

College of Saint Mary Title IX Procedures

Sexual Violence, Sexual Harassment, and Violence against Women

Prohibited Conduct and Definitions

College of Saint Mary Title IX policy addresses a broad spectrum of behavior, all of which fall under the broad definition of sexual misconduct.

Complainant is an individual who is subject to alleged discrimination, harassment, or retaliation regarding the application of this policy.

Respondent is an individual whose alleged conduct is the subject of a complaint.

Sexual Harassment is defined as unwanted conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, questions about a person's sexual practices, lewd, offensive or vulgar comments, sexual insults or innuendoes, sexually explicit jokes, and other verbal, nonverbal or physical conduct of a sexual nature. Sexual harassment can also include unwanted touching, fondling, patting, pinching or kissing. The display of sexually explicit pictures, sexual graffiti, cartoons or objects can also constitute sexual harassment. CSM is legally required to take immediate steps to address the discrimination when harassment occurs which creates a hostile environment.

Harassment on the basis of sex may occur without sexual advances or overtones when conduct is directed at individuals or groups because of their gender. This type of harassment is often referred to as gender stereotyping and is a violation of this policy. Both men and women can be targets of sexual harassment. Sexual harassment can also occur between members of the same sex.

Hostile Environment is when sexual harassment is sufficiently severe or pervasive that it unreasonably interferes, limits or deprives someone of the ability to participate in or benefit from the University's educational programs, activities, or employment. In determining whether a reasonable person in the individual's circumstances would find the work or educational environment hostile, the totality of the circumstances must be considered.

Sexual Violence is a severe form of sexual harassment including physical sexual acts perpetrated against another person without his/her consent. Such acts include, but are not limited to, forced oral, anal, or vaginal penetration, to any degree, insertion of foreign objects into the body and any act of sexual intercourse against someone's will. This includes, but is not limited to, the use of a weapon, physical violence or restraint, verbal threats, intimidation, and threats of retaliation or harm.

Consent: Positive cooperation in the act or expressing intent to engage in the act. The person must act freely and voluntarily and have knowledge of the nature of the act involved. A person who is giving consent cannot be under the influence of drugs or alcohol, unconscious, passed out, coming in and out of consciousness, or have a disability or disorder that would impair

his/her understanding of the act. Silence or lack of active resistance does not imply consent. Past consent does not imply future consent. The presence or absence of consent is based on the totality of the circumstances.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to Fear for the person's safety or the safety of others; or Suffer substantial emotional distress.

Domestic violence means a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Sexual Exploitation means an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses. Sexual exploitation may involve individuals who are known to one another, have an intimate or sexual relationship, and/or may involve individuals not known to one another. Examples include, but are not limited to:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- Prostituting another individual;
- Knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Retaliatory Harassment is intentional action taken by an accused or allied third party that harms a complainant, witness, reporter, investigator, or any other individual for filing or participating in a University investigation.

Preponderance of the Evidence means that it is “more likely than not,” based upon the information provided, that the respondent is responsible for the alleged violation(s). This is the standard that is used to review evidence during Formal Resolutions and Appeals.

Sexual Assault 1st Responder Protocols

Medical Assistance

Experiencing any form of sexual misconduct, especially acts of violence, is difficult and overwhelming. Victims often experience a range of emotions, including fear, anxiety, and confusion, and may be unsure of what they want to, or should do, next. Regardless of whether the individual chooses to report the incident, the University strongly encourages victims of any form of violence to seek medical attention as soon as possible, even if they feel no injury was sustained.

Bergan Mercy Medical Center
7500 Mercy Rd, Omaha, NE 68124
(402) 398-6060

Preserving Evidence

Many sexual misconduct offenses also are crimes in the state or locality in which the incident occurred. For that reason, victims of sexual misconduct often have legal options that they can pursue. These options are available solely at the discretion of the victims, who may change their minds about pursuing them at any time.

Below are suggestions for preserving evidence related to an incident of sexual misconduct. It is important to keep in mind that each suggestion may not apply in every incident:

General evidence preservation suggestions:

- Do not alter, dispose of, or destroy any physical evidence.
- If there is suspicion that a drink may have been drugged, inform a medical assistance provider and/or law enforcement as soon as possible so they can attempt to collect possible evidence (e.g., from the drink, through urine or blood sample).
- Preserve evidence of electronic communications by saving them and/or by taking screen shots of text messages, instant messages, social networking pages, or other electronic communications, and by keeping pictures, logs, or copies of documents that relate to the incident and/or perpetrator.

- Even if victim chooses not to make a complaint regarding sexual misconduct, they should nevertheless consider speaking with someone from the Title IX Team or law enforcement to preserve evidence in the event that they change their mind at a later date.
- Because some evidence, particularly evidence that may be located on the body, dissipates quickly (within 48-96 hours), individuals who have been sexually assaulted and wish to preserve evidence should go to a hospital or medical facility immediately to seek a medical examination and/or evidence collection.

Methodist Hospital offers victims of sexual assault immediate, comprehensive and compassionate care and evidence collection from health care professionals specifically trained and educated to meet their special needs. This service is available 24 hours per day, 7 days per week at the following locations:

- Methodist Hospital, 8303 Dodge Street
- Methodist Women's Hospital, 707 N 190th Plaza

Confidential Counseling Services/Alternatives to Reporting

While many victims of sexual assault are ready to file a formal complaint against an alleged offender right away – others want time and privacy to sort through their next steps. There are currently no CSM faculty or staff whose official role includes being available for confidential, professional counseling. However, CSM has partnered with Alegant Creighton Health to offer free, confidential, professional counseling to students and employees.

Students can utilize the College of Saint Mary Counseling Assistance Program (CAP) by calling (402) 398-5566 or (888) 847-4975.

Employees can utilize the Employee Assistance Program (EAP) by calling (402) 398-5566 or (888) 847-4975.

Women's Center for Advancement (WCA) also offers a hot line and free short term crisis counseling to survivors of sexual assault and domestic violence. They can be reached at 402-345-6555 (Business Hours) or 402-345-7273 (Evenings and Weekends).

Campus Reporting

A student, faculty member, or staff member who has a complaint against a student, faculty member, or staff member, or other individual involving allegations of sex discrimination or sexual harassment should contact the Title IX Coordinator. A report can be received in person, by phone, or through email. In general, CSM employees do not have legally protected confidentiality. Therefore, any employee who receives a report of sexual assault or harassment is required to share the report with the Title IX Coordinator.

In all cases of reported sexual violence, stalking, or domestic/dating violence, the CSM President will be notified of the situation, however, all personally identifying information will be withheld.

Requests for Confidentiality

Where a complainant requests that a name or other identifiable information not be shared with the respondent or that no formal action be taken, the College will balance this request with its dual obligations to provide a safe and non-discriminatory environment for the entire community and to afford a respondent fundamental fairness by providing notice and an opportunity to respond before action is taken.

CSM will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation or disciplinary action, but its ability to do so may be limited based on the nature of the request by the complainant.

When weighing a victim's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
 - Whether there have been other sexual violence complaints about the same alleged perpetrator;
 - Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
 - Whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
 - Whether the sexual violence was committed by multiple perpetrators;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the victim is a minor;
- Whether the University possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence);
- Whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the University to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the University will likely respect the victim's request for confidentiality.

If the University determines that it cannot maintain a victim's confidentiality, the University will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response.

The Department of Safety & Security will be notified of any reports of sexual violence occurring on campus. Pursuant to federal law, the University has a legal responsibility for documenting and providing statistics of reported incidences of sexual assault. All personally identifying information will be removed from the statistical report.

