



# ST. FRANCIS COLLEGE

## THE SMALL COLLEGE OF BIG DREAMS

### **POLICY AND PROCEDURES FOR REPORTS OF EMPLOYEE SEXUAL MISCONDUCT**

#### **INTRODUCTION**

##### **Notice of Nondiscrimination and Policy Statement on Sexual Misconduct**

The health, safety, and well-being of all members of the St. Francis College (“College”) community are the College’s primary concerns. In furtherance of the Franciscan Spirit, and in accordance with Title IX of the Education Amendments of 1972 (“Title IX”), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act/Campus Sexual Violence Act (“Campus SaVE Act”), Article 129-B of the New York State Education Law, Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.), the New York State Human Rights Law, the New York Labor Law, and the New York City Stop Sexual Harassment Act, the College is committed to maintaining a community free from all forms of sex discrimination, including sexual harassment. In accordance with Title IX, the College does not discriminate on the basis of sex in its education programs and activities or in its employment. Under Title IX, discrimination on the basis of sex includes sexual harassment and sexual violence.

All members of the College community, including, but not limited to, faculty, employees, staff, and covered non-employees, are required to conduct themselves in a manner that prevents sexual harassment in the workplace. Sex discrimination is against the law, and all members of the college community have a legal right to a workplace free from sexual harassment.

Sexual misconduct, as referred to herein, includes a broad range of behaviors that will not be tolerated in the College’s education programs or activities or in its employment. The College strictly prohibits sexual harassment and sexual violence, including the offenses of sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking (collectively, “sexual misconduct”). Sexual misconduct can occur between strangers, acquaintances, or people who know each other well, including those who are involved in an intimate or sexual relationship, and can be committed by anyone regardless of sex, gender, or gender identity. The College does not tolerate any form of sexual misconduct or retaliation. Any person covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including dismissal or termination.

Members of the College community are encouraged to report sexual harassment by filing a complaint internally with the College’s Title IX Coordinator. Questions regarding Title IX, the Campus SaVE Act, or the other aforementioned statutes may be referred to the College’s Title IX Coordinator. Questions regarding Title IX may also be referred to the U.S. Department of Education’s Office for Civil Rights.

The College's designated Title IX Coordinator is:

Linda Werbel Dashefsky  
Vice President of Government and Community Relations  
180 Remsen Street  
Room 7304  
Brooklyn, NY 11201  
Phone: (718) 489-5370 or, if on campus, extension 5370  
Email: lwerbel@sfc.edu

The Title IX Coordinator's responsibilities include, but are not limited to, overseeing the College's response to complaints of sexual misconduct, coordinating investigations into allegations of sexual misconduct, and identifying and addressing any patterns or systemic problems of sexual misconduct that arise during the investigation of a complaint of sexual misconduct.

Members of the College community can also file a complaint with a government agency or in court under federal, state or local anti-discrimination laws.

### **Scope of Policy**

This policy is one component of the College's commitment to a discrimination-free work environment. It governs sexual misconduct involving all College employees, whether part time or full time, including staff, administrators, faculty, and adjunct faculty (collectively, "employees") and all covered non-employees (defined below), and applies to such employees regardless of sex, race, creed, color, age, national origin, citizenship status, disability, sexual orientation, marital status, gender identity, or other protected status.

"Covered non-employees" include all: (i) applicants for employment; (ii) interns, whether paid or unpaid; (iii) persons who are (or are employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services to the College; and (iv) persons commonly referred to as independent contractors, "gig" workers, and temporary workers, including, but not limited to, persons providing equipment repair, cleaning services, or any other services provided pursuant to a contract with the College. In the event a student brings a complaint against a College employee under the Policy and Procedures for Reports of Employee Sexual Misconduct (the "Policy"), such student is entitled to any and all rights afforded to students in the College's Policy and Procedures for Reports of Student Sexual Misconduct (the "Student Sexual Misconduct Policy") which can be found at:

[https://www.sfc.edu/uploaded/documents/pdf/consumer\\_info/SexualMisconductPolicy\\_Students.pdf](https://www.sfc.edu/uploaded/documents/pdf/consumer_info/SexualMisconductPolicy_Students.pdf).

If an employee brings a complaint against a College student, the investigation and disciplinary process described in the Student Sexual Misconduct Policy will apply. For information about the Student Sexual Misconduct Policy, please contact the Title IX Coordinator.

Complaints of discrimination or harassment on the basis of sex that do not involve sexual misconduct are governed by the College's Non-Discrimination and Anti-Harassment Policy, which can be found in The Cord or on the College's website. For information about the Non-Discrimination and Anti-Harassment Policy, please contact the Title IX Coordinator.

With respect to adjunct faculty only, inasmuch as their employment with the College is subject to the terms and conditions of a Collective Bargaining Agreement ("CBA") between the College and the St. Francis College Adjunct Faculty Union ("SFCAFU"), either the College or SFCAFU may at

any time elect to utilize the grievance procedures available pursuant to the CBA in the administration of this Policy. In the event that there is a conflict between the CBA and this Policy, the CBA will control, except as otherwise provided by law. For information about the CBA, please contact the Human Resources Department.

This Policy applies to any allegation of sexual misconduct that takes place on College property, including College-occupied housing, or any other property on which a College program or activity takes place. This Policy also covers conduct that takes place off of College property and has a reasonable connection to the College and has a continuing effect on campus or in an off-campus education program or activity. Calls, texts, emails, and social media usage by persons covered by this Policy can constitute unlawful workplace harassment, even if the conduct occurs away from the campus, on a personal device, or not during work hours.

This Policy (i) describes programs implemented by the College to educate and increase awareness among the College community regarding sexual misconduct; (ii) sets forth the available resources and reporting options for victims of sexual misconduct; (iii) specifies and defines the prohibited conduct; and (iv) describes the College's procedures for responding to complaints of sexual misconduct, including the investigation, hearing, and sanctioning process.

## **I. PREVENTION AND AWARENESS EDUCATION PROGRAMS**

Creating a safe and respectful environment is the responsibility of all members of the College's Franciscan community. To promote and maintain this environment, St. Francis College engages in comprehensive educational programming to prevent sexual misconduct, including sexual harassment, domestic violence, dating violence, sexual assault, stalking, and retaliation. The College provides primary prevention and awareness programs for all incoming students and employees, and ongoing prevention and awareness campaigns for all students and employees.

