIONS AND TERMS RELATED TO THIS POLICY

**ACCUSED** is a person accused of a violation who has not yet entered the College's judicial or conduct process; for this policy, the accused is referred to as the Responding Party once formally charged.

**AFFIRMATIVE CONSENT** is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. As used in this policy, the term "consent" always refers to "affirmative consent."

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 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. When consent is withdrawn or can no longer be given, sexual activity must stop.

Past consent does not imply future consent and consent to one form of sexual activity does not imply consent to any other forms of sexual activity. The initiator has the sole responsibility to confirm consent. Coercion, force, intimidation, incapacitation, or threat of harm invalidates consent. An individual of minority age cannot give consent.

The definition of consent does not vary based on a participant's sex, sexual orientation, gender identity, gender expression or relationship status.

A **BYSTANDER** is a person who observes a crime, an impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of College policy.

**CLERY REPORTING** refers to the data collected by the Office of Security & Safety on violent crimes (including sexual assault/rape, domestic violence, dating violence, and stalking) occurring on or near College property and compiled in the College's Annual Security Report. Only aggregate data is reported, and no personally identifiable information is collected. For more information on Clery Reporting, please review the Annual Security Report or contact the Office of Safety and Security.

**COERCION** is verbal and/or physical conduct, including intimidation and explicit or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is used to compel someone to engage in sexual conduct against their will.

**COMPLAINANT** is the individual who reports or is reported as having experienced prohibited conduct.

**CONFIDENTIALITY** may be offered by an individual who is not required by law or College policy to report known incidents of sexual assault or other crimes to institution officials. Counseling Services, Health Services, and Director of Campus Ministry and Chaplain are examples of College employees that are confidential resources.

**FORCE** refers to the use or threat of physical violence to compel someone to engage in sexual activity. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, strangulation, and/or brandishing or using any weapon.

**HOSTILE ENVIRONMENT** is one in which, when viewed from the perspective of a reasonable person in the complainant's position, one's behavior unreasonably interferes with another person's ability to access education or execute his or her work-related responsibilities.

**INCAPACITATED PERSON** is incapable of giving consent. A person is incapacitated if that person is in a physical or mental state such that they lack the ability to make a knowing and deliberate choice to engage in the sexual interaction. For the purposes of this policy, a person who is asleep, unconscious, or involuntarily restrained is incapacitated, without exception. A person may also become incapacitated due to other factors, which may include the use of alcohol and/or drugs to such a degree that the person no longer has the ability to make a knowing or deliberate choice to engage in the sexual interaction. When the question of whether the complainant was incapacitated is at issue, the perspective of a sober, reasonable person in the position of the respondent will be the basis for determining whether the respondent should have known that the complainant was incapacitated and thus incapable of giving consent.

**INTIMIDATION** is any threat of violence or other threatening behavior directed toward another person or group that reasonably leads the target(s) to fear for their physical well-being or to engage in sexual conduct for self-protection. A person's size alone does not constitute intimidation; however, a person can use their size or physical power in a manner that constitutes intimidation (for example, by blocking access to an exit).

**REPORTING INDIVIDUAL** will encompass the terms victim, survivor, complainant, claimant, or witness with victim status.

**RESPONDING PARTY or RESPONDENT** will mean a person accused of a violation who has entered the College's judicial or conduct process.

## **5. GRIEVANCE PROCESS FOR REPORTING PROHIBITED CONDUCT UNDER THIS POLICY**

The College encourages individuals who believe that they have experienced prohibited conduct under this policy to bring their concerns to the College's attention immediately. Early reporting and intervention tend to be the most effective in the ability to investigate and respond. The College will take allegations of prohibited conduct seriously.

### OFFICIALS WITH AUTHORITY

The College has designated the following employees as "Officials with Authority" to take corrective action to redress the sexual harassment or sexual misconduct:

Title IX Coordinator, Matthew Byrne, Garden Apartments 1, Room 205, 845-569-3597,  
[titleixcoordinator@msmc.edu](mailto:titleixcoordinator@msmc.edu), [matthew.byrne@msmc.edu](mailto:matthew.byrne@msmc.edu)

Deputy Title IX Coordinator, Margaret Kemp, Aquinas Hall, Room 100c-3, 845-569-3638/3652  
[Margaret.Kemp@msmc.edu](mailto:Margaret.Kemp@msmc.edu)

### RESPONSIBLE EMPLOYEES

While individuals are encouraged to promptly report sexual misconduct to the Title IX Coordinator, they may also choose, or feel more comfortable, reporting incidents to other administrators, staff, or faculty who can assist in obtaining direction, suggestions, or referrals to services that may be helpful.

A "Responsible Employee" is a non-confidential resource who, at a minimum, shares all information with the Title IX Coordinator or the Deputy Title IX Coordinator.

Responsible employees have the duty to report incidents of sexual/gender discrimination or sexual violence. All faculty, and most professional staff and employees, unless otherwise authorized and designated to receive "confidential reports" are expected to report acts of sex and/or gender discrimination, including sexual violence, involving any members of the campus community, guests, or visitors to the Title IX Coordinator or Deputy Coordinator without delay.

Responsible employees include:

- All Full and Part Time Faculty

- Administration (excluding professional, pastoral counselors and health care providers)
- Resident Directors and Resident Advisors
- Athletic Coaches, Trainers, and Administrators
- Academic Coaches
- Advisors to Student Organizations
- Security Officers, Coordinators, and Supervisors

Responsible employees do not include:

- Clerical Staff
- Custodial Staff
- Facilities and Maintenance Staff
- Non-employee contractors such as those working in food service, the bookstore, etc.

A complainant who wishes to report an incident to a Responsible Employee should consider such communications non-confidential. The College will consider a request for confidentiality when a report is made to such responsible employees but may be required to report it. Even College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary to the Title IX Coordinator.

A reporting party has the right and can expect to have reports taken seriously by the College when reported and to have those incidents investigated and properly resolved through these procedures. In cases where a reporting individual requests confidentiality and circumstances allow the College that request, the College will offer interim supports and remedies to the individual and the community, but will not otherwise pursue formal action.

## STUDENT ALCOHOL AND DRUG USE AMNESTY POLICY WHEN REPORTING SEXUAL MISCONDUCT

At Mount Saint Mary College, the health and safety of every student is of great importance to us. The College 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 College officials. ***A bystander acting in good faith or a reporting individual acting in***



*good faith who discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College 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.*

## EVALUATION OF INITIAL REPORT/REQUEST FOR CONFIDENTIALITY

The College has designated the following individuals to evaluate requests for confidentiality once a responsible employee and/or victim discloses an alleged act of sexual misconduct has occurred:

[Matthew Byrne](#), Title IX Coordinator

845-569-3597

[Margaret Kemp](#), Deputy Title IX Coordinator

845-569-3638

The College will seek consent from reporting individuals and receive a Formal Complaint from them prior to conducting an investigation, and will generally honor a reporting individual's request not to investigate unless the College determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the College community. Honoring a request not to investigate and maintain confidentiality may limit the College's ability to meaningfully investigate and pursue conduct charges against an accused individual. Factors used to determine whether to honor such a request include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether the College possesses other means to obtain evidence, and whether the available information reveals a pattern of perpetration at a given location or by a particular group.

