# Mount Saint Mary College

## SEXUAL MISCONDUCT AND TITLE IX

The policies and procedures that follow specifically address sexual misconduct. The purpose of this policy is to help Mount Saint Mary College protect the safety, rights, and dignity of all students, faculty, administrators, staff, and visitors without regard to person or position. Good judgment and respect for oneself and others can go a long way toward avoiding problems before they start.

Mount Saint Mary College's Campus Security is on call 24 hours per day. IN THE EVENT OF ANY EMERGENCY on campus, such as a disturbance, hazard, injury, or suspected crime of any kind, please contact Security at 845-569-3200.

The College, through Campus Security, may refer suspected violations of the Municipal Code of the City of Newburgh, the laws of New York State, or Federal law to their respective authorities as the case may warrant.

### STUDENTS' BILL OF RIGHTS

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure from the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any unfair suggestion that the reporting individual is at fault when these crimes and violations are committed, or that he or she should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Have access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process, and who may also be present during all meetings and hearings related to such process if the student wishes; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

The above rights are in addition to any other rights afforded under federal, state or local law.

### REPORTING AND RESPONSE

Individuals wishing to report incidents of sexual assault, domestic violence, dating violence, and/or stalking have the right to pursue more than one of the reporting options below, or to choose not to participate in any of the options below. You may choose to:

Report the incident confidentially to a College official, who by law may maintain confidentiality, and can assist in obtaining support, counseling, and protective services. Please see the table below which lists names and contact information of professional and pastoral counselors;

| **Name:** | **Title:** | **Email:** | **Phone:** |
|---|---|---|---|
| Dr. Orin Strauchler | Director of Counseling | orin.strauchler@msmc.edu | 845-569-3547 |
| Fr. Gregoire Fluet | Chaplain, Director of Campus Ministry | gregoire.fluet@msmc.edu | 845-569-3154 |
| Caitlin Kramer | Counselor | caitlin.kramer@msmc.edu | 845-569-3114 |
| Benjamin Greenwald | Counselor | benjamin.greenwald@msmc.edu | 845-569-3433 |

Report the incident to other administrators and staff who can offer *privacy* and can assist in obtaining direction, suggestions, or referrals to services that may be helpful. Please see the table below which lists names and contact information of non-professional counselors;

| **Name:** | **Title:** | **Email:** | **Phone:** |
|---|---|---|---|
| Dr. Stephen Shapiro | Consulting Physician | Please call | 845-569-3152 |
| Dr. James DiLorenzo | Consulting Physician | Please call | 845-569-3152 |
| Dori Bischof | Director of Health Services, FNP-BC | doreen.bischof@msmc.edu | 845-569-3153 |
| Dina Leduc | Assistant Director of Health Services, RN | dina.leduc@msmc.edu | 845-569-3353 |
| Kely Da Silva | RN-Health Services | kely.dasilva@msmc.edu | 845-569-3647 |
| Barbara Seymour | Administrative Assistant-Health Services | barbara.seymour@msmc.edu | 845-569-3152 |
| Alisha McCorvey | Director of Disability Services | alisha.williams-mccorvey@msmc.edu | 845-569-3641 |

Have, upon the first instance of disclosure by a reporting individual, emergency access to a College official who is trained in interviewing victims of sexual assault, in order to receive information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence, and a trained College official who handles sexual assault interviews can answer any questions about whether a specific incident violated the penal law, and whether the issue should be addressed to law enforcement or to the district attorney;

Disclose *confidentially* the incident and obtain services from the New York State or county hotlines: http://www.opdv.ny.gov/help/dvhotlines.html. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: http://www.opdv.ny.gov/help/index.html (or by calling 1-800-942-6906);

File a criminal complaint with Campus Security, local law enforcement, and/or state police:

- Campus Security: 845-569-3200
- City of Newburgh Police Department: 845-561-3131
- New York State Police:
  - 844-845-7269 (Campus Sexual Assault Victims Unit)
  - 845-344-5300 (Troop F-Middletown, NY);

Disclose, if the accused is a faculty member, staff member, or administrator of the College, the incident to the College's Human Resources authority or the right to request that a confidential or private employee assist in reporting to the appropriate Human Resources authority;

Receive assistance from appropriate College representatives in initiating legal proceedings in Family Court or civil court;

Withdraw your complaint or involvement from the College process at any time.

A complainant wishing to file charges may choose to do so either through the College's disciplinary process, criminally, or both.

## ALCOHOL AND/OR DRUG USE AMNESTY

At Mount Saint Mary College, the health and safety of every student is of great importance to us. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs, may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to College officials. A bystander acting in good faith or a reporting individual acting in good faith who discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to the College's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

SEXUAL ASSAULT, BATTERY, ABUSE, and COERCION involve a nonconsensual sexual act with another person, whether by physical force, threat, or coercion; including when a person is incapacitated.

RAPE is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

HARASSMENT under New York State Law means:

1. To communicate or cause someone to communicate with another person in a manner likely to cause annoyance or alarm.
2. To engage in a course of conduct that places another person in reasonable fear of physical injury.
3. To intentionally and repeatedly harass another person by physical following in a public place with the intent to annoy, threaten, or alarm.

DOMESTIC VIOLENCE is defined as physical violence committed by a current or former spouse of the victim, by a person with whom the victim has a child in common, by a person who is cohabitating or has cohabitated with the victim as if a spouse (as determined under applicable law), or by any other person against an adult or youth victim who is protected from that person's acts by applicable domestic or family violence laws.

DATING VIOLENCE is violence committed by a person who is or has been in a social relation of a romantic or intimate nature with the victim. The length, type, and frequency of the interaction between the persons involved in the relationship are key aspects of these kinds of crimes.

STALKING is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

If you are the victim of Sexual Violence or another crime, or if you witness a crime of any kind, CONTACT CAMPUS SECURITY at 845-569-3200, and follow the operator's instructions. You may also contact Matthew Byrne, Executive Director of Risk Management & Title IX Coordinator, TitleIXCoordinator@msmc.edu, 845-569-3597. His office is located at 319 Powell Avenue, 1st floor.

SEXUAL HARASSMENT is defined as unwelcome sexual advances, requests for favors, or other verbal or physical conduct of a sexual nature, when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's safety, employment, grade, or education;
2. submission to or rejection of such conduct by an individual is used as the basis for employment, grade, or education decisions affecting an individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or subjecting him or her to intimidation, hostility, or humiliation.

Sexual harassment can originate from a person of either sex against a person of the opposite or the same sex.

A HOSTILE ENVIRONMENT is one in which, when viewed from the perspective of a reasonable person in the complainant's position, unreasonably interferes with the individual's ability to access education or ability to execute his or her work-related responsibilities.

RETