

## **St. John's College Sexual Misconduct Policy**

As an institution of higher education, St. John's College (the College) is committed to providing programs, activities, and an educational environment that is free from sex-based discrimination. As a leader in liberal arts education, the College highly values the environment that results when students, faculty, and staff from different backgrounds come together to discuss the ideas and ideals that are the cornerstone of a St. John's education.

The Sexual Misconduct Policy is designed to further the College's goal of equity and inclusion and identifies resources that are available to students, faculty, staff, and others affiliated with the College; defines the conduct that is prohibited under this Policy; and outlines the process by which the College will respond to reports of sexual misconduct as defined herein. St. John's College strives to be a community in which all members readily and safely report acts of sexual misconduct; it is our goal to remove all barriers to reporting.

In order to address incidents of sexual misconduct that do not fall within the definition of Title IX Sexual Harassment (which is a definition that is set forth in regulations promulgated by the U.S. Department of Education under Title IX of the Education Amendments Act of 1972 and which, among other things, limits the scope of Title IX Sexual Harassment to conduct that occurs within the United States and conduct that occurs within the University's education program or activity), the College has two policies that address sexual misconduct: (1) this policy and (2) the Title IX Sexual Harassment policy. These policies are inter-related and must be read together. There may be a circumstance when the allegations forming the basis of a formal complaint (defined below), if substantiated, would constitute prohibited conduct under both this Sexual Misconduct Policy and the Title IX Sexual Harassment Policy. In that circumstance, the process set forth in the Title IX Sexual Harassment policy will be applied in the investigation and adjudication of all of the allegations.

This Sexual Misconduct Policy applies only to certain conduct defined under this policy. Conduct not falling under the scope of this policy may be addressed under other College policies. Specifically, this policy applies to forms of sexual misconduct that do not fall under the scope of the Title IX Sexual Harassment policy. The Sexual Misconduct Policy also applies to complaints alleging certain conduct that would otherwise be prohibited under the Title IX Sexual Harassment policy, but which must be dismissed under the Title IX Sexual Harassment policy because they do not meet the jurisdictional requirements.

### **I. Sexual Misconduct Policy Statement**

This Policy prohibits sexual misconduct, including Sexual Assault, College Sexual Harassment, Quid Pro Quo Sexual Harassment, Domestic Violence, Dating Violence, Sexual Coercion, Sexual Exploitation, and Stalking. It further prohibits Retaliation and Intimidation, as defined in Section V, below.

### **II. Applicability and Scope**

*Who ("Covered Individuals")* - This policy applies generally to:

- All members of the College community including all students, faculty, staff, recognized groups, and Board members; and
- Alumni, visitors, and third parties engaged in business with the College.

**Where** - This policy applies to:

- Conduct that occurs in the local vicinity but outside of a College program or activity; or
- Conduct that occurs outside of the United States when the conduct is associated with a college-sponsored program or activity, such as travel, research, or internship programs; or
- Conduct that involves the use of the College's computing and network resources from a remote location, including but not limited to accessing email accounts;
- Conduct that occurs outside the local vicinity and outside of a College program or activity, but the College determines that it implicates a substantial-College interest, for instance, where the conduct may create a hostile environment for community members on an on-going basis

**What** - This policy applies to all forms of sexual misconduct, as defined herein. Allegations of sexual misconduct that do not fall under this policy because they do not constitute prohibited conduct as defined herein, may constitute violations of other College policies, including the Title IX Sexual Harassment Policy.

**When** - Reports of sexual misconduct may be made to the College at any time. The College encourages those who experience or witness the alleged act of sexual misconduct to report it immediately in order to maximize the College's ability to respond and conduct a thorough investigation. Prompt reporting allows evidence to be preserved, witnesses to be interviewed, and any disciplinary/resolution process to move forward most effectively. The ability to investigate a report and take action against a Respondent becomes more limited as time goes on. Disciplinary action can generally only be taken against a Respondent as long as that person is enrolled, employed, or otherwise affiliated with the College. This does not preclude the College from taking administrative actions against Respondent's who are unaffiliated with the College. Administrative actions may include, but are not limited to, barring an individual from College property or attending College-affiliated events.

The College also has a Title IX Sexual Harassment and a Non-Discrimination and Anti-Harassment Policy. These policies address protected-class based discrimination and sexual misconduct that does not constitute Title IX Sexual Harassment as defined in Section III of this policy, and other forms of discrimination which are prohibited by the College, but are not violations of this policy. If particular conduct would be prohibited by both this Policy and by the Non-Discrimination and Anti-Harassment Policy, this Policy controls.

Inquiries about this Policy should be made to the appropriate Sexual Misconduct Coordinator:

- In Santa Fe: Christine Guevara, Executive Director, Campus Health and Wellness. Weigle Hall Room 117, [Christine.Guevara@sjc.edu](mailto:Christine.Guevara@sjc.edu), 505-984-6128.
- In Annapolis: Danielle Lico, Executive Director, Campus Wellness. Mellon Hall 119,

### III. Definitions

- A. **Complainant** is an individual(s) who has standing to file a Formal Complaint under this policy. This generally refers to an individual who directly experienced a violation(s) of this policy.
- B. **Confidential resources/persons** are those who are not required to convey a report of misconduct or harassment to a Sexual Misconduct Coordinator. *Completely* confidential persons to whom reports can be made are the mental health counselors. Such reports will not be shared without the reporter's explicit permission, except in extreme circumstances. *Mostly* confidential reporting persons include physicians, nurse practitioners, and other counselors. Mostly confidential reporting persons will keep reports as confidential as possible, but must share de-identified information with a Sexual Misconduct Coordinator.
- C. **Consent** is informed, freely and actively given speech or action that indicates willingness to participate in mutually agreed upon specific sexual contact. Consent must be given from the beginning to the end of each instance of sexual activity and for each type of sexual contact. Consent cannot be given by someone who is incapacitated, by alcohol or other drugs or for some other reason (for example, age or disability). Silence and/or lack of resistance on the part of the Complainant does not imply consent. A previous relationship or prior consent does not imply consent to future sexual acts. Consent is not indefinite; it can be withdrawn at any time. Consent is not given if it results from the use of threat of physical force, deception, lying, intimidation, coercion, or any other factor that would eliminate an individual's ability to choose whether or not to have sexual contact.
- D. **Dating Violence** means an act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person who is subject to such behavior. The existence of such a relationship shall be determined based on all of the following: the Complainant's statement, the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
1. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  2. Dating Violence does not include acts covered under the definition of Domestic Violence.
- E. **Domestic Violence** refers to felony or misdemeanor crimes of violence committed by a current or former spouse of the victim (or a person similarly situated to a spouse of the victim), by a person who shares a child with the victim, or by a person who is or formerly has cohabitated with the victim as a spouse. Domestic Violence also includes:

1. An offense that meets the definition of abuse as defined by the laws of the State of Maryland (Md. Code Ann., Fam. Law § 4-501, *et seq.*), as applicable.
2. An offense that meets the definition of assault or battery as defined by the laws of the State of New Mexico (N.M. Stat. Ann. § 30-3-12, *et seq.*), as applicable.

**F. Formal Complaint** refers to a written complaint (electronic submission via email meets this definition) alleging sexual misconduct against a respondent that is submitted by the Complainant to a Sexual Misconduct Coordinator, that articulates the following details:

1. A stated desire to move forward with an investigation into the incident as outlined in this policy;
2. Date(s) or approximate date(s) of the alleged incident(s);
3. Time(s) or approximate time(s) of the alleged incident(s);
4. Name(s) of the Respondent(s) involved in the alleged incident(s); and
5. Details of the alleged incident(s) sufficient to permit the Respondent(s) to prepare for an initial interview.