Anonymous Reporting

Any individual may make an anonymous report concerning an act of sexual assault or harassment. An individual may report the incident without disclosing one's name, identifying the respondent, or requesting any action. Anonymous reports can be provided by using the Human Resources mail box in the mail room on the Ground Floor of Walsh Hall. Another person may also report an assault anonymously on behalf of the victim. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may impact the College's ability to respond, investigate, or take further action.

Reporting Considerations

Timeliness and Location of Event

Complainants and third party witnesses are encouraged to report sexual assault and harassment as soon as possible in order to maximize the CSM's ability to respond promptly and effectively. CSM does not, however, limit the timeframe for reporting. If the respondent is no longer a student or employee, the College may not be able to take action against the respondent, but it will still seek to meet its Title IX obligation by taking steps to end the harassment, prevent its recurrence, and address its effects.

This policy generally applies to incidences that occur on campus or at a CSM sponsored event. However, off-campus conduct that creates a hostile learning or working environment on campus may be covered under this policy.

False Reporting

The University takes validity of information very seriously as a charge of sexual assault or harassment may have severe consequences.

A complainant 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. 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.

Similarly, a respondent or witness who is later proven to have intentionally given false information during the course of an investigation may be subject to disciplinary action.

Reports Involving Minors

All College of Saint Mary employees, who in the course of their employment witness or receive information related to suspected physical or sexual abuse or neglect of children, must report such information to the Department of Health and Human Services (DHHS) of the state where the suspected abuse has taken place within 24 hours. The Nebraska Child Abuse/Neglect Hotline is 1-800-652-1999. The employee should report to the Director of Safety and Security once they have reported the information to the DHHS. The State of Nebraska defines minor to be anyone under the age of nineteen.

Anti-retaliation

CSM expressly prohibits any form of retaliatory action against any individual for filing a complaint under this policy or for assisting in an investigation. This prohibition includes intimidation or threats of retaliation. Any acts of retaliation shall be a violation of this policy and shall be grounds for disciplinary action up to and including expulsion for students and termination for employees.

Although CSM will not restrict either party from discussing the investigation with other potential witnesses, communication that is deemed as retaliatory, vengeful, or intended to unduly influence a witnesses will be treated as a violation of this policy.

Complaint Processes

An individual who wishes to make a report of sexual assault or harassment is encouraged to make a report directly to the Title IX Coordinator. In every report of sexual assault, sexual harassment, or violence against women, the Title IX Coordinator or designee will conduct an initial Title IX assessment.

Initial Assessment

Upon receipt of a complaint, the Title IX Coordinator will first determine whether or not the complaint states a potential violation of this policy. The Title IX Coordinator will notify the complainant in writing of the decision.

If there is a potential violation of this policy, the Title IX Coordinator will conduct an initial assessment within seven (7) working days after receiving the complaint. The first step of the assessment will usually be a preliminary meeting with the complainant with the Title IX Coordinator or designee. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full interview.

As part of the initial assessment of the facts, the Title IX Coordinator or designee will:

- Assess the nature and circumstances of the allegation
- Address immediate physical safety and emotional well-being of the parties
- Provide the complainant with an explanation of the procedural options
- Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding
- Explain the University's policy prohibiting retaliation
- Provide the complainant with information about on and off-campus resources, if necessary
- Notify the complainant of the right to contact law enforcement and seek medical treatment, if a sexual assault or sexual violence has occurred.
- Notify the complainant of the importance of preservation of evidence, if a sexual assault or sexual violence has occurred
- Notify the complainant of the range of interim accommodations, if necessary
- Assess the reported conduct for the need for a timely warning under the Clery Act
- Ensure the report is entered into the University's daily crime log, if applicable.

Interim Accommodations

In all cases of alleged sexual misconduct, regardless of whether the complainant wishes to pursue an investigation or action, the University will undertake an appropriate inquiry and take prompt and effective action to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation, if any. The Title IX Coordinator, may request from the University, a no-contact order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation. The Title IX Coordinator may take any other protective actions as appropriate, including, without limitation, coordinating with appropriate University officials to alter the students' academic, University housing, and/or University employment arrangements.

