

## **College of Saint Mary Sexual Misconduct, Harassment, Relationship Violence and Stalking Policy**

The College of Saint Mary Sexual Misconduct, Harassment, Relationship Violence and Stalking Policy strives to ensure that our institutional mission and values are upheld in order to maintain a community free from the harmful consequences of sexual and gender-based harassment. College of Saint Mary (CSM) is committed to providing a non-discriminatory and harassment-free educational, living, and working environment for all members of our community. CSM will take appropriate action to prevent, correct, and discipline harassing or violent behavior that is found to violate this policy.

The purpose of this policy is to provide the CSM community with a clearly articulated set of behavioral standards, common understandings of definitions and key concepts, and descriptions and examples of prohibited conduct, including sexual misconduct, sexual harassment, stalking, and domestic and dating violence. This policy provides guidance for what students or employees should do if they have experienced conduct that is prohibited by this policy on campus and what CSM will do if such conduct occurs.

A student alleged to have violated this policy can be disciplined under the Student Code of Conduct and/or prosecuted under the Nebraska criminal statutes. Employees alleged to have violated this policy may also be disciplined under other CSM policies found in Employee and Faculty handbooks and/or prosecuted under the Nebraska criminal statutes.

## TABLE OF CONTENTS

- I. Scope of the Policy
- II. Notice of Non-Discrimination
  - a. Role of Title IX Coordinator
- III. Prohibited Misconduct
  - a. Sexual Harassment
  - b. Sexual Assault and Non-Consensual Sexual Contact
  - c. Unlawful, non-forcible sexual intercourse
  - d. Sexual Exploitation
  - e. Stalking
  - f. Indecent Exposure
  - g. Domestic Violence
  - h. Dating Violence
  - i. Physical Assault
  - j. Retaliation
  - k. Violation of Campus No Contact Orders
  - l. Other Campus Code Violations
- IV. Other Important Concepts and Definitions
  - a. Hostile Environment
  - b. Consent
  - c. Coercion and Force
  - d. Incapacitation
  - e. Preponderance of the Evidence
- V. Privacy and Confidentiality
  - a. Privacy
  - b. Confidentiality
  - c. Responsible Employees
  - d. Request for Confidentiality
  - e. Timely Warning
- VI. Resources
  - a. Emergency Support and Response services in the Event of Sexual Violence
  - b. Medical Resources in the Event of Sexual Violence
- VII. Reporting Prohibited Conduct
  - a. Campus Reporting
  - b. Reporting to Law Enforcement
  - c. Anonymous Reporting
  - d. False Reports
  - e. Reports involving Minors or Suspected Child Abuse
- VIII. Amnesty for Drug/Alcohol Violations
- IX. Reporting Considerations: Timeliness of Report and Location of Incident
- X. University Procedures for Responding to Reports of Prohibited Conduct
  - a. Initial Assessment
  - b. Interim Supportive Measures

- c. Withdrawal of Complaint
- XI. Disciplinary Procedures
  - a. Informal Resolution
  - b. Formal Resolution
    - i. Conduct Hearings
- XII. Role of Advisor/Support Person
- XIII. Appeals
- XIV. Potential Sanctions and Other Remedial Measures
- XV. Records
- XVI. Education and Prevention Programs
  - a. Students
    - i. SafeColleges
    - ii. Bystander Intervention Training
    - iii. Women’s Center for Advancement
    - iv. Title IX Basics for Students
  - b. Campus Activities and Events
  - c. Faculty and Staff
    - i. Title IX Responsible Employee Training
    - ii. Bystander Intervention Training
  - d. Title IX Coordinator and Title IX Team
  - e. Campus Safety and Security
- XVII. Amendments

Appendix A: Summary of Survivor Rights

Appendix B: Flow Chart for Title IX Complaint Procedures

Appendix C: Reporting Guidelines for Mandatory Reporters

## **I. Scope of the Policy**

CSM denounces harassment of and discrimination against any and all individuals or groups. The policy applies to all community members, including students, faculty, adjunct faculty, staff, student workers, contractors, and visitors. The Title IX complaint provisions of this policy apply only to current and prospective students and employees.

All CSM community members are responsible for their actions and behavior, and are required to follow University policies and local, state, and federal law. This policy applies to conduct that occurs on CSM property or at a CSM-sponsored event that takes place off campus. Off-campus conduct that is not a CSM sponsored event that creates a hostile learning or working environment on campus may be covered under this policy. This policy applies to conduct that occurs within the United States. Title IX does not apply to sexual harassment or sexual misconduct that occurs off campus, in a private setting, that is not part of CSM's educational program or activity. However, CSM will offer support and services to individuals regardless of where the misconduct occurred.

When used in this policy, "Complainant" refers to an individual (student or employee) who is subject to alleged discrimination, harassment, or retaliation regarding the application of this policy. "Respondent" refers to an individual who has been accused of prohibited conduct under this policy. "Third party" refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.

Reporting Parties or Third Parties are encouraged to report sexual misconduct or harassment to CSM officials regardless of where the incident occurred, or who committed it. However, CSM has jurisdiction to take disciplinary action only against a Respondent who is a current student or employee. Even if CSM does not have jurisdiction over the Respondent, CSM will provide support for the safety and well-being of the Complainant and the broader campus community.

## **II. Notice of Non-Discrimination**

CSM does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Title IX of the Education Amendments of 1972 prohibits sex discrimination in education programs and activities at universities that receive federal financial assistance. Title IX protects all students and employees regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age, pregnancy, disability, or immigration status. Independent undergraduate programs may be single-sex programs, and an exemption is contained for religiously affiliated colleges if a conflict exists between Title IX and their religious tenets. Title IX prohibits sex discrimination in both the educational and employment settings. Sex discrimination and sexual harassment are also prohibited under Title VII of the Civil Rights Act of 1964. Title IX is enforced by the Office for Civil Rights within the U.S. Department of Education, which has promulgated regulations explaining and implementing Title IX.

Under the Department of Education’s Title IX regulations, an institution that receives federal funding “shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student’s pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.” CSM’s procedures regarding Title IX pregnancy and parenting accommodations can be found in its own policy. All inquiries concerning the application of this policy or other Title IX requirements should contact the Title IX Coordinator.

#### A. Role of Title IX Coordinator

CSM has designated a Title IX Coordinator to oversee implementation of this policy and facilitate the University's compliance with Title IX and related provisions of the Clery Act (as amended by VAWA).

Complaints or inquiries about sexual harassment or sex discrimination should be directed to the Title IX Coordinator:

Title IX Coordinator  
Director of Human Resources  
Walsh Hall, Room 295  
7000 Mercy Road  
Omaha, NE 68106  
(402) 399-2664  
[TitleIX@csm.edu](mailto:TitleIX@csm.edu)

The Title IX Coordinator is supported by members of an interdepartmental team. These team members are called the Title Designees. If the Title IX Coordinator is unavailable or has a conflict of interest, one of the Title IX Designees will respond. Members of the Title IX Team include:

- Director of Safety and Security, Walsh Hall #319, 402-399-2319
- Associate Dean of Students, Hixson Lied Commons # 127, 402-399-2411
- Chief Administration Officer, Walsh Hall #297, 402-399-2417
- Associate Dean for Arts, Sciences and Professional Studies, Walsh Hall #173, 402-399-2675

Concerns about the University's application of relevant federal and/or state law can be referred to:

U.S. Department of Education

Office for Civil Rights  
Lyndon Baines Johnson Department of Education Bldg.

400 Maryland Avenue, SW  
Washington, DC 20202-1100

Telephone: 800-421-3481  
FAX: 202-453-6012; TDD: 800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

### **III. Prohibited Misconduct**

College of Saint Mary Sexual Misconduct, Harassment, Relationship Violence and Stalking Policy addresses a broad spectrum of behavior, all of which fall under the general term sexual misconduct.