Requests for confidentiality and/or not to initiate an investigation will be weighed against the College's obligation to provide a safe, non-discriminatory environment for all members of its community. In the event the College determines it must proceed forward with an investigation, the Title IX Coordinator will complete and sign the Formal Complaint, provided the complainant declines to do so.

#### CASE OF CONTINUAL THREAT, TIMELY WARNING OBLIGATIONS AND DUTY TO REPORT CRIMES

Victims of sexual misconduct should be aware that the College is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees, subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the complainant. The College will make every effort to ensure a victim/survivor or reporting individual is not disclosed.

All Responsible Employees and Campus Security Authorities are expected to report sex and or gender-based crimes involving any member of the campus community without delay, unless a sex crime victim does not wish the report to be made. A report of any sex crime must be made to the Title IX Coordinator. Incidents involving sex-based crimes against minors must be reported by all employees, including confidential resources, without delay to the Title IX Coordinator.

#### 6. CONFIDENTIAL RESOURCES

There are certain College employees who can offer confidentiality. Any other College employee to whom a report is made will disclose to as few individuals as possible but, as a non-confidential resource, they do not have the ability to promise that they will not tell others within the College about the information that has been shared with them.

Individuals may report or disclose an incident of sexual misconduct to the following resources confidentially. These resources can assist in obtaining support, counseling, pastoral care, and protective services. These resources will not report the incident to the Title IX Coordinator. Reports made to medical professionals, pastoral counselors, and licensed mental health counselors shall not be shared with any third parties except in cases of imminent danger to the patient, a third party, or in situations of State regulated mandatory reporting. The reporting party must make a report to the Title IX Coordinator or another responsible College official in order for the College to take action with respect to the conduct at issue.

Elizabeth Bruno, Director of Counseling	845-569-3433 <a href="mailto:elizabeth.bruno@msmc.edu">elizabeth.bruno@msmc.edu</a>
Fr. Gregoire Fluet, Director of Campus Ministry	845-569-3154 <a href="mailto:gregoire.fluet@msmc.edu">gregoire.fluet@msmc.edu</a>
Deirdre Pettus, Director of Health Services	845-569-3153 <a href="mailto:deirdre.pettus@msmc.edu">deirdre.pettus@msmc.edu</a>
Dina Leduc, Assistant Director of Health Services	845-569-3353 <a href="mailto:dina.leduc@msmc.edu">dina.leduc@msmc.edu</a>
Maria Rivera, Nurse Practitioner (NP)	845-569-3353 <a href="mailto:maria.rivera@msmc.edu">maria.rivera@msmc.edu</a>

Counseling Services may be contacted after hours by calling Campus Safety at 845-569-3200 and asking for the on-call counselor. There is no need to leave your name. Just leave your number and the counselor will call you back.

\*These employees will submit anonymous statistical information for Title IX and Clery Act purposes.

## OFF-CAMPUS CONFIDENTIAL RESOURCES

Off-campus resources will maintain confidentiality except in extreme cases of immediate threat, danger and/or abuse of a minor.

Fearless! (formerly known as Safe Homes of Orange County) 845-562-5340

Orange County Sexual Assault Prevention and Advocacy Program 1-800-832-1200

These resources provide support services and answer questions, 24 hours a day, about the Sexual Assault Nurse Examination process and your options regarding medical treatment, evidence collection, reporting to law enforcement and assisting you with College resources.

## MEDICAL TREATMENT

Anyone who is physically injured or sexually assaulted has the right to seek a medical examination to determine the extent of injuries. It is also important to understand that physical evidence collected in a rape examination (i.e., a rape kit) is a way to preserve evidence should anyone want to pursue criminal charges with the police or a local prosecutor at a later time. [5]

Note: A decision to avail yourself of any of the Rape Crisis services, including the collection of evidence at the hospital, does not result in notification to law enforcement. You have the ability to decide if and when to report to law enforcement authorities; the evidence will be preserved without cost to you.

Anyone who is physically injured or sexually assaulted may contact:

Montefiore St. Luke's Cornwall Hospital  
Dubois Street, Newburgh, NY 12550

845-561-4400 70

You may disclose *confidentially* the incident and obtain services from the New York State or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906);

## REPORTS TO POLICE/LAW ENFORCEMENT AND OTHER SUPPORTIVE AGENCIES

A person may report an incident to either the police or the College, or to both simultaneously. A complainant has the right to have the institution's process run concurrently with a criminal justice investigation. Making a report or filing a complaint of sexual misconduct under this Policy is independent of any criminal investigation or proceeding. The College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the complainant and the College community.

However, the College may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code.

There may be times when the Security & Safety Department or another administrator may contact the police regarding the nature of an alleged incident. Further, the Security & Safety Department and other administrators stand ready to assist in reporting incidents to the police or local prosecutors and help with initiating legal proceedings in Family Court or civil court.

To file a criminal complaint with Campus Security, local law enforcement, and/or state police, a reporting party may call 911 or contact:

Campus Security:	845-569-3200
City of Newburgh Police Department:	845-561-3131
New York State Police:	845-344-5300
844-845-7269	
(Campus Sexual Assault Victims Unit) (Troop F-Middletown, NY);	844-845-7269
Family & Civil Court:	845-476-3520
District Attorney of Orange County:	845-291-2050
NY State Sexual Violence Hotline:	844-845-7269

## 7. SUPPORTIVE MEASURES

When notice of a violation of this policy has been received by the Title IX Coordinator, Director of Student Conduct, Deputy Title IX Coordinator, or other College employee who is obligated to report, the College will take supportive measures deemed necessary to appropriately respond to protect the reporting party, its students, faculty, staff, and third parties. Not all forms of harassment and discrimination will be deemed equally serious offenses, and the College reserves the right to impose different, yet appropriate measures, depending on the severity of the offense. As required by federal regulation, these interim measures must be non-disciplinary and non-punitive to the parties.

The College will take appropriate supportive measures promptly if it receives notice of a sexual misconduct allegation. Interim protections or responsive measures are available without a Formal Complaint and are available to both the complainant and accused/respondent in the areas of safety, counseling, housing, and educational accommodations (academic support).

Supportive measures are administrative actions and may include, but are not limited to: mutual no-contact orders (as further discussed below); change of housing or place of employment; change of class schedule or location; change of transportation; leaves of absence, campus escort services, increased security and monitoring of certain areas of the campus, counseling, extensions of deadlines or other course-related adjustments, or change of supervision. These supportive measures are not sanctions when made prior to the final determination.