As a condition of continued employment with the College, every employee must participate in and complete annual sexual harassment prevention training. New hires must complete this training within thirty (30) days of hire, unless he/she received training within the same annual cycle from a prior employer. At the conclusion of this training, each employee must sign a training acknowledgment form which will be kept in that employee's personnel file.

For additional information about the College's sexual misconduct prevention and awareness programming, please contact the College's Title IX Coordinator, Linda Werbel Dashefsky, Vice President of Government and Community Relations, St. Francis College, 180 Remsen Street, Room 7304, New York, NY 11201, (718) 489-5370, [lwerbel@sfc.edu](mailto:lwerbel@sfc.edu).

## **II. RESOURCES AND REPORTING OPTIONS**

### **Immediate Medical Assistance and Counseling**

If you or someone you know is or may be the victim of any form of sexual misconduct, the College strongly urges you to seek immediate assistance. Assistance is available 24 hours a day, 7 days a week, from:

- Local Police (84th Precinct) and Emergency Assistance - Call 911
- Campus Security - (718) 489-5333 or, if on campus, extension 5333
- Safe Horizon Rape and Sexual Assault Hotline - (866) 689-HELP (4357)
- Safe Horizon Domestic Violence Hotline - (800) 621-HOPE (4673)
- Beth Israel Hospital Emergency Room, First Avenue and 16th Street Manhattan
- Maimonides Medical Center Emergency Rm - 4802 10th Ave., Brooklyn, NY 11219 (718) 283-7222
- NYPD Sex Crimes Report Hotline - (212) 267-7273
- Brooklyn District Attorney's Office Special Victims Bureau- (718) 250-3170
- New York City Gay and Lesbian Anti-Violence Project – (212) 714-1141
- St. Luke's Hospital Crime Victim Treatment Center – (212) 523-9058
- Center Against Domestic Violence - (718) 254-9134
- New York State Office of Victim Services Toll Free Number – (800) 247-8035

### **Sexual Assault Forensic Examiners**

Victims of sexual assault should receive immediate medical attention. Sexual Assault Forensic Examiners (SAFE) are considered the best and most appropriate medical professionals to conduct such an examination. The following hospitals employ certified Sexual Assault Forensic Examiners:

- St. Luke's Hospital (Manhattan)
- Roosevelt Hospital (Manhattan)
- Beth Israel Hospital (Manhattan)
- Bellevue Hospital (Manhattan)
- Mount Sinai (Manhattan)
- New York Presbyterian-Weil Cornell (Manhattan)
- Woodhull Hospital (Brooklyn)
- Coney Island (Brooklyn)
- King's County Hospital (Brooklyn)

### **Law Enforcement Notification**

If you are the victim of sexual misconduct, the College strongly encourages you to promptly report the incident to the police. Timing is a critical factor in collecting and preserving evidence that may assist in proving that the alleged misconduct occurred, or may be helpful in obtaining a protection or restraining order from the police. College representatives are available to assist you in notifying law enforcement of an incident of sexual misconduct and in contacting law enforcement or legal service organizations to learn about these remedies. You may also decline to notify law enforcement.

## **College Resources and Reporting**

All persons covered by this Policy have a legal right to a workplace free from harassment and employees can enforce this right by filing a complaint internally with the College, or externally with a government agency or in a court under federal, state, or local antidiscrimination laws, as explained below in the section on Legal Protections.

Preventing sexual harassment is everyone's responsibility. The College cannot prevent or remedy sexual harassment unless it is aware that such conduct is occurring or has occurred. Any member of the College community covered by this Policy who has been subjected to behavior that may constitute sexual harassment is encouraged to promptly report such behavior in accordance with the policies and procedures set forth in this Policy. Anyone who witnesses or becomes aware of potential instances of sexual harassment should also report such behavior immediately.

Reports of sexual harassment may be made verbally or in writing. The College has developed form of submission of a written complaint of sex discrimination under this Policy. A copy of this form is attached to this Policy as Appendix A. Members of the College community are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

The College is committed to providing a prompt, fair, and impartial investigation and resolution of all allegations of sexual misconduct. Therefore, the College also encourages the reporting of sexual misconduct to a College representative in a timely manner. Incidents of sexual misconduct should be reported to the College's Title IX Coordinator - Linda Werbel Dashefsky, Vice President of Government and Community Relations, St. Francis College, 180 Remsen Street, Room 7304, New York, NY 11201, (718) 489-5370, [lwerbel@sfc.edu](mailto:lwerbel@sfc.edu). Any incident of sexual misconduct reported to another College employee, with the exception of those employees designated as confidential, such as The SFC Counseling Center (718) 489-5335 and Fr. Brian Jordan, OFM (718) 489-5493 will be reported by the employee to the Title IX Coordinator.

## **Reports of Sexual Misconduct from Others or Anonymous Sources**

If the College receives a report of alleged sexual misconduct by someone other than the complainant (e.g., by a friend or coworker) or from an anonymous source, the College's Title IX Coordinator will promptly notify the complainant of the report, and inform the complainant of the available resources and assistance. The College will respond to the report of sexual misconduct as if the complainant had made the initial report and an investigation will commence.

## **Time for Reporting**

There is no time limit for reporting sexual misconduct. Nevertheless, any member of the College community who believes that he or she has been a victim of sexual misconduct is encouraged to report the alleged sexual misconduct immediately in order to maximize the College's ability to obtain evidence and conduct a thorough, impartial, and reliable investigation.

## **College Counseling**

Regardless of whether or not an official complaint of sexual misconduct is made, various counseling options for employees are available through the College's Employee Assistance

Program, *Ability Assist*, which can be reached at 800-964-3577, or at [www.guidanceresources.com](http://www.guidanceresources.com). Please contact Human Resources for additional information about this resource.