Formal complaint may also refer to a document signed by the Sexual Misconduct Coordinator. Where the Sexual Misconduct Coordinator signs a formal complaint, the Sexual Misconduct Coordinator is not a complainant or otherwise a party.

**G. Incapacitation** is the inability, temporarily or permanently, to give consent because the individual is asleep, unconscious, losing or regaining consciousness, or is otherwise unable to make informed rational judgments and decisions.

Incapacitation may result from the use of alcohol and/or drugs (both legal and illegal) and is a state beyond drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs that a person is incapacitated or approaching incapacitation may include acting confused or incoherent, slurred speech, vomiting, inability to perform personal tasks such as undressing, inexplicable sudden changes in emotion, and/or difficulty walking. Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's decision-making ability, awareness of consequences, ability to make informed judgments, or capacity to appreciate the nature and the quality of the act.

When an investigator or panel is assessing incapacitation, they will look at the issue from the perspective of a Respondent and determine whether a Respondent should have been aware of the Complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent's position.

**H. Supportive Measures** are designated to stop and prevent the recurrence of sexual

misconduct and protect the educational and living environment for the Complainant and the Respondent pending the outcome of the procedures under this policy. In all complaints of sexual misconduct whether the Complainant files a Formal Complaint or asks that the complaint remain confidential, the College may implement reasonable supportive measures.

The range of supportive measures include, but are not limited to, the imposition of a no-contact order instructing the parties to not contact one another; change in work schedule or job assignment; restrictions in access to the College facilities, including but not limited to the Dining Hall or Residence Halls; change in housing; change in class schedule; restrictions on co-curricular activities; interim suspension; or any other remedy which can be tailored to the involved individuals.

- I. Intimidation** is any act to deter an individual from making a report of an alleged violation of this Policy or participating in an investigation or related proceeding under this Policy by imposing fear through threats of physical or emotional harm to anyone.
- J. Managing Coordinator** is the person who is assigned to manage the administrative aspects of a complaint. While the Managing Coordinator will usually be a Deputy Sexual Misconduct Coordinator, the College reserves the right to appoint others, including persons external to the College, to serve in this capacity.
- K. Recognized Organization** is any student organization, club, intermural sports team, or other group of students organized in a formal and/or identifiable way.
- L. Reporting Party** is an individual(s) making a report that this Policy has been violated. The Reporting Party and the Complainant may or may not be the same individual(s). The report of an engaged bystander can provide critical direction for the investigation of misconduct, even when the misconduct was not directed at the Reporting Party.
- M. Respondent** is an individual(s) or recognized organization(s) accused of violating this Policy.
- N. Retaliation** is any act or attempted act to seek retribution against anyone who has reported an alleged violation of this Policy or against anyone who has participated in an investigation or related proceeding under this Policy. Prohibited retaliatory acts include, but are not limited to, intimidation, threats, coercion, and discrimination.
- O. Sexual Assault** is actual or attempted physical sexual contact with another person without that person's consent. Sexual Assault specifically includes:
  - 1. An offense that meets the definition of rape, fondling, incest, or statutory rape as defined by the FBI's Uniform Crime Reporting Program.
    - Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of

another person, without the consent of the victim.

- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age and/or because of temporary or permanent mental incapacity.
  - Incest: Non forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - Statutory Rape: Non forcible sexual intercourse with a person who is under the statutory age of consent.
2. An offense that meets the definition of rape or sexual offenses, as defined by the laws of the State of Maryland (Md. Code Ann., Crim. Law § 3-303, *et seq.*), as applicable.
  3. An offense that meets the definition of rape, aggravated rape, or criminal sexual contact as defined by the laws of the State of New Mexico (N.M. Stat. Ann. § 30-9-11, *et seq.*), as applicable.

**P. Sexual Coercion** is unreasonable or oppressive speech or action used to pressure someone to engage in unwanted sexual activity (*e.g.*, using inappropriate pressure, threats of a non-violent nature [for example, the release of sensitive or private information], manipulation, or exploiting a real or perceived power or authority over another). Sexual Coercion can be differentiated from seduction by a repetition of the coercive activity in the face of resistance, the degree of pressure applied, or the initiator's knowledge that the pressure is unwanted.

**Q. Quid Pro Quo Sexual Harassment** – An employee of the institution conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.

**R. College Sexual Harassment** – Sexual Harassment is unwelcome conduct on the basis of a person's sex (including on the basis of their gender, gender identity and expression, or sexual orientation), including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature when:

1. Submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (*quid pro quo*); or
2. Such conduct creates a hostile environment.

A hostile environment is created when unwelcome verbal or physical conduct of a sexual nature:

1. is so severe, pervasive, and objectively offensive that it effectively denies a student's ability to participate in or benefit from an education program or

- creates an abusive educational environment; or
2. explicitly or implicitly affects an individual's employment (including a student's employment), unreasonably interferes with an individual's work performance, or creates an abusive or offensive work environment.

**S. Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. Such conduct may include, but is not limited to, acts in which one directly or indirectly follows, monitors, observes, surveils, threatens, or communicates to or about a person in a way prohibited or interferes with a person's property. A course of conduct consists of two or more acts. Stalking may be conducted through any method, device or means.

Stalking includes activity otherwise defined by the laws of the State of Maryland (Md. Code Ann., Crim. Law § 3-801, *et seq.*) and the State of New Mexico (N.M. Stat. Ann. § 30-3A- 3, *et seq.*), as applicable.

**T. Sexual Exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another for the individual's own advantage or benefit, or to the benefit or advantage of anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other Sexual Misconduct offenses. Examples of Sexual Exploitation include, but are not limited to: non-consensual observation or recording of individuals who are undressed or engaging in sexual acts; prostituting another person; knowingly transmitting a STI, STD, or HIV to another; and administering or providing alcohol and/or drugs for the purpose of impairing a person.

**U. Sexual Misconduct** includes sexual assault, College sexual harassment, quid pro quo sexual harassment, dating violence, domestic violence, sexual coercion, sexual exploitation, and stalking as defined herein.

**V. Sexual Misconduct Coordinator** is the senior College administrator who oversees the College's compliance with all forms of sexual misconduct, including that specifically governed by Title IX. The Sexual Misconduct Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Misconduct Policy, the Title IX Sexual Harassment Policy, and other applicable policies. The Sexual Misconduct Coordinator is available to discuss the Policy, coordinate Supportive Measures, explain College policies and procedures, and provide education on relevant issues. The Sexual Misconduct Coordinator may designate one or more Deputy Sexual Misconduct Coordinators to facilitate these responsibilities. Any member of the College community may contact the Sexual Misconduct Coordinator with questions.

**W. Investigators** are neutral and impartial fact-finders who gather evidence during the investigation. The investigators are responsible for completing an investigation report at the conclusion of the investigation. The Deputy Sexual Misconduct

Coordinators may supervise and advise the investigators when conducting investigations and update the Sexual Misconduct Coordinator as necessary to ensure compliance with this policy. Investigators need not be employees of the College.

- X. Hearing Officer(s)** are responsible for conducting the hearing in an orderly manner, controlling the conduct of all participants and attendees of the hearing, and rendering a written determination regarding responsibility of the Respondent's alleged conduct charges in an impartial, neutral, and objective manner. Hearing Officer(s) need not be employees of the College.