Supportive measures are available from the time of the incident until a final decision is rendered by the College. Both the accused or respondent and the reporting individual shall, upon request, and consistent with the College's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects them, and shall be allowed to submit evidence in support of his or her request.

Factors determining which interim measures the College will take may include: the specific needs expressed by the reporting party; the age of the students involved; the severity or pervasiveness of the allegations; whether the reporting party and responding party share the same residence hall, class, or job location; whether there is a continuing threat to the health and safety of the College community; and whether other court ordered judicial measures have been taken to protect the reporting party.

When the accused is not a student but is a member of the College community, an assessment of any continuing threat to the health and safety of the community will be conducted, and interim measures will be put into place in accordance with applicable employee handbooks, and rules and policies of the College.

When a case involves a foreign student, the College will work with a SEVIS Designated School Official if the student's course load is likely to drop below full-time status as a result of the alleged incident. (Threatening a student with deportation or invoking a student's immigration status in an attempt to deter testimony in such cases is a violation of the investigative process and applicable Federal law.)

The College determines if there is a continuing threat to the health and safety of the community by evaluating each instance on an individual basis and applying current threat assessment guidelines. The Title IX Coordinator, Deputy Title IX Coordinator or the Vice President for Students, will consult with the Director of Student Conduct and the Director of Security & Safety, and may convene the Assessment and Care Team (ACT), whose mission is to identify members of the MSMC community who may pose a threat to the safety and well-being of themselves or others, if further review is warranted.

## NO CONTACT ORDERS

After a reporting party makes a complaint of sexual misconduct, the College may institute a no contact order between the reporting and responding party. A no contact order is a directive prohibiting contact between or among designated individuals, direct or indirect, including personal contact, correspondence, email, instant message, text messages, social media, telephone, or through a third party. In general, the Director of Student Conduct, the Vice President for Students, Title IX Coordinator or the Deputy Title IX Coordinator or designee may impose a limited or campus-wide No Contact Order between parties or witnesses to a Complaint when the fear of retaliation and/or harassment may be present and/or for reasons relating to the safety and well-being of students, faculty, and staff.

An individual who believes that a violation of the No Contact Order has occurred needs to report the violation to the Title IX Coordinator, Vice President for Students, the Director of Student Conduct, the Deputy Title IX Coordinator, or designee. Individuals who violate a no contact order are subject to disciplinary action, such as a charge of retaliation and violation of the no contact order.

Specific instructions will accompany the No Contact Order outlining to all parties the expected behavior including any prohibitions on face-to-face contact. Friends and relatives may also be prohibited from contact on behalf of either party.

## EMERGENCY REMOVAL

In some cases, the College may undertake an emergency removal of an accused or respondent student in order to protect the safety of the College community, which may include contacting local law enforcement to address imminent safety concerns.

Emergency removal is not a substitute for reaching a determination as to an accused's responsibility for the sexual misconduct allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person's physical health or safety, which may arise out of the sexual misconduct allegations.

Prior to removing an accused or respondent student through the emergency removal process, the College will undertake an individualized safety and risk analysis. If the individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student, including the accused student, or other individual justifies removal, then the accused or respondent student will be removed. This is the case regardless of the severity of the allegations and regardless of whether a Formal Complaint was filed.

After determining an accused or respondent student is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator, Deputy Title IX Coordinator, and/or Director of Student Conduct, or designee will provide written notice of the emergency removal to both the complainant and the accused or respondent student. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision.

If the accused or respondent student disagrees with the decision to be removed from campus, the accused or respondent student may appeal the decision. The accused or respondent student must provide written notice of the intent to appeal, which shall include the substance of the appeal, to the Vice President for Students or designee, within (10) days of receiving the notice of removal. The burden of proof is on the accused or respondent student to show that the removal decision was incorrect.

This section applies only to accused or respondent students. Employees are not subject to this section and may be placed on administrative leave pursuant to the College's policies during the pendency of a Title IX grievance process.



## ORDERS OF PROTECTION ISSUED BY CRIMINAL OR CIVIL COURTS

Separate from a no contact order issued by the College, a reporting party can seek an order of protection from both the criminal or civil (family) court system. The Title IX Office will place the student in touch with an advocate from Fearless! (formerly known as Safe Homes of Orange County) or Legal Services of the Hudson Valley who will be available to assist in obtaining a government court issued order of protection (or equivalent restraining order if outside New York State) and explain to all involved parties the consequences of violating such an order, including but not limited to arrest, additional conduct charges, and interim suspension. Both the reporting party and responding party have the right to receive a copy of the order of protection when received by the College. Either the Title IX Coordinator, Deputy Title IX Coordinator, or designee, or an advocate from Fearless! or Legal Services of the Hudson Valley will be available to explain the order and answer any questions about it. If such an order is violated, an individual may contact the Title IX Coordinator, Deputy Title IX Coordinator, Director of Security & Safety, or designee to receive assistance from the police department with appropriate jurisdiction in effecting an arrest, if and when appropriate.

## 8. FORMAL COMPLAINT FILING

### FORMAL COMPLAINT

A Formal Complaint is necessary to initiate the College's grievance process, meaning an investigation and adjudication process. A Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual misconduct against a respondent and requesting that the College investigate the allegation.

A Formal Complaint may be filed with the Title IX Coordinator in person, electronically or other College approved format located on the College's Portal and/or [Title IX website](#), by mail, or by email. In order to qualify as a Formal Complaint, the document must contain the complainant's physical or electronic signature, or otherwise indicate that the complainant is the person filing the Formal Complaint.

If a complainant declines to sign a Formal Complaint or does not wish to participate in the complaint and adjudication process, or the complainant's identity is unknown, and the Title IX Coordinator determines there is sufficient cause to file a Formal Complaint, the Title IX

Coordinator may file a Formal Complaint. In such cases, the Title IX Coordinator is not considered to be a complainant or other party under this policy.

## EVALUATION OF FORMAL COMPLAINT

The Title IX Coordinator will review the Formal Complaint filed by a complainant to determine whether the alleged conduct:

- would not constitute Title IX covered sexual harassment as defined in Section 106.30 of the U.S. Department of Education's Title IX regulations, even if proved,
- did not occur in the College's education program or activity (as defined in federal regulations), or
- did not occur against a person in the United States.

In order to comply with Title IX regulations, the Title IX Coordinator must dismiss and discontinue the processing of any allegations that meet the above criteria for purposes of Title IX and related federal regulations. However, even if certain allegations are subject to dismissal for purposes of Title IX, the College may continue to process the allegations as potential violations of this policy, assuming that the allegations, if true, would constitute prohibited sexual misconduct.

Notice of any dismissal under this section will be in writing and issued to both the Complainant and the Accused or Respondent student, with information concerning the parties' rights to appeal.

## NOTICE OF DISMISSAL

Upon reaching a decision that the Formal Complaint will be dismissed, in whole or in part, the College 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.

