



## **INVESTIGATION, RESOLUTION, AND LIVE HEARING PROCEDURES**

### **SUMMARY**

These procedures are designed to facilitate fact-finding and review incidents involving violations of the Title IX Grievance, Harassment and Discrimination, and Sexual Misconduct policies. It is not intended to create an adversarial court-like proceeding. Saint Elizabeth University reserves the right to invoke these procedures when a student of the University has been charged off-campus with a violation of a local, state, or federal law. Students are subject to reasonable disciplinary action, including suspension or expulsion, for breach of federal, state, or local laws or University conduct policies for both on and off-campus conduct, which is likely to have an adverse effect on the University, the educational process, or if it affects the student's suitability as a member of the academic community.

The burden of proof in all campus conduct investigations, including Title IX is "the preponderance of the evidence" standard - whether it is "more likely than not" that the policy violation occurred. If the evidence meets this standard, the Responding Party will be found responsible.

### **I. MAKING A REPORT TO THE INSTITUTION**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

#### **Contact Information for the Title IX Coordinator:**

Name: [Dr. Joseph Ciccone](#)

Title: Interim Title IX Coordinator

Office Address: 2 Convent Road, Santa Maria Hall 10G

Email Address: [jcicccone@steu.edu](mailto:jcicccone@steu.edu)

Telephone Number: 973-290-4383

A report may be made at any time (including during non-business hours) by using the telephone number, electronic mail address, or by mail to the office address listed for the Title IX Coordinator. An electronic report can be made online at [www.steu.edu/title-ix/Report](http://www.steu.edu/title-ix/Report).

In addition to reporting directly to the Title IX Coordinator, any campus community member can file a report through the Advocate CARE program at <https://www.steu.edu/incidentreporting>. Individuals submitting a report will be asked to provide contact information so the appropriate University official may follow up for more details regarding the report, if necessary.

## **II. INITIATING AN INVESTIGATION**

### **A. Receiving Notice**

After receiving notice that a student or employee wishes to file a complaint, the Title IX Coordinator will meet with the Reporting Party to document the complaint, provide a copy of the University policy and other appropriate resources, and determine if an investigation should commence. Upon reviewing a complaint, if the Title IX Coordinator finds insufficient information or basis to support the complaint, the Title IX Coordinator is authorized to dismiss the complaint. The decision to dismiss a complaint by the Title IX Coordinator is final. However, if additional information becomes available, the University reserves the right to investigate a complaint that had previously been dismissed.

### **B. Informing the Parties**

At the initiation of an investigation, the Title IX Coordinator will immediately schedule a meeting with the accused (the Responding Party) and provide the Responding Party with a copy of the University's Policy and written notice of the filed complaint. The Responding Party must then prepare a written response to the allegations and submit it to the Title IX Coordinator within three business days of meeting with the Title IX Coordinator. The Title IX Coordinator will review the written complaint and response and assign two investigators to the case within two business days. Both the Reporting Party and the Responding Party will receive written notification of the assignment of investigators. The University will make every effort to conduct a timely review of the complaint and conclude the investigation within ninety business days. A business day constitutes any normally scheduled workday that the University is open between 8 am and 5 pm.

The Title IX Coordinator will explain to both the Reporting and the Responding Parties the policy procedures, the investigation process, support services available, and relevant avenues of redress. The Title IX Coordinator (or investigator) has the authority to take all

reasonable and prudent interim measures to protect both parties pending completion of the investigation and the procedures undertaken to resolve the complaint.

**C. Reporting & Responding Parties Rights:**

**A Reporting Party has the right to:**

- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a report to local law enforcement and/or state police;
- Seek medical treatment and/or speak to a medical professional regardless of intent to file a police report;
- Decide whether or not to disclose a crime or policy violation and participate criminal justice process and/or in the judicial or conduct process free from pressure from the University;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and receive from the University courteous, fair, and respectful support services and/or health care and counseling services, where available;
- Be free from any suggestion that the Reporting Party is at fault for the alleged policy violations or should have acted in a different manner;
- Describe the incident to as few University representatives as practicable and not be required to repeat a description of the incident unnecessarily;
- Be protected from retaliation by the University community member and/or their friends, family, and acquaintances within the jurisdiction of the institution;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice (see explanation below).