#### **A. Sexual Harassment**

Sexual Harassment is defined as unwanted conduct of a sexual nature when one or more of the following occur:

1. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic progress, or participation in any aspect of a college program or activity; or is used as the basis for employment or academic decisions affecting such individual, or
2. Such conduct has the purpose or effect of unreasonably interfering with an individual's work, academic performance, or equal opportunity to participate in or benefit from the University's educational programs, activities, or employment. That is, the conduct is so severe, pervasive, and objectively offensive as to create a hostile educational or workplace environment under both a subjective and an objective standard. 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.
3. Any instance of sexual assault, dating violence, domestic violence, or stalking

Sexual harassment may be committed by anyone regardless of gender identity and may occur between members of the same or different sex.

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, written, visual, or physical conduct of a sexual nature. Sexual harassment also includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, stalking, or hostility based on sex/gender or sex/gender-stereotyping, even if the acts do not involve conduct of a

sexual nature. Gender-based harassment can occur if individuals are harassed either for exhibiting what is perceived as a stereotypical characteristic of their sex, or for failing to conform to stereotypical notions of masculinity or femininity. To constitute harassment, the conduct must unreasonably interfere with an individual's work, academic performance, or equal opportunity to participate in or benefit from the University's educational programs, activities, or employment. That is, the conduct is so severe, pervasive, or persistent as to create a hostile educational or workplace environment under both a subjective and an objective standard. 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.

#### B. Sexual Assault and Non-Consensual Sexual Contact

Sexual assault is defined as having or attempting to subject another person to sexual intercourse either:

- Without the consent of the Complainant, or
- When the Respondent knew (or should have known) that the Complainant was incapacitated.

Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

Non-consensual sexual contact is defined as having intentional physical contact of a sexual nature with another individual:

- Without the consent of the Complainant, or
- When the Respondent knew (or should have known) that the Complainant was incapacitated.

Non-consensual sexual contact includes: touching the intimate parts of another; touching a person with one's own intimate parts; forcing a person to touch another's intimate parts; forcing a person to touch their own intimate parts; or disrobing or exposure of another without permission. Intimate parts may include the breasts or chest, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner, or the clothing covering the same.

#### C. Unlawful non-forcible sexual intercourse (incest and statutory rape)

Incest is the non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory rape is the non-forcible sexual intercourse with a person who is under the statutory age of consent.

#### D. Sexual Exploitation

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:

1. 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;
2. 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;
3. Prostituting another individual;
4. Knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge; and
5. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

#### E. Stalking

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.

A course of conduct refers to a pattern of behavior of two or more acts over a period of time that can be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Stalking includes cyber-stalking, a particular form of stalking in which technological means are used to pursue, harass, or make unwelcome contact with another person in an unsolicited fashion. Such methods include the use of the Internet, emails, social media, or blogs; landlines and cell phones; text messaging; global positioning systems; spyware on a person's computer or cellphone; or other similar devices or forms of contact.



## F. Indecent Exposure

A person commits indecent exposure if that person intentionally shows their genitals in a public place or in another place where there are other persons present under circumstances in which one knows or should know that this conduct is likely to affront or alarm.

## G. Domestic Violence

Domestic violence includes a single act of physical violence as well as a pattern of coercive or controlling behavior committed by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child in common; By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; By a person similarly situated to a spouse of the Complainant 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 Complainant 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.

Domestic violence takes many forms: physical; emotional; economic; stalking and harassment.

### a. Physical abuse

Physical abuse does not always leave marks or cause permanent damage:

- Scratching, biting, grabbing or spitting.
- Shoving and pushing.
- Slapping and punching.
- Throwing objects to hurt or intimidate you.
- Hurting or threatening to hurt your children and/or pets.
- Burning.
- Strangling.
- Attacking or threatening to attack with a weapon.
- Blocking exits, physically restraining you and/or not allowing you access to call for help (taking your phone).
- Any threats or actual attempts to kill you.
- Withholding basic physical needs such as food, transportation and/or housing.

### b. Emotional/Psychological Abuse

Emotional/psychological abuse is a behavior your partner uses to control you or damage your emotional well-being. It can be verbal or non-verbal:

- Name-calling, mocking, intimidation and making humiliating remarks or gestures.
- Yelling in your face or standing in a menacing way.
- Manipulating your children.

- Threatening to hurt themselves, your friends, family, children and/or pets.
- Threatening to take away children or visiting privileges.
- Telling you what to do or where you can and cannot go.
- Interrupting, changing topics, not listening or responding, and twisting your words.
- Putting you down in front of your children or other people.
- Preventing or making it difficult for you to see friends or relatives.
- Shifting responsibility for abusive behavior by blaming others or saying you caused it.
- Monitoring your phone calls, texts, car and computer use.

#### c. Economic/Financial Abuse

Economic/financial abuse happens when the abuser makes a Complainant entirely financially dependent on the abuser, with no power or say in the relationship:

- Forbidding the Complainant to work or attend school.
- Sabotaging employment opportunities.
- Jeopardizing employment.
- Denying access to a vehicle or damaging the vehicle so that the Complainant cannot get to work.
- Sabotaging educational opportunities.
- Withholding documents such as passports and visas.
- Withholding money or giving an allowance.
- Confiscating your paycheck.
- Denying access to bank accounts.
- Hiding family assets.
- Running up debt in the Complainant's name.

#### d. Stalking and Harassment

Stalking and harassment can happen between strangers or in relationships, where the abusive partner or ex demands your time even after you make it clear you do not want contact:

- Making unwanted visits, sending you unwanted messages (voicemails, text messages, emails, etc.) or sending you unwanted items
- Following you, including installing GPS tracking software on your car or cell phone without your knowledge or consent.
- Checking up on you constantly.
- Embarrassing you in public.
- Refusing to leave when asked.

## H. Dating violence

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 Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

## I. Physical Assault

Physical assault is a purposeful action meant to threaten or endanger the health or safety of any person. Examples include, but are not limited to, fighting, pushing, kicking, punching, hitting with or throwing an object at, or biting. This behavior is typically treated as a violation of the Student Conduct and the Employee Handbook. When these acts occur in the context of domestic or dating violence or when the behavior is perpetrated on the basis of sex or gender, the misconduct will be resolved under the College of Saint Mary Sexual Misconduct, Harassment, Relationship Violence and Stalking Policy.

## J. Retaliation

Retaliation is any act or attempt to retaliate or seek retribution against any individual or group of individuals involved in the report, investigation and/or resolution of an allegation of sexual misconduct or harassment. Forms of retaliation include intimidation, threats, pressuring, harassment, continued abuse or violence, slander and libel, or preventing participation in college activities or proceedings. Retaliation can be committed by any individual or group of individuals, not just a Complainant. Retaliatory conduct by community members and third parties is prohibited regardless of whether it occurs on or off campus, in person, or through social media, e-mail, or other forms of communication.

CSM expressly prohibits any form of retaliatory action against any individual involved in a complaint under this policy or for assisting in an investigation. 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 does 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.

## K. Violations of campus no contact orders

Violations of campus No Contact orders are a violation of this policy. Suspected violations of a no contact order will be handled separately through different processes depending on whether a student or employee is suspected of the misconduct.

## L. Other Campus Code Violations

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.

## IV. Other Important Concepts and Definitions

### A. Hostile Environment

Hostile Environment is when sexual harassment is so severe, pervasive and objectively offensive that it effectively 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.