## 9. INFORMAL RESOLUTION

Initiation of an informal procedure to resolve a complaint is appropriate for allegations of non-violent acts, provided all parties voluntarily agree to the informal procedure. The informal resolution process is not available unless a Formal Complaint has been filed. If the parties are unable to reach a resolution through the informal procedure or if any party requests that the informal process be discontinued, then the complaint will be moved to a formal investigation and further proceedings, as described below.

The informal procedure is a voluntary process in which a trained facilitator assists the parties in resolving the allegations made by a complainant. An informal resolution prioritizes educational and conciliatory approaches over more adversarial contestation of the facts. One objective of informal resolution is to provide to the parties an opportunity to hear each other's concerns and address them as collaboratively and usefully for the parties as possible, with the assistance of the facilitator.

The Informal Resolution Process is not available if the accused or respondent in a sexual misconduct complaint is a faculty or staff member of the College and the complainant is a student.

Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator or designee will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Informal resolution will not be a mechanism used to address reports of sexual violence or coerced/forced behavior of any kind or if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. It is not necessary to pursue the informal resolution process first in order to make a formal report and, as noted above, anyone participating in the informal resolution process can stop that process at any time and request formal resolution. Further, interim measures are available to both parties in the same manner as they would be if the Formal Complaint were proceeding under the formal grievance and hearing process.

The Title IX Coordinator, Deputy Title IX Coordinator, or Director of Student Conduct will offer the informal resolution process to the parties after a Formal Complaint is filed by a complainant. A written notice will be given to both parties before entering an informal resolution process, and both parties must consent to the process in writing. No party should feel intimidated, coerced/forced or threatened to participate in an informal resolution process, or to withdraw from an informal resolution process.

If both parties consent to participate in the informal resolution process, the College will assign a facilitator who will act in an independent, impartial manner to facilitate a resolution between the parties. The facilitator will be trained on how to perform the role and screened to ensure that such a person is free from conflicts of interest and bias.

## 10. INVESTIGATION PROCESS

All involved parties have the right to an investigation that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest. Any conflict of interest should be brought to the attention to the Vice President for Students as soon as possible. The investigation will be completed in a reasonably prompt timeframe, taking into account the complexity of the allegations and availability of parties and witnesses.

### APPOINTMENT OF INVESTIGATOR

Where a formal complaint has been filed, and in the absence of an informal resolution, the College will appoint an investigator to conduct an investigation into the allegations in the Formal Complaint.

The College may appoint one or more internal or external qualified investigators at its sole discretion. The investigation is an impartial fact-finding process.

### NOTICE OF REMOVAL

Upon dismissal of a Formal Complaint, in whole or in part, for the purposes of Title IX, the College retains discretion to determine if any violation(s) of the Code of Conduct and/or this Sexual Misconduct and Grievance Policy has occurred. If the Formal Complaint does not allege a violation of this policy, but does allege a violation of the Code of Conduct, then the College will promptly send written notice of the removal of the complaint and allegations contained therein to the Code of Conduct or other applicable process.

### NOTICE OF ALLEGATIONS

The Title IX Coordinator, Deputy Title IX Coordinator, or Director of Student Conduct will draft and provide a notice to all known parties ("Notice of Allegations") regarding the allegations of sexual misconduct contained in the Formal Complaint. Such notice will occur as soon as practicable, but no more than ten (10) days, after the institution receives a Formal Complaint, 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, Deputy Title IX Coordinator, or Director of Student Conduct may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above and will issue notice of the 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 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 institution's Sexual Misconduct Policy and Title IX Grievance Process, including any informal resolution, investigation and adjudication process and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting Title IX covered sexual harassment and/or other sexual misconduct, and sufficient details known at the time the Notice is issued, such as:
  - o the identities of the involved parties;
  - o the date, time, location, and factual allegations concerning the alleged violation;
  - o the policy provisions allegedly violated;
  - o a description of, or reference to, the applicable investigation and adjudication process;
    - 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 grievance 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 and consistent with this policy that is directly related to the allegations raised in the Formal Complaint,
    - A statement that College Policy/Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

## ONGOING NOTICE

If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise sexual misconduct prohibited by this 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 charges.

## ADVISORS

The Reporting Individual, Complainant, and Accused/Respondent have the right to a person of their choice accompany them as an advisor throughout the investigation and disciplinary hearing. The Title IX Coordinator, the Deputy Title IX Coordinator or the Director of Student Conduct will notify both the reporting and accused/responding party of their right to use one advisor of their choice, including an attorney, parent or advocate who can advise them during the grievance process. Advisors may be present at investigatory interviews and the Hearing, but they may not answer for students, make objections, or pose questions, with the exception of a party's advisor conducting cross examination at a Title IX grievance hearing, as further discussed below. The availability of an advisor to attend an interview, conduct meeting, or hearing will not unreasonably interfere with or delay the proceedings. The choice whether or not to invite an advisor is solely that of the reporting party and responding party. However, if a party does not have an advisor for a Title IX grievance hearing, then one will be provided to that party by the College.

## MEETINGS AND INTERVIEWS TO GATHER INFORMATION

The Complainant and Accused/Respondent will be provided with advance written notice of the date, time, location, participants, and purpose of any meeting or interview in which they are invited to or expected to participate.

The Complainant and the Accused/Respondent will be given an equal opportunity to present information during the investigation. This includes the opportunity to present fact or expert witnesses and other evidence that the party believes tends to prove or disprove the allegations. However, at all times, the burden of gathering evidence remains with the College. The investigator may decline to interview any witness or to gather information the investigator finds to be not relevant or otherwise excludable (e.g., sexual history of the complainant with a person other than the accused/respondent, materials subject to a recognized privilege, medical records in the absence of a release by the subject of the records, etc.). The investigator will determine the order and method of investigation.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or interviews. If the investigator elects to audio and/or video record interviews, all parties involved in the meeting or interview will be made aware that audio and/or video recording is occurring.

#### OPPORTUNITY FOR INSPECTION AND REVIEW OF EVIDENCE/TITLE IX GRIEVANCE

In cases involving Title IX covered sexual harassment, the Complainant and Accused will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. Prior to the conclusion of the investigative report, the Complainant and Accused, and their advisors, will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the evidence, subject to redaction permitted and/or required by law. The Complainant and Accused will be provided with at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The investigator will determine if additional investigation is necessary and, if so, will complete any additional investigative steps.

#### OPPORTUNITY FOR INSPECTION AND REVIEW OF EVIDENCE/NON-TITLE IX GRIEVANCE

In cases involving sexual misconduct that does not constitute Title IX covered sexual harassment, once it is determined by the College that charges will be filed against the Accused and the matter

will proceed to a live hearing, the Complainant and Respondent, and each party's advisor of choice, will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. All parties will be notified in writing by the Director of Student Conduct, or designee that they may schedule an appointment with the Office of Student Affairs up to three (3) business days prior to the scheduled hearing date to review the investigative file, subject to redaction permitted and/or required by law. Parties in non-Title IX Grievances are not provided a copy (hard copy or electronic format) of the evidence.