### **Confidentiality**

The College understands that, for many complainants, confidentiality is a primary concern. The College values the privacy of all members of the College community. However, certain College employees are required by state and federal laws to share information from a report of sexual misconduct with the College or governmental agencies. Even College employees who cannot guarantee confidentiality will maintain the privacy of the reporting individual to the greatest extent possible. The information that the reporting individual provides to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. When reporting crimes for the purposes of Clery Act compliance, the College will not release identifying information of the complainant. The ability of College employees to maintain confidentiality is as follows:

#### **Professional and Pastoral Counselors**

Professional, licensed counselors and pastoral counselors (ordained clergy), whose official responsibilities include providing mental-health counseling to College employees and students, including those who act in that role under the supervision of a licensed counselor, are not required to report any information about an incident of sexual misconduct disclosed while acting within the scope of providing mental health counseling to the Title IX Coordinator without a complainant's permission. The following is a list of the College's professional counselors:

The SFC Counseling Center  
180 Remsen Street, Room 2310  
Brooklyn, NY 11201  
Phone: (718) 489 – 5335 or, if on campus, extension 5335

Director of Student Health Services  
Counseling & Wellness  
Room 2311  
Office: (718) 489-2035 | Fax: (718) 489-3410

State law requires professional counselors to report: (i) when a patient is likely to engage in conduct that would result in serious harm to the patient or to others; or (ii) if there is reasonable cause to suspect that a minor has been sexually abused.

#### **Non-Professional Counselors and Advocates**

College representatives who work or volunteer in the College's Health Center or Counseling Center generally may talk with and provide assistance and resources to a complainant without being required to report any personally identifying information about the incident to the College. These individuals may maintain a complainant's confidentiality while reporting the nature, date, time, and general location of the incident to the Title IX Coordinator.

## Responsible Employees

A “responsible employee” is a College employee who has the authority to redress sexual misconduct, who has a duty to report incidents of sexual misconduct, or who a victim of sexual misconduct could reasonably believe has this authority or duty (e.g., all supervisors and managers). All responsible employees who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior, or for any reason suspect that sexual harassment is occurring, are required to report such suspected sexual harassment to the Title IX Coordinator. A responsible employee **must** report all relevant details about the alleged sexual misconduct to the Title IX Coordinator. A responsible employee will strive to maintain privacy and information reported to the responsible employee will be shared only with those having a need to know such information in order to respond in accordance with College policy. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, responsible employees will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Responsible employees will also be subject to discipline for engaging in any retaliation.

The College is obligated by law to investigate all allegations of sexual misconduct regardless of whether the complainant wishes to file a complaint. A report of sexual misconduct to a responsible employee will immediately trigger the College’s investigation into the alleged sexual misconduct in accordance with the procedure described in this Policy.

Therefore, if a complainant reports an incident of sexual misconduct to a responsible employee, but wishes to remain anonymous or requests that no investigation into the incident be conducted, the College will weigh that request against the College’s obligation to provide a safe, nondiscriminatory environment for all members of the College community, including the complainant. If the College honors the request for confidentiality, the complainant must understand that the College’s ability to effectively investigate the incident and pursue disciplinary action against the respondent may be limited.

In certain circumstances, the College may not be able to honor a complainant’s request for confidentiality when doing so would jeopardize the College’s responsibility to provide a safe, non-discriminatory environment. The College has designated the Title IX Coordinator to evaluate requests for confidentiality once a responsible employee is notified of alleged sexual misconduct.

When weighing a complainant’s request for confidentiality, the Title IX Coordinator will consider a range of factors, including, but not limited to, the following:

- whether there have been other sexual misconduct complaints about the same respondent;
- whether the respondent has a history of arrests or records from a prior school or place of employment indicating a history of violence;
- whether the incident represents an escalation in and unlawful conduct on behalf of the respondent from previously noted behavior;
- whether there is an increased risk that the respondent will commit additional acts of violence;
- whether the sexual misconduct was committed by multiple perpetrators;
- 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;
- whether the alleged sexual misconduct was perpetrated with a weapon;

- the age of the complainant;
- whether the College has other means to obtain relevant evidence (e.g., security cameras or personal, physical evidence).

After considering these factors, the College may be compelled to investigate the alleged sexual misconduct and, if appropriate, pursue disciplinary action in a manner that may require the College to disclose the complainant's identity to the respondent. If the College determines that an investigation is required, the College will inform the complainant and take immediate action necessary to protect and assist the complainant.

If, after considering these factors, the College determines that it is able to respect the complainant's request for confidentiality, the College will nevertheless take all reasonable steps to respond to the complaint consistent with the complainant's confidentiality request, and will determine whether interim measures are appropriate or necessary. The College will also consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported sexual misconduct occurred, increasing training, education and prevention efforts, and conducting climate surveys.

### **Immediate (Interim) Measures and Accommodations**

Any individual who has been the target of sexual misconduct may request assistance in changing working situations and, if applicable, living arrangements that are being provided by or on behalf of the College. Such accommodations may include, adjusting an employee's work schedule, providing increased security, supervision or monitoring at the location or activities where the alleged misconduct occurred, and issuing a "no-contact" order. Requests for accommodations in connection with incidents of sexual misconduct should be made to the College's Title IX Coordinator. The College will grant such accommodations, provided they are reasonable and available, regardless of whether the complainant chooses to report the crime to law enforcement.

To ensure the safety and well-being of the complainant or any other individual, the Title IX Coordinator or her designee also may take any further protective action that he or she deems appropriate concerning the interaction of the parties, which may include directing appropriate officials to alter employment arrangements, or other appropriate protections.

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

### **Anti-Retaliation Policy**

No member of the College community covered by this Policy shall be subject to adverse action because the employee in good faith reports sexual misconduct or participates in the investigation of any allegation of sexual misconduct, including testifying as a witness. Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours). Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person:



- Made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Retaliation should be reported promptly to the College's Title IX Coordinator. Reports of retaliation will be investigated in accordance with the appropriate College policy, and such conduct may result in disciplinary action independent of the sanction(s) or interim measures imposed in response to the underlying allegations of sexual misconduct. All covered members of the College community who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

### **III. DEFINITIONS WITHIN THE POLICY**

**“Bystander”** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior or conduct that is in violation of rules or policies of the College.

**“Days”** means days that St. Francis College administrative offices are open for business.

**“Complainant”** means the individual who reportedly experienced sexual misconduct, regardless of whether such individual reports such sexual misconduct to the College or participates in the College's conduct process for responding to complaints of sexual misconduct described herein.

**“Confidentiality”** may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092 (f) and 20 U.S.C. 1681 (a). Licensed mental health counselors, medical providers and pastoral counselors are examples of College employees who may offer confidentiality.