### B. Consent

Consent must be communicated clearly, either verbally or non-verbally, through an outward demonstration signifying a person has chosen to engage in specific sexual activity. 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 incapacitated by 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. Consent cannot be inferred from the absence of a "no" and may not be inferred from silence, passivity, lack of resistance, or a lack of an active response (e.g. freezing or being physically unable to communicate). Past consent does not imply future consent. Consent can be revoked at any time. The presence or absence of consent is based on the totality of the circumstances.

Consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, or coercion. Sexual activity accompanied by coercion or force is not consensual.

### C. Coercion

Coercion is present when an individual is compelled by another individual to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, implied threats of physical harm, or blackmail which places a person in fear of immediate harm or physical injury. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion is more than persuading an individual to engage in sexual activity. For the use of pressure to result in coercion, the amount must be unreasonable. This is more than an effort to persuade, entice, or attract another person to gain sexual access. Factors include the frequency, intensity, degree of isolation of the person being pressured, and the duration of the pressure. Coercing an individual into engaging

in sexual activity violates this policy in the same way as physically forcing someone into engaging in sexual activity.

#### D. Force

Force refers to the use or threat of physical violence and/or imposing on someone physically to engage in sexual contact or intercourse. Force can also include threats, intimidation (implied threats), or coercion used to overcome resistance.

#### E. Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because they lack conscious knowledge of the nature of the act. Incapacitation is the inability, temporarily or permanently, to make rational, reasonable judgments. An individual is incapacitated, and therefore unable to give consent, if they are asleep, unconscious, or otherwise unaware that the sexual activity is occurring.

Incapacitation may result from the use of alcohol and/or drugs. Incapacitation is a state beyond drunkenness or intoxication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person; however, warning signs that a person may be approaching incapacitation includes slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, loss of consciousness, or emotional volatility.

The test for whether a person should know if another individual is incapacitated is whether a reasonable person in the same position knew or should have known of the Complainant's incapacitation.

Being intoxicated or impaired by drugs or alcohol is not an excuse for sexual harassment, sexual violence, stalking, intimate partner violence, or other sexual misconduct and does not diminish one's responsibility to obtain informed and freely given consent.

#### F. Preponderance of the Evidence

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.

### **V. Privacy and Confidentiality**

CSM is committed to protecting the privacy of all individuals involved in a report of sexual misconduct, including sexual harassment, sexual violence, stalking, or intimate partner violence. All CSM employees who are involved in the college's Title IX response, including investigators, Title IX Designees, and Appeals Authority receive specific instruction about

respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report. Such a review is essential to protecting the safety of the Complainant, Respondent, and the broader campus community and to maintaining an environment free from sex discrimination and gender-based harassment. Privacy and confidentiality have distinct meanings under this policy.

#### A. Privacy

Privacy generally means that information related to a report of misconduct will only be shared with a limited group of individuals. The use of this information is limited to those college employees who “need to know” in order to assist in the active review, investigation, provide supportive measures, or resolution of the report. While not bound by confidentiality, these individuals will be discreet, and respect the privacy of all individuals involved in the process. The Title IX Coordinator will determine which employees have a “need to know.”

At no time will CSM release personally identifying information of the Complainant to the general public without the express consent of the Complainant. The release of the Complainant or other necessary parties’ personally identifying information to the general public is guided by Family Educational Rights and Privacy Act (FERPA) and the Jeanne Clery Act. However, CSM may share non-identifying information about reports received in aggregate form, including data about outcomes and sanctions.

Under this policy, all CSM employees, who are not specifically designated as confidential resources, are required to share reports of sexual violence, harassment, dating/domestic violence, or stalking with the Title IX Coordinator. This includes faculty; staff; coaches; security officers; and RAs. In general, CSM employees do not have legally protected confidentiality. Only the Director of Counseling can offer confidentiality to individuals who are not ready to report to the Title IX Coordinator.

A CSM student, faculty, or staff who has a complaint against another CSM community member involving allegations of conduct prohibited by this policy should contact the Title IX Coordinator.

#### B. Confidentiality

Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others or as otherwise required by law. The only CSM employee that can offer confidentiality is the Director of Counseling. Off campus confidential resources are available and are listed in this policy. The Title IX Coordinator, in some circumstances, may offer confidentiality which is described below.

In general, CSM employees do not have legally protected confidentiality, with the exception of the campus counselor. Therefore, all other employees who receives a report of sexual assault or harassment is required to share the report with the Title IX Coordinator.

### C. Responsible Employees

A “Responsible Employee”, under Title IX, is an employee: who has the authority to take action to redress sexual or gender-based harassment or violence; has the duty to report to appropriate school officials sexual or gender-based harassment or violence; or an individual who could reasonably be thought to have the authority or responsibility to take action.

The University is on official notice if the Title IX Coordinator or other responsible employee has actual knowledge of alleged sexual harassment that has occurred within the schools education program or activities. This includes incidents that are reported directly, are witnessed, or are reported by a third party (parent, other student), etc. All of these should be reported to the Title IX Coordinator immediately.

In all cases of reported sexual violence, sexual harassment, stalking, or domestic/dating violence that occurs on campus or at a campus event, the CSM President will be notified of the situation, however, all personally identifying information will be withheld.

### D. Request for Confidentiality

Where a Complainant requests from the Title IX Coordinator that a name or other identifiable information not be shared with the Respondent or that no formal action be taken, the Title IX Coordinator 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 Complainant’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 Complainant or others;

- Whether the sexual violence was committed by multiple perpetrators;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the Complainant 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 Complainant’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 Complainant’s request for confidentiality.

If the University determines that it cannot maintain a Complainant’s confidentiality, the University will inform the Complainant 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 Jeanne Clery Act, the University has a legal responsibility for documenting and providing statistics of reported incidences of sexual assault and other crimes to the U.S. Department of Education. The information contained in a “Clery report” only tracks the number of Clery reportable offenses. All personally identifying information will be removed from the statistical report.

#### E. Timely Warnings

If a report of misconduct discloses a serious, immediate or continuing threat to the CSM community, the college may issue a campus wide timely warning or notification (which may take the form of an email, text or other electronic communication to community members) to protect the health or safety of the community and to heighten safety awareness. A timely warning may include a campus wide notification for a report of sexual assault, stalking, and intimate partner violence on campus. The timely warning will not include any identifying information about the Complainant. The college reserves the right to send campus wide notifications on any report of sexual misconduct.

## VI. Resources

CSM recognizes that deciding whether to make a report, either to the university or law enforcement, and choosing how to proceed can be difficult decisions. The university encourages all individuals affected by sexual misconduct to seek the support of campus and community resources. These professionals can provide guidance in making decisions, information about available resources and procedural options, and assistance to either party in the event that a report and/or resolution under this policy is pursued. Individuals are encouraged to use all available resources on and off campus, regardless of when or where the



incident occurred. A list of these resources are provided in writing to all students and employees and made readily available.

A. Confidential Counseling

If you are uncertain whether you want to report or you are want to speak confidentially to a trained professional, the following are excellent resources we encourage you to contact.

CSM Director of Counseling Services

402-399-2374

*Provides free on campus short term counseling services to all students.*

Women's Center for Advancement (WCA)

3801 Harney St. / 402-345-6555

Hotline 402-345-7273 or email DirectSupport@wcaomaha.org

*Provides free counseling, victim advocacy, legal assistance and more to victims of domestic violence, sexual assault, human trafficking and stalking.*

Bergan Mercy- One Professional Center- Counseling Assistance Program (CAP) and Employee Assistance Program (EAP)

7710 Mercy Rd. / 402-398-5566 or (888) 847-4975

*CSM partnership that provides counseling services and referrals for more specific behavioral health needs for students and employees of CSM.*

Project Harmony

11949 Q St. / 402-595-1326

Report Child Abuse 1-800-652-1999

*A child advocacy center dedicated to ending the cycle of abuse. Comprehensive services for children and their families including immediate crisis counseling, case coordination, advocacy and medical exams for your child.*

B. Campus Safety and Law Enforcement

CSM Safety and Security has established a solid working relationship with the Omaha Police Department and are here to help keep you safe.