#### **IV. Prohibited Conduct**

Any conduct that is defined as Sexual Misconduct, Retaliation or Intimidation under this policy is considered prohibited conduct. Respondents who are alleged to have violated this policy will be charged with one or more of the following types of Sexual Misconduct:

- A. Sexual Assault:
  - i. Rape
  - ii. Fondling
  - iii. Incest
  - iv. Statutory Rape
- B. Quid Pro Quo Sexual Harassment
- C. Sexual Harassment
- D. Dating Violence
- E. Domestic Violence
- F. Sexual Coercion
- G. Sexual Exploitation
- H. Stalking
- I. Other: Violation of Maryland State Law
- J. Other: Violation of New Mexico State Law
- K. Retaliation
- L. Intimidation

#### **V. Retaliation and Intimidation**

The College prohibits Retaliation against or Intimidation of those who make or are the subject of a complaint or third-party report of Sexual Misconduct or who participate in the investigation or disciplinary/resolution process. However, if an investigation results in a finding that the Reporting Party or Complainant knowingly accused another falsely of an act of sexual misconduct, the Reporting Party will be subject to appropriate sanctions, which may include termination of employment or, in the case of students, dismissal from the College.

Consistent with this policy, the College will take steps to prevent Retaliation and Intimidation, and will take strong responsive action if Retaliation or Intimidation occurs. Any Retaliation, Intimidation, or reprisal directed toward any party or witness as a result of their role in the investigation process is strictly prohibited, is itself a violation of this Policy, and should be

reported immediately to a Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator.

## **VI. Reporting Options**

Any member of the College community who believes that they have witnessed, experienced, or are aware of conduct that constitutes a violation of this policy is encouraged to talk to somebody about what happened.

For any individual subject to or witness to Sexual Misconduct of any type, the first step is always the same: get to a safe place as soon as possible. If emergency assistance is required, call Public Safety or Local Emergency Services by dialing 911.

- In Santa Fe: Dial “0” from a campus phone or call 505-984-6000
- In Annapolis: Dial “x2000” from a campus phone or call 443-336-2348

If you have been affected by a violation of this Policy, and wish to seek emergency medical treatment, the following medical centers are equipped with evidence collection kits and staff specially trained to conduct forensic examinations:

- In Santa Fe: Christus St. Vincent Regional Medical Ctr, 455 St. Michaels Drive, Santa Fe, NM, 505-913-3361
- In Annapolis: Anne Arundel Medical Center, 2001 Medical Parkway, Annapolis, MD 443-481-1000

If any individual has been subject to or witnessed any type of sexual misconduct, the following options are available. Individuals may pursue some or all of these options simultaneously:

- Seek confidential support and counseling from staff in the Counseling Center (Annapolis) or Therapy Services (Santa Fe). An after-hours confidential resource can be accessed by calling Public Safety.
- Report the incident to or file a complaint with the College through a Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator listed in this policy. Reports can also be made to Public Safety.
- Notify law enforcement authorities and file a criminal complaint. Public Safety and/or a Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator are available to assist in this process.

### **A. Confidential Resources/Persons**

A report to a confidential resource listed below is not considered a report to the College and will not result in an investigation or any remedial or disciplinary action. Confidential resources are available to support emotional and physical needs only.

The following resources are considered confidential for students:

- Annapolis Campus
  - Harrison Health Center, including Counseling Services, at x2553 from a campus phone or 410-626-2553
  - Anne Arundel County sexual assault hot line at 410-222-7273
  - Anne Arundel Medical Center at 443-481-1000
- Santa Fe Campus
  - Student Health Office at x6418 from a campus phone or 505-984-6418
  - Therapy Services at x6419 from a campus phone or 505-984-6419; or at x6421 from a campus phone or 505-984-6421
  - Solace Crisis Treatment Center at 505-986-9111
  - Christus St. Vincent Regional Medical Center at 505-913-3361

The following resources are considered confidential for employees:

- Annapolis Campus
  - Employee Assistance Program offered by Business Health Services at 800-327-2251
  - Anne Arundel County sexual assault hot line at 410-222-7273
  - Anne Arundel Medical Center at 443-481-1000
- Santa Fe Campus
  - Employee Assistance Program offered by The Solutions Group at 505-254-3555
  - Solace Crisis Treatment Center at 505-986-9111
  - Christus St. Vincent Regional Medical Center at 505-913-3361

*NOTE:* While the above confidential resources may maintain an individual's confidentiality vis -à-vis the College, they may have reporting or other obligations under state law, such as mandatory reporting to the state in the case of abuse of minors; threat of imminent harm to self or others; or the requirement to testify if subpoenaed in a criminal case. At the beginning of any conversation, individuals may want to consider asking resources to describe their level of confidentiality.

## **B. Reporting to the College**

Sexual Misconduct Coordinators and Deputy Sexual Misconduct Coordinators have been trained to receive and respond to alleged violations of this policy and Reporting Parties are encouraged to seek out these resources when making reports.

### Annapolis Campus

- Sexual Misconduct Coordinator:
  - Danielle Lico, Executive Director Campus Wellness  
[Danielle.Lico@sjc.edu](mailto:Danielle.Lico@sjc.edu)  
410-626-2530
- Deputy Sexual Misconduct Coordinators:
  - Sue Gelenter, Director of Personnel

[Sue.Gelenter@sjc.edu](mailto:Sue.Gelenter@sjc.edu)

410-626-2504

- Taylor Waters, Director of Student Services

[Taylor.Waters@sjc.edu](mailto:Taylor.Waters@sjc.edu)

410-626-2512

### Santa Fe

- Sexual Misconduct Coordinator:
  - Christine Guevara, Executive Director of Campus Health and Wellness  
[Christine.Guevara@sjc.edu](mailto:Christine.Guevara@sjc.edu)  
505-984-6128
- Deputy Sexual Misconduct Coordinators:
  - Cesar Cervantes, Director of Student Life  
[cesar.cervantes@sjc.edu](mailto:cesar.cervantes@sjc.edu)  
505-982-6052
  - Aaron Young, Director of Human Resources  
[Aaron.Young@sjc.edu](mailto:Aaron.Young@sjc.edu)  
505-984-6140

Reporting Parties are encouraged to make reports of alleged violations of the Sexual Misconduct Policy to the Sexual Misconduct Coordinator or a Deputy Sexual Misconduct Coordinator. Given the size and intimate nature of the College environment, all employees of the College, (including staff, administrators, faculty, and Resident Advisors) - with a few limited exceptions - are required to promptly report allegations of violations of this policy that they observe or learn about to a campus Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator. Employees who knew about but did not report allegations of violations of this policy may be subject to disciplinary action.

Note, however, that employees are not required to report information about violations of this policy learned through public awareness events such as “Take Back the Night” or other forums at which individuals disclose experiences with sexual violence or other violations of this policy.

The Sexual Misconduct Coordinator and, through delegation of authority the Deputy Sexual Misconduct Coordinators, are the only people with the authority to implement corrective measures on behalf of the College. These are the only people to whom formal complaints can be made.

### *Confidentiality*

The College understands that Reporting Parties may report an incident but request confidentially. The College also understands that some Complainants may not wish to pursue an investigation or that they may wish to pursue an investigation in a more limited way due to confidentiality concerns. In such instances, the Sexual Misconduct Coordinator will weigh the request against the College’s obligation to provide a safe, non-discriminatory environment for all students, employees, and others, including the Reporting Party.