A complainant may request specific accommodations from the Title IX Coordinator. If the request is reasonable, the Title IX Coordinator will coordinate with the appropriate University official to obtain the requested action.

Once notification is given, the Title IX Coordinator will offer interim accommodations to the respondent as well. The Respondent may request specific accommodations from the Title IX Coordinator. If the request is reasonable, the Title IX Coordinator will coordinate with the appropriate University official to obtain the requested action. The purpose of interim accommodations is to avoid depriving any student her or his education.

Informal Resolution Process

An option available to students, faculty, and staff is to seek a voluntary resolution. This option is available for any Title IX complaint if CSM determines, in its discretion, that such an informal process would be appropriate, and both the complainant and the respondent agree to participate, after receiving full disclosure of the allegations and their options.

The parties to any such informal process will not be required to deal directly with each other. Instead, the Title IX Coordinator or other designee may arrange for or facilitate mediation between the involved parties and coordinate other informal resolution measures. Either party may request that the informal resolution process be terminated at any time. If the situation is not able to be resolved informally or if either party chooses not to engage in an informal resolution, a formal process could commence. A summary of the outcomes from an Informal Resolutions shall be provided to the appropriate Vice President. An informal resolution does not preclude an employee's Vice President from taking disciplinary actions, if necessary.

Formal Resolution Process

After the initial assessment has been made and when a decision has been made to pursue a formal resolution, the Title IX Coordinator will obtain the consent of the complainant. The respondent will be notified upon the initiation of an investigation. When a Formal Resolutions process involves sexual violence and students, the Title IX procedures and outcomes replace the Judicial Process described in the College of Saint Mary Student Handbook. Student misconduct that is addressed using the Informal Resolution process may still be addressed through the Judicial System. Other non-Title IX violations will be handled separately through different processes.

Investigation in a Formal Process

The Title IX Coordinator will appoint an investigator to begin an investigation. The Investigator will be selected from the Title IX trained designees. The Title IX Coordinator will ensure there are no conflicts of interest between the parties involved and the investigator. Rather than a formal hearing process, the University will use an investigation to determine responsibility. Once an investigation is opened, the Title IX Coordinator must provide written notice to the responding party listing the potential violation with sufficient details and with sufficient time to prepare a response before the initial interview with the Investigator.

The investigator will take steps to complete the investigation within a reasonably prompt timeframe once an investigation is opened. The University is committed to a complete and impartial investigation of reports of sexual violence or sexual harassment, including the opportunity for both parties to present witnesses and other evidence. Investigations will occur as quickly as possible, but the complexity of the investigation, the severity and extent of the harassment, and the number of involved parties can impact duration. Extensions of time frames may be given for good cause, with a written notice given to the parties. A Title IX

investigation will occur even if law enforcement is conducting its own investigation. Although the Title IX investigation may be reasonably delayed in order to allow law enforcement to collect evidence, it does not need to wait until the law enforcement investigation is completed or criminal cases have been resolved. The reasonableness of delaying a Title IX investigation pending the completion of a law enforcement investigation or criminal case will be made on a case by case basis by the Title IX Coordinator.

The investigation shall consist of:

- Reviewing all related written statements or reports;
- Interviewing the alleged victim, alleged perpetrator, and other witnesses;
- Reviewing applicable University records and documents;
- Reviewing other relevant material and evidence; and,
- Allowing an opportunity for both parties to provide evidence or witnesses to be included in the written report.

It is improper for an investigator to ask about prior sexual history with anyone other than the perpetrator. A prior consensual sexual relationship with the perpetrator does not imply future consent nor preclude sexual violence. At no time shall an investigator permit the complainant and the responder to cross examine each other.

At the conclusion of the investigation, the investigator will submit the investigative report with a finding of facts and conclusions to the Title IX Coordinator using a “preponderance of the evidence” standard (more likely than not that sexual violence or harassment occurred).