**A Responding Party has the right to:**

- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and receive from the University courteous, fair, and respectful support services and/or health care and counseling services, where available;
- Be free from any assumption that the Responding Party is at fault for the alleged policy violations or should have acted in a different manner;
- Describe the incident to as few University representatives as practicable;
- Be protected from retaliation by the University community member and/or their friends, family, and acquaintances within the jurisdiction of the institution;
- Access to at least one level of appeal of a determination;
- Be accompanied by an Advisor of choice (see explanation below).

**D. Advisors:** The Reporting and Responding Parties may be supported during interviews and meetings related to the Title IX investigation by an Advisor of their choice, provided that person is not expected to be a witness or participate in the proceedings other than the latter as an Advisor. The chosen Advisor may be an attorney. To serve as an Advisor, the individual will be required to meet with the Title IX Coordinator in advance of participating in a meeting to understand the expectations of the role, privacy, and appropriate decorum. No copies of written materials or any other evidence will be given to the Advisor; the Reporting and Responding Parties may choose to share such information with an Advisor, as necessary, to assist them in the proceedings.

**E. Support Measures:**

The University will make interim measures such as academic or housing accommodations and other supports services, as appropriate, available to the Reporting and Responding Parties throughout the investigative process. These interim measures will be tailored to each complaint and/or investigation, making every effort to avoid undue duress or hardship concerning their educational or employment experience on the Reporting or Responding Parties. Support Measures may include the following: ● alternate housing assignments;

- course reassignment;
- issuance of a zero-contact order;
- change in work schedule and/or location; or
- reasonable academic accommodations, including withdrawal from class, retaking a class without penalty, and/or access to tutoring services.

### **III. INVESTIGATION TIMELINE**

The University is committed to investigating and resolving complaints promptly. However, its ability to do so is closely related to the cooperation of the Reporting and Responding Parties and the witnesses they identify. Under normal circumstances, the University would expect to have resolved the formal complaint within 90 calendar days of receipt. Each party may request a one-time delay in the process of up to five (5) business days for a good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties. The Title IX Coordinator will communicate any such delay to both parties within one (1) business day of the decision.

**A. Typical Timeline**

Absent unusual circumstances, the timeline will typically be:

- Complaint Filed ○ Weeks 1-3: Investigators conduct interviews with the Reporting and, the Responding Parties, and relevant witnesses

- Weeks 4-5: The parties will review the evidence gathered by the Investigators. Investigator(s) designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence and provide that report to the parties at least 10 business days prior to the hearing in an electronic format for each party's review written response. The Parties will have up to 10 business days to respond.
- Weeks 6-7: Parties have the opportunity to respond to the Investigative Report within 10 business days;
- Weeks 8-9: The Hearing Process and the review of the recording of the hearing by the Reporting(s) and Responding(s) within five (5) business days of the completion of the Hearing Process.
- Week 10: If there are no extenuating circumstances, the determination regarding responsibility will be issued by SEU within 10 business days of the completion of the hearing.
- To appeal, a party must submit their written appeal within five (5) business days of being notified of the final determination, indicating the grounds for the appeal.