#### INVESTIGATIVE REPORT/TITLE IX GRIEVANCE

At the conclusion of the investigation, in cases involving Title IX covered sexual harassment, the investigator will complete a written investigative report that fairly summarizes the relevant evidence. The investigator need not include information in the investigative report that the investigator determines not relevant or otherwise excludable. The investigator will submit the investigative report to the Title IX Coordinator and, if the accused is a student, the Director of Student Conduct, or designee.

At least ten (10) days prior to a hearing to determine whether there is responsibility for the allegations, the Complainant and Accused/Respondent, and each party's advisor if any, will be provided a copy of the investigative report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law.

#### INVESTIGATIVE REPORT/NON-TITLE IX GRIEVANCE

At the conclusion of the investigation, in cases involving sexual misconduct that does not constitute Title IX covered sexual harassment, the investigator will complete a written investigative report that fairly summarizes the relevant evidence. The investigator need not include information in the investigative report that the investigator determines not relevant or otherwise excludable. The investigator will submit the investigative report to the Title IX Coordinator and, if the accused is a student, the Director of Student Conduct, or designee. If it is



determined by the College that charges will be filed against the Accused and the matter will proceed to a live hearing, the Complainant and Respondent, and each party's advisor of choice, will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. All parties will be notified in writing by the Director of Student Conduct, or designee that they may schedule an appointment with the Office of Student Affairs up to three (3) business days prior to the scheduled hearing date to review the investigative file, subject to redaction permitted and/or required by law. Parties in cases involving sexual misconduct that does not constitute Title IX covered sexual harassment are not provided a copy (hard copy or electronic format) of the evidence.

## 11. HEARING PROCEDURES

In cases involving Title IX covered sexual harassment, a live hearing will be convened not less than ten (10) days after the parties have been provided access to the final investigative report, for the purpose of determining whether the Respondent is responsible or not responsible for the alleged sexual misconduct. In cases involving sexual misconduct that does not constitute Title IX covered sexual harassment, a live hearing will be convened no less than three (3) days after formal charges have been filed against the accused.

A hearing panel made up of trained faculty, staff, and/or administrators charged with hearing cases brought before them involving alleged violations of the College's discrimination, harassment, and sexual misconduct policies, including Title IX violations, will be assembled (the "Hearing Panel"). Hearings for violations of this policy are conducted by a three (3) person panel made up of trained faculty and staff from the College that are designated by the Office of Student Affairs. Hearings under this policy are closed to all members of the campus and outside community except those directly involved with the Formal Complaint or investigation.

Participants in the hearing will include the members of the Hearing Panel, the Complainant and the Respondent, their respective advisors, the investigator(s) who conducted the investigation, and witnesses (solely during their own testimony). During any hearing, Advisors are required to follow the Code of Decorum for Advisors, Addendum "B" of this policy.

With the exception of conducting cross-examination of another party or witness in cases involving Title IX covered sexual harassment, advisors may be present to advise only; they may

not participate directly in the hearing. Advisors who interfere with the proceedings can be excused by the Hearing Panel. An audio recording or a transcript of the hearing will be made and kept by the Office of Student Affairs.

Only persons involved in the hearing process will be permitted in the vicinity of the hearing. It is expected that participants and advisors will respect the dignity and privacy of College community members and keep private that which transpires during the hearing, in accordance with federal and state law.

All members of the College community, including students, faculty, and staff, are expected to participate in the hearing process, when called as a witness on behalf of the Complainant, the Respondent, or the College. The evidence in the investigation report will always be admissible if relevant, regardless of who does or does not attend the hearing. How much weight that evidence is given can be impacted by testimony at the hearing, or the lack thereof. No one has to participate in a hearing, and parties and witnesses can choose not to attend, or not to answer (some or all) questions. In hearings where the parties or witnesses let their statements to the investigators stand on their own, and they give no testimony at the hearing, the decision-makers will weigh whatever evidence is provided and may draw reasonable inferences as permitted by law from the failure of parties or witnesses to participate or answer.

## NOTICE OF HEARING

At least one week prior (5) business days to a hearing involving allegations of Title IX covered sexual harassment, or at least three (3) business days prior to all other hearings under this policy, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Title IX Coordinator, the Director of Student Conduct, or designee will send a letter to the parties with the following information. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.

- The time, date and location of the hearing and a reminder that attendance is mandatory. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Title IX Coordinator or designee may reschedule the hearing.
- The names of the Hearing Panel members, and how to challenge participation by any Hearing Panel member for bias or conflict of interest. Bias or conflict of interest will be judged by an objective standard (i.e., whether a reasonable person would conclude the decision maker is biased).
- A notice regarding the parties' right to have an advisor at the hearing, as described in, and subject to the limitations of, this policy.

Hearings for possible violations that occur near or after the end of an academic term will be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within a reasonable time for resolution.

#### ADDITIONAL PROCEDURAL MATTERS

Generally, the hearing process will be conducted in the following manner:

1. The Hearing Chair will open and establish rules and expectations for the hearing; all participants and advisors will be introduced to the Hearing Panel.
2. The Hearing Chair will ask the Director of Security, the Title IX Coordinator, or other College designee who has participated in compiling the investigative file to give an overview. The Hearing Panel will be given an opportunity to ask any questions of the investigator before excusing this person from the hearing room. The investigator may be called by the Chair at any point throughout the hearing to help answer questions concerning the investigative report.
3. Once the investigator is dismissed, the Hearing Chair will recite the Complaint against the Respondent and all policy sections alleged to have been violated.
4. The Respondent will state whether they are responsible, not responsible, or responsible with an explanation for the alleged misconduct. Responsible with an explanation means the student admits to the actions, but believes there were circumstances that should be taken into consideration by the Hearing Panel in the determination of the Complaint.
5. Statements regarding their respective positions may be given by the Complainant and the Respondent. The Hearing Panel, through its Chair, may place reasonable time

limitations on the statements. In a case involving Title IX covered sexual harassment, the Complainant and Respondent will be subject to cross-examination by the Advisor for the other party. The Chair of the Hearing Panel will rule on the relevancy of all questions asked by an Advisor during cross examination.

6. The College reserves the right to assign a representative of the Office of Student Affairs and/or a representative from the Office of Security and Safety to present the Complaint against the Respondent.
7. The Complainant, the Respondent and the representative from the Office of Student Affairs or the Office of Security and Safety will be able to present witnesses. The Hearing Panel will ask questions of the Parties and Witnesses. In a case involving Title IX covered sexual harassment, Parties will be given the opportunity for live cross-examination after the Hearing Panel conducts its initial round of questioning. During the Parties' cross-examination, which shall be conducted through the Parties' Advisors, the Hearing Panel will have the authority to pause cross-examination at any time for the purposes of asking their own follow up questions and take any time necessary in order to enforce the established rules of decorum.