CSM Safety and Security

Walsh 319 / 402-670-8848\* or dial 1 from any campus phone. 24 hour assistance

*CSM Safety officers provide a safe walk program to help you feel safe on campus at all times. They can also help inform you of your rights and enforce no contact orders should you need assistance.*

Omaha Police Department (OPD)

*For emergency help or to file a report call:*

911

*General information*

*505 S. 15th St. / 402-444-5600*

C. 24/7 Confidential Crisis Services- Call, Text, or Chat online

All services are free and available 24 hours, 7 days a week in convenient and confidential manners to provide you support when you need it the most.

Crisis Text Line

Text HOME to 741741

*Free confidential texting service available 24/7.*

Trevor Project

1-866-488-7386

Text START to 678678

*Free LGBTQ resource for crisis intervention provided 24/7. Available to chat online.*

Rape, Abuse and Incest National Network

1-800-656-4673

*National Sexual Assault hotline and online chat. Also available in Spanish and free for everyone.*

D. Other Helpful Resources

CSM Student Financial Aid- Express Center

1<sup>st</sup> Floor Walsh Hall, the Express Center is open Monday through Thursday from 8 a.m.—5:30 p.m. and Friday from 8 a.m.—5 p.m.

402-399-2429

Immigrant Legal Center (ILC)

4223 Center Street

402-898-1349 or info@immigrantic.org

*ILC continues to provide free legal services to immigrants who have incomes below 150% of the federal poverty guidelines.*

Nebraska Immigration Legal Assistance Hotline (NILAH)

Monday-Friday 9am-3pm

1-855-307-6730

*A confidential centralized hotline that provides resources and referrals for those in need of immigration legal assistance.*

Catholic Charities of Omaha - Immigration Legal Assistance Services

5211 S. 31st Street

402-939-4615

*Offers quality bilingual legal immigration assistance services at a low to no cost.*

Legal Aid of Nebraska

209 S. 19th St., Suite 200

402-348-1069

*Legal Aid seeks to empower individuals to take action on their own behalf and increase the likelihood of achieving a positive legal outcome by providing the knowledge and resources to help people understand and navigate the civil legal system.*

Vine

*Free and confidential victim notification network will notify you of an offender's custody information. You can also download the app, VINElink and receive updates via phone, email or text.*

MyPlan

*Free phone app that can help you or someone you care about identify if they are experiencing relationship abuse, how to navigate it, make a safety plan and provides access to resources.*

E. Medical Resources in the Event of Sexual Violence

Individuals are encouraged to seek medical care to assess and address their healthcare needs. When seeking care, you have the option of requesting your care be provided under the State of Nebraska's Victim Compensation Fund.

Local Omaha hospitals offer immediate services to victims of sexual assault and domestic violence 24 hours per day, 7 days a week. Sexual/Domestic Assault Nurse Examiners (SANE) are nurses who have received special training in the collection of forensic evidence in sexual assault and rape cases. Completing a forensic examination does not require an individual to file a police report but would help preserve evidence in case the individual decides to file a police report at a later date.

The nearest medical facilities to campus is:

Bergan Mercy Medical Center- CHI Health

7500 Mercy Rd/ (402) 398-6161

*Bergan Mercy provides a team of Sexual/Domestic Assault Nurse Examiners (SANE) to respond to any of the 5 emergency departments in its health system. SANE seek to reduce the physical and psychological trauma by additionally collaborating with interdisciplinary community response teams.*

Methodist Hospital

8303 Dodge St. / 402-354-4424 \*24 hour hotline

*Methodist has a survivor program adjacent to the Emergency Department that provides a team of specially trained professionals: Sexual/Domestic Assault Nurse Examiner (SANE), Physician, Victim Advocate and Law Enforcement Officer. Teams respond to all Methodist hospital locations.*

There may be legal options available if the sexual misconduct offense is also a crime in the state or locality in which the incident occurred. These options are available solely at the discretion of the Complainant, who has the right to file a report and/or pursue charges at any time.

The preservation of evidence may assist in proving that the alleged criminal offense occurred or that may be helpful in obtaining a protection order.

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. Evidence includes DNA that can be collected from clothing, skin, hair, underneath nails, etc.
- 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 Complainant 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.

## **VII. Reporting Prohibited Conduct**

CSM is committed to providing a variety of accessible means of reporting sexual misconduct so that all instances of sexual violence or harassment will be reported. The Title IX Coordinator is specifically charged with coordinating CSM's efforts to comply with Title IX responsibilities to

include responding to allegations of sexual misconduct or harassment to stop the conduct, address its effects, and prevent its recurrence.

#### A. Campus Reporting

There are several ways to report possible acts of sexual misconduct or harassment.

- Report to the Title IX Coordinator directly in Walsh Hall Room 295
- Send an email to [TitleIX@csm.edu](mailto:TitleIX@csm.edu)
- Call Title IX Coordinator at 402-399-2664
- Use the online form at <http://www.csm.edu/TitleIX>

#### B. Reporting to Law Enforcement

The Complainant has the right to choose whether or not to notify law enforcement. If a Complainant chooses to report to law enforcement, campus authorities can assist, at the Complainant's request, in contacting local law enforcement and will cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law. Except where the Complainant is less than 19 years old, the university will respect a Complainant's choice whether or not to report an incident to local law enforcement, unless the university determines that there is an overriding issue with the safety or welfare of the CSM community. A Complainant has the right to decline to participate. When a report involves suspected abuse of a minor under the age of 19, the university is required by state law to notify the state Department of Health and Human Services (DHHS).

CSM's policy, definitions, and standard of proof may differ from Nebraska criminal law. A Complainant may seek a resolution through CSM's Title IX process, may pursue criminal action, may choose one but not the other, or may choose both. Neither law enforcement's decision whether or not to prosecute, nor the outcome of any criminal prosecution are determinative of whether sexual harassment, sexual violence, stalking, or domestic/dating violence has occurred under this policy. Proceedings under College of Saint Mary Sexual Misconduct, Harassment, Relationship Violence and Stalking Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Individuals are not required to file a criminal complaint.

#### C. Anonymous reporting

Any individual may make an anonymous report concerning an act of sexual violence 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 online form at <http://www.csm.edu/student-life/student-support/title-ix>.

Another person may also report an assault anonymously on behalf of the Complainant. 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.

#### D. False Reports

CSM takes validity of information very seriously since a charge of sexual misconduct 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.

#### E. 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.

### **VIII. Amnesty for Alcohol or Drug Use**

CSM seeks to remove any barriers to reporting. An individual who reports sexual harassment, sexual violence, stalking, and domestic and dating violence either as a Complainant or a third party, 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, provided that any such violations did not and do not place the health or safety of any other person at risk. CSM may, however, initiate an educational discussion or pursue other educational or therapeutic remedies regarding alcohol or other drugs for those individuals.

### **IX. Reporting Considerations: Timeliness of Report and Location of Incident**

Complainants and third party witnesses are encouraged to report sexual misconduct and harassment as soon as possible in order to maximize CSM's ability to respond promptly and effectively. CSM does not, however, limit the timeframe for reporting. If the Respondent is not a student or employee, the College will not be able to take action against the Respondent

under Title IX, but it will still seek to provide support through other campus and community resources.

The Title IX requirements and procedures 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.