#### **IV. Emergency Removal**

SEU retains the authority to remove a Reporting or a Responding Party from SEU's program or activity on an emergency basis, where SEU (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

Interim Suspension Policy: An interim suspension may be imposed on any student by the Vice President for Student Life (or designee) when there is reasonable cause to believe, based on available facts, that the continued presence of the student in the community constitutes an immediate threat to a) the emotional or physical health, safety or welfare of any member of the University community or b) University property. An interim suspension may also be imposed by the Vice President (or designee) if the student's behavior is deemed to be persistently or seriously disruptive to the University community. During the interim suspension, a student shall be denied access to the residence halls and/or to the campus (including classes) and/or all other University activities or privileges for which the student might otherwise be eligible until a hearing/meeting can be held to determine the status of the student as a member of the University community. The University retains the right to contact the students' parents or guardians regarding the reason for the interim suspension. Any student who is suspended on an interim basis and returns to the campus or otherwise violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on campus for a specific purpose may

be granted in writing by the Vice President for Student Life (or designee). A student may be given an Interim Suspension if:

- The student has been arrested on-campus or off-campus;
  - The student has repeatedly refused to follow the lawful directions of a University official who is responding to a reported violation of the Code of Conduct or of applicable federal or state laws or an emergency situation;
  - The student threatens or poses a threat to the safety of any members of the University community;
  - It is the judgment of the University official that the student might pose a danger to the safety, security or normal operations of the campus;
  - The student directly and substantially impedes the lawful activities of others;
  - The student threatens to cause or cause significant property damage;
  - The student lacks the capacity to respond to pending disciplinary charges;
  - The student does not seem to know the nature or wrongfulness of his/her behavior at the time of the offense; or
  - The student has behaved in a manner indicating emotional distress requiring mental health evaluation or has threatened to harm the safety of any member of the University community.

If SEU determines such removal is necessary, the Reporting and/or the Responding Party will be provided notice and an opportunity to challenge the decision immediately following the removal.

## **V. INFORMAL AND FORMAL RESOLUTIONS**

The Reporting Party may determine whether to use the Informal Resolution or the formal resolution procedures described below. To utilize the Informal Resolution procedures, both parties must consent to participate. Utilization of either process requires the submission of a formal complaint to the Title IX Coordinator.

### **A. Informal Resolutions**

The Informal Resolution procedure involves a good faith effort to resolve the complaint through a confidential, informal method. The methods utilized for Informal Resolution will be tailored to the specifics of each complaint. Methods may include but are not limited to mediation, modification of the parameters of the situation where the offensive conduct occurred, and on- or off-campus counseling.

Where circumstances allow for the Informal Resolution, reconciliatory measures will be initiated immediately, absent any unusual circumstances. Both the Reporting and the Responding Party have the right to bypass or end the Informal Resolution process at any time and initiate the formal resolution proceedings. If the complaint is not satisfactorily resolved through the Informal Resolution process, either party may

inform the Title IX Coordinator of the desire to use the formal resolution process in writing.

**Please see Appendix A for the Informal Resolution Policy, Procedures, and Agreements.**

**B. Formal Resolutions**

If the Reporting or the Responding Party requests a formal resolution process, a formal investigation and hearing will commence. Two Title IX investigators are assigned to each investigation. The investigators will give the Reporting and the Responding Party a reasonable opportunity to be heard (orally and/or in writing) with respect to the complaint, to furnish names of witnesses, and to provide information or other evidence pertaining to their knowledge of the event(s) set forth in the complaint.

To a party whose participation is invited or expected, Saint Elizabeth will provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Saint Elizabeth University, not the parties, has the burden of proof and collecting evidence, i.e., the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may choose not to participate in an investigation or hearing. This does not shift the burden of proof away from SEU and does not indicate responsibility.

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The inspection and review process aims to allow each party the equal opportunity to respond meaningfully to the evidence prior to the conclusion of the investigation. At the conclusion of the investigation, the investigative report will be shared with both parties 10 business days before the scheduled hearing. The parties will have 10 business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report.

**VI. LIVE HEARING PROCESS**

**1. General Rules of Hearings**

Saint Elizabeth University will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing.



