



ST. FRANCIS COLLEGE

THE SMALL COLLEGE OF BIG DREAMS

Office of the Dean of Students

ST. FRANCIS COLLEGE POLICY AND PROCEDURES FOR STUDENT SEXUAL MISCONDUCT COMPLAINTS

Your health, safety, and well-being are the college's primary concern. If you or someone you know may be the victim of any form of sexual misconduct, you are strongly urged to seek immediate assistance. Assistance can be obtained 24 hours a day, seven days a week, from:

- Local Police (84th Precinct) - call 911
- Brooklyn Women's Center - call (718) 748-1234
- Safe Horizon - (212) 227-3000
- Maimonides Medical Center Emergency Room, 4802 10th Avenue, Brooklyn, NY (718) 283-6000

During business hours (9 a.m. to 6 p.m., Monday through Friday), you are also strongly urged to contact the Dean of Students by telephone, at 718-489-5315, by email at deanofstudents@sfc.edu or in person at the Office of the Dean of Students, (Room 3307) as soon as reasonably possible to report any sexual misconduct you believe may have occurred. If it is after hours, you should contact the Security Desk at 718-489-5222. If you are a resident student, you may also immediately contact the Resident Director's office during office hours at 718-489-3415 or the RAs on their cell phone at 347-533-0499.

For extensive information about the many forms of sexual misconduct and the numerous resources available at the College and in the local community, please consult the College's Counseling Center website for Sexual Violence Education & Resources (www.sfc.edu) available to you.

OVERVIEW AND PURPOSE

Sexual misconduct, as defined by this Policy and Procedures for Complaints of Student Sexual Misconduct comprises a broad range of behavior that will not be tolerated in the College's community of Franciscan values and trust. Sexual Misconduct not only violates college policies but also violates federal civil rights laws and may be subject to criminal prosecution. The College is committed to fostering a community that promotes prompt reporting of Sexual Misconduct and timely and fair resolution of Sexual Misconduct complaints. Creating a safe and respectful environment is the responsibility of all members of the College's Franciscan Community.

As a recipient of federal funds, the College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq* ("Title IX"), which prohibits discrimination on the basis of sex in education programs or activities. Sexual Misconduct is a form of sex discrimination prohibited by Title IX. St. Francis College is committed to providing programs, activities and an educational environment free from discrimination.

As an academic institution, the College also should provide due process to students accused of sexual misconduct. This Policy is designed to provide due process while also ensuring a complainant's protections under Title IX. Sexual misconduct is defined as actual or attempted forms of the following:

- Sexual Harassment
- Non-Consensual Sexual Intercourse
- Non-Consensual Sexual Contact
- Sexual Exploitation

DEFINITIONS WITHIN THE POLICY

"Coercion" is the application of unreasonable pressure for sexual access.

"Dean" means the Dean of Students and his or her designee. The college has designated the Dean as the Title IX Coordinator for purposes of this Policy.

"Dean's Office" means the Office of the Dean of Students, located in Room 3307 on the third floor.

"Effective Consent" means words or actions that show an active, knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective consent cannot be gained by force, by ignoring or acting without regard to the objections of another, or by taking advantage of the incapacitation of another, where the accused student knows or reasonably should have known of such Incapacitation. Effective consent is also absent when the activity in question exceeds the scope of effective consent previously given. In addition, certain states have designated a minimum age under which a person cannot give "effective consent."

"FERPA" means the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99.

"Force" means physical force, violence, threat, intimidation or coercion.

"Incapacitation" means the physical and/or mental inability to make informed, rational judgments. States of Incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication, and is defined with respect to how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments.

"Non-Consensual Sexual Contact" means sexual contact that occurs without effective consent.

"Non-Consensual Sexual Intercourse" means sexual intercourse that occurs without effective consent.

“Sexual Contact” means the deliberate touching of a person’s intimate parts (including genitalia, groin, breast or buttocks or clothing covering any of those areas) or using force to cause a person to touch his or her own or another person’s intimate parts.

“Sexual Exploitation” means taking sexual advantage of another person without effective consent, and includes, without limitation, causing or attempting to cause the incapacitation of another person; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.

“Sexual Harassment” means conduct, including physical contact, advances, and comments in person and/or via phone, text message, email, or other electronic medium that is (1) unwelcome; (2) based on sex or gender stereotypes; and (3) is severe, pervasive and objectively offensive that is unreasonably interferes with a person’s academic performance or equal opportunity to participate in or benefit from College programs or activities. Sexual harassment may include severe, pervasive and objectively offensive: unwelcome efforts to develop a romantic or sexual relationship; unwelcome commentary about an individual’s body or sexual activities; threatening to engage in the commission of an unwelcome sexual act with another person; stalking or cyber stalking; and engaging in indecent exposure. – Title IX and this policy prohibit gender-based harassment, which may include acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

“Sexual Intercourse” means penetration (anal, oral or vaginal) by a penis, tongue, finger, or an inanimate object.