**“Consent”** must be affirmative. Affirmative consent means a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create a clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated.
- Consent cannot be when it is the result of any coercion, intimidation, force, threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

**“Dating Violence”** means violence or coercive behavior committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the 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, physical, or psychological abuse, or the threat of such abuse.

**“Domestic Violence”** means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of New York, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York.

**“Force”** The use 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.

**“Incapacitation”** A state where a person cannot make a rational, reasonable decision because the person lacks the ability to understand his or her decision. A person can become incapacitated as a result of disability, involuntary physical constraint, sleep, or consumption of alcohol or other drugs.

**“Intimidation”** means implied threats or acts that reasonably cause another to fear for his/her safety or well-being.

**“No-Contact Order”** means a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party.

**“Privacy”** may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a complainant or bystander to a crime or incident reporting individual, including appropriate College employees, above what is necessary to comply with this and other applicable laws or College policy.

**“Reporting Individual”** means any individual who reports a violation of this Policy to the College, including, but not limited to, a complainant or bystander.

**“Respondent”** means the individual alleged to have committed acts constituting sexual misconduct.

**“Retaliation”** means taking any adverse action or attempting to take adverse action, including intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint of sexual misconduct or participation in an investigation or proceeding related to alleged sexual misconduct.

**“Sexual Assault”** includes non-consensual sexual intercourse and non-consensual sexual contact.

- **“Non-consensual sexual intercourse”** means any form of sexual penetration or intercourse (vaginal, anal, or oral), however slight, with any object by an individual upon another individual without consent and/or by force. Intercourse means: vaginal or anal penetration

by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

- “Non-consensual sexual contact” means any intentional sexual touching, however slight, with any body part or object by an individual upon another individual without consent. Intentional sexual contact includes contact with the breasts, buttocks, or groin, or touching another with any of these body parts; making another person touch any of these body parts; and any intentional bodily contact in a sexual manner.

“**Sexual Coercion**” is the application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.

“**Sexual Exploitation**” means abuse or exploitation of another person’s sexuality without consent, for the perpetrators own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Sexual Exploitation includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that 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**” is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. It includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. “Sexual Harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic or physical conduct of a sexual nature, when: (1) submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, education or campus life activities, or used as the basis of any academic, student life or employment decision (quid pro quo); or (2) such conduct is sufficiently severe, persistent or pervasive such that it limits an individual’s ability to participate in, or benefit from, the College’s education or work programs or activities (hostile environment). A sexually hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s sex. Examples of sexual harassment include, but are not limited to:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee’s body or poking another employee’s body;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target’s job performance evaluation, a promotion, or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- Sex stereotyping, which occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people’s ideas or perceptions about how individuals of a particular sex should act or look.

- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic.

**“Sexual Misconduct”** means a range of unwelcome behavior of a sexual nature that is committed without consent or by intimidation, coercion, threat or force. Sexual Misconduct includes, but is not limited to, sexual harassment, sexual assault, sexual coercion, sexual exploitation, sexual violence, dating violence, domestic violence, and stalking.

**“Sexual Violence”** refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to an individual’s age or use of drugs or alcohol, or because an intellectual or other disability prevents the individual from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

**“Stalking”** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

For purpose of this definition:

“Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person, or interferes with a person's property.

“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 reasonable person under similar circumstances and with similar identities to the victim.

Conduct that violates this Policy may also violate New York State laws and subject the perpetrator to criminal prosecution. Sex Offenses under New York law are described in Sections 130.00 to 130.96 of the New York State penal Code, available at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

## **IV. PROCEDURES FOR RESPONDING TO A COMPLAINT OF SEXUAL MISCONDUCT**

The College is committed to providing a prompt, fair, and impartial investigation and resolution to all allegations of sexual misconduct. Incidents of sexual misconduct should be reported to the College's Title IX Coordinator. Any incident of sexual misconduct reported to another College employee, with the exception of those employees designated above as confidential, will be reported by the employee to the Title IX Coordinator.

### **Initial Steps**

#### **Intake Meeting with Complainant**

Upon notice of any allegation of sexual misconduct, the Title IX Coordinator, or his or her designee, will schedule an individual intake meeting with the complainant. At the intake meeting, the Title IX Coordinator will provide the complainant with a general understanding of this Policy, and identify forms of support or immediate assistance available to the complainant (e.g., referrals to appropriate law enforcement agencies; referrals for medical treatment at local hospitals and trauma centers). The Title IX Coordinator will also provide the complainant with a written explanation of his or her rights and options with respect to his or her report of sexual misconduct. The intake meeting may also involve a discussion of any accommodations that may be appropriate concerning the complainant's employment.

At the initial intake meeting, the Title IX Coordinator or his or her designee, 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. Regardless of how the complainant chooses to proceed, the College seeks to resolve every report of sexual misconduct within 60 calendar days of the initial report, excluding any appeal. The time frames included in this Policy may vary depending on the details of the complaint and, in some cases, the time of the academic year (e.g., during College breaks or final exams). The College may extend any time frame for good cause, provided the complainant and respondent are given a written explanation as to the reason for such extension.

If the complainant wishes to proceed with either Formal Resolution or Informal Resolution, the Title IX Coordinator or his or her designee will ascertain the name of the respondent, and the date, location, and nature of the alleged sexual misconduct, and, will schedule an individual intake meeting with the respondent. The College will notify the respondent in writing that a complaint has been filed and provide the date, time, location and factual allegations concerning the alleged violation, and possible sanctions.

If the complainant does not wish to pursue Formal Resolution or Informal Resolution, and either requests that his or her complaint remain confidential, or refuses to participate in the initial intake meeting with the Title IX Coordinator, the Title IX Coordinator will inform the complainant that the College's ability to respond may be limited. In such scenarios, Title IX nevertheless 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 the entire College community.

**Use of a Designee:** The College may, at its discretion, designate another trained and experienced person(s) to act in the place of the investigator and/or adjudicator in a conduct process. If there is a designation, the parties involved will be informed.

### Effect of Criminal Proceedings

Sexual misconduct may constitute a violation of both law and College Policy. The College encourages employees 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. The standards for finding a violation of criminal law are different from the standards for finding a violation of this Policy. Therefore, 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 decline to prosecute.

The filing of a complaint of sexual misconduct under this Policy is independent of any criminal investigation or proceeding. The College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or take any necessary interim measures to protect the complainant and the College community. However, the College may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code.