In a case involving Title IX covered sexual harassment, should a Party choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the hearing panel. A Party's waiver of cross-examination does not eliminate the ability of the hearing to use statements made by a Party or Witness.

As stated above, each Party's advisor will conduct the live cross-examination of the other Party or Parties and Witnesses. During this live-cross examination, the Advisor may 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 Hearing Chair will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Hearing Panel may be deemed irrelevant if they have been asked and answered.

In cases involving allegations of sexual misconduct that do not constitute Title IX covered sexual harassment, witnesses are not subject to live cross-examination. Rather, the Parties are given the opportunity to submit written questions to the Hearing Chair to be asked of any other Party or Witness, provided the questions are relevant as determined by the Hearing Chair.

8. Relevant records, documents, and written statements may be accepted and considered by the Hearing Panel; in cases of sexual misconduct, all parties have the right to exclude their own prior sexual history with persons other than the party in the judicial process or their own mental health diagnosis and/or treatment from admittance in the College disciplinary stage that determines responsibility.
9. The Complainant and the Respondent may be present throughout the entirety of the proceeding, except for the deliberation phase.
10. Witnesses will be asked to remain until the end of the hearing in the event they must be called back for clarification of their testimony.
11. Witnesses will appear separately and will leave the hearing room after their testimony is completed. Witnesses are not permitted to leave the vicinity of the hearing room until permission has been granted by the Hearing Panel and are instructed not to communicate with other witnesses outside the hearing during the proceedings.
12. The Complainant and the Respondent may present concluding remarks. The Hearing Panel may place reasonable time limitations on the statements.
13. At the conclusion of the hearing the Hearing Panel will advise the Complainant and the Respondent that their determination will be given, in writing, to the Director of Student Conduct when the respondent is a student, the VP of Academic Affairs when the respondent is a faculty member and the VP of Finance when the respondent is an administrator or staff.
14. The Accused prior conduct record will be a factor in determining the appropriate sanction(s) if a violation of this policy is found to have occurred.

In cases of sexual misconduct, past findings of domestic violence, dating violence, stalking, or sexual assault, are admissible in the sanctioning stage. This includes past responsible findings which occurred at previous colleges, universities, or schools attended by the respondent, criminal convictions, guilty, or no-contest pleas for acts of interpersonal violence, sexual violence, or other acts of violence. All parties will have the opportunity to make an impact statement to the Hearing Panel when they are deliberating an appropriate sanction(s).

The rules of evidence applicable to Federal, State and Local courts do not apply to proceedings at the College. Fair process is as defined in these procedures.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings, subject to College consequences for failure to do so. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose and should discuss doing so with their Advisors.

Hearings are recorded for purposes of review in the event of an appeal. Hearing panel members, the parties and/or the persons who initiated the action and appropriate administrative officers of the College will be allowed to listen to the recording in a location determined by the Title IX Coordinator, the Director of Student Conduct, or designee. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator or designee. The parties and/or the persons who initiated the action confirm that they will protect the privacy of the information contained in the recording.

Upon completion of the hearing process, the hearing panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the violation(s) in question.

The Title IX Coordinator, Deputy Title IX Coordinator, Director of Student Conduct, or designee will simultaneously inform the respondent and the reporting party of the hearing panel's determination within ten (10) business days of the hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## STANDARD OF PROOF

The College uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this Policy. This means that the investigator(s) and Hearing Panel are tasked with determining whether it is more likely than not that the Respondent committed each alleged violation of the Policy.

## 12. SANCTIONS

### STUDENT SANCTIONS

If a Respondent student is found responsible by a majority of the Hearing Panel, then the panel will determine appropriate sanctions in consultation with the Director of Student Conduct to ensure consistency. Respondent student sanctions may include:

**DISCIPLINARY REPRIMAND:** A written or verbal notice that the student has been found in violation of a specific regulation, and that repetition or continuation of this violation may result in further disciplinary action.

**RESTITUTION:** Reimbursement by the student to the College or a member of the College community to cover the cost of damage to or misappropriation of property.

**RESTRICTION:** Withdrawal or restriction of certain privileges for a specific period of time, such as participation in student activities, use of computing services representing the College.

**FORCED RELOCATION:** Relocation of the student to another area of the residence community for the common good. When a student is relocated, they will not be permitted to return to the residence area in which they were removed for a period of at least one calendar year. Return to the original area will be at discretion of the VP for Students and/or the Director of Residence Life.

**CAMPUS COMMUNITY SERVICE ASSIGNMENT:** The assignment of tasks or work appropriate to the violation, which will benefit all or part of the College community.

**FINES:** A monetary assessment that may vary because of the nature and/or the frequency or nature of the violation.

**MANDATORY ALCOHOL/DRUG EVALUATION AND/OR EDUCATION:** Mandate students to obtain an Alcohol/Drug Evaluation and/or attend a mandatory Alcohol/Drug Education Workshop. The Counseling Services Office will facilitate this process.

**NO TRESPASS AND NO CONTACT ORDERS:** In addition to No Trespass and No Contact Orders that may be imposed pending an investigation and/or the resolution of an alleged violation of

this policy, the College may also impose No Trespass and No Contact Orders as discipline upon the outcome of a hearing.

**INTERIM SUSPENSION:** In any non-Title IX Grievance process, an interim suspension may be imposed pending an investigation and/or the resolution of an alleged violation of this policy. An interim suspension is not disciplinary in nature.

**SUSPENSION OF PARTICIPATION IN CAMPUS ACTIVITIES:** A student's ability to participate in a campus leadership position or other campus activities may also be impacted or suspended if a student is found responsible for sexual misconduct under this policy.

**PARENTAL NOTIFICATION:** Parents/guardians of a traditional student will receive written notification, as allowable under FERPA, from Mount Saint Mary College if a traditional student receives any of the following sanctions listed below as part of a disciplinary conference. This notification will include a copy of the student's sanction letter and will be mailed to the permanent address listed on the student's MSMC account. The College also reserves the right to notify parents/guardians in situations where a student's health or safety may be in jeopardy. Parental Notification applies to traditional college students, defined as an undergraduate student, age 23 and younger.

**STUDENT LIFE PROBATION:** A defined period of time during which any further violations of the Student Code of Conduct or this Policy may result in additional disciplinary sanctions. Additional sanctions include (but are not limited to) Disciplinary Probation, Residence Suspension, and loss of on campus recreational privileges. Future violations could jeopardize a resident student's housing or a commuter student's campus privileges.

**DISCIPLINARY PROBATION:** An official and final warning directing the student to comply with the terms of the probation and to exhibit good conduct in general by obeying College rules and regulations during a specified probation period. Further violations and/or failure to comply with sanctions will require that the student meet with the VP for Students. The VP for Students will meet with the student to determine if additional Judicial Action is necessary.