## **X. University Procedures for Responding to Reports of Prohibited Conduct**

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

### **A. Initial Assessment**

Upon receiving information about a potential violation of this policy, the Title IX Coordinator will first determine whether or not the information provided 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 notice of the alleged misconduct. 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 a written notification which will include:
  - ✓ Information about on and off-campus resources
  - ✓ The right to contact law enforcement and seek medical treatment
  - ✓ The importance of preservation of evidence
  - ✓ An explanation of the rights and options under the Title IX disciplinary process
  - ✓ The range of interim supportive measures
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding
- Provide information on how to obtain orders of protection issued by a criminal, civil, or tribal court

- Explain the University’s policy prohibiting retaliation
- 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.

## B. Interim Supportive Measures

In all cases of alleged sexual misconduct or harassment, regardless of whether the Complainant wishes to pursue CSM disciplinary action or report to law enforcement, CSM will undertake an appropriate inquiry and take prompt and effective action to support and protect the Complainant. The purpose of interim supportive measures is to avoid depriving any student or employee of their right to an education, safe work environment, and safe college community. These actions may include:

- **No Contact Orders:** The Title IX Coordinator may request from the University a no-contact order which typically will include a directive that the Complainant and Respondent refrain from having intentional contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation. A violation of a CSM no contact order is a violation of this policy. CSM can assist with obtaining other state issued protective orders as well.
- The State of Nebraska has multiple types of Protection Orders and a confidential victim advocate can help provide you with further information on this process. To request an advocate, please contact the Women’s Center for Advancement hotline at, 402-345-7273. If a state issued protection order or no contact order has been obtained that has implications for the Complainant's or Respondent's participation in employment, educational programs and activities, or other University activities or programs, the University will assist with implementation.
- The Title IX Coordinator may coordinate other supportive measures that are reasonable and appropriate, including, without limitation:
  - ✓ Addressing academic concerns with the appropriate University officials (e.g. assignments, grades, withdrawal, leave of absence, alternative course completion, alternative internship or field placement, modify class schedule)
  - ✓ Safety planning
  - ✓ Changing on campus housing
  - ✓ Changing a work or job assignment/schedule
  - ✓ Providing on-campus escort to help ensure safety on campus
  - ✓ Imposing interim leave or suspension
  - ✓ Assistance contacting community resources, such as Heartland Family Services, or other support services
  - ✓ Guidance and support with filing a report through the criminal justice system
  - ✓ Provide information on transportation options such as CSM 2 Go and Heartland Bike Sharing memberships



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. For further information please contact the Title IX Coordinator, Jessica Hochstein at (402) 399-2664.

Regardless of whether the alleged offense cites a possible Title IX violation, CSM will provide information about the student or employees' rights, options, and on and off campus resources when any report of sexual harassment or sexual violence is received by CSM.

The Title IX Coordinator will offer interim supportive measures to the Respondent as well, once notification is given. 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. When requesting or coordinating supportive measures for either party, the Title IX Coordinator may disclose the name of the Complainant or Respondent and other supporting information on a "need to know" basis and only to the extent necessary to obtain the requested support. In addition, the Title IX Coordinator will maintain as confidential any accommodations or protective measures provided, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide accommodations or protective measures.

#### C. Withdrawal of Complaint

Prior to the completion of the resolution options described in this policy, the Complainant may withdraw the sexual misconduct complaint. Withdrawal of the complaint will, in most circumstances, end any investigation or process taking place under this policy. CSM reserves the right to move forward with a complaint, even after the Complainant withdraws it, in order to protect the interests and safety of the college community.

## **XI. Disciplinary Procedures**

All proceedings under this policy will include a prompt, fair, and impartial process from the initial investigation to the final result. CSM applies a presumption of innocence throughout the disciplinary process. The burden of proof is on the University to prove a finding of responsibility.

#### a. Informal Resolution

An option available to students, faculty, and staff is to seek a voluntary, informal resolution. This option is available only after a formal complaint is filed and the Respondent has been notified of the complaint and given full disclosure of the allegations and their options. An informal resolution can be voluntarily entered any time prior to a final determination. The parties must provide written consent to participate in the informal process. Either party may

withdraw from the informal resolution process and resume the formal process at any time prior to a resolution being reached.

The parties to any such informal resolution 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 Appellate Authority, who is the Provost. An informal resolution is not available in any case where an employee is accused of sexually harassing a student. An informal resolution does not preclude an employee's supervisor from taking disciplinary actions, if necessary. Student misconduct that is addressed using the informal resolution process may still be addressed through the Student Judicial System

#### b. Formal Resolution Process

A Complainant may initiate the formal resolution process by filing a "formal complaint" with the Title IX Coordinator which must be in writing. The formal complaint must include the allegations against the respondent and request the school to investigate the allegation. The formal complaint must include an original signature or digital signature.

Once a formal complaint is made, the College must provide written notice to the parties of the investigation. The written notice must describe the process to be utilized and disclose sufficient details regarding the complaint, including, if known, the identities of the parties, the conduct at issue, and the date and location of the alleged incident. This written notice must also include a statement that the Respondent is presumed not responsible and that a determination will not be made until the conclusion of the grievance process. The notice must also advise the parties of their right to an advisor of their choice, who may be an attorney. The notice should apprise the parties of the prohibitions against making false statements and retaliation.

When initiating a formal resolution following a formal complaint, the Title IX Coordinator may consolidate multiple complaints involving different persons when they arise from the same facts or circumstances.

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. . At the discretion of the Title IX Coordinator, other non-Title IX violations may be handled separately through different processes or within the Title IX disciplinary procedure if actions are connected to the Title IX offense.

In situations that require CSM to proceed with Title IX disciplinary procedures without a Complainant, the Title IX Coordinators can initiate a formal complaint against the Respondent on behalf of the University. Where the Title IX Coordinator signs a formal complaint, the Title IX

Coordinator is not a Complainant or a party during the disciplinary process. The act of initiating a formal complaint in absence of a Complainant does not create a conflicts of interest or bias.

The Title IX Coordinator will appoint an investigator to begin an investigation. The Investigator will be selected from the Title IX trained designees, who have received annual training through seminars and webinars on the issues related to dating violence, domestic violence, sexual assault and stalking, as well as how to conduct an investigation. 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 whether the conduct violated the University's policy definitions for sexual misconduct. Once a decision has been made to open an investigation, the Title IX Coordinator must provide a written "Notice of Investigation" to the Respondent listing the potential violation with sufficient details and with sufficient time to prepare a response before the initial interview with the Investigator. The Respondent will be informed of the prohibition against retaliation and instructed not to destroy any potentially relevant documentation or evidence in any format. If the Respondent refuses to meet or cooperate with the investigation or with the Title IX Coordinator, the investigation will proceed without input from the Respondent.

The investigator will take steps to complete the investigation within a reasonably prompt timeframe once an investigation is opened. Although Investigations will occur as quickly as possible, 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 can 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.

If the scope of the investigation expands, the Title IX Coordinator must issue a supplemental written notice to the parties that meet the requirements in the initial notice.

At any point during the investigation, if it is determined that the conduct alleged, if assumed true:

- Does not constitute sexual harassment;
- Did not occur in the College's education program or activity; or
- Did not occur against a person in the United States

then the College *must* dismiss the complaint for purposes of its Title IX grievance procedure. However, the conduct may be addressed through other CSM policies and procedures.

During the investigation, the College *may* dismiss a formal complaint at any time if:

- The Complainant would like to withdraw the complaint;
- The Respondent is no longer enrolled or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient evidence to reach a determination.

The Title IX Coordinator will provide written notice of a dismissal (mandatory or discretionary) to the parties and the reason for the dismissal.