The Title IX Coordinator will review the investigative report. With instances involving sexual violence or other complex investigations, the Title IX Coordinator will call a Title IX Team meeting with the Title IX Designees listed above. The Title IX Team will review the investigation report and may request additional investigation. Upon accepting the report, they will make recommendations on the actions needed to prevent, correct, and discipline. If the circumstances do not warrant a Title IX Team meeting, the Title IX Coordinator will make recommendations on the actions needed to prevent, correct, and discipline. Once completed, but before sending the report to the appropriate Vice President for action, the Title IX Coordinator will send the report to the parties and give them an opportunity to respond in writing within 7 days. The Title IX Coordinator will then forward the investigative report, and additional written documents from the parties, and the recommendations to the appropriate Vice President for action.

- In matters involving complaints where the respondent is a student, the recommendation is sent for action to the Vice President of Student Development.
- In matters involving complaints where the respondent is a faculty member, the recommendation is sent for action to the Vice President of Academic Affairs.
- In matters involving complaints where the respondent is a staff member, the recommendation is sent for action to the Vice President of Financial Services

The appropriate Vice President may accept, reject, or modify the findings and recommendations using a preponderance of the evidence standard. Within ten (10) working days from the receipt of the Title IX Team's recommendation, the Vice President will provide a written summary of the findings and recommendations to the complainant, to the respondent, and to the appropriate University authority. This summary will also include information on the appeals process. CSM will take immediate and corrective action if appropriate. In the event of disciplinary actions, CSM has an obligation to disclose the disciplinary actions taken against the respondent to the complainant as it related to his/her complaint.

Appeals

Both the complainant and the respondent have the right to appeal for any reason. Third parties do not have the right to appeal. An appeal must be submitted in writing to the Title IX Coordinator within seven (7) calendar days of being notified of the outcome and must set forth the reasons for the appeal. Appeals will be decided by the President of the University. Notification of the appeal will be given to the non-appealing party. Neither the complainant nor the respondent will be entitled to a hearing in connection to the appeal, but the University may request written submissions from either party or consider any other information as deemed appropriate by the school. Both parties will be informed in writing of the outcome of the appeal within fourteen (14) calendar days by which all requested information is received unless the school determines that additional time is required.

Potential Recommendations

Potential recommendations, which may be applied to the complainant and/or the respondent, include, but are not limited to:

- Access to counseling services and assistance in setting up initial appointment
- Imposition of an on-campus "no-contact directive"
- Rescheduling of exams and assignments
- Providing alternative course completion options
- Change in class schedule, including the ability to transfer course sections or withdrawal from a course without penalty
- Change in work schedule or job assignment
- Change in student's resident housing
- Limit of an individual or organization's access to certain College facilities or activities pending resolution of the matter
- Voluntary leave of absence
- Providing an escort to ensure safe movement between classes and activities
- Providing academic support services, such as tutoring
- Suspension or Expulsion, if a student
- Termination, if an employee

- Any other remedy which can be tailored to the involved individuals to achieve the goals of this policy.

Role of the Attorney/Outside Parties

CSM prohibits outside attorneys from participating in proceedings under this policy. A complainant or respondent may choose to seek the advice and assistance of an attorney at their own expense, but the attorney may not participate in the informal or formal processes, investigations, or interviews described in this policy.

Records

The Title IX Coordinator will retain records of all reports, allegations and complaints, regardless of whether the matter is resolved by Title IX assessment, informal resolution, or formal resolution. All records will be maintained for seven (7) years. Complaints resolved by Title IX assessment or informal resolutions are not part of a student's conduct file or academic record.

Affirmative findings of responsibility in matters resolved through the formal process are part of a student's file and academic record.

Other CSM Disciplinary Processes

The outcomes and actions taken by the Title IX process do not necessarily preclude other disciplinary actions from being taken using other CSM disciplinary procedures. The Title IX investigations and outcomes may be used as support for other disciplinary processes.

Amendments or Termination of this Policy

CSM reserves the right to modify, amend, or terminate this policy at any time.