If additional judicial action is required, the VP for Students or his/her designee, will conduct a special hearing pursuant to the terms of the Disciplinary Probation. Sanctions may then be imposed pursuant to the terms of probation and may include dismissal from the residence hall and/or the College, and parent/guardian notification to the extent permitted under FERPA. The VP for Students decision is subject to appeal consistent with the appeal procedures outlined in section 15 of this policy. Students will lose seniority and/or priority in the room selection process and be restricted from living in the same room the following year.

**WEEKEND SUSPENSION:** Suspension from on-campus residence and/or from the entire campus grounds for one or more weekends. Generally, a student is suspended for weekends up to a semester or more. In such circumstances, students must be off campus and/or out of the

residence halls by a designated time on Fridays and cannot return to campus and/or the residence halls until a certain hour on Monday. Times would be determined by the hearing officer and the student's schedule. Future violations jeopardize the student's housing. Students may lose seniority and/or priority in the room selection process and be restricted from living in the same room the following year.

**RESIDENCE SUSPENSION:** The student will be asked to terminate occupancy of on-campus residence for a specified period of time. The student must remove all belongings from the residence hall within 24 hours of receiving notice, returning all keys to residence life. The student will be obligated to pay the full room and board charge for the semester in which they are dismissed. During the suspension, the student will be denied access to all residence hall facilities. After the residence hall suspension period ends, the student is required to return to campus housing and will be billed room and board upon re-registration for classes accordingly. Upon return, the student will not be guaranteed his/her original place of occupancy and the student's seniority and/or priority in the room selection process will be reviewed. Students may lose seniority and/or priority in the room selection process and be restricted from living in the same room the following year.

**DISCIPLINARY SUSPENSION:** Temporary separation from the College, including the residence halls, with the right to apply for readmission. The terms of the suspension may be set for an indefinite period of time, and special conditions upon readmission may be designated.

The Office of Student Affairs is authorized to place a “Student Affairs” hold on the suspended student’s registration account to prohibit re-enrollment during the suspension period. Once the suspension period ends, a written request for re-enrollment must be submitted to the Student Affairs. The Vice President, or designee, in consultation with other College officials, will review the documentation and notify the student, in writing, of the outcome. If the request is granted, the “Student Affairs” hold will be removed within ten (10) business days.

Factors considered in review of requests include:

- The conduct of the student subsequent to the disciplinary suspension;
- The nature of the disciplinary suspension; and
- The information provided by the student in the written request.

**DISMISSAL/EXPULSION:** Permanent separation from the College and/or residence halls. The Office of Student Affairs is authorized to place a Student Affairs hold on the dismissed student’s registration account to prohibit re-enrollment.

### EMPLOYEE SANCTIONS

In consultation with the Director of Human Resources, responsive actions for an employee who has engaged in sexual misconduct, harassment, discrimination and/or retaliation include disciplinary action, up to and including termination from employment.

### 13. TRANSCRIPT NOTATIONS

For all crimes of violence, including, but not limited to forcible and non-forcible sex offenses, a notation will be placed on the transcript of the student found responsible after a conduct process. The transcript shall read: “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.”

Notations will not be removed prior to one year after the conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

To request that a transcript notation be removed after a suspension ends, a student must submit a written request to the Vice President for Students; this request will be considered one year from the date of the suspension's end. The Vice President for Students, in consultation with other College officials, will review the documentation provided. The student will be notified of the outcome, in writing, and, if the appeal is granted, the transcript notation will be removed within ten (10) business days.

- Factors considered in review of requests include:
- The conduct of the student subsequent to the disciplinary violation;
- The nature of the disciplinary violation; and
- The information provided by the student in the appeal.

All reviews are subject to the approval of the College president or his/her designee and will be final within the College Student Judicial Code Structure.

## 14. WITHDRAWAL, GRADUATION, OR RESIGNATION WHILE CHARGES PENDING

### STUDENTS

For respondents who withdraw from the College while such conduct charges are pending, and decline to complete the disciplinary process, the College will make a notation on the transcript of such students that they "Withdrew with Conduct Charges Pending." Students will not be permitted to return to the College unless all sanctions have been satisfied and/or hearing takes place. The College reserves the right to withhold a degree from an accused or respondent student who graduates subsequent to the filing of a formal Title IX and/or Sexual Misconduct Complaint but prior to completion of a formal adjudication as provided for in this policy.

### EMPLOYEES

Should an employee resign while charges are pending, the records of the Title IX Coordinator or designee will reflect that status. The Title IX Coordinator or designee will act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

## 15. APPEALS

A three-member panel designated by the Title IX Coordinator, the Deputy Title IX Coordinator, the Director of Student Conduct, or designee, consisting of individuals who were not involved in the grievance previously, will consider all appeal requests. Any party may appeal by submitting a written appeal within (14) days of the Hearing Panel's issuance of its determination regarding responsibility and sanctions. Appeals are limited to the following grounds:

- A procedural error, omission, or irregularity occurred that significantly impacted the outcome of the hearing (e.g., material deviation from established procedures, etc.).
- To consider new evidence, unknown or not reasonably available during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included with the appeal request.
- The sanctions imposed are substantially disproportionate to the severity of the violation.
- The Title IX Coordinator, investigator(s), decision-maker(s), or Hearing Panel members had a conflict of interest or bias for or against complainants or respondents generally of the individual complainant or respondent that affected the outcome of the matter.

The appeals panel will review the written appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party requests an appeal, the other party (parties) will be notified in writing and given the opportunity to submit a written statement in response to the appeal. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

Where the appeals panel finds that at least one of the grounds is met, and proceeds, additional principles governing the hearing of appeals include the following:

- Appeals decisions by the appeal panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings of the underlying complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original hearing panel unless otherwise directed by the Title IX Coordinator, the Director of Student Conduct, or designee.
- Sanctions imposed by the Hearing Panel are implemented once a determination regarding responsibility becomes final, which occurs on either:
  - o the date that the Appeal Panel provides the parties with the written determination of the result of the appeal, if an appeal is filed, or
  - o if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- Pending appeal, the College will treat complainants and respondents equitably by offering supportive measures to both the complainant and the respondent. Supportive measures will continue prior to the imposition of any disciplinary sanctions against a respondent.
- The Chair of the Appeal Panel will normally, after conferring with the full appeals panel, render a written decision on the appeal to all parties within (10) business days from hearing of the appeal.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision.
- Once an appeal is decided, the outcome is final: further appeals are not permitted.

## 16. APPLICATION TO COLLEGE EMPLOYEES, INCLUDING FACULTY AND STAFF

One or more of the College's personnel, faculty and employee handbook policies may overlap with this policy in a particular situation. This Sexual Misconduct and Grievance policy applies to any situation where a student is the complainant or respondent. In all other situations, the

College reserves the right to apply this or other applicable College policies. The College will apply this policy to any situation mandated by Title IX.

## 17. FALSE CLAIMS

Filing a false claim or grievance against another person or one that is not made in good faith is a serious breach of the College code, and can incur College, civil, and legal penalties. Filing a false police report can be either a misdemeanor or felony under the New York State criminal code, depending on the circumstances.