The live hearing may be conducted with all parties physically present in the same geographic location, or, at SEU discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through video conferencing software while located in a private room with their Advisor. This technology will enable participants simultaneously to see and hear each other. At its discretion, Saint Elizabeth University may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be audio recorded. The recording will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard, or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

## **2. Continuances or Granting Extensions**

Saint Elizabeth University may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) are needed to complete a hearing. If so, Saint Elizabeth University will notify all participants and endeavor to accommodate all participants' schedules and conduct the hearing as promptly as practicable.

## **3. Participants in the live hearing**

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

### **a. Reporting and Responding (The Parties)**

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party. See, 85 Fed. Reg. 30026, 30361 (May 19, 2020). See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>.
- Saint Elizabeth University will not threaten, coerce, intimidate or discriminate against either party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- Suppose a party does not submit to cross-examination. In that case, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility. Still, it may reach a

determination regarding responsibility based on evidence that does not constitute a "statement" by that party.

- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).
- The parties shall be subject to the institution's employee or faculty handbook or student code of conduct.

**b. The Decision-Maker**

- The hearing body will consist of a single decision-maker.
- The decision-maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Reporting Parties, and any technology to be used at the hearing.
- The decision-maker will not have served as the Title IX Coordinator, Title IX investigator, or Advisor to any party in the case, may not serve on the appeals body in the case. The decision-maker is prohibited from having a conflict of interest or bias in favor of, against either party, for, or against complainants or respondents in general.
- The parties will have an opportunity to raise any objections regarding a decision maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

**c. Advisor of choice**

- The parties have the right to select an Advisor of their choice, who is not required to be an attorney.
- The Advisor of choice may accompany the parties to any meeting or hearing the party is permitted to attend; however, the Advisor is not permitted to participate or speak on behalf of the party, except for the purpose of cross examination during the hearing process.
- The parties are not permitted to conduct cross-examination; the Advisor must conduct it. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The Advisor is not prohibited from having a conflict of interest or bias in favor of, against Reporting or Responding Parties, for, or against Reporting or Responding Parties in general.
  - The Advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's Advisor may appear and conduct a cross-examination on their behalf. See, 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their Advisor appears at the hearing, Saint Elizabeth University will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).

- Advisors shall be subject to the institution's employee or faculty handbook, or student code of conduct, as appropriate, and may be removed upon violation of policies laid within. If the Advisor is removed from the hearing, the institution will appoint the party a new advisor.

**d. Witnesses**

- Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. See, 85 Fed. Reg. 30026, 30347 (May 19, 2020).
- Witnesses shall be subject to the institution's employee or faculty handbook, or student code of conduct, as appropriate, and may be removed upon violation of policies laid within.

**4. Hearing Procedures For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:**

- The decision-maker will open and establish rules and expectations for the hearing, utilizing the Title IX Grievance policy and applicable University policies and procedures as guidance;
- The Parties will each be given the opportunity to provide opening statements;
- The decision-maker will ask questions of the parties and witnesses;
- Parties will be given the opportunity for live cross-examination after the decision maker conducts the initial round of questioning;
- During the parties' cross-examination, the decision-maker will have the authority to pause cross-examination at any time for the purposes of asking the decision-maker's own follow-up questions; and at any time necessary to enforce the established rules of the hearing.
- Should a party or the party's Advisor choose not to cross-examine a party or witness, the party shall affirmatively waive cross-examination through a written or oral statement to the decision-maker. A party's waiver of cross-examination does not eliminate the ability of the decision-maker to use statements made by the Party.

**5. Live Cross-Examination Procedure**

Each party's Advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination, the Advisor will ask the other party or parties and witnesses' relevant questions and follow-up questions, orally, and in real time.

Before any cross-examination question is answered, the decision-maker will determine if the question is relevant. Cross-examination questions that are duplicative of those

already asked, including by the decision-maker, might be deemed irrelevant if they have been asked and answered.

## **6. Review of Recording**

The recording of the hearing will be available for review by the Reporting and Responding Parties within five business days unless there are any extenuating circumstances.