“Sexual Misconduct” is a broad term encompassing “Sexual Exploitation,” “Sexual Harassment,” “Non-Consensual Sexual Contact,” and “Non-Consensual Sexual Intercourse” as defined in this policy. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by men or by women, and it can occur between people of the same or different sex.

“Standard of Conduct” means the College’s Standards of Conduct Expected of Students as enforced by the Dean’s office.

“College” means St. Francis College.

“Vice President & Provost” means the Vice President and Provost and his or her designee.

“Vice President’s Office” means the Office of the Vice President and Provost.

SCOPE OF POLICY, TIMING; RETALIATION AND RELATED MISCONDUCT; CRIMINAL PROCEEDINGS

SCOPE OF POLICY

Any person may file a complaint of sexual misconduct against a “college student” under this policy. “College student” means any student who is registered or enrolled at the College (a) at the time of the alleged sexual misconduct (including sexual misconduct that is alleged to have occurred during any academic recess, provided that there is an expectation of such student’s continued enrollment at the college) and (b) at the time that the Dean prepares and delivers to the Faculty Committee on Student Behavior a formal complaint against such student.

This policy applies to any allegation of sexual misconduct against a college student, regardless of where the alleged sexual misconduct occurred. Sexual misconduct that is alleged to have occurred at a significant distance from the college may be more difficult to investigate, but it will be investigated.

TIMING OF COMPLAINTS

There is no time limit to invoking this policy in complaints of alleged sexual misconduct. Nevertheless, students are encouraged to report alleged Sexual Misconduct immediately in order to maximize the college’s ability to obtain evidence, and conduct a thorough, impartial and reliable investigation.

In no circumstances will the college allow an impending graduation to compromise its resolution processes. The conferral of the degree may therefore be held, if necessary, until proper resolution of any sexual misconduct charges, provided that a hearing opportunity will be scheduled for the earliest practicable date that can accommodate the parties and their witnesses.

RETALIATION AND OTHER RELATED MISCONDUCT

It is a violation of college policy to retaliate against any person making a complaint of sexual misconduct or against any person cooperating in the investigation of (including testifying as a witness to) any allegation of sexual misconduct. For these purposes, “retaliation” includes intimidation, threats, harassment and other adverse action against any such complainant or third party. Retaliation should be reported promptly to the Dean and may result in disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of sexual misconduct.

In accordance with this policy, the Vice President & Provost is empowered to hear allegations of, and to impose sanctions for, Sexual Misconduct *and* any violations of the college’s Standards of Conducts Expected of Students directly related to the alleged sexual misconduct or any alleged violations of this Policy. Such related misconduct may include, without limitation, violations of the rules of privacy as articulated herein, violations of the Dean’s directive(s), and/or violations of other Standards of Conduct Expected of Students that occurred in

the course of the alleged sexual misconduct.

EFFECT OF CRIMINAL PROCEEDINGS

Because sexual misconduct may constitute *both* a violation of college policy *and* criminal activity, the college encourages students to report alleged sexual misconduct promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, criminal investigations or reports are *not* determinative of whether sexual misconduct, for purposes of the policy, has occurred. In other words, conduct may constitute sexual misconduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute. In such cases, the complainant may initially be unfamiliar with the results of the criminal investigation, the nature of criminal procedure or the grounds for the law enforcement decision not to prosecute. The complainant in such cases may request that the Dean assist the complainant in seeking and attending a meeting with the local law enforcement to gain an understanding of the decision to decline a prosecution.

The filing of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding and the College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and take interim measures to protect the complainant and the College community, if necessary.

THE PROCESS: INITIAL STEPS

Intake Meeting with Complainant. Upon notice of any allegation of sexual misconduct, the Dean of Students will first schedule an individual intake meeting with the complainant in order to provide to the complainant a general understanding of this policy and to identify forms of support or immediate interventions available to the complainant (e.g. referrals to appropriate law enforcement agencies; referrals for medical treatment at local hospitals and trauma centers). The intake meeting may also involve a discussion of any accommodations that may be appropriate concerning the complainant's academic, college housing and/or college employment arrangements.