### Informal Resolution

A complainant who wishes to file a complaint but who does not wish to pursue Formal Resolution may request a less formal proceeding, known as "Informal Resolution." While the Informal Resolution process is not as structured as the Formal Resolution process, it can be an effective and appropriate means to deal with the complaint.

If the complainant wishes to proceed with Informal Resolution, the Title IX Coordinator will ascertain the name of the respondent, and the date, location, and nature of the alleged sexual misconduct, and will schedule an individual intake meeting with the respondent in order to provide him or her with a general understanding of the Policy.

A trained counselor, trained mediator, or, if appropriate, a College faculty member or administrator, or designee will preside over the Informal Resolution and may elect to be assisted by another member of the senior staff of the College or outside expert. Advisors are subject to the same restrictions for advisors in Formal Resolution, as set forth below.

If, in the course of the Informal Resolution, the respondent admits to violating this Policy, that admission will serve as a finding of responsibility after an independent investigation into the matter by the College. To be clear, the College will not impose sanctions on the basis of an admission by the respondent without an independent investigation into the misconduct allegations. If, after the College has conducted an independent investigation, the College determines that the respondent (a faculty member) is responsible for the alleged misconduct, the Vice President for Academic Affairs will recommend one or more sanctions, which the respondent can accept or reject. If the respondent is a staff member or member of the administration, the President's Chief of Staff will recommend one or more sanctions. The sanctions that may be imposed as the result of the Informal Resolution process are the same as those outlined in the Formal Resolution process below. If the recommended sanction is accepted, the process is concluded. If it is rejected, the complaint will proceed to the Formal Resolution process.

Participation in the Informal Resolution process is voluntary. The College will not compel a complainant or a respondent to engage in Informal Resolution, will not compel a complainant to directly confront the respondent, and will allow a complainant or respondent to withdraw from the Informal Resolution process at any time. The College may, at any time, elect to end such proceedings and initiate Formal Resolution instead. Pursuing Informal Resolution does not preclude later use of Formal Resolution and if the Informal Resolution fails to achieve a resolution acceptable to the parties and the College. Statements or disclosures made by the parties in the course of the Informal Resolution may be considered in the Formal Resolution.

Informal Resolution may result in the imposition 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.

### **Formal Resolution**

Under Formal Resolution, the reported allegations will be investigated promptly, thoroughly, and impartially. Those involved in the investigation and adjudication process will receive training, at least annually, on the issues relating to sexual misconduct, including sexual harassment, dating violence, domestic violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. During all phases of the Formal Resolution process, the parties will be provided with advance notice of any meeting they are required or eligible to attend.

## **Formal Resolution Process for Members of the Staff, Administration, and Adjunct Faculty**

The following process and procedures apply to members of the staff, administration, and adjunct faculty.

### **Investigation**

When the complainant indicates a desire to pursue Formal Resolution, the reported allegations of sexual misconduct will be investigated promptly, thoroughly, and impartially by the Executive Director of Human Resources (the “Director”), or the Director’s designee.

The Title IX Coordinator will promptly prepare a formal letter to the Director notifying the Director of the initiation of a formal investigation. The letter will provide the names of the complainant and respondent and the date, location, and nature of the alleged sexual misconduct.

The Title IX Coordinator will also notify the complainant and respondent, in writing, of the commencement of the investigation. Such notice will:

- Identify the complainant and the respondent;
- Specify the date, time (if known), location, allegations and nature of the alleged misconduct;
- Specify that there is a formal inquiry into the conduct in question;
- List the specific provisions of this Policy alleged to have been violated;
- List the possible sanctions;
- Explain the prohibition against retaliation;
- State that both parties will be provided the time and place for all meetings in relation to the conduct process.

The Director’s fact-finding will commence within seven business days of receipt of the Title IX Coordinator’s formal letter. The Director will handle complaints impartially and objectively, perform fact-finding. The investigation by the Director, or the Director’s designee, 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. During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the Director to each other or other witnesses. The Director will collect and review evidence it deems necessary or helpful to the investigation of the alleged sexual misconduct. The investigation may also include examination of medical records, surveillance video, cell phone and other electronic records, and other evidence. College officials involved in the investigation or adjudication will also make a separate determination of what evidence should be provided, beyond any evidence proposed by the parties.

### **Hearing**

The Formal Resolution process involves a hearing before the Director, or the Director’s designee. The Director is charged with fairly, promptly and impartially determining, based upon a preponderance of evidence, whether it is more likely than not that Policy has been violated upon a review of the investigative materials. The Director, or the Director’s designee, will schedule a hearing date. The College will provide written notice to both parties stating the date, time, and



place of the hearing with the Director, or the Director's designee, at least five business days before the hearing date.

A party wishing to challenge the participation of the Director must notify the Title IX Coordinator, in writing, within three business days of receipt of the notice of hearing, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes at any time.

i. Pre-Hearing Submissions

The parties will provide the Title IX Coordinator with a list of witnesses they wish the Director, or the Director's designee, to call, copies of documents, and a description of any other information they propose to present at the hearing at least three business days prior to the hearing. The Title IX Coordinator 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. The College will also collect and review evidence it deems necessary to its investigation into the alleged sexual misconduct.

A party wishing to challenge the admittance of evidence and/or witnesses must notify the Title IX Coordinator, in writing, within at least forty-eight hours before the hearing date. The party must state the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit and determine the relevance of any proffered evidence and to include or exclude certain types of evidence.

In the absence of good cause, as determined by the Director, or the Director's designee, the parties may not introduce witnesses, documents, or other information at the hearing that were not provided by this deadline

ii. Conduct of the Hearing

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the College will provide both parties with written notice explaining the reason for such change. The College may arrange for the hearing to be recorded, and may arrange for the preparation of any transcript of the recording that the College deems appropriate.

As a non-adversarial process, the hearing will not follow a courtroom model, and formal rules of evidence will not be observed. The Director, or the Director's designee, 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, 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 Director, or the Director's designee, determines may remain anonymous. The Director, or the Director's designee, will review in advance of the hearing all the written materials provided.

Only the Director, or the Director's designee, may question the individual parties and any witnesses, unless the permission is granted to modify the questioning process. After all witnesses have been questioned, each party may make a closing statement. At no time will the complainant and respondent be questioned at the same time or be permitted to question each other.

