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”) and 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”), the College is committed to maintaining a community free from all forms of sex discrimination, including sexual misconduct. 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.

Sexual misconduct 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.

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.

Questions regarding Title IX and the Campus SaVE Act may be referred to the College’s Title IX Coordinator or 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.

**Scope of Policy**

This policy governs sexual misconduct involving all employees of St. Francis College, including staff, administrators, faculty, and adjunct faculty (collectively, “employees”), and applies to such employees regardless of sex, race, national origin, disability, part-time/full-time status, sexual orientation, gender identity, or other protected status. 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 contained in The Cord and available through the Human Resources Department.

If the respondent is a St. Francis College student, the investigation and disciplinary processes described in the College’s Policy and Procedures for Reports of Student Sexual Misconduct will apply, which can be found in The Cord. For information about this policy, please see the policy on the college web site and/or contact the Title IX Coordinator.

This policy applies to any allegation of sexual misconduct that takes place on College property, including student-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, but which may have an impact on the College community.

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

**RESOURCES AND REPORTING OPTIONS FOR VICTIMS OF SEXUAL MISCONDUCT**

**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:

- NYPD Special Victims Division 646-610-7272
- 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)
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, indicated below, 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

The College is committed to providing a prompt, fair, and impartial investigation and resolution to 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. Any incident of sexual misconduct reported to another College employee, with the exception of those employees designated as confidential, as set forth below, will be reported by the employee to the Title IX Coordinator.

Regardless of whether or not an official complaint of sexual misconduct is made, various counseling options are available from the College’s Employee Assistance Program, Ability Assist:

[800-964-3577 www.guidanceresources.com, Company ID: HLF902;Company name:abili

Accommodations

Any individual who has been the victim of sexual misconduct may request assistance in changing working situations and, if applicable, living arrangements. The College will grant such accommodations, provided they are reasonable and available, regardless of whether the victim chooses to report the crime to law enforcement. Such accommodations may include, adjusting an employee’s work schedule, 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 provide information about the employee’s request for accommodations only to those having a need to know such information in order to implement the accommodations.
Confidentiality

The College understands that, for many victims of sexual misconduct, 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. 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 to the Title IX Coordinator without a victim’s permission. 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. The following is a list of the College’s professional and pastoral counselors:

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

Fr. Brian Jordan, OFM
McGardle Student Lounge
180 Remsen Street, Room 1304
Brooklyn, NY 11201
Phone: (718) 489-5493 or, if on campus, extension 5493

Non-Professional Counselors and Advocates

College representatives who work or volunteer in the College’s Student Health Center or Counseling Center generally may talk with and provide assistance and resources to a victim of sexual misconduct without being required to report any personally identifying information about the incident to the College. These individuals may maintain a victim’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. 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. A responsible employee must report all relevant details about the alleged sexual misconduct shared by the victim to the Title IX Coordinator. To the extent possible, 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.

The College is obligated by law to investigate all allegations of sexual misconduct regardless of whether the victim wishes to file a complaint. Therefore, if a complainant reports an incident of sexual misconduct to a responsible employee, but wishes to remain confidential 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 accused 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 respondent threatened further sexual misconduct or other violence against the complainant or others;
- 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 it must disclose the complainant’s identity to the respondent, the College will promptly inform 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.

**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.

**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.

**Anti-Retaliation Policy**

The College prohibits retaliation against any person who reports sexual misconduct or participates in the investigation of any allegation of sexual misconduct, including testifying as a witness. 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.

**DEFINITIONS WITHIN THE POLICY**

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

“Complainant” means the individual making the allegation(s) of sexual misconduct.

“Consent” means an informed, knowing, and voluntary decision to engage in a mutually agreed upon sexual activity. Consent to engage in one form of sexual activity does not imply consent to other forms of sexual activity. Past consent to engage in sexual activity does not constitute present or future consent. Consent cannot be obtained from coercion, force, intimidating behavior or threats. An individual who is incapacitated (by alcohol or drug use, unconsciousness, or disability) or otherwise helpless cannot consent. Silence or lack of resistance is not deemed consent. Consent can be revoked at any time.
“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.

“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.

“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” 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).

“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, dating violence, domestic violence, and stalking.

“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.

“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.

Conduct that violates the College 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

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 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. Additional information regarding interim accommodations is set forth in the Interim Measures section below.

At the initial intake meeting, the Title IX Coordinator 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 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 many instances, counseling, advice, or informal discussion may be useful in resolving concerns about allegations of discrimination prohibited by Title IX. Complainants who wish to resolve their concerns informally should bring them to the attention of the Title IX Coordinator. In working to resolve the matter, the Title IX Coordinator ordinarily will interview the complainant and, as appropriate, others who may have knowledge of the facts underlying the grievance. At any point, including while the informal process is ongoing or afterward, the complainant may elect to end the informal process in favor of filing a formal grievance.

If the complainant wishes to proceed with Formal Resolution, the Title IX Coordinator will promptly prepare a formal letter to the Executive Director of Human Resources or the Sexual
Misconduct Committee, as applicable, notifying the Executive Director of Human Resources or the Sexual Misconduct Committee, as applicable, 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.

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.

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 College 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.

To ensure the safety and well-being of the complainant, the 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 employment arrangements, or other appropriate protections. Any employee who has been the victim of sexual misconduct may request assistance in changing working situations after a report of sexual misconduct. The College will grant such accommodations, provided they are reasonable and available, regardless of whether the victim chooses to report the crime to law enforcement. When taking such steps to separate the complainant and the respondent, the College will, to the extent practicable, minimize the burden on the complainant.