At the initial intake meeting, the Dean will seek to determine how the complainant wishes to proceed, i.e., whether the complainant wishes to pursue Formal Resolution, Informal Resolution or does not wish to pursue resolution of any kind. If the complainant wishes to proceed with either Formal or Informal Resolution the Dean will ascertain the name of the accused student, and the date, location and nature of the alleged sexual misconduct, and will schedule an individual intake meeting with the accused student in order to provide to him or her a general understanding of the policy and to identify forms of support or immediate interventions available to him or her.

If the complainant wishes to proceed with Formal Resolution, the Dean will promptly prepare a formal letter informing the Faculty Committee on Student Behavior. The formal complaint will set forth the name of the accused student, and the date, location and nature of the alleged sexual misconduct.

If the complainant does not wish to pursue formal or informal resolution and/or requests that his or her complaint remain confidential, Title IX nevertheless requires the college to investigate and take reasonable action in response to the complainant's request. The Dean will inform the complainant that the college's ability to respond may be limited. In such cases, Title IX requires the college to evaluate the complainant's request(s) for no action in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment for all students.

In order to make such an evaluation, the Dean may conduct a preliminary investigation into the alleged sexual misconduct and may weigh the complainant's request(s) against the following factors: the seriousness of the alleged sexual misconduct; whether there have been other complaints of sexual misconduct against the same accused student. The Dean will inform the complainant if the college cannot ensure confidentiality. Even if the College cannot take disciplinary action against the accused student because the complainant insists on confidentiality, Title IX nonetheless requires the College to take prompt and effective action to limit the effects of the alleged sexual misconduct and to prevent its recurrence. The Dean reserves the authority to issue a "no-contact" order and other interim measures.

Interim Measures. In all complaints of alleged sexual misconduct, the college will undertake an appropriate inquiry and take immediate action to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any. Accordingly, at or after the intake meeting, the Dean may impose 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 and, if applicable, the hearing.

The Dean, as Title IX Coordinator, also may take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, which may include directing appropriate officials to alter the students' academic, college housing, and/or college employment arrangements, or other appropriate protections. Title IX requires that, when taking such steps to separate the complainant and the accused student, a school must minimize the burden on the complainant and thus should not, as a matter of course, remove the complainant from his or her classes or housing while allowing the accused student to remain.

Violation(s) of the Dean's directive and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

FORMAL RESOLUTION PROCESS

A complainant may elect to pursue a formal resolution which typically includes a hearing before the Faculty Committee on Student Behavior.

The Faculty Committee on Student Behavior. Formal Resolution involves a hearing before a committee of at least three college faculty who are members of the committee. The committee chair will select

the committee and will either serve as the presiding chair or will appoint the presiding chair (or if the committee chair is unavailable or otherwise unable to serve, the Vice President & Provost will select the committee and a presiding chair).

Investigation

When the complainant indicates a desire to pursue formal resolution, the reported allegations will be investigated promptly, thoroughly and impartially by the Faculty Committee on Student Behavior. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.

Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action. A typical investigation will be completed within sixty (60) days, if not sooner. The Faculty Committee on Student Behavior will prepare a written report which will be sent to the Vice President & Provost.

The Dean will provide written notice to both parties stating the date, time, and place of the pre-hearing meeting with The Faculty Committee on Student Behavior at which preliminary matters will be discussed. The notice of hearing will be delivered by email or in person and will be considered effective immediately upon delivery.

A party wishing to challenge the participation of any committee member must notify the Committee Chair, in writing, within five (5) business days of receipt of the Notice of Hearing, stating the specific reason(s) for the party's objection. The Chair will determine whether the challenge has merit and reserves discretion to make changes in the Committee composition at any time.

The hearing will take place promptly following delivery of the Notice of Hearing. The parties are expected to cooperate in the scheduling of the hearing. If either party fails to appear at the scheduled hearing, the Faculty Committee on Student Behavior may postpone the proceedings or proceed and determine the complaint on the basis of the evidence available, provided the absent party was duly notified of the scheduled hearing date.

Both the complainant and the accused student may have advisors present to support and assist them during the pre-hearing, hearing and appeal stages of the formal resolution process. At the complainant's or accused student's request, the Dean of Students will appoint to each party an advisor who has been formally trained. An advisor may not direct questions to the Faculty Committee on Student Behavior or witnesses at the hearing, but may consult with the student that he or she is assisting. The Faculty Committee on Student Behavior will not allow an advisor's presence to inhibit the parties' sharing of information or the conduct of the hearing.

HEARING PROCEDURES

Pre-Hearing Submissions

The parties will provide the Dean with a list of witnesses they wish The Faculty Committee on Student Behavior to call, and copies of documents and a description of any other information they propose to present at the hearing, on or before a date set for the hearing, but at least two business days prior to the hearing. The Dean will provide each party with a copy of the list of witnesses, and identification or copies of documents or other information, submitted by each party.