In order to comply with the Family Education Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), as applicable, 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.

Both the complainant and the respondent may have advisors present to support and assist them during the investigation, hearing, and appeal stages of the resolution process. The advisor may be any person who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a complaint under this Policy. At the complainant's or respondent's request, the Title IX Coordinator will appoint the requesting party an advisor who has been formally trained. An advisor may not direct questions to the parties, Director, or the Director's designee, or witnesses at the hearing, but may consult with the party that he or she is assisting. The Director, or the Director's designee, will not allow an advisor's presence to inhibit the parties' sharing of information or the conduct of the hearing. The Title IX Coordinator must be advised in writing that an advisor will be present at least 48 hours before any scheduled meeting, hearing or proceeding. This notification must include: (1) full name and title of the advisor of choice; (2) contact information for the advisor of choice (phone number, email address, and mailing address).

The parties are expected to cooperate with the College during the hearing process. The complainant and respondent do not need to be in the same room. Closed Circuit television may be used. If either party fails to appear at the scheduled hearing, the Director, or the Director's designee, may postpone the proceedings if there is a legitimate documented reason for the absence, 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.

If the Director, or the Director's designee, determines that unresolved issues exist that would be clarified by the presentation of additional information, the Director, or the Director's designee, 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.

### **Determination and Sanction**

In all investigations into alleged sexual misconduct, the College will evaluate evidence under a **“preponderance of the evidence”** standard. A preponderance of the evidence means that information shows it is **“more likely than not”** that the respondent violated this Policy.

The respondent will be found to be responsible for the alleged sexual misconduct if the Director, or the Director's designee, concludes, based upon careful review of all information presented during the investigation of the Director, or the Director's designee, and the hearing, that such sexual misconduct more likely than not occurred. The Director, or the Director's designee, shall determine whether the respondent is responsible for sexual misconduct. The Director, or the Director's designee, shall provide such determination in writing to the President's Chief of Staff after the hearing's conclusion.

The President's Chief of Staff may terminate the employment of any staff member or administrator found to have engaged in sexual misconduct. The President's Chief of Staff may impose any of the following sanction(s) that is determined to be fair and proportionate to the violation:

- Reprimand or warning
- Changing the respondent's work schedule
- Disciplinary probation
- Restricting the respondent's access to College facilities or activities
- Community service
- Issuing a "no-contact" order to the respondent or requiring that such an order remain in place
- Forfeiture of a benefit, honor, leadership position, or other privilege enjoyed by virtue of the person's membership as adjunct faculty, staff, or administration.
- Demotion or forfeiture of promotion or salary increase
- Reassignment of College employment
- Suspension (limited time or indefinite, with or without pay)

In determining an appropriate sanction(s), the President's Chief of Staff will consider any record of past violations of College policies, as well as the nature and severity of such past violation(s), and whether the respondent poses a continuing risk to the complainant and/or the College community. Any sanction imposed will be explained and supported in the written decision of the President's Chief of Staff.

Within ten business days from the conclusion of the hearing of the Director, or the Director's designee, the President's Chief of Staff will issue a determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this determination letter.

The determination letter will contain only the following information: (i) the name of the respondent; (ii) whether the respondent has been found responsible or not responsible for specific violation(s) of the sexual misconduct Policy; (iii) the sanction imposed, if any; (iv) the rationale for the decision and sanctions; (v) the College's appeal process; (vi) any change to the results that occurs prior to the time that the results become final; and (vii) when the results become final. Both the respondent and the complainant have a right to this information. The determination letter may not be disclosed except where disclosure is authorized or required by law.

### **Appeal Process**

Either party may appeal the determination of the Director, or the Director's designee, and/or the sanction of the President's Chief of Staff. A party has three grounds under which to appeal the College's determination: (i) the Director, or the Director's designee, committed procedural errors that had an impact on the complaint's decision, (ii) there is new evidence that was not reasonably available at the time of the hearing before the Director, or the Director's designee, or (iii) the sanctions are not consistent with past practices or the severity of the alleged sexual misconduct.

Final sanctions are in effect until any timely appeal of the decision is resolved. The President's Chief of Staff may suspend the sanction pending exhaustion of appeal, allow the employee to attend work or other activity on a supervised or monitored basis, or make such other modifications to the determination as may be advisable. Interim measures will remain in effect until the appeal is resolved.

The procedure to file an appeal is as follows:

1. A party wishing to appeal the determination of the Director, or the Director's designee, and/or sanctions of the President's Chief of Staff or must file a **notice of intent to appeal** within five business days of the date the party is notified of the finding and sanctions. The intention to file an appeal must be submitted in writing (either email or hard-copy) to the Title IX Coordinator. This notice of intent to appeal must contain the party's grounds for the appeal.
2. Within two weeks of filing a notice of intent to appeal, the party's formal appeal must be filed. The party should submit copies of any and all material the party wishes to provide as evidence for his/her appeal. Additionally, the party can submit a written statement that is no longer than five (5) single-spaced typed pages, using size 12 Times New Roman font and 1-inch margins.
3. In the event a formal appeal is filed, the non-appealing party is given an opportunity to review the appealing party's submissions and material and submit a written response. The response can be no longer than five (5) single-spaced typed pages, using size 12 Times New Roman font and 1-inch margins. The written response must be submitted within five (5) day after the appealing party submits a formal appeal.
4. Appeals will be heard by the Vice President for Academic Affairs unless it involves a student complaint. Appeals of student complaints will be heard by an Appeals Committee consisting of three full-time faculty members. Except for appeals brought under (ii) above, the Vice President of Academic Affairs or the President's Chief of Staff's entire review process will be based on the party's appeal, the non-appealing party's response to the appeal, and the Director's, or the designee's, record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard.
5. The Vice President for Academic Affairs will make a final determination on the appeal. The Vice President for Academic Affairs shall render its decision regarding the appeal within 20 calendar days.
6. Within three days of the Vice President for Academic Affairs' or designee's determination, the Vice President for Academic Affairs, will issue a final determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this final determination letter.

### **Formal Resolution Process for Full-Time Faculty**

The following process and procedures apply to full-time faculty members.

