

# Title IX Sexual Harassment Training

**Title IX Personnel, Investigators and Decision-Makers**



ST JOHN'S  
College

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# ***What is Title IX?***

- As a recipient of Federal funds, St. John's College is required to comply with Title IX of the Education Amendments of 1972, relating to sexual harassment (including sexual violence, stalking, and domestic and dating violence), the Violence Against Women Reauthorization Act of 2013 (VAWA), and any applicable state laws.
- In May 2020 new regulations were announced that require colleges and university to comply with a new “final rule” governing Title IX Sexual Harassment.
- The Policy prohibits Title IX Sexual Harassment, including Sexual Assault, Sexual Harassment, Domestic Violence, Dating Violence, and Stalking. It further prohibits Retaliation and Intimidation.

# ***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 provided that
- At the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity at the College.

***Where*** - This policy applies to:

- Conduct that occurs within the United States; and
- Conduct that occurs within an education program or activity including College sponsored or supported events, buildings owned or controlled by student groups recognized by the College, or in locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the Title IX Sexual Harassment occurs.

# **Title IX Sexual Harassment**

**Title IX Sexual Harassment** includes sexual assault, sexual harassment, quid pro quo sexual harassment, dating violence, domestic violence, and stalking as defined herein. Any conduct that is defined as Title IX Sexual Harassment, Retaliation or Intimidation 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 Title IX Sexual Harassment:

- Sexual Assault: Rape, Fondling, Incest, Statutory Rape
- Quid Pro Quo Sexual Harassment
- Sexual Harassment
- Dating Violence
- Domestic Violence
- Stalking
- Retaliation
- Intimidation

# ***Sexual Assault***

**Sexual Assault** is actual or attempted physical sexual contact with another person without that person's consent. Sexual Assault specifically includes:

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.

# *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.

# ***Sexual Harassment***

Unwelcome conduct on the basis of a person's sex (including on the basis of their gender, gender identity and expression, or sexual orientation) as deemed by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity.

# ***Dating Violence***

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.

# *Domestic Violence*

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.

# *Stalking*

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.

# ***Intimidation & Retaliation***

**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.

**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.

# ***Incapacitation***

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 incapacity, 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 incapacity based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent's position.

# **Consent**

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

# *Bias*

The following topics and activities will be reviewed specific to bias:

- Implicit and Explicit Bias:
  - Definitions
  - Examples
  - Bias and sexual assault response
- How bias is developed
- Identifying individual bias
- Harvard Implicit Bias Test
- Gender Bias
- Identifying and preventing bias in sexual assault response
- Bias when assessing credibility
- Bias when developing interview questions

## References:

- Archambault, J., Lonsway, K.A., (2020). *Interviews with Victims vs. Suspects: Start by Believing and the Question of Bias*. End Violence Against Women International.
- Huhtanen, H. (2020). *Gender Bias in Sexual Assault Response and Investigation. Part 1: Implicit Gender Bias*. End Violence Against Women International.
- US Department of Justice (DOJ) published groundbreaking new guidance for law enforcement in 2015, entitled, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*.

# ***Technology***

Microsoft Teams is the platform that will be used should any part of the process need to be conducted through the use of technology.

Teams training is through the review of three different training resources:

- Review training video: Part I: Teams for Staff at SJC
- Review training video: Part II: Teams for Faculty at SJC
- Review training video: Part III: Microsoft Teams Training

Training is available via Microsoft 365 by using College username and password.

# ***Informal Resolution Process***

Informal Resolution is a process for resolving complaints raised under this policy that does not require a formal investigation or hearing.

An Informal Resolution will only be presented if:

- The Complainant requests an informal mechanism;
- The Complainant, Respondent, and Title IX Coordinator, on behalf of the College, agree to an Informal Resolution in writing;
- The alleged misconduct does not involve Sexual Assault;
- The complaint does not involve allegations that an employee sexually harassed a student.

# ***Informal Resolution Process***

The Title IX Coordinator will be responsible for facilitating the Informal Resolution Process.

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. This will “pause” the timeline associated with the procedures within the policy.

Either party may end the Informal Resolution process at any time and request an investigation.

Title IX Coordinator retains discretion to terminate the Informal Resolution process.

The terms of an informal resolution are considered final, and cannot be referred for Formal Resolution.