In the absence of good cause, as determined by the Faculty Committee on Student Behavior, the parties may not introduce witnesses, documents, or other information at the hearing that were not provided by this deadline. If, at any time prior to the hearing, the accused student elects to acknowledge his or her actions and take responsibility for the alleged sexual misconduct, he or she may request that an informal hearing be used with the consent of the complainant to resolve the complaint and determine sanctions.

Pre-Hearing Meeting and Determination of Charges and Witnesses

The Faculty Committee on Student Behavior will schedule a pre-hearing meeting prior to the hearing date. At the meeting, the Faculty Committee on Student Behavior will review hearing procedures with the parties separately. The college reserves the right to add or modify the alleged violations at the prehearing meeting, and to add witnesses to the witness lists at the pre-hearing meeting and/or at the hearing.

The Dean and the Faculty Committee on Student Behavior will instruct all parties concerned to avoid any private discussion of the merits of the complaint.

On behalf of the Faculty Committee on Student Behavior, the Dean may seek advice from the College's General Counsel throughout the hearing process on questions of law and procedure.

Conduct of the Hearing

As a non-adversarial process, the hearing will not follow a courtroom model, and formal rules of evidence will not be observed. The Faculty Committee on Student Behavior will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. The college will ask for all necessary witnesses to be present to be available, or to have provided written statements in lieu of attending the hearing. This may be done as necessary to accommodate a witness who cannot be present, or whom the Faculty Committee on Student Behavior determines may remain anonymous. The Faculty Committee on Student Behavior will review in advance of the hearing all the written materials provided.

Only the Faculty Committee on Student Behavior may question the individual parties and any witnesses, unless permission is granted to modify the questioning process. After all witnesses have been questioned, each party may make a closing statement. If the Faculty Committee on Student Behavior determines that unresolved

issues exist that would be clarified by the presentation of additional information, the Faculty Committee on Student Behavior may suspend the hearing and reconvene it in a timely manner to receive such information. A delay may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents or other information that should have been presented at the pre-hearing meeting.

Participation by the Accused Student

If the accused student fails to appear at the hearing, after being duly notified of its place and time, the Faculty Committee on Student Behavior may postpone the proceedings if there is a legitimate documented reason for the absence. Alternatively, they may direct that the hearing proceed and determine the complaint on the basis of the information available.

The Dean will arrange for the hearing to be recorded and may arrange for the preparation of any transcript of the recording that he or she deems appropriate.

Standard of Proof

The Department of Education's Office of Civil Rights has interpreted Title IX to require schools to evaluate evidence of alleged sexual misconduct under a "***preponderance of the evidence***" standard and that is the standard adopted by this policy. A preponderance of the evidence means that information shows it is "***more likely than not***" that the accused student violated this policy. In the context of a hearing, the accused student will be found to be responsible for the alleged sexual misconduct if the Faculty Committee on Student Behavior concludes that such sexual misconduct more likely than not occurred based upon careful review of all information presented.

Determination and Sanction

The Faculty Committee on Student Behavior shall determine whether the accused student is responsible for sexual misconduct, i.e., that the sexual misconduct more likely than not occurred, and will provide a written statement of such determination to the Vice President & Provost.

The Vice President & Provost may consider suspending or expelling any student found responsible for sexual misconduct; however, he or she may impose any sanction that is determined to be fair and proportionate to the violation. In determining an appropriate sanction, the Vice President & Provost will consider any record of past violations of the Standards of Conduct Expected of Students, as well as the nature and severity of such past violation(s). The Vice President & Provost will consider as part of the deliberations whether the accused student poses a continuing risk to the complainant and/or the college community. Any sanction imposed will be explained or supported in the written decision of the Vice President & Provost.

Within the next Five (5) class days from the conclusion of the hearing, the Dean will provide to both parties, concurrently, a copy of the determination letter of the Vice President & Provost.

The College has a three-fold duty in all decisions:

1. Bring an end to the discriminatory conduct.
2. Act to reasonably prevent its reoccurrence.
3. To the extent possible, remedy the effects on the victim.

APPEAL PROCESS

Either party may appeal the decision of the Vice President & Provost to the Faculty Committee on Student Behavior by notifying the Dean in writing within five (5) class days of the date of the decision. All appeals will be governed by the procedures of the Faculty Committee on Student Behavior, attached to this policy as Appendix A. Interim measures will stay in effect until the appeal is resolved.