During the investigation, the burden of proof and the burden of gathering evidence rests on the College, not the parties. The College may not access either party's health, psychiatric, or counseling records without consent. In addition, the parties must have equal opportunity to present witnesses, including both fact and expert witnesses, together with any inculpatory and exculpatory evidence. The College may not restrict the ability of either party to discuss the allegations or to gather and present relevant evidence. As a result, it is impermissible to prohibit the parties from communicating with witnesses.

The Title IX Coordinator will provide written notice to the parties and witnesses of any interview, meeting, or hearing that the individual is expected to attend, with sufficient time for the party to prepare to participate, to include: the date, time, and location; the participants; and the purpose.

In general, in a case where the Respondent raises consent as a defense, any prior consensual relationship between the parties may be deemed relevant to assess the manner and nature of communications between the parties, but is not necessarily determinative. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Generally, prior sexual history of either party will not be considered relevant to an investigation. However, in limited circumstances, such as pattern evidence, it may be relevant in the determination of responsibility or, in the case of Respondent, the determination of a sanction. Additionally, a prior finding (post appeal rights) of responsibility for a similar act of sexual misconduct will always be deemed relevant and may be considered in making a determination as to responsibility and/or assigning of a sanction.

At the conclusion of the investigation, the investigator will prepare a written investigative report summarizing the relevant facts determined through the investigation, referencing any supporting documentation or statements. The investigation report shall consist of:

- History of the case
- Policy violations being investigated
- Standard of Proof
- The Complaint
- The Response
- Summary of interviews conducted

- Summary of additional evidence collected (relevant photographs, physical evidence, electronic records, documents, records, and reports etc)
- Negative Inquiries (information requested, but unable to obtain)
- Evidence or witnesses provided by either party
- Summary of facts not in dispute
- Summary of facts that are in dispute
- Optional Responses (Additional responses from the parties after they have seen the preliminary report)

The investigator will present the report to the Title IX Coordinator who will ask for feedback and comment from both parties and their advisors. The Complainant and Respondent each have 10 days following the receipt of the report to write a response to it, if they so wish. Responses will be included with the final report. Upon receiving feedback and comment, the Title IX Coordinator will review the report and supplemental information. The Title IX Coordinator may request assistance in reviewing the report from other Title IX Designees, except the Investigator. The Title IX Coordinator and Title IX Designees, when requested, will review it to determine whether or not there is adequate information available to proceed to a conduct hearing. The Title IX Coordinator may request that additional information be gathered in order to make an appropriate determination.

Should a determination be made that the information gathered warrants a Conduct Hearing, the complete report, with party responses, will be sent forward to the hearing panel for adjudication. The Title IX Coordinator will provide finalized investigation reports to the parties and their advisors. The report must be provided at least 10 days prior to the hearing.

### 1. Conduct Hearing

The Conduct Hearing is not an investigative hearing. It is a deliberative hearing in which the Hearing Board will weigh the information provided and will accept it as fact, or not. The Conduct Hearing is a closed hearing; it is not open to the public. The individuals who may appear before the Conduct Hearing Board are: the Complainant, the Respondent; any individual serving as an approved Advisor; the Title IX Coordinator; and any individuals appearing as witnesses. Due to the sensitive nature of these cases, either party participating in the hearing will have the opportunity to do so without having to physically be in the same room. The concerned party can have the ability to call-in from an alternate on-campus location through the use of Zoom or other video conference system that allows for live, simultaneous video and audio of all participants.

Before and after giving testimony, witnesses may be excluded from the room or building where the hearing occurs.

All parties involved in a hearing are required to keep all information learned in preparation for the hearing, and at the hearing, private. No copies of documents provided are to be made or

shared with any third parties. Any breach of this duty is subject to further disciplinary action by the College.

The Hearing Board will be comprised of a three-person panel drawn from the Senior Leadership Team of the College (2 people) and an outside attorney (1 person), who are trained in hearing Title IX cases. The outside attorney will be Chair of the Hearing Board. The Complainant and Respondent will have the opportunity to state whether they feel a Board member should not participate in the panel due to bias or any other reason which would prevent them from making a fair assessment of the evidence. The final decision on any such requests for recusal will be made by the Title IX Coordinator. This panel will hear the case and determine, based on the preponderance of the evidence, whether there has been a sexual misconduct policy violation by the Respondent. A majority of two votes is necessary for a positive or negative finding of responsibility in a Title IX case. If the Respondent is found responsible, then the same panel will also determine the sanction(s).

The Hearing Board must review the Title IX Investigator's report containing all pertinent information regarding the incident in question prior to the date of the Conduct hearing. Additional relevant information may be offered in the form of written statements, documents, items, or oral information from the Complainant, the Respondent, and witnesses to the Hearing Board. Cross-examination of the parties and witnesses may be allowed by the party's advisor, not by the party personally.

Notes may be taken by the participants in the hearing solely for their personal use. There will be a single verbatim recording made of the hearing which shall be the sole property of the Title IX Coordinator, and this recording will be available only for review by the Complainant, Respondent, or the College for the purpose of an appeal. The recording will not be released to any party nor will the Title IX Coordinator make copies. If copies are requested, the party interested must supply a transcriber at their cost to transcribe at the College under the supervision of Title IX Coordinator or his/her designee. The recording will be maintained with the student conduct record. It will be discarded with the entirety of the record following the institutions record retention guidelines.

A hearing will be called to order by the Hearing Board Chair. The Chair will orally explain the hearing process and will provide an opportunity for all parties to ask procedural questions prior to initial statements and the presentation of information.

The Investigator will provide a summary of the investigation report. The Hearing Board, Complainant, and Respondent may make inquiries of the Investigator at this juncture. The Complainant may supplement the information provided to the Hearing Board with a brief statement. This is not intended to be a retelling of the event. The Hearing Board and Respondent may pose questions to the Complainant. Questions from the Respondent must be asked by the Respondent's advisor, who will then ask the Complainant directly.

Generally, questions concerning Complainant's prior sexual history is not permitted, subject to exceptions under the rape shield provisions of the Federal Rules of Evidence

After the Complainant is finished, the Respondent will be given an opportunity to make a brief statement. This is not meant to be a retelling of the event. The Hearing Board and Complainant may pose questions to the Respondent. Questions from the Complainant must be asked by the Complainant's advisor, who will then ask the Respondent directly.

The Hearing Board may hear from witnesses on behalf of the Complainant and the Respondent. Each witness will be questioned by the Hearing Board, and the advisors of the Complainant and the Respondent. Neither Party may cross examine witnesses personally.

If a party or a witness refuses to submit to cross examination, the Hearing Board is required to ignore that person's statement and reach a decision based on the remaining relevant evidence.

At the conclusion of the presentation of all witnesses, the Complainant and Respondent will each be given a brief final opportunity to address any outstanding issues of fact.

At the conclusion of this process, the Hearing Board will excuse everyone from the room and deliberate. At the conclusion of their deliberations, the Hearing Board must issue a written determination of responsibility applying the preponderance of evidence standard. The written determination must include:

- Identification of the allegations at issue;
- Description of the procedural steps taken throughout the case;
- Findings of fact supporting the determination;
- Conclusions regarding application of the Sexual Misconduct Policy;
- A statement and rationale as to the determination of each allegation;
- A statement of any disciplinary sanctions and whether any remedies will be provided to the Complainant; and
- A description of the procedures and permissible grounds for appeal

The parties will receive the written determination simultaneously. The written determination will be final upon the earlier of when: (1) the parties are notified of the determination on appeal; or (2) the time to file an appeal has passed with neither party appealing.

In the event that the University chooses to pursue a Conduct Hearing without a Complainant in order to protect the interests and safety of the University community, the Title IX Investigator will take the role of the Complainant during the hearing. Since the Investigator is not an actual party to the complaint, the Investigator may cross examine the Respondent and other witnesses and will not be provided an advisor.