In weighing a request for confidentiality or a request that no additional actions be taken by the College, the Sexual Misconduct Coordinator will consider a number of different factors, including, but not limited to:

- The details of the reported incident;
- The age of the Complainant;
- Whether the incident involved physical violence or the use of a weapon; and
- If the report reveals a pattern of behavior at a specific location or by a Respondent.

Consideration of these factors could lead the College to investigate and, if appropriate, pursue action against the Respondent. If none of these factors indicates the need to initiate an immediate investigation, the College will likely respect the request for confidentiality. It is important to note that requests for confidentiality, if honored, may limit the College's ability to respond to a report in a meaningful way. If the College determines that it cannot maintain a Complainant's confidentiality, the Complainant will be notified prior to an investigation.

#### *Anonymous Reports*

Anonymous reports of violation of the Policy may be made by calling the College's Compliance Hotline administered by Lighthouse Services at 844-490-0002 (or for services in Spanish, 800-216-1288). Reports will be forwarded to a Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator on the appropriate campus.

Anonymous reports of violations of this Policy may be made to Public Safety on the Annapolis Campus via the LiveSafe app. Anonymous reports made through LiveSafe are received by a Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator.

It should be noted that the College's ability to investigate or act upon anonymous reports may be limited.

#### *Required Disclosures*

As is required under the Clery Act and the 2013 Amendments to the Violence Against Women Act, the College is required to collect non-identifying statistical information about certain crimes, including any alleged sexual misconduct, Dating Violence, Domestic Violence, or Stalking, as required by state and federal law. These statistics are shared with Public Safety for inclusion in the Daily Crime Log and in the Annual Security Report.

The College is also required to issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the College community. These notifications will not contain any identifying information about the Reporting Party and/or Complainant.

Certain members of the College community are considered mandatory reporters under state law and, as such, are required to notify local authorities about suspected abuse of minors,

including sexual abuse.

### **C. Reporting to Law Enforcement**

The College encourages (but does not require) Complainants to pursue criminal action for incidents of sexual misconduct that may also be crimes under applicable law. The Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator will inform the Complainant of the possibility of bringing criminal charges. If the Complainant decides to proceed with a criminal charge, officials of the College will cooperate with the police investigation. At the request of the Complainant, College officials will also assist the Complainant in bringing the allegation to the proper law enforcement authorities.

It is important to emphasize that law enforcement's decision to prosecute or not to prosecute a Respondent is not determinative of whether a violation of this Policy has occurred; similarly, the outcome of any criminal prosecution is not determinative of whether a violation has occurred.

Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings.

Regardless of whether a criminal complaint is filed, the College will pursue its own internal processes to address the alleged conduct, and it expects that all those involved will participate in the process. The fact that an individual (Complainant, Reporting Party, Respondent, and/or witnesses) refuses to participate in the College process does not mean that the disciplinary process will not take place if the College deems it appropriate to move forward with that process. Similarly, a party's withdraw/departure from the College does not necessarily mean that the process will end.

In criminal cases, the preservation of evidence is critical and should be done properly and promptly (as soon as possible, but typically within 5 days). In cases of rape or other forms of sexual assault, it is important not to shower, change clothes, or even brush one's hair, as physical evidence may be lost. In cases of violence or physical abuse, it is important to document injuries, including by taking photographs.

## **VII. False Allegations**

Anyone who makes a report that is later found to have been intentionally false or made maliciously without regard for truth may be subject to disciplinary action under the College civility policy. Similarly, a person who is later proven to have intentionally given false information during the course of an investigative or disciplinary process may be subject to disciplinary action. This provision does not apply to reports made in good faith, even if the facts alleged in the report are not substantiated by an investigation. No complaint will be considered "false" solely because it cannot be corroborated.

## **VIII. Amnesty**

The College encourages reporting and recognizes that a Reporting Party, Complainant, or witness who has been drinking or using drugs at the time of the incident may be hesitant to make a report or participate in an investigation because of potential consequences for their own conduct. Students who report alleged violation of the policy, either as a Reporting Party, Complainant, or a third-party witness, will not be subject to disciplinary action by the College for their own personal consumption of alcohol or drugs at or near the time of the incident. The College may initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. Amnesty for a student who reports Sexual Misconduct may extend to other violations of the College's policies and practices, provided that any such violations did not and do not place the health or safety of any other person at risk. Amnesty will not apply if someone is found to have possessed, used, provided, or administered alcohol or other drugs for the purpose of facilitating sexual assault or harm to others.

## **IX. Complaint Process and Investigation**

The purpose of this policy and the activities of the Sexual Misconduct Coordinator and Deputy Sexual Misconduct Coordinators is to stop, remediate the effects of, and prevent the recurrence of sexual misconduct, as defined within this policy. All complaints and investigations will be handled in a prompt, thorough and impartial manner. Additionally, Complainants and Respondents are entitled to treatment with dignity, respect, and sensitivity by the College during all phases of the Complaint Process and Investigation.

- A. Complaint Intake** – Following receipt of notice of a violation or of a complaint, the Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator will contact the Reporting Party and Complainant, if not the Reporting Party, and provide information regarding rights, options, and how to get immediate confidential help.

An initial determination is made by a Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator as to whether a policy violation may have occurred or whether Informal Resolution might be appropriate. If the complaint does not appear to allege a policy violation, or if Informal Resolution is agreed to by the involved parties and appears appropriate given the nature of the alleged behavior, then the complaint does not generally proceed to full investigation. A full investigation will almost always be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members.

A Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator will meet with the Complainant for an initial intake meeting. At this meeting, the Coordinator will provide the Complainant with an understanding of the sexual misconduct reporting and investigation process, the resources available, and answer any questions. The intake meeting may also involve a discussion of any accommodations/interim measures that may be appropriate. The Complainant will be notified about their right to have an advisor of their choice present at this meeting.

**B. Filing a Formal Complaint** – In order for the College to move forward, the Complainant is required to file a Formal Complaint with the Sexual Misconduct Coordinator or a Deputy Sexual Misconduct Coordinator. The Formal Complaint is required to include, at minimum, the following information:

- A stated desire to move forward with an investigation into the incident as outlined in this policy;
- Date(s) or approximate date(s) of the alleged incident(s);
- Time(s) or approximate time(s) of the alleged incident(s);
- Name(s) of the Respondent(s) involved in the alleged incident(s); and
- Details of the alleged incident(s) sufficient to permit the Respondent(s) to prepare for an initial interview.

Formal Complaints may be initiated by the Sexual Misconduct Coordinator in instances where there is information presented to the College that identify the same Respondent in more than one incident or if the information presented constitutes an ongoing risk to the College community. The Sexual Misconduct Coordinator is required by federal law to initiate a Formal Complaint in these instances without regard to the wishes of the complaining party(ies).

**C. Decline to File a Formal Complaint or Requests Confidentiality** – If the Complainant does not wish to pursue a Formal Complaint and/or requests the complaint remain confidential, the College’s ability to respond may be limited. The College reserves the right to issue a no contact order and take other reasonably necessary measures, including interim measures, to ensure the safety of the Complainant or others. If the College determines that it cannot maintain a Complainant’s confidentiality, the Complainant will be notified prior to an investigation.

**D. Mandatory and Discretionary Formal Complaint Dismissals** – Under Title IX regulations, colleges are required to distinguish between prohibited conduct that is “under Title IX” and prohibited conduct that is a violation of College policy. If it is determined that the complaint falls under the definition of Title IX Sexual Harassment, the complaint will be dismissed from this policy and adjudicated under the Title IX Sexual Harassment Policy. The College may also investigate allegations of prohibited conduct under other disciplinary procedures of the College.