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

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.

**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.

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, who receives 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 investigation of 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. In the event the Director is either the complainant or respondent in the matter, the investigation and hearing will be conducted by the Provost.

**Pre-Hearing Meeting**

Following the Title IX Coordinator’s intake meeting with the respondent, the Director, or the Director’s designee, will schedule separate pre-hearing meetings with the complainant and the respondent. The Title IX Coordinator will provide written notices to the complainant and the respondent, stating the date, time, and place of their respective pre-hearing meetings with the Director, of the Director’s designee. Notices of the pre-hearing meetings will be delivered by email or in person, and will be considered effective immediately upon delivery.

At the pre-hearing meetings, the Director, or the Director’s designee, will review hearing procedures and preliminary matters separately with the parties. The Director, or the Director’s designee, will instruct all parties concerned to avoid any private discussion of the merits of the complaint.
Hearing

The resolution process involves a hearing before the Director, or the Director’s designee. After the pre-hearing meetings with the complainant and the respondent, 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.

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.

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. Investigation by the Director

The Director, or the Director’s designee, may interview witnesses and collect and review such evidence as the Director deems necessary or helpful to his/her investigation into the alleged sexual misconduct.

iii. 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.

In order to comply with the Family Education 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. At the complainant’s or respondent’s request, the Title IX Coordinator will appoint to each party an advisor who has been formally trained. An advisor may not direct questions to the 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 parties are expected to cooperate at the hearing. 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 and, if so, make a
recommendation of sanctions to the Executive Vice President. The Director, or the Director’s designee, shall provide such determination and recommended sanctions, if applicable, in writing to the Executive Vice President.

The Executive Vice President, in consultation with the Director, may terminate the employment of any staff member or administrator found to have engaged in sexual misconduct. The Provost, in consultation with the Director, may terminate any adjunct faculty member found to have engaged in sexual misconduct; however, the Executive Vice President or Provost, as applicable, 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 Executive Vice President or Provost, as applicable, in consultation with the Director, 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 Executive Vice President or Provost, as applicable.

Within ten business days from the conclusion of the hearing of the Director, or the Director’s designee, the Executive Vice President or Provost, as applicable, 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 College’s appeal process; (v) any change to the results that occurs prior to the time that the results become final; and (vi) 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 disciplinary decision of Executive Vice President or Provost. 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 Executive Vice President, Provost, or Director 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 Executive Vice President or Provost 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.

3. Appeals will be heard by the President or the President’s designee. Except for appeals brought under (ii) above, the President’s entire review process will be based on the party’s appeal and the Director’s, or the Director’s designee’s, record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard.

4. The President will make a final determination on the appeal. The President shall render its decision regarding the appeal within 20 calendar days.

5. Within three days of the President’s determination, the President, will issue a final determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this final determination letter.

**Resolution Process for Faculty**

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

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”). Beginning in January 2015, the Provost 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. Upon notification of an incident of sexual misconduct the Title IX Coordinator will send written notice to the Sexual Misconduct Committee. Such members may not include members of the Professional Standards Committee. The Sexual Misconduct Committee will conduct the investigation, which 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. The Committee may request additional resources from the Provost to aid in the investigation.

Pre-Hearing Meeting

Following the Title IX Coordinator’s intake meeting with the respondent, the Sexual Misconduct Committee will schedule separate pre-hearing meetings with the complainant and the respondent. The Title IX Coordinator will provide written notices to the complainant and the respondent, stating the date, time, and place of their respective pre-hearing meetings with the Sexual Misconduct Committee. Notices of the pre-hearing meetings will be delivered by email or in person, and will be considered effective immediately upon delivery.

At the pre-hearing meetings, the Sexual Misconduct Committee will review hearing procedures and preliminary matters separately with the parties. The Sexual Misconduct Committee will instruct all parties concerned to avoid any private discussion of the merits of the complaint.

Hearing

The resolution process involves a hearing before the Sexual Misconduct Committee. After the Sexual Misconduct Committee’s pre-hearing meetings with the complainant and the respondent, the Sexual Misconduct Committee 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 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 Provost, in writing, within three business days of receipt of the notice of hearing, stating the specific reason(s) for the party’s objection. The Provost 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.

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. Investigation by the Sexual Misconduct Committee

The Sexual Misconduct Committee may interview witnesses and collect and review such evidence as the Sexual Misconduct Committee deems necessary or helpful to its investigation into the alleged sexual misconduct.

iii. 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.

In order to comply with the Family Education 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 to each 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. 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 President and/or Provost. The Sexual Misconduct Committee’s written report will also be sent to the President and/or Provost.

The President or the President’s designee may recommend the dismissal of any faculty member found to have engaged in sexual misconduct. The President 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 President 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 President and/or Provost.

In the event the President 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 President and/or Provost 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 College's appeal process; (v) any change to the results that occurs prior to the time that the results become final; and (vi) 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 disciplinary decision of the President 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 President 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 President and/or Provost 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 Provost’s 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.

3. All appeals will be heard by the President or the President’s designee. Except for appeals brought under (ii) above, the Appeal Committee’s entire review process will be based on the party’s appeal and the Sexual Misconduct Committee’s record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard.

4. The President will make a final determination of the appeal. The President or the President’s designee will render a decision regarding the appeal within 20 business days.

5. Within three days of the President’s determination, the President 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.

**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.

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.