## **XII. Role of Advisor or Support Person**

During a formal resolution process, the Respondent and Complainant can each be accompanied by one advisor of choice who may assist, advise, and support the person throughout the formal resolution process/investigation. An advisor may be present for related meetings or interviews but cannot actively participate. The choice whether or not to invite an advisor is solely that of the Complainant and Respondent. An advisor may not participate in the formal investigative process in any other capacity in reference to the same incident, including, but not limited to, serving as a witness, co-Complainant, or co-Respondent. If the advisor of choice is a College faculty or staff member, the College will not require the individual to serve as an advisor. However, if the individual voluntarily accepts the role as advisor, the College will support the decision.

The Complainant/Respondent is encouraged to provide the contact information of the Title IX Coordinator to their advisor of choice in advance of the meeting or interview. The Title IX Coordinator must be advised in writing that an advisor will be present at least 48 hours before the scheduled meeting or interview. This notification must include:

- Full name and title of the advisor of choice
- Contact information for the advisor of choice (phone, email and address)

If the advisor is an attorney, this must be disclosed to the University in advance. The University reserves the right to have its own legal counsel present during meetings and interviews.. If any advisor's conduct is not consistent with the guidelines in this policy, he or she may be excluded from the formal resolution process.. The availability of an advisor to attend meetings or interviews shall not unreasonably interfere with or delay the proceedings.

During a live disciplinary hearing, cross examination must be conducted directly, orally, and in real time by the party's advisor and never by the party personally.

If either party is unable to obtain an advisor, the College will provide one free of charge for the purpose of conducting cross examination for the party. The advisor provided does not have to be an attorney.

## **XIII. Appeals**

Both the Complainant and the Respondent have the right to appeal. 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 Provost of the University. Notification of the appeal will be given to the non-appealing party and allowed to submit a written response within seven (7) days. Neither the Complainant nor the Respondent will be entitled to a hearing in connection to the appeal.



The appeal will be conducted in an impartial manner by the Provost, who has received annual training from the Title IX Coordinator on the Title IX process and concepts that promote fairness and accountability. In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination is presumed to have been decided reasonably and appropriately. The appeal is not a de novo review of the underlying matter. The decision shall affirm the original findings of the Hearing Board unless the Provost sustains one of the grounds for appeal in which case the Provost will refer the case to the Title IX Coordinator for further action as appropriate.

Dissatisfaction with the findings is not grounds for appeal. Appeals may be based only on one or more of the following grounds:

- Procedural error (failure to follow proscribed policy and/or procedures) that may have had a prejudicial effect upon the outcome of the proceedings;
- New evidence that was discovered after the investigation was completed and could not have been discovered previously that may have an effect upon the outcome of the proceedings; or
- Evidence of conflict of interest, bias, fraud or misconduct on the part of the investigator, Title IX Coordinator, or the Hearing Board members in charge of making the decision and sanctions.

The Provost will review any appeal statements provided the Complainant and Respondent, the recording of the original hearing, and any supplemental information gathered during the original hearing

The Provost has the option to uphold the original decision and sanction, institute a modified decision and/or sanction, or request the case be reheard in its entirety. The latter will only be utilized in cases with significant procedural lapses that impacted the decision-making of the original Hearing Board.

Both parties will be informed simultaneously in writing of the outcome of the appeal within fourteen (14) calendar days by which all requested information is received unless the Title IX Coordinator determines that additional time is required. The written appeals decision must describe the appeal and the rationale for the result. The decision of the Provost upon an appeal shall be final.

#### **XIV. Potential Sanctions**

An individual found responsible for violations of this policy will face a range of sanctions. Sanctions depend upon the severity of the incident and take into account any previous incidences. Potential sanctions are as follows:

- Imposition of an on-campus "no-contact order"

- Loss of privileges to use campus housing and facilities to include Lied Fitness Center and Dining Hall
- Change in class schedule, work schedule, or job assignment
- Loss of privileges to participate in CSM functions, activities, facilities, or organizations.
- Being placed on University probation
- Required counseling or education
- Suspension or Expulsion, if a student
- Termination, if an employee
- Revocation of degree
- Campus ban
- Revocation of honors or awards
- Reprimand or written warning
- Required community service or other restorative action deemed appropriate
- Any other remedy which can be tailored to the involved individuals to achieve the goals of this policy.

## **XV. 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.

## **XV. Education and Prevention Programs**

As part of College of Saint Mary's commitment to preventing and eliminating crimes of sexual assault, domestic violence, dating violence, stalking and all other discrimination on the basis of sex, CSM will have educational programs designed to promote the awareness and prevention of sexual assault, domestic violence, dating violence, stalking and other forms of sexual misconduct. These educational programs are intended for incoming students and new employees, in addition to ongoing campaigns for students and employees. These programs will provide information on the following: relevant definitions of sexual assault, domestic violence, dating violence, stalking and consent; safe and positive options for bystander intervention when there is risk for sexual offense; information on risk reduction strategies to decrease perpetration and avoid potential attacks; empower individuals to promote safety and help change the culture; warning signs of abusive behavior; overview of Title IX federal law; and a

summary of College of Saint Mary Sexual Misconduct, Harassment, Relationship Violence and Stalking Policy procedures and disciplinary proceedings.

The following section provides further details on specific ongoing prevention and education initiatives for students, faculty and staff.

A. Students

i. SafeColleges

This online prevention and education module is available for all students, however it is mandatory for all freshman, transfer and student athletes. SafeColleges provides primary and refresher courses on sexual violence awareness; policies, responses and rights within university's disciplinary proceedings, university procedures, information on healthy relationships, risk reduction, victim protections and bystander intervention.

ii. Bystander Intervention Training

This comprehensive Bystander Intervention Training is uniquely created to empower individuals to recognize and effectively address potentially harmful situations. The courses will help communicate that violence will not be tolerated and that everyone has a role in changing the culture. Bystander Intervention Training will be offered to the campus community 4 times a year and additional trainings are provided to clubs, other campus identified groups and by invitation of course instructors.

iii. Women's Center for Advancement

The Women's Center for Advancement is a community partner that offer ongoing prevention and education on the topics of sexual violence.

iv. Title IX Basics for Students

This presentation will provide an overview of Title IX federal law, important definitions and a summary of College of Saint Mary Sexual Misconduct, Harassment, Relationship Violence and Stalking Policy.

B. Campus Activities and Events

CSM hosts a variety of events and activities throughout the year to provide strong messages of awareness and prevention of sexual assault, domestic violence, dating violence and stalking. Activities and events occur during National Stalking Awareness Month, National Teen Dating Violence Awareness Month and Sexual Assault Awareness Month.

### C. Faculty and Staff

To promote and maintain a safe environment, faculty and staff will be strongly encouraged to engage in comprehensive, culturally competent, and trauma informed programming, activities and events being offered throughout the year.

#### i. Title IX Responsible Employee Training

All faculty and staff will receive “Responsible Employee” training during their first 30 days of new hire. This training will provide an overview of Title IX federal law, important definitions and a summary of College of Saint Mary Sexual Misconduct, Harassment, Relationship Violence and Stalking Policy procedures and disciplinary proceedings.

#### ii. Bystander Intervention Training for Employees

Bystander Intervention training will be made available upon request to faculty and staff who wish to participate. This training is designed to empower CSM faculty and staff to address potentially harmful situations and help create a community where violence will not be tolerated.