The College may dismiss a Formal Complaint, at its discretion, for any of the following circumstances:

- If the Complainant requests in writing to dismiss a Formal Complaint (e.g. withdraws the Formal Complaint or any allegations therein);
- If the Respondent is an employee and no longer employed by the College at the time the Formal Complaint is filed;
- Any specific circumstances that prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or any

- allegations therein; or
- The conduct alleged does not meet the definition of any prohibited conduct under this Policy.

If the College dismisses a Formal Complaint, the College will provide both parties a written notice of the dismissal and the reason(s) for the dismissal. The Complainant will have ten (10) business days from notification that the complaint will not move forward to an investigation to submit a written appeal to the Sexual Misconduct Coordinator. If the Sexual Misconduct Coordinator does not receive an appeal, the matter will be closed. If the Sexual Misconduct Coordinator receives a timely appeal, the appeal will be shared with the Appeal Officer.

For cases on the Santa Fe Campus, the person reading the appeal (Appeal Officer) will be the Director of Personnel on the Annapolis Campus. For cases on the Annapolis Campus, the Appeal Officer will be the Director of Human Resources on the Santa Fe Campus. The Complainant will not meet with the Appeal Officer and should not communicate with them directly. The appeals process is conducted in writing through the Sexual Misconduct Coordinator. The Appeal Officer will evaluate the appeal based on the Formal Complaint and any additional information submitted by the Complainant during the appeal process. The Appeal Officer may uphold the decision of the Sexual Misconduct Coordinator or refer the matter for investigation.

**E. Notification of Investigation/Charge Letter** – Once the Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator receives the Formal Complaint, a Managing Coordinator will be assigned. The Managing Coordinator will send the Respondent a Notification of Investigation/Charge Letter that contains, at minimum, the following information:

- Date(s) or approximate date(s) of the alleged incident(s);
- Time(s) or approximate time(s) of the alleged incident(s);
- Name(s) of the Respondent(s) involved in the alleged incident(s);
- Details of the alleged incident(s) sufficient to permit the Respondent(s) to prepare for an investigation;
- Alleged conduct violation(s);
- Range of potential sanctions;
- A copy of the Formal Complaint; and
- Names of the investigator(s) assigned to the complaint.

The Managing Coordinator will notify the Respondent of their right to have an advisor of their choosing present with them at this meeting.

The Complainant will also be provided with a copy of the Notification of Investigation/Charge Letter.

**F. Informal Resolution** – Based upon the information presented by the parties, the Managing Coordinator will review the possibility of an Informal Resolution. An

Informal Resolution will only be presented if:

- The Complainant requests an informal mechanism;
- The Respondent has not previously participated in the Informal Resolution process and where that process resulted in a mutual agreement;
- The Complainant, Respondent, and Sexual Misconduct Coordinator, on behalf of the College, agree to an Informal Resolution in writing;
- The alleged misconduct does not involve Sexual Assault or Sexual Coercion.

Should an Informal Resolution be agreeable to both parties, the Sexual Misconduct Coordinator will facilitate the process, and communicate with the parties. Informal Resolutions of a Formal Complaint will be concluded within 60 days of notice to the College that both parties wish to proceed with the Informal Resolution process. Such notice that the parties wish to proceed with an Informal Resolution process will “pause” the counting of the timeframe to conclude the Procedures of this Policy, should the Informal Resolution process fail and the parties continue with the Investigation. Either party may end the Informal Resolution process at any time and request an investigation.

Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven years as required by law. However, no recording of the Informal Resolution process will be made and all statements made during the Informal Resolution process and may not be used for or against either party (and the Hearing Officer and Appellate Officer may not consider any such statement made during Informal Resolution) should the complaint move forward to an investigation. Failure to comply with an Informal Resolution agreement may result in disciplinary action.

## **G. Investigation –**

### *Investigator*

In cases where the Sexual Misconduct Coordinator determines that a Complaint appears to allege a policy violation and the Complainant wishes to pursue a formal complaint, or the Sexual Misconduct Coordinator decides that the College, based on a potential policy violation, wishes to pursue a Formal Complaint, then the Sexual Misconduct Coordinator appoints trained, impartial individual(s) to conduct the investigation. In the event that the Sexual Misconduct Coordinator designates more than one investigator, both investigators will not necessarily attend every interview.

The Sexual Misconduct Coordinator may appoint an investigator external to the College; any investigator may serve as a single investigator or as a co-investigator.

The investigation will be prompt, thorough, and impartial. The College will strive to complete all investigations within 60 business days; should an extension be required, the parties will be notified. Depending on the nature and severity of the complaint,

and after an individualized assessment of each case, the College reserves the right to intermily suspend the Respondent and otherwise restrict their access to campus during the course of the investigation.

In all cases in which an interim suspension is imposed, the student will be given the opportunity to meet with the Assistant Dean and the Sexual Misconduct Coordinator or their designees prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Assistant Dean and Sexual Misconduct Coordinator or their designees has sole discretion to implement or stay an interim suspension and to determine its conditions and duration. Violation of an interim suspension under this policy is grounds for expulsion.

#### *Communication and Confidentiality*

The investigator is responsible for communications with the parties regarding the progress of the investigation. This includes the date, time, and location of each interview the party is required or permitted to attend. The investigator will also inform the parties of their right to have an advisor of their choice present at any meeting or other proceeding under this Policy.

The investigator is responsible for providing the parties with the opportunity to review any documentary evidence that may be used in determining the outcome of the investigation before such a determination is reached. Specifically, the investigator will provide each party with the opportunity to review written summaries of any witness interviews, including interviews of the other party. It is important to note that any character evidence, personally identifiable information, and/or information that is irrelevant to the complaint, including information that is not permitted by law, will be redacted.

Parties and witnesses are expected to maintain confidentiality regarding the proceedings under this Policy, provided that the parties may speak to advisors, confidantes, parents, counselors, and law enforcement authorities regarding the matter, and may speak to others for the purposes of seeking, obtaining, or presenting evidence, or otherwise preparing for the meetings and proceedings described in this Policy.

The parties are reminded that, in addition to this Policy's prohibition on Retaliation and Intimidation, the College's civility policy remains in effect with respect to the parties' dealings with one another, witnesses, and third parties related to the proceedings under this Policy. Any documentary evidence, witness summaries, or other documents reviewed by the parties must be kept confidential, and may be used only for the purposes of the proceedings under this Policy. Should either party, third-party on their behalf, whether or not the party is aware of the action of the third-party, share, post, or otherwise disclose any of the documentary evidence, witness summaries, or other documents reviewed as part of the Complaint, other than as

permitted under this Policy, additional disciplinary action may be taken by the College.

### *Advisor of Choice*

The Managing Coordinator will notify all parties that each is permitted, if they wish, to have an advisor of their choice present at any meeting or other proceeding under this Policy. Parties may change their advisor at any point during the process. Advisors may be attorneys.

Meetings/proceedings will be scheduled not less than three (3) business days in advance. If a party intends to have an advisor present at a meeting/proceeding, the party must notify the investigator at least twenty-four (24) hours in advance of the meeting/proceeding of the identity of the advisor. Advisors serve in a supportive role, and are not permitted to participate actively in the investigation, or communicate with anyone other than the person being advised. Should the case proceed to a hearing, the Advisor for each party will question the other party and any witnesses that are called. Advisors are expected to conduct themselves in a professional manner at all times and respect the decisions made by the Hearing Officer. Advisors who fail to comply with these rules will be asked to leave and will not be permitted to attend future meetings/proceedings. Should this occur, the impacted party will be able to select another person to serve as their advisor.