Final sanctions are in effect until any timely appeal of the decision to the College Faculty Committee on Student Behavior is resolved. The Vice President & Provost may suspend the determination pending exhaustion of appeal, or allow the student to attend classes or other activity on a supervised or monitored basis, or make such other modifications to the determination as may be advisable.

In order to comply with FERPA and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the hearing, documents, testimony, or other information introduced at the hearing, and any transcript of the hearing itself may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law and/or college policy.

Following the hearing, the Vice President & Provost will issue a determination letter to the accused student and the complainant.

The determination letter will contain only the following information: the name of the accused student; whether the accused student has been found responsible or not responsible for specific violation(s) of the sexual misconduct policy; and the sanction imposed, if any. As guaranteed by Federal law, both the accused student and the complainant have a right to this information. College policy neither encourages nor discourages further disclosure of the determination letter by either student.

The determination letter will contain an explanation for the determination. The determination letter is both an education record and private record of the hearing and may not be disclosed except where disclosure is authorized or required by law.

INFORMAL RESOLUTION

A complainant who wishes to file a formal complaint with the Dean's office but who does not wish to pursue Formal Resolution may request a less formal proceeding, known as "Informal Resolution." Although less formal than Formal Resolution, Informal Resolution is an appropriate resolution process; it is not mediation.

Informal Resolution provides an opportunity for the complainant to confront the accused student, in the presence of and facilitated by, a presiding officer and to communicate his or her feelings and perceptions regarding the incident, the impact of the incident, and his or her wishes and expectations regarding protection in the future. The accused student will have an opportunity to respond. The accused student is expected to attend, but is not required to participate.

The complainant and the accused student each may bring an advisor to the Informal Resolution. Advisors are subject to the same restrictions set forth for advisors in Formal Resolution, outlined above. The Vice President & Provost will preside over the Informal Resolution and may elect to be assisted by another member of the senior staff of his or her office.

If, in the course of the informal resolution, the accused student admits to violating the sexual misconduct policy, that admission will serve as a finding of responsibility that is final and cannot be appealed. The Vice President & Provost will recommend a sanction which the accused student can accept or reject. If accepted, the process is concluded. If rejected, the complaint may proceed to the Formal Resolution Process.

Informal Resolution may result in the imposition by the Dean's office of protective actions agreed upon by the parties, or (with or without such agreement) based on information derived from the Informal Resolution taken together with any other relevant information known to the college at the time of the Informal Resolution.

The College or the complainant may, at any time, elect to end such proceedings and initiate Formal Resolution instead. Statements or disclosures made by the parties in the course of the Informal Resolution may be considered in the Formal Resolution.

In order to promote honest, direct communication, information disclosed during Informal Resolution must remain private while the Informal Resolution is pending, except where disclosure may be required by law or authorized in connection with duties on behalf of the College.

APPENDIX A

Student Behavior Committee Appeals Policy

A student who is unsatisfied with the decision of the Student Behavior Committee (“Committee”) and/or the sanctions imposed by the Vice President & Provost based on the Committee’s decision may file a claim stating (i) that the Committee committed procedural errors that had an impact on the case's decision, (ii) there is new evidence not reasonably available at the time of the hearing before the Committee, or (iii) the sanctions are not consistent with past practices. Otherwise, no additional evidence is allowed and no witnesses may be heard. Except for appeals brought under (ii) above, the entire review process will be based on the record of the case as heard by the Committee.

The procedure is as follows:

1. A student wishing to appeal the findings of the Committee and/or sanctions of Vice President & Provost indicate his or her intention to file an appeal within five (5) class days of the date the student is notified of the Committee’s finding and the Vice President & Provost’s sanctions. The intention to file an appeal must be submitted in writing (either e-mail or hard-copy) to the Dean of Students.
2. The appeal must be filed within two weeks from the date the student is notified of the Committee’s findings and the Vice President & Provost’s sanctions.
3. An ad hoc committee made up of three full-time faculty members (“Appeals Committee”), which shall not include the Vice President & Provost or members of the Student Behavior Committee, will make a final determination on the appeal.
4. Brief outline of process:
 - a. The student filing the appeal must submit a letter (hard copy) to the Dean of Students in which s/he states the grounds for the appeal (“Letter of Appeal”).
 - b. The student should submit copies of any and all material the student wishes to provide as evidence for his/her appeal with the Letter of Appeal.
 - c. Within ten (10) days of receipt of the Letter of Appeal, the Dean of Students shall assemble an Appeals Committee to hear the student’s appeal.
 - c. The Appeals Committee shall review the student’s appeal and the Student Behavior Committee’s record of the case. The Appeals Committee shall render its decision regarding the appeal within 30 calendar days.