### D. Title IX Coordinator and Title IX Team

The Title IX Coordinator and the Title IX Team will receive annual and ongoing trainings in order to conduct and effectively respond to situations involving sexual assault, domestic violence, dating violence and stalking. These trainings can include, but are not limited to: information on the causes and effects of sexual assault, intimate partner violence and stalking; trauma-informed responses and investigations; neurobiology of trauma; cultural competency in cases of intimate partner violence; tactics of offenders; and review of student conduct code.

### E. Campus Safety and Security

CSM’s Campus Safety and Security will meet regularly to review campus responses and to engage in quarterly ongoing trainings on the topics of sexual assault, domestic violence, dating violence and stalking. These trainings can include, but are not limited to; information about relevant state and federal laws, ways victims respond to trauma, lethality assessments, tactics of offenders; and forensic interview techniques.

## **XVI. Amendments or Termination of this Policy**

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

## Appendix A: Survivor Bill of Rights

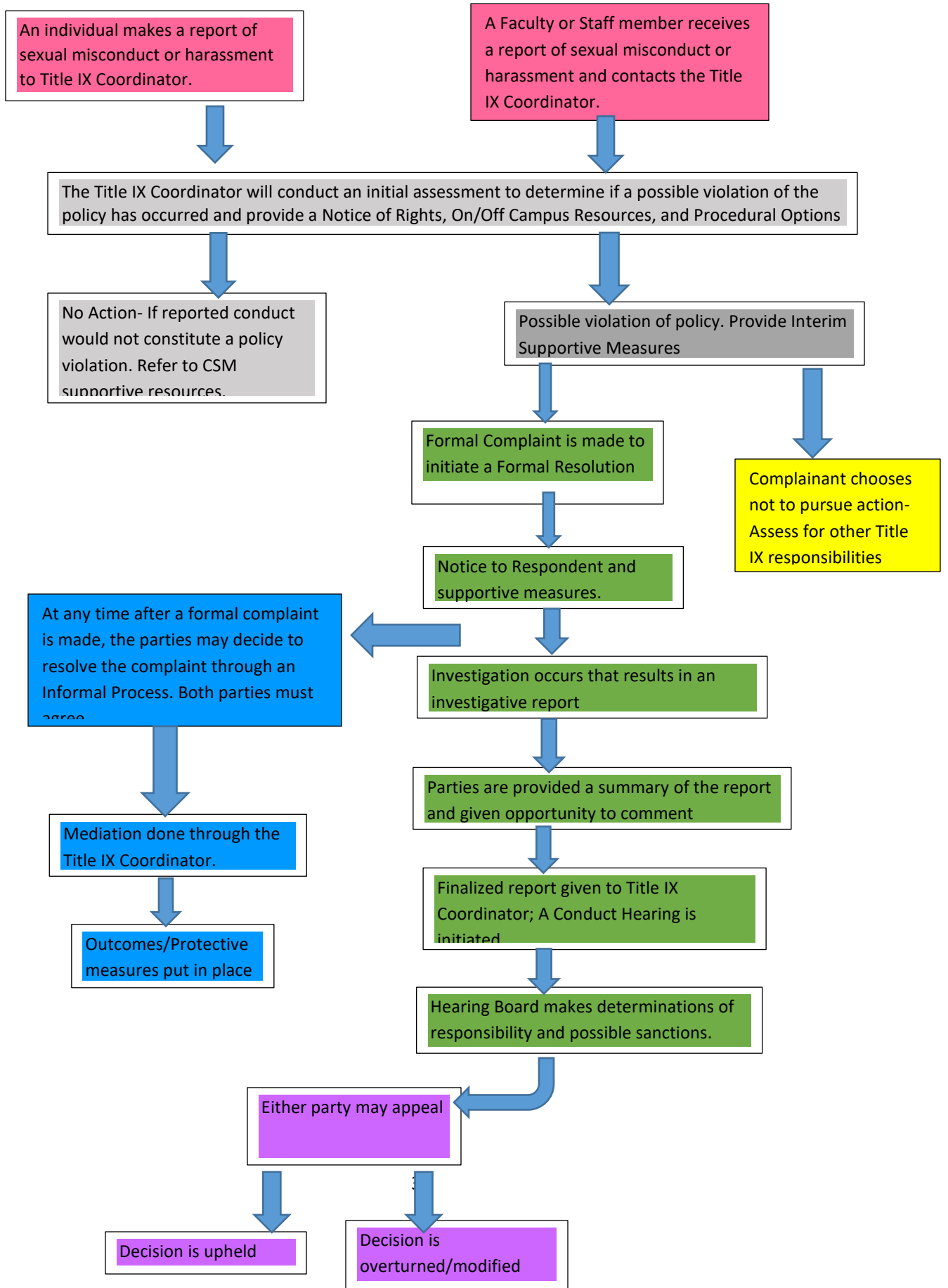
At the College of Saint Mary, we believe in the power of a careful education and are dedicated to providing an environment that calls forth potential and leadership. We recognize that the impact of violence on victims can be severe and long lasting. As such, we are committed to providing survivors of sexual assault, dating violence, domestic violence, and stalking with options, support and assistance to ensure that they can continue to participate in campus programs, activities and employment. All survivors of these crimes, regardless of race, color, religion, gender, gender identity, sexual orientation, age, pregnancy, ability and documentation status, have the following rights regardless of whether the crime occurs on or off campus.

College of Saint Mary Survivor Bill of Rights has been established to summarize the rights and help ensure that the needs of survivors are met.

### **Campus Survivor Rights**

- You have the right to live, learn and/or work in a community free from gender-based discrimination.
- You have the right to have your disclosure(s) of sexual assault, dating violence, domestic violence and/or stalking be treated seriously.
- You have the right to know that any disclosure of sexual assault, dating violence, domestic violence and/or stalking made to a university employee (with the exception of the Director of Counseling) may result in the private outreach from the Title IX Coordinator.
- You have a right to know that you have amnesty for drug or alcohol violations of CSM policy that occurred at the time of the incident.
- You have the right to know all of your reporting options, both on and off campus.
- You have the right to choose whether you wish to participate in any formal investigative process.
- You have a right to ask for and to receive appropriate interim support and reasonable protective measures to help you heal, live, learn and/or work at College of Saint Mary, regardless of your choice to file a report on or off campus.
- You have the right to be informed of the medical, counseling, crisis response, legal, campus disciplinary, pertinent local resources and/or victim advocacy services available through campus or community resources. You have the right to choose which services are appropriate for you.
- You have the right to be free from retaliation for seeking supportive services and/or choosing to report.

## Appendix B: Flow Chart for Title IX Complaint Procedures



Appendix C: Reporting Guidelines for Mandated Reporters

## Step 1

### Listen

LISTEN actively and be present.

ASK if the person is safe. See if they would like assistance contacting the police or if they require medical attention.

BELIEVE them and provide nonjudgmental support. Let them know it is not their fault and validate what they have been through.

THANK them for trusting you and sharing.

## Step 2

### Refer

PROVIDE them with the [Campus Survivor Bill of Rights](#).

SHARE with them [the on and off campus resource](#) hand out. Let them know they are not alone.

ADVISE them of accommodations they may be provided to help ensure their safety and equal access to their education and/or work place.

OFFER to check back in with them in a few days.

## Step 3

### Report

REVIEW their reporting options, both their right to file with law enforcement and their right to file with CSM.

EXPLAIN your obligation to report the *necessary* information to *only* the Title IX coordinator. This is to help ensure their safety and rights are being met.

CONTACT the Title IX coordinator to make the report:

Jessica Hochstein,  
Walsh 295, 402-399-2664, [titleIX@csm.edu](mailto:titleIX@csm.edu)

**Responsible Employees consist of *all* College of Saint Mary employees, with exception of the Director of Counseling Services. All students, faculty and staff who are employed by the school are mandated reporters.**