Should a party not select an advisor, the College will provide an advisor to that party prior to the hearing, if not sooner, based on the wishes of that party.

Parties initiating this Policy on the Annapolis Campus are encouraged to review Section XIV, which outlines specific information about attorneys and advocates available within the State of Maryland.

### *Evidence Collection*

The investigator will interview the parties, as well as all relevant witnesses, gather any relevant evidence (such as texts/emails, social media postings, surveillance video, photos), and consider all relevant evidence. The investigator retains discretion to determine how to conduct the investigation and what information is necessary and relevant. Although formal rules of evidence will not apply, the investigator will not consider character evidence, incidents not directly related to the possible violation unless they tend to show a pattern, past sexual history (except as provided below), or sexual character of either party, unless such information is determined to be highly relevant by the Sexual Misconduct Coordinator. The investigation will be thorough, impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect.

During the investigation, the parties will have an equal opportunity to share information and request that witnesses be interviewed. The parties will *not* be

interviewed together or be required to meet. Either party may request in writing follow-up questions to be posed to any witnesses or the other party. These questions will ordinarily be asked of the witnesses or other party unless they are determined, in the investigators' sole discretion, to be irrelevant, redundant of questions previously asked, appear designed to abuse or intimidate the witness or other party, or otherwise inappropriate.

The investigator is a neutral fact-finder, who, during the course of the investigation, may gather information in multiple ways. The investigator may collect documents and other information and may also interview witnesses or other people with relevant information beyond those identified by the parties. The interviews are not required to be in-person.

The investigator may decline to gather information if:

- the request seeks information about the Complainant or Respondent's past sexual history with anyone other than the other party except to:
  - a. Prove the source of injury;
  - b. Prove prior sexual misconduct;
  - c. Support a claim that a student has an ulterior motive; or
  - d. Impeach a student's credibility after that student has put his or her own prior sexual conduct at issue.
- the request seeks information about either party's mental health history, unless that party consents;
- the request seeks information that is unreasonably duplicative;
- the request is unlikely to yield relevant evidence;
- the request seeks information that the requesting party could obtain from another source with greater convenience or less burden;
- the request unreasonably invades the privacy interests of a party or witness or seeks information protected by federal or state law; or
- the burden of complying with the request is likely to substantially outweigh the benefit of the information as relevant evidence in the hearing.

#### *Witness Statements and Summary of Evidence*

The investigator will prepare Witness Statements and a draft "Summary of Evidence" that includes all of the evidence to be considered at the conclusion of an investigation, including, but not limited to, any documents and/or materials gathered during the investigation, statements by witnesses, and statements by the parties. The Parties will be provided with the opportunity to review all witness statements, including the statement of the other party, and send to the investigator questions to be posed in response. Parties will be given ten (10) days to review and respond to witness statements.

Parties may be provided with witness statements throughout the course of the investigation or after all of the witnesses have been interviewed. In cases where the parties are provided with all of the witness statements at once, additional time to

review the materials may be provided at the sole discretion of the investigator.

Before the Summary of Evidence is finalized, the parties will be given the opportunity to review the document. Parties must submit any comments about this summary to the investigator within five (5) calendar days of the date when it was provided.

**F. Potential Outcomes of Investigation: No Charge Decision, Non-Hearing Resolution or Referral for a Hearing**

Following an investigation, or possibly during the investigation in the event of a Non-Hearing Resolution or withdrawal of the complaint, the Sexual Misconduct Coordinator will adopt one of the following options:

*No Charge Decision*

If the Sexual Misconduct Coordinator concludes that a reasonable Sexual Misconduct Sexual Harassment Hearing Panel (“Hearing Panel”) could not find by a preponderance of the evidence that the alleged Prohibited Conduct occurred, no charge will be issued, and the Sexual Misconduct Coordinator will issue an Outcome Letter. The Outcome Letter can be appealed pursuant to Section XI.

*Non-Hearing Resolution*

If the Sexual Misconduct Coordinator concludes that a reasonable Hearing Panel could find by a preponderance of the evidence that the alleged Prohibited Conduct occurred, but there is not a significant dispute among the parties and the Sexual Misconduct Coordinator about the proper outcome of the matter (including administrative remedies and disciplinary sanctions), the Sexual Misconduct Coordinator may suggest to the parties a resolution without a hearing. In no case shall the parties be required to engage in discussions together regarding a proposed resolution.

- A non-hearing resolution is not available if a party objects to such a resolution.
- A non-hearing resolution will result in an Outcome Letter.
- The administrative remedies and disciplinary sanctions will have the same force and effect as though they were imposed following a review panel.
- Non-hearing resolutions cannot be appealed.

*Referral to a Sexual Misconduct Hearing Panel*

If the Title IX Coordinator concludes that a Sexual Misconduct Hearing Panel could find by a preponderance of the evidence that the alleged Prohibited Conduct occurred and that a non-hearing resolution is either not possible or not appropriate based on the investigation, the matter will be referred to a Hearing Panel for adjudication.

## **X. SEXUAL MISCONDUCT HEARING PANEL**

The Hearing Panel is responsible for evaluating the information gathered by the investigator and determining whether a violation of this Policy occurred and the appropriate sanction(s).

### **A. Panel Composition**

Each Hearing Panel includes two members. One panel member will be an employee of the College and the other will be external to the College. The panel member external to the College will serve as the Hearing Officer. All Panel members will receive appropriate training on the Sexual Misconduct Policy and on sexual misconduct. Panel members will be determined by the Managing Coordinator, in conjunction with the Sexual Misconduct Coordinator.

### **B. Challenging Panel Members**

Either party may challenge a Panel member for an alleged lack of fairness or objectivity. A party challenging a Panel member must submit a written challenge to the Managing Coordinator stating with specificity the reasons for the challenge. The challenge must be submitted within forty-eight (48) hours after a party is notified of the names of the Panel members. The Sexual Misconduct Coordinator will determine if a Panel Member needs to be replaced.

### **C. Panel Process**

- The Hearing Officer will rule on all procedural matters and on objections regarding exhibits and testimony of participants at the hearing, may question the parties and any witnesses, and is entitled to have the advice and assistance of legal counsel. The other Hearing Panel member will ask questions through the Hearing Officer.
- Each party will have access to all of the evidence from the investigation, including a copy of the completed investigation report
- At the request of either party, the College will arrange for the hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and the parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually, and are not required to be physically present at the same physical location of the hearing.
- Each party may make opening and closing statements.
- No person will be required to disclose information protected under a legally recognized privilege. The Hearing Officer must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- Each party may have an advisor of their choice at the hearing. If a party does not have an advisor, the College will provide one. Advisors are not permitted to actively participate in the hearing, except for asking questions of the other party

and any other witnesses. In addition, witnesses may have an advisor of their choice at the hearing.