# **VII. Determination Regarding Responsibility**

## **1. Standard of Proof**

Saint Elizabeth University uses the preponderance of the evidence standard for investigations and determinations regarding the responsibility of formal complaints covered under this Policy. This means that the final determination reflects whether it is more likely than not, that a violation of the Policy has occurred to a neutral decision-maker.

## **2. General Considerations for Evaluating Testimony and Evidence**

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part or entirely on the documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decision-maker.

Decision-makers shall not draw inferences regarding a party's or witness's credibility based on the party's or witness' status as a Complainant, Respondent, or witness, nor shall the decision-maker base judgments on stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony and/or evidence. Credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision-makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in an equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of the specific facts of what occurred.

The Final Rule requires that Saint Elizabeth University allow parties to call "expert witnesses" for direct and cross-examination. EU does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and cross examined as required by the Final Rule, the decision-maker will be instructed to afford lower weight to the non-factual testimony of the expert witness relative to fact witnesses and any expert testimony that is not directed to the specific facts of the complaint will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is subjected to cross-examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that Saint Elizabeth University allow parties to call character witnesses to testify. SEU does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be cross examined as required by the Final Rule, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that Saint Elizabeth University admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the process and testimony and cross-examination of the process, test, and findings will be allowed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or the witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the decision-maker may draw an adverse inference as to that party or witness' credibility.

### **3. Components of the Determination Regarding Responsibility**

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their University email account or other reasonable means. The Determination will include:

- Identification of the allegations potentially constituting covered sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding which section of the Code of Conduct, Sexual Misconduct Policy, and Employee or Faculty Handbook, if any, it was determined that the Respondent had or had not violated.
- For each allegation:

- A statement of, and rationale for, a determination regarding responsibility;
- A statement of, and rationale for, any disciplinary sanctions imposed on the
- Responding Party;
- A statement of, and rationale for, whether remedies designed to
- to restore or preserve equal access to the University's programs and/or activities will be provided by the University to the Reporting Party; and
  - The University's procedures and the permitted reasons for the Reporting and Responding Parties to appeal the determination (described below in "Appeal").

#### **4. Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by SEU within 10 business days of the completion of the hearing.

#### **5. Finality**

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

### **VIII. SANCTIONS AND DISCIPLINARY ACTIONS**

Disciplinary action, up to and including separation from the University as detailed in the determination letter by the decision-maker, may be taken against a Responding Party who violated the Policy. The appropriate University official will initiate disciplinary action as soon as reasonably practicable and, where appropriate, will take whatever steps necessary to prevent the recurrence of the offending behavior.

#### **A. Students Complainants**

Corrective and disciplinary actions for Responding Parties who are students will be determined on a case-by-case basis and may include but are not limited to:

- Changes in class schedule;
- Zero contact orders;
- Community service;
- Counseling;
- Disciplinary reprimand;
- Loss of privilege;
- Restitution;
- Disciplinary probation;
- Suspension; or

- • Expulsion.

#### **B. University Employees Complainants**

Corrective and disciplinary actions for Responding Parties who are University employees will be determined on a case-by-case basis and may include but are not limited to:

- Participation in education sessions on harassment;
- A written reprimand;
- Reassignment of teaching or other responsibilities;
- Suspension without pay; or Termination

#### **C. Third-Party Complainants**

Corrective and disciplinary actions for Responding Parties who are third party employees or contracted vendors, or otherwise unaffiliated with the University will be determined on a case-by-case basis and may include but are not limited to:

- Campus ban;
- The filing of criminal charges;
- Reassignment of contracted services personnel; or
- Termination of business agreements.

### **IX. Appeals**

Each party may appeal:

- (1) the dismissal of a formal complaint or any included allegations and/or a determination regarding responsibility.

To appeal, a party must submit a written appeal within five (5) business days of receiving notification of the determination.