#### **Investigation**

When the complainant indicates a desire to pursue Formal Resolution, the reported allegations of sexual misconduct will be investigated promptly, thoroughly, and impartially by a committee comprised of at least three full-time faculty members, all of whom receive training, at least annually, on the issues relating to sexual misconduct, including sexual harassment, dating violence, domestic violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability (the "Sexual Misconduct Committee").

The Vice President for Academic Affairs will appoint three faculty members and two alternate faculty members to serve on the Sexual Misconduct Committee. Faculty members will serve a three year term. Such members may not include members of the Professional Standards Committee.

The Title IX Coordinator will promptly prepare a formal letter to the Sexual Misconduct Committee notifying the Sexual Misconduct Committee of the initiation of a formal investigation. The letter will provide the names of the complainant and respondent and the date, location, and nature of the alleged sexual misconduct.

The Title IX Coordinator will notify the complainant and respondent, in writing, of the commencement of the investigation. Such notice will:

- Identify the complainant and the respondent;
- Specify the date, time (if known), location, allegations and nature of the alleged misconduct;
- Specify that there is a formal inquiry into the conduct in question;
- List the specific provisions of this Policy alleged to have been violated;
- List the possible sanctions;
- Explain the prohibition against retaliation;
- State that both parties will be provided the time and place for all meetings in relation to the conduct process.

The Sexual Misconduct Committee's fact-finding will commence within seven business days of receipt of the Title IX Coordinator's formal letter.

The Sexual Misconduct Committee will handle complaints impartially and objectively, perform fact-finding, and will follow certain procedures. The investigation of the Sexual Misconduct Committee, or the Sexual Misconduct Committee's designee, 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. During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed to each other or other witnesses. The Sexual Misconduct Committee will collect and review evidence it deems necessary or helpful to the investigation of the alleged sexual misconduct. The investigation may also include examination of medical records, surveillance video, cell phone and other electronic records, and other evidence. College officials involved in the investigation or adjudication will also make a separate determination of what evidence should be provided, beyond any evidence proposed by the parties.

### Hearing

The formal resolution process involves a hearing before the Sexual Misconduct Committee. The Sexual Misconduct Committee is charged with fairly, promptly and impartially determining, based upon a preponderance of evidence, whether it is more likely than not that the Policy has been violated upon a review of the investigative materials. The College will provide written notice to both parties stating the date, time, and place of the hearing with the Sexual Misconduct Committee at least five business days before the hearing date.

A party wishing to challenge the participation of any member appointed to the Sexual Misconduct Committee must notify the Title IX Coordinator, in writing, within three business days of receipt of the notice of hearing, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes in the composition of the Sexual Misconduct Committee at any time.

i. Pre-Hearing Submissions

The parties will provide the Title IX Coordinator with a list of witnesses they wish the Sexual Misconduct Committee to call, copies of documents, and a description of any other information they propose to present at the hearing at least three business days prior to the hearing. The Title IX Coordinator 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. The College also has an independent obligation to collect and review evidence.

A party wishing to challenge the admittance of evidence and/or witnesses must notify the Title IX Coordinator, in writing, within at least forty-eight hours before the hearing date. The party must state the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit and determine the relevance of any proffered evidence and to include or exclude certain types of evidence.

In the absence of good cause, as determined by the Sexual Misconduct Committee, the parties may not introduce witnesses, documents, or other information at the hearing that were not provided by this deadline.

ii. Conduct of the Hearing

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the College will provide both parties with written notice explaining the reason for such change. The College may arrange for the hearing to be recorded, and may arrange for the preparation of any transcript of the recording that the College deems appropriate.

As a non-adversarial process, the hearing will not follow a courtroom model, and formal rules of evidence will not be observed. The Sexual Misconduct Committee 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, 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 Sexual Misconduct Committee determines may remain anonymous. The Sexual Misconduct Committee will review in advance of the hearing all the written materials provided.

Only the Sexual Misconduct Committee 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. At no time will the complainant and respondent be questioned at the same time or be permitted to question each other.

In order to comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), 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.

Both the complainant and the respondent may have advisors present to support and assist them during the pre-hearing, hearing, and appeal stages of the Resolution process. A member of the Professional Standards Committee may not serve as an advisor. At the complainant's or respondent's request, the Title IX Coordinator will appoint the requesting party an advisor who has been formally trained. An advisor may not direct questions to the Sexual Misconduct Committee or witnesses at the hearing, but may consult with the party that he or she is assisting. The Sexual Misconduct Committee will not allow an advisor's presence to inhibit the parties' sharing of information or the conduct of the hearing.

The parties are expected to cooperate at the hearing. The complainant and respondent do not need to be in the same room. Closed Circuit television may be used. If either party fails to appear at the scheduled hearing, the Sexual Misconduct Committee may postpone the proceedings if there is a legitimate documented reason for the absence, 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.

If the Sexual Misconduct Committee determines that unresolved issues exist that would be clarified by the presentation of additional information, the Sexual Misconduct Committee 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. The Committee will use its best efforts to complete the process in 60 days.

### **Determination and Sanction**

In all investigations into alleged sexual misconduct, the College will evaluate evidence under a **"preponderance of the evidence"** standard. A preponderance of the evidence means that information shows it is **"more likely than not"** that the respondent violated this Policy.

The respondent will be found to be responsible for the alleged sexual misconduct if the Sexual Misconduct Committee concludes, based upon careful review of all information presented, that such sexual misconduct more likely than not occurred. The Sexual Misconduct Committee shall determine whether the respondent is responsible for sexual misconduct, and will provide a written statement of such determination to the Vice President for Academic Affairs .

The Vice President for Academic Affairs or the Vice President for Academic Affairs' designee may recommend the dismissal of any faculty member found to have engaged in sexual misconduct. The Vice President for Academic Affairs or his or her designee may impose any of the following sanction(s) that is determined to be fair and proportionate to the violation:

- Reprimand or warning
- Changing the respondent's work schedule
- Disciplinary probation
- Restricting the respondent's access to College facilities or activities
- Community service

- Issuing a “no-contact” order to the respondent or requiring that such an order remain in place
- Forfeiture of a benefit, honor, leadership position, or other privilege enjoyed by virtue of the person’s membership as faculty
- Demotion, or forfeiture of promotion or salary increase
- Reassignment of College employment
- Suspension (limited time or indefinite, with or without pay)

In determining an appropriate sanction(s), the Vice President for Academic Affairs or his or her designee will consider any record of past violations of College policies, as well as the nature and severity of such past violation(s) and whether the respondent poses a continuing risk to the complainant and/or the College community. Any sanction imposed will be explained and supported in the written decision of the Vice President for Academic Affairs. .