- At least five (5) days prior to the hearing, the parties and their advisors will be notified of the hearing date, time, and location. Please note that hearing may be conducted virtually, in which case parties will be provided with relevant electronic information.
- In advance of the hearing, parties will be required to identify witnesses to be called at the hearing, as well as to provide a brief written explanation of the information each witness would be asked to provide, such that the Hearing Officer can determine their relevance. The Hearing Officer has the discretion to exclude from the hearing evidence/witnesses/questions deemed irrelevant. At the Hearing Officer's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisors to explain the hearing protocol.
- The Hearing Officer may, at the Hearing Officer's discretion, ask questions during the hearing of any party or witness and may be the first person to ask questions of any party or witness. Each party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other party and of any witnesses that participate in the hearing, including questions that challenge credibility. Each advisor has the ability to ask questions directly, orally, and in real time at the hearing. The parties will not be permitted to personally ask questions of the other party or any witnesses that participate in the hearing. The advisors may ask questions under the following procedure:
  - The advisor will ask a question of the applicable participant.
  - Before the participant answers a question, the hearing officer will rule as to whether the advisor's question is relevant to the alleged conduct charges.
  - If the Hearing Officer rules the advisor's question as not relevant, then the Hearing Officer must explain any decision to exclude a question as not relevant. If the Hearing Officer allows the question as relevant, the participant will answer it.
  - A Complainant's sexual predisposition or prior sexual behavior is not relevant except where questions and evidence about a Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent of the alleged conduct.
  - If a party or witness refuses to submit to any cross-examination questions during the hearing, the Hearing Panel will not rely on any statement of that party or witness, when reaching a responsibility determination. The Hearing Panel will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.
  - The hearing will be recorded in audio or audiovisual format and may be transcribed at the discretion of the College. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon

request.

#### **D. Written Determinations**

The deliberations of the Panel are private and closed to the parties and public.

The Panel shall determine whether a violation of this Policy occurred using the preponderance of the evidence standard.

Following the hearing, the Hearing Panel will consider all of the relevant evidence and deliberate regarding responsibility. The Hearing Officer shall make a determination, by a preponderance of the evidence, whether the respondent has violated the policy. The Hearing Officer shall write a written determination, which will contain:

1. The allegations potentially constituting sexual misconduct;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination (including any notifications to the parties, interviews with parties and witnesses, site visits (if any), methods used to gather other information, and the hearing);
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of this policy to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a policy violation occurred), any disciplinary sanctions imposed if there has been a finding of responsibility, and whether any remedies designed to restore or preserve equal access to the College's education program or activity or working environment will be implemented; and
6. Relevant appeal information for the parties.

Disciplinary sanctions and remedies will be determined in accordance with the procedures listed below, and the information will be provided to the Hearing Officer for inclusion in the written determination.

The parties and their advisers will simultaneously be provided with the written determination via electronic format.

#### **E. Sanctions**

If the Panel determines that a violation has occurred, the Panel shall then determine the appropriate sanction(s). Members of the College community who are determined to have violated this Policy may be subject to sanctions depending on the nature and severity of the offense, regardless of whether the sexual misconduct is the subject of a criminal investigation or results in a criminal conviction.

The goal of sanctions is to (1) end the misconduct; (2) remedy its effects on the

reporting party and/or the College community; and (3) take reasonable steps calculated to prevent its recurrence.

Sanctions for sexual misconduct may range from mandated education, a formal warning, probation, suspension, expulsion (for students), or corrective action up to and including termination (for employees).

Sanctions may also require that existing support measures stay in place for a prescribed period of time. Likewise, sanctions may involve the imposition of new remedies, such as no contact orders, disciplinary probation, housing placement, or academic adjustments, based upon the facts developed during the investigation and the conclusions reached in the case.

Specific sanctions include, but are not limited to: formal reprimand (to be included in the permanent record of the student or employee); expulsion from the dormitories (if the person is a student residing on campus); suspension or expulsion from the College, with or without the refund of fees, in the case of students; suspension with or without pay or termination of employment, in the case of employees; commencement of procedures to terminate appointment by reason of “failure to perform teaching duties in a satisfactory manner” or for “moral turpitude,” as provided in Polity Article IV (6) (a) (i) and (ii), in the case of tutors; disciplinary probation; no-contact orders or prohibitions from entering certain parts of campus or attending certain campus events; and mandatory education on issues related to sexual misconduct, including, but not limited to, prevention and awareness, victims’ rights, and appropriate behaviors.

Upon a finding that a student is responsible for engaging in Rape as defined in III.P above, the Respondent will ordinarily be suspended for ***a minimum of two (2) calendar years***, or a longer period up to and including expulsion, if one or more of the following factors are found by a preponderance of the evidence.

1. Proven history of prior Title IX Sexual Harassment or sexual misconduct by the Respondent;
2. Whether the Respondent has a proven history of violating no contact orders or restraining orders;
3. Whether the prohibited conduct involved the use of physical force, including but not limited to restraining, strangling, hitting, punching, slapping, or kicking;
4. Whether the prohibited conduct involved the use of a weapon;
5. Whether the Respondent facilitated the prohibited conduct through the use of drugs, alcohol, or other intoxicants;
6. Whether the prohibited conduct occurred by knowingly taking advantage of the incapacitation of the Complainant;
7. Whether the prohibited conduct involved multiple victims;
8. Whether the prohibited conduct was committed by multiple individuals acting together;

9. Whether the prohibited conduct included the recording, photographing, transmitting, viewing, or distributing of intimate or sexual images without consent;
10. Whether the Respondent threatened violence against the Reporting Party, Complainant, or others.

Engaging in any other prohibited activity under this policy may result in a sanction greater than this minimum suspension period, even absent any of the factors noted above.

If either party (or their surrogates) is found to have engaged in Retaliation or Intimidation, they may be subject to sanctions beyond those articulated by the Panel by the Assistant Dean, Dean, or Director of Personnel, depending on the nature and severity of the offense and the individual's disciplinary record.

The Hearing Panel will determine sanctions solely for the case being adjudicated under this Policy. Additional or more severe sanctions may be imposed by the Sexual Misconduct Coordinator, Dean, Assistant Dean, or Director of Personnel/Human Resources for related violations and/or after a review of the disciplinary and/or employee file of the Responding Party.

Both the Complainant and the Respondent shall be notified in writing of the outcome of the investigation and the rationale of the Panel in reaching the outcome. The parties shall also be notified in writing of any sanction imposed on the Respondent as a result of a violation of this Policy.

The Panel process ordinarily concludes within fifteen (15) days of the date the Panel is convened.

Interim support measures put in place during the investigation may be continued or implemented as part of sanctions. Even if a Respondent is found *not responsible*, in the discretion of the Sexual Misconduct Coordinator, support measures may remain in place depending on the circumstances.

## **XI. Appeals**

The Complainant and the Respondent have equal rights to an impartial appeal. Appeals shall be limited to the following grounds:

- There was a material deviation from the procedures that affected the outcome of the process;
- There is new and relevant information that was unavailable, with reasonable diligence and effort that could materially affect the outcome.
- The Sexual Misconduct Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against the parties (generally, or specifically in this matter) that affected the outcome of the matter.

Generally, the original decision, including sanctions, remains in effect throughout the appeal period.

Both the Complainant and the Respondent will have five (5) business days from written notification of an outcome to submit a written appeal to the Sexual Misconduct Coordinator. If the Sexual Misconduct Coordinator receives no timely appeals, both parties will be notified that the original decision stands.

If and when the Sexual Misconduct Coordinator receives a timely appeal, the appeal will be shared with the non-appealing party who may, but need not, provide a written response within five (5) business days of receiving a copy of the appeal. This response is a right, but not a requirement. The decision by a party not to respond to the other party's appeal does not indicate agreement with that appeal.