Accepting an informal resolution does not mean that the respondent admits responsibility for a policy violation; nor does it mean that there has been a finding of a policy violation.

# ***Informal Resolution Process***

Informal Resolution terms will be memorialized in a written document, signed by both parties and the Title IX Coordinator. The document will be kept for a period of 7 years.

Failure to comply with an Informal Resolution agreement may result in disciplinary action or referral for Formal Resolution.

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.

# **Determining Relevance**

When collecting and assessing evidence, the following types of determinations need to be made:

- Is the evidence “relevant” to the charges?
  - *Relevant evidence* is commonly defined as evidence that has probative value to make at least one of the elements of the case likelier or not.
  - As defined in the Federal Rules of Evidence, evidence is relevant if:
    - it has any tendency to make a fact more or less probable than it would be without the evidence; and
    - the fact is of consequence in determining the action

# **Determining Relevance**

If it is determined that the evidence is “relevant”, is it allowed within the policy? The following evidence is explicitly *not allowed*:

- The request seeks information about the Complainant sexual predisposition or prior sexual behavior:
  - unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
- The request seeks information about either party’s mental health history, unless that party consents;
- The request unreasonably invades the privacy interests of a party or witness or seeks information protected by federal or state law.

# *Determining Relevance*

**Character evidence** generally refers to any testimony or document submitted for the purpose of proving that a person acted in a particular way on a particular occasion based on the character or disposition of that person.

An example of “character evidence” is a party to the case providing evidence that the other party lied in the past as evidence of that party lying in the present case.

Character evidence is generally not permitted in Title IX Sexual Harassment cases.

# ***Advisor of Choice***

All parties are 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, except that 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.

# *Investigation*

The investigation will be prompt, thorough, and impartial. Generally, investigations should be completed within 60 business days; should an extension be required, the parties will be notified.

The investigator is responsible for communications with the parties. This includes the date, time, and location of each interview the party is required or permitted to attend.

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.

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.

# ***Witness Statements & 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 (including any evidence upon which the investigator does not intend to rely in creating the final investigation report).

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 and the draft Summary of Evidence by providing any comments to the investigator.

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.

Based on the written responses submitted, the investigator(s) will make any necessary revisions, and finalize the report. The investigator(s) will document the rationale for any changes made as a result of the parties’ submissions.

The Managing Coordinator will provide the final investigation report to the parties at least 10 business days before the complaint is to be reviewed by a hearing panel.

# *Hearing Panel*

**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. Panel members will be determined by the Managing Coordinator, in conjunction with the Title IX Coordinator.

**Challenging Panel Members:** Either party may challenge a Panel member for an alleged lack of fairness or objectivity (including allegations of bias or conflict of interest). 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 Title IX Coordinator will determine if a Panel Member needs to be replaced.

# Hearing

- 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.
- 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, provided the Hearing Officer will explain to the parties the basis for any such relevancy decisions. At the Hearing Officer's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisers to explain the hearing protocol.

# Hearing

- 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 charges (questions that are intended to be abusive or harass a party or witness will be considered irrelevant).
  - If the Hearing Officer rules the advisor's question is 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.
  - If a party or witness refuses to submit to any cross-examination questions from a party's advisor during the hearing, the Hearing Panel will not rely on any statement of that party or witness, when reaching a responsibility determination. However, if the Respondent refuses to submit to cross-examination about statements that are the subject of the charges (for instance, in a case of Quid Pro Quo Harassment), those statements are not precluded from admission despite the Respondent's refusal to answer.
  - 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.

# **Hearing**

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 Panel 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 Title IX sexual harassment;
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 an explanation of the determination of appropriate sanctions will be included by the Hearing Officer in the written determination.

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

# ***Sanctions***

If the Panel determines that a violation has occurred, the Panel shall then determine the appropriate sanction(s). 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 Title IX Sexual Harassment 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 Title IX Sexual Harassment, including, but not limited to, prevention and awareness, victims’ rights, and appropriate behaviors.

# ***Sanctions***

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 Title IX 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 of the hearing.

# ***Appeal***

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 Title IX 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 Title IX Coordinator. If the Title IX Coordinator receives no timely appeals, both parties will be notified that the original decision stands.

If and when the Title IX 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 Title IX Coordinator. Therefore, when submitting documents in the appeal process, parties should include any and all information they would like to have considered.

# ***Appeal***

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 Title IX 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.