The limited grounds for appeal are as follows:

- Procedural irregularity that affected the outcome of the hearing or investigation (i.e. a failure to follow the institution's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility was made could affect the outcome of the matter; or
- The Title IX Coordinator, an investigator(s), or decision-maker(s) had a conflict of interest or bias for or against a party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of an appeal stays any sanctions for the length of an appeal. Supportive measures and remote learning opportunities remain available during the appeal process.

If a party appeals, the University will, as soon as practicable, notify the other party in writing

of the appeal; however, the time for an appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than five (5) pages (excluding attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

An appeal decision-maker will decide appeals, typically a Vice President, or designee, who will be free of conflict of interest and bias against either party or Reporting and Responding Parties in general and will not have served as investigator, Title IX Coordinator, or hearing decision-maker in the grievance process.

The outcome of the appeal will be provided in writing simultaneously to both parties and include the rationale for the decision.

## **X. FALSE ALLEGATIONS**

Knowingly making a material misstatement of fact, falsifying evidence, or testimony will subject the Reporting Party to disciplinary actions.

Responding Party who believe that they have been the subject of a false complaint of conduct in violation of this Policy may meet with the Title IX Coordinator to discuss the complaint. The filing of a complaint that does not result in a finding of a policy violation is not alone evidence of intent to file a false complaint.

### **RETALIATION POLICY**

Saint Elizabeth University will keep the identity of any Reporting or Responding Party, and witnesses, confidential, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding.

No person may intimidate, threaten, coerce, or discriminate against any individual to interfere with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in an investigation, proceeding, or hearing under these procedures-related policies.



Any intimidation, threats, coercion, or discrimination to interfere with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any

charges filed against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment. However, any such violation cannot have imperiled the health or safety of any other person. As a result, SEU may not pursue drug or alcohol charges against students reporting offenses involving sexual harassment and misconduct based on their personal consumption of drugs or alcohol at or near the time of the incident. Amnesty does not preclude the University from pursuing educational measures, including discussing the drug or alcohol offense regarding the risks and consequences of such activity.

Retaliation against an individual who has made a good faith complaint participated in the investigation of a complaint or otherwise exercised their rights under this Policy or the law is prohibited and is grounds for disciplinary and/or remedial action. Retaliation is an offense separate from the underlying alleged policy violation(s) and will be considered independently. Retaliation is grounds for immediate disciplinary action against the perpetrator of the retaliation, including expulsion of students and dismissal of employees. Anyone who believes that they may have been the victim of retaliation should discuss this concern with the Title IX Coordinator.

## **XI. FILING A COMPLAINT WITH A STATE AND/OR FEDERAL AGENCY**

A student who is not satisfied with Saint Elizabeth University's handling of a complaint, may file a complaint with the appropriate federal and/or state agency.

Office for Civil Rights/New York, U.S. Department of Education, 32 Old Slip, 26th Floor, New York NY 10005-2500 | Telephone: 646-428-3800 | Facsimile: 646-428-3843 Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov).

Office for Civil Rights U.S. Department of Education 32 Old Slip, 26th Floor New York, NY 10005-2500 Telephone: (646) 428-3800 Facsimile: (646) 428-3843 Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov) Web: <http://www2.ed.gov/about/offices/list/ocr/index.html>

## **XII. RECORD KEEPING**

All reports of sexual misconduct, sexual assault, or other forms of harassment or discrimination must be submitted to the Title IX Coordinator. The Title IX Coordinator will maintain a record of all complaints, investigations, and determinations.

# Appendix A

## Informal Resolution

### What is an Informal Resolution in the Title IX Office?

Informal Resolution is a process through which parties voluntarily engage with an impartial Informal Resolution Facilitator (IRF) to discuss remedies to resolve a formal complaint under the University Sexual Misconduct or Title IX Sexual Harassment. Informal Resolution is a non-disciplinary process separate from the University's investigation resolution policy by a hearing body process. Informal Resolution does not include any factual investigation or substantive determination under University policy. While parties may agree to a restriction, resulting in a binding agreement, the Agreement and the Resolution will not appear on any transcript or disciplinary record. Though individual cases may vary, Informal Resolutions aim to stop, remedy, and prevent any occurrence of sexual violence and sexual harassment. The Reporting Party is provided the opportunity to articulate their needs and develop terms designed to address those needs in a tailored, fact-specific manner. The Responding Party acknowledges the harm and addresses that harm without determining policy/violations/s or formal disciplinary action.