## 18. RETALIATION

No person may intimidate, threaten, coerce, discriminate or retaliate 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, discriminate or retaliate 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 Sexual Misconduct and Grievance Policy. This includes investigations, proceedings, and hearings related to 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.

## ADDENDUM 'A' STUDENTS' BILL OF RIGHTS

1. All students have the right to:
2. Make a report to local law enforcement and/or state police;

3. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
4. 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 from the institution;
5. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
6. Be treated with dignity and receive from the institution courteous, fair, and respectful health care, pastoral care and counseling services, where available;
7. Be free from any unfair suggestion that the reporting individual is at fault when these crimes and violations are committed, or that they should have acted in a different manner to avoid such crimes or violations;
8. Describe the incident to as few institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident;
9. 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;
10. Have access to at least one level of appeal of a determination;
11. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process, and who may also be present during all meetings and hearings related to such process if the student wishes; and
12. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.
13. The above rights are provided to students in accordance with NYS Education Law Section 6443 of Article 129-B, in addition to any other rights afforded under federal, state or local law.

## ADDENDUM 'B'

### CODE OF DECORUM FOR ADVISORS

The Reporting Individual, Complainant, and Accused/Respondent have the right to a person of their choice accompany them as an advisor throughout the investigation and disciplinary hearing. The Title IX Coordinator, the Deputy Title IX Coordinator or the Director of Student Conduct will notify both the reporting and accused/responding party of their right to use one advisor of their choice, including an attorney, parent or advocate who can advise them during the grievance process.

Advisors may be present at investigatory interviews and the Hearing, but they may not answer for students, make objections, or pose questions, with the exception of a party's advisor conducting cross examination at a Title IX grievance hearing, as further discussed below. The availability of an advisor to attend an interview, conduct meeting, or hearing will not unreasonably interfere with or delay the

proceedings. The choice whether or not to invite an advisor is solely that of the reporting party and responding party. However, if a party does not have an advisor for a Title IX grievance hearing, then one will be provided to that party by the College.

#### Student Conduct Hearing Procedures:

Student Conduct Hearings for violations of the Code are conducted by a three (3) person panel made up of trained faculty and staff from the College that are designated by the Office of Student Affairs. Student Conduct hearings are closed to all members of the campus and outside community except those directly involved with the complaint.

In cases of sexual misconduct, all students (the accused, the complainant(s), and the witnesses) have the right to be accompanied by an advisor of choice throughout the entire judicial process.

All advisors who enter a hearing may be present to advise only; they may not participate directly in the hearing. Advisors who interfere with the proceedings can be excused by the hearing panel. An audio recording or a transcript of the hearing may be made and kept by the Office of Student Affairs.

In a case involving Title IX covered sexual harassment, Parties will be given the opportunity for live cross-examination after the Hearing Panel conducts its initial round of questioning. During the Parties' cross-examination, which shall be conducted through the Parties' Advisors, the Hearing Panel will have the authority to pause cross-examination at any time for the purposes of asking their own follow up questions and take any time necessary in order to enforce the established rules of decorum.

Each Party's advisor will conduct the live cross-examination of the other Party or Parties and Witnesses. During this live-cross examination, the Advisor may 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 Hearing Chair will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Hearing Panel may be deemed irrelevant if they have been asked and answered. In cases involving allegations of sexual misconduct that do not constitute Title IX covered sexual harassment, witnesses are not subject to live cross-examination. Rather, the Parties are given the opportunity to

submit written questions to the Hearing Chair to be asked of any other Party or Witness, provided the questions are relevant as determined by the Hearing Chair.



In a case involving Title IX covered sexual harassment, should a Party choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the hearing panel. A Party's waiver of cross-examination does not eliminate the ability of the hearing to use statements made by a Party or Witness.

Only persons involved in the hearing process will be permitted in the vicinity of the hearing. It is expected that participants and advisors will respect the dignity and privacy of College community members and keep private that which transpires during the hearing, in accordance with federal and state law. Student witnesses, when called by the College on behalf of the Complainant, the accused student, or the College, are required to participate in the hearing process.

Generally, the hearing process will be conducted in the following manner:

1. All participants and advisors will be introduced to the Hearing Panel;
2. The Hearing Panel will recite the Complaint against the student and all code sections alleged to have been violated;
3. The Accused student will state whether he or she is responsible, not responsible, or responsible with an explanation for the alleged misconduct. Responsible with an explanation means the student admits to the actions, but believes there were circumstances that should be taken into consideration by the Hearing Panel in the determination of the Complaint;
4. Statements regarding their respective positions may be given by the Complainant and the Accused student. The Hearing Panel, through its Chair, may place reasonable time limitations on the statements.
5. The College reserves the right to assign a representative of the Office of Student Affairs and/or a representative from the office of Security and Safety to present the Complaint against the accused student;
6. Relevant records, documents, and written statements may be accepted and considered by the Hearing Panel; in cases of sexual misconduct, all parties have the right to exclude their own prior sexual history with persons other than the party in the judicial process or their own mental health diagnosis and/or treatment from admittance in the College disciplinary stage that determines responsibility.
7. The Complainant and the Accused student may be present throughout the entirety of the proceeding, except for the deliberation phase;
8. The Complainant, the Accused student and the representative from the Office of Student Affairs or the Office of Security and Safety will be able to present witnesses, who will be subject to cross examination;
9. Witnesses will be asked to remain in the vicinity until the end of the hearing in the event they must be called back for clarification of their testimony;
10. In the event that a witness is not available, a signed statement from the witness may be admitted. Any such statements will be shared with the parties prior to the hearing, and the

accused student will be given full opportunity to respond to the written statement at the hearing;

11. Witnesses will appear separately and will leave the hearing room after their testimony is completed. Witnesses are not permitted to leave the vicinity of the hearing room until permission has been granted by the Hearing Panel, and are instructed not to communicate with other witnesses outside the hearing during the proceedings.
12. All parties may question each other and the witnesses, through the Chair, and the Hearing Panel may direct questions as appropriate to any participant; in a case involving Title IX covered sexual harassment, Parties will be given the opportunity for live cross-examination which shall be conducted through the Parties' Advisors. Further information on cross-examination is set forth in the College's Sexual Misconduct and Grievance Policy, located in Section XI: General College Policies.
13. The Complainant and the Accused student may present concluding remarks. The Hearing Panel may place reasonable time limitations on the statements.
14. At the conclusion of the hearing the Hearing Panel will advise the Complainant and the Accused student that their determination will be given, in writing, to the Director of Student Conduct. 15. The Accused student's prior student conduct record will be a factor in determining the appropriate sanction(s) if a violation of the Code is found to have occurred.
15. In cases of sexual misconduct, past findings of Domestic Violence, Dating Violence, Stalking, or Sexual Assault, are admissible in the sanctioning stage. All parties will have the opportunity to make an impact statement to the board when they are deliberating an appropriate sanction (s).