In the event the Vice President for Academic Affairs recommends dismissal of a faculty member, the procedures set forth in Section L of the Faculty Statutes will govern such dismissal proceedings.

Within ten business days from the conclusion of the Sexual Misconduct Committee hearing, the Vice President for Academic Affairs will issue a determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this determination letter.

The determination letter will contain only the following information: (i) the name of the respondent; (ii) whether the respondent has been found responsible or not responsible for specific violation(s) of the sexual misconduct Policy; (iii) the sanction imposed, if any; (iv) the rationale for the decision and sanctions; (v) the College’s appeal process; (vi) any change to the results that occurs prior to the time that the results become final; and (vii) when the results become final. Both the respondent and the complainant have a right to this information. The determination letter may not be disclosed except where disclosure is authorized or required by law.

### **Appeal Process**

Either party may appeal the Sexual Misconduct Committee’s determination and/or the sanction of the Vice President for Academic Affairs or his or her designee. A party has three grounds under which to appeal the College’s determination: (i) the Sexual Misconduct Committee committed procedural errors that had an impact on the complaint’s decision, (ii) there is new evidence that was not reasonably available at the time of the hearing before the Sexual Misconduct Committee, or (iii) the sanctions are not consistent with past practices or the severity of the alleged sexual misconduct. The Appeal Process described herein is not applicable to a faculty member’s appeal of a recommendation for his or her dismissal; such appeal is heard in accordance with the procedure set forth in Section L of the Faculty Statutes.

Final sanctions are in effect until any timely appeal of the decision is resolved. The Vice President for Academic Affairs or his or her designee may suspend the determination pending exhaustion of appeal, allow the faculty member to attend classes or other activity on a supervised or monitored basis, or make such other modifications to the determination as may be advisable. Interim measures will remain in effect until the appeal is resolved.



The procedure to file an appeal is as follows:

1. A party wishing to appeal the findings of the Sexual Misconduct Committee and/or sanctions of Vice President for Academic Affairs must file a **notice of intent to appeal** within five business days of the date the party is notified of the Sexual Misconduct Committee's finding and the President and/or Vice President for Academic Affairs' sanctions. The intention to file an appeal must be submitted in writing (either email or hard-copy) to the Title IX Coordinator. This notice of intent to appeal must contain the party's grounds for the appeal.
2. Within two weeks of filing a notice of intent to appeal, the party's formal appeal must be filed. The party should submit copies of any and all material the party wishes to provide as evidence for his/her appeal. Additionally, the party can submit a written statement that is no longer than five (5) single-spaced typed pages, using size 12 Times New Roman font and 1-inch margins.
3. In the event a formal appeal is filed, the non-appealing party is given an opportunity to review the appealing party's submissions and material and submit a written response. The response can be no longer than five (5) single-spaced typed pages, using size 12 Times New Roman font and 1-inch margins. The written response must be submitted within five (5) day after the appealing party submits a formal appeal.
4. All appeals of faculty members will be heard by the President's Chief of Staff or her designee except appeals of student complaints. Student appeals will be heard by an "Appeals Committee" composed of three full-time faculty members. Except for appeals brought under (ii) above, the entire review process will be based on the party's appeal, the non-appealing party's response to the appeal, and the Sexual Misconduct Committee's record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard.
5. The President's Chief of Staff will make a final determination of the appeal. The President's Chief of Staff or her designee will render a decision regarding the appeal within 20 business days.
6. Within three days of the President's Chief of Staff's determination, the President's Chief of Staff or his or her designee will issue a final determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this final determination letter.

## **V. LEGAL PROTECTIONS AND EXTERNAL REMEDIES**

Sexual harassment is not only prohibited by the College, but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at the College, employees and covered non-employees may also choose to pursue legal remedies with the following governmental agencies. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

### **New York State Human Rights Law**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees and covered non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time within one year of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to the College does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400, or visit [www.dhr.ny.gov](http://www.dhr.ny.gov)

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

### **Civil Rights Act of 1964**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred.

An employee alleging discrimination at work, can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov)

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### **Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml)

### **Contact the Local Police Department**

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

### **Retaliation.**

As set forth more fully in the Policy, unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law and, where applicable, New York City Human Rights Law protect any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- Made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of the law or this policy, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, this retaliation provision and the anti-retaliation policy set forth in the Policy are not intended to protect persons making intentionally false charges of harassment.

## **VI. PUBLIC NOTICES**

Under NYC Local Law 95 of 2018, the College is required to conspicuously display anti-sexual harassment rights and responsibilities notices in both English and Spanish, and distribute a factsheet to individual employees at the time of hire. The College will post the notices in conspicuous employment areas throughout the Campus. The factsheet will be incorporated into the College's new hire packet, and will be sent annually to all employees via email. The notices and fact sheet will also be incorporated into the Employee Handbook.

## **APPENDIX A:**

### **COMPLAINT FORM FOR REPORTING SEXUAL HARASSMENT**

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form for employees and covered non-employees to report in writing alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to the Title IX Coordinator. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, the College is still required to follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

**For additional resources, visit: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>**

#### **COMPLAINANT INFORMATION**

Name:

Department:

Home Address:

Work Phone:

Home Phone:

Job Title:

Email:

Select Preferred Communication Method:

Email  Work  Home  In person

#### **SUPERVISORY INFORMATION**

Immediate Supervisor's Name:

Title:

Work Phone:

Department:

#### **COMPLAINT INFORMATION**

1. Your complaint of Sexual Harassment is made about:

Name:

Title

Department:

Work Phone:

Relationship to you:       Supervisor  Subordinate  Co-Worker  Other

2. Date(s) sexual harassment occurred: \_\_\_\_\_

Is the sexual harassment continuing?       Yes       No

3. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.
4. Please list the name and contact information of any witnesses or individuals that may have information related to your complaint:

If you have retained legal counsel and would like us to work with them, please provide their contact information.

*I request that St. Francis College investigate this complaint of sexual harassment in a timely manner as outlined in the College's policy, and advise me of the results of the investigation.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_