### When can someone choose an Informal Resolution with the Title IX Office?

When an initial assessment in which a Reporting Party shares sufficient information for the Title IX office to conclude that the conduct being alleged if substantiated, would violate the Title IX Policy.

- When there is no significant power dynamic between the Reporting and Responding Parties or other relationship between the parties that would make Informal Resolution ineffective or inappropriate.
- When the Title IX Office believes that an Informal Resolution process will not place the Reporting Party or others at risk for future harm and will serve to prevent future harm
- All of the above apply.

### How are the terms developed?

For Informal Resolutions, the Reporting and Responding Parties voluntarily work with the Title IX Informal Resolution Facilitator to reach an agreement.

- The Informal Resolution Officer (IRF) works first with the Reporting Party to draft terms.
- The IRF will consider whether the terms will stop, remedy, and prevent future harm and suggest alternative or additional terms.
- The IRF will confirm in writing with the Reporting Party before contacting the Responding Party.
- The IRF will contact the Reporting and the Responding Parties that the Reporting Party has made allegations and would like to engage in an alternative resolution. If the Responding Party chooses to engage in the Informal Resolution process, the

Responding Party will receive the suggested terms and have the opportunity to make counter-suggestions.

- Generally, the parties will not meet together but will meet with the IRF separately to develop

terms.

**Are the terms of an Informal Resolution binding?**

An Informal Resolution process is administered by the Title IX Office and complies with the Title IX Policy.

Working with the Title IX Office in any fashion may not prevent a criminal or civil action.

If the final mutually agreed open terms have been fulfilled, the Title IX Office will NOT investigate the same allegation unless there are new allegations and parties fail to complete the terms, and the Reporting Party requests an investigation.

**Must the Responding Party be notified of an Informal Resolution?**

Yes, a Responding Party must be notified of the Reporting Party's request to engage in an Informal Resolution and include a Summary of Allegations.

The Responding Party can ask questions about the process and decide whether or not they would like to engage in an Informal Resolution process.

**What if the Responding Party chooses not to participate in the Informal Resolution?**

If the Responding Party is notified of the Informal Resolution and chooses not to participate in the process, the Reporting Party has the option to move forward with an investigation.

**Can a Reporting or Responding Party be forced to participate in an Informal Resolution?**

No. The ARF works with both parties to create mutually agreed-upon terms. For an Informal Resolution to be initiated and supported by Title IX Office, both parties must willingly engage in the Informal Resolution process.

**Does the Reporting Party have to communicate directly with the Responding Party to develop the Informal Resolution terms?**

No, the Reporting and Responding Parties generally do not directly interact during an Informal Resolution process. The ARF will act as a mediator between the Reporting and Responding Parties during the creation of the terms.

**Will the Title IX IRF monitor the terms after an agreement has been made?**

Yes. The IRF will continue to communicate timelines and monitor the completion of terms until all terms have been fulfilled.

**What if the Responding Party does not fulfill the terms of the Informal Resolution after it is agreed upon?**

If the Responding Party does not fulfill or complete the agreed-upon terms of the Informal Resolution, the Reporting Party may request an investigation into the allegations.

## Informal Resolution Agreement Reporting Party

The Informal Resolution process will only be used at the request and agreement of both the Reporting and the Responding Parties and under the direction of the Title IX Office. For the Informal Resolution Process to be appropriate, both parties must understand and agree on the necessary elements of the process. The following information was reviewed in your initial meeting with the Title IX Office, but please read through the following components and initial that you understand each of the following:

\_\_\_\_\_ Participation in this process is voluntary, and either the Reporting or Responding Parties can choose to end the process at any time before signing the agreement;

\_\_\_\_\_ The process can only be used once and will not be considered if requested by a repeat Responding Party under the Title IX Policy;

\_\_\_\_\_ The Reporting and Responding Parties must agree to all recommendations laid out in the agreement or the case reverts to an investigation;

\_\_\_\_\_ Participation in this process does not constitute a responsible finding of a policy violation and therefore is not reflected on a student's disciplinary record:

\_\_\_\_\_ If the Responding Party is accountable for violating this agreement, those violations will be considered for the future sanctioning phase of the disciplinary proceeding; and

\_\_\_\_\_ The Responding Party may be charged with *Failure to Comply with a Directive of a University Official* for failure to meet the requirements specified in the agreement.

\_\_\_\_\_ Information documented during this process can be subpoenaed if a criminal investigation is initiated.

By signing below, I indicate that I approve of the Title IX Office moving forward with this contract as is and understand the requirements that must be completed on behalf of the Responding Party in this for the Informal Resolution Process (*as part of the Title IX Policy*) to be satisfied. By participating in this process, I understand and acknowledge that I am waiving my right to utilize a formal investigation to resolve this matter once both parties (myself & Responding Party) have signed this contract. Lastly, I understand and acknowledge that if the Responding Party fails to complete the activities set forth, the Responding Party may be charged with *Failure to Comply with a Directive of a University Official* under the Title IX Policy. I further understand and acknowledge that sanction (s) listed under the Title IX Policy may be imposed upon the Responding Party if they are found responsible for *Failure to Comply with a Directive of the University Official*.

Reporting Party's Printed Name

Signature

Date

Title IX IRF's Printed Name

Signature

Date

## Informal Resolution Agreement for Respondent

The Informal Resolution process will only be used at the request and agreement of both the Reporting and the Responding Parties and under the direction of the Title IX Office. In order for the Informal Resolution Process to be appropriate, both parties must have an understanding and agree on the necessary elements of the process. The following information was reviewed in your original meeting with the Title IX Office, but please read through the following components and initial that you understand each of the following:

\_\_\_\_\_ Participation in this process is voluntary, and either the Reporting or Responding Parties can choose to end the process at any time before signing the agreement;

\_\_\_\_\_ The process can only be used once and will not be considered if requested by a repeat Responding Party under the Title IX Policy;

\_\_\_\_\_ The Reporting and Responding Parties must agree to all recommendations laid out in the agreement or the case reverts to an investigation;

\_\_\_\_\_ Participation in this process does not constitute a responsible finding of a policy violation and therefore is not reflected on a student's disciplinary record:

\_\_\_\_\_ If the Responding Party is found accountable for violating this agreement, those violations will be considered for the future sanctioning phase of the disciplinary proceeding; and

\_\_\_\_\_ The Responding Party may be charged with *Failure to Comply with a Directive of a University Official* for failure to meet the requirements specified in the agreement.

\_\_\_\_\_ Information documented during this process can be subpoenaed if a criminal investigation is initiated.

By signing below, I indicate that I approve of the Title IX Office moving forward with this contract as is and understand the requirements that must be completed on behalf of the Responding Party in this for the Informal Resolution Process (*as part of the Title IX Policy*) to be satisfied. By participating in this process, I understand and acknowledge that I am waiving my right to utilize a formal investigation to resolve this matter once both parties (myself & Reporting Party) have signed this contract. Lastly, I understand and acknowledge that if I fail to complete the activities set forth, I may be charged with *Failure to Comply with a Directive of a University Official* under the Title IX Policy. I further understand and acknowledge that sanction (s) listed under the Title IX Policy may be imposed upon the Responding Party if I am found responsible for *Failure to Comply with a Directive of the University Official*.

Reporting Party's Printed Name

Signature

Date





Title IX IRF's Printed Name

Signature

Date