For cases adjudicated on the Santa Fe Campus, the person reading the appeal (Appeal Officer) will be the Director of Personnel on the Annapolis Campus. For cases adjudicated on the Annapolis Campus, the Appeal Officer will be the Director of Human Resources on the Santa Fe Campus. Parties will not meet with the Appeal Officer and should not communicate with them directly. The appeals process is conducted in writing through the Sexual Misconduct Coordinator. Therefore, when submitting documents in the appeal process, parties should include any and all information they would like to have considered.

The Appeal Officer will evaluate the appeal based on the record considered by the Panel. Any information or materials that were previously submitted and determined to contain personally identifiable information and/or information that is irrelevant to the complaint, including information that is not permitted by law and character evidence, will not be considered by the Appeal Officer.

The Appeal Officer is not expected to conduct a full review of the case. This is not an opportunity for the Appeal Officer to substitute their judgment for that of the Panel. Rather, they may only make changes to the original outcome when at least one of the specified grounds for appeal is met. The changes made should directly pertain to the appeal grounds that were met.

The Appeal Officer may a) determine that no grounds for appeal have been met; thus, the original decision stands; b) determine that grounds for appeal have been met, and choose to remand the matter back to the Panel to address the appealed aspects of the case; or c) may make a new finding of fact, finding of responsibility, and/or (as appropriate) sanction(s). The Appeal Officer's decision will be made based on the preponderance of the evidence standard. The Officer's decision is final, and no further appeal is permitted.

Absent unusual circumstances, the Sexual Misconduct Coordinator will provide the outcome of the appeal in writing to the Complainant and Respondent within fifteen (15) business days from the Appeal Officer's receipt of the appeal.

## **XII. Withdrawal from St John's College With Charges Pending**

If a student Respondent withdraws from St. John's College while any aspect of this Policy is in progress, and before any findings have been made, the Respondent's academic file will include a letter from the Sexual Misconduct Coordinator reflecting that the student withdrew pending an investigation of disciplinary charges. If a student Respondent withdraws after an investigation found that person responsible for violating the Policy, but before a sanction was implemented, the student's academic file will include a letter from the Sexual Misconduct Coordinator reflecting that the student withdrew pending disciplinary sanctions. Should a student decide to withdraw and not participate in the investigation or Panel, St. John's College may opt to proceed without the student to a reasonable resolution and the student will not be permitted to return unless all sanctions have been satisfied.

Should an employee Respondent decide to resign or otherwise leave the College and not participate in the investigation, St. John's College may opt to proceed with the investigation without the employee to a reasonable resolution and the employee may not be permitted to reapply for employment or to otherwise participate in the St. John's College community if a policy violation is found or if the investigation is impeded or impossible due to the employee's lack of participation.

## **XIII. Reinstatement of Students After Disciplinary Suspension for Any Sexual Misconduct**

Any reinstatement following a period of suspension for any violation is conditional. Students who wish to return to St. John's College following a term of disciplinary suspension for sexual misconduct must demonstrate that they are prepared to return to the College and meet behavioral expectations. *Reinstatement is not automatic.*

Students who request to be reinstated following disciplinary suspension for sexual misconduct must obtain clearance from the Sexual Misconduct Coordinator and the Assistant Dean on the campus where they were last enrolled. Such requests must be submitted in writing at least eight (8) weeks prior to the beginning of the semester.

Any student who has outstanding sanctions must complete them prior to reinstatement. Students who are being reinstated after suspension for Sexual Misconduct will have the following requirements:

- Disciplinary probation: Students who are reinstated after suspension will be placed on disciplinary probation for the remainder of their time at St. John College. Students on disciplinary probation are restricted from certain leadership positions/opportunities within the College. Students who violate any policies of the College or exhibit behavior prohibited by the College may face more serious disciplinary sanctions, including immediate dismissal from the College with no reimbursement of fees or tuition.
- Academic work: Any academic work completed elsewhere during the term of suspension will not be transferred into St. John's College.

- Proof of good standing: If a student has attended another institution of higher learning during the period of suspension, they will be required to provide (1) proof of good disciplinary standing from each institution attended; (2) a copy of their student conduct record from each institution attended.
- Financial aid/scholarships: Students who are seeking reinstatement from suspension must work with the Financial Aid Office to determine, what, if any, impact their suspension may have on any scholarship or financial aid.
- Complaints of misconduct: Prior to reinstatement, a student must notify the College if they have been the subject of any complaints of misconduct during the period of suspension, whether at an educational institution, through law enforcement, employment, or otherwise. Failure to notify the College of any complaints of misconduct will result in immediate expulsion should such complaints later come to light.
- Re-entry meeting: Students applying for reinstatement must schedule a meeting with the Sexual Misconduct Coordinator and the Assistant Dean prior to the desired term of re-enrollment to review the student's progress, assess readiness to return, and discuss expectations for re-entry.
- Check In: Depending on the circumstances, the Sexual Misconduct Coordinator and/or Assistant Dean may require the returning student to check in periodically to assess the student's transition and compliance.

If at the time of reinstatement the Complainant is still an enrolled student, the Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator will promptly notify the Complainant (1) if the Respondent requests reinstatement following a period of suspension for Sexual Misconduct; (2) of the reinstatement decision; and (3) when the Respondent is expected to return to campus.

The Sexual Misconduct Coordinator or Deputy Sexual Misconduct Coordinator will be available to meet with the Complainant prior to the student's reinstatement to discuss whether support measures are required.

The processes and potential for support measures outlined in this section may differ depending on the wishes of the Complainant concerning receipt of such notifications and the then-current status of the Complainant (i.e., whether or not they remain affiliated with St. John's College) which may affect the ability to implement certain accommodations.

#### **XIV. Documentation**

The College (through the appropriate office) will retain all of the documentation generated as the result of a complaint for seven years, in accordance with state and federal records laws and College policy. All documentation of records are private and confidential to the extent possible

under law. Student records are disciplinary records under FERPA. Employee records of the Grievance Process are subject to the Freedom of Information Act (FOIA).

## **XV. Campus-Specific Considerations: Annapolis**

Within the state of Maryland, student parties in sexual misconduct cases are provided with specific rights and access to a licensed attorney, an advocate supervised by an attorney, or a trained advocate to be paid for, at least in part, by the Maryland Higher Education Commission.

Student parties are entitled to have assistance by a licensed attorney, an advocate supervised by an attorney, or a trained advocate:

- At all meetings, hearings, and interviews associated with the complaint;
- To provide private consultations with the student during hearings, meetings, and interviews, except during question of the student at a hearing; and
- To assist with the student's exercise of any right during the proceedings.

In addition to assistance by a licensed attorney, an advocate supervised by an attorney, or a trained advocate, the student is entitled to have a personal supporter of the student's choice at any hearing, meeting, or interview during the proceedings. Students are not entitled to have more than two people at any hearing, meeting, or interview.

This resource is available to all current and former students who make or respond to a complaint on which a formal sexual assault investigation is initiated and who was enrolled as a student at the institution at the time of the incident that is the basis of the complaint. This resource is not a requirement and students can knowingly and voluntarily choose not to have counsel.

Before the start of any formal proceedings under the policy, student Complainants and Respondents will be notified in writing as to the student's right to the assistance of an attorney or advocate, legal service organizations and referral services available to the student, and the student's right to have a personal supporter at any hearing, meeting, or interview.

For information on how to retain a licensed attorney, an advocate supervised by an attorney, or a trained advocate, students are encouraged to visit the Maryland Higher Education Commission website [www.mhec.state.md.us](http://www.mhec.state.md.us).

## **XVI. Effective Date**

This Policy will govern any complaints received on or after August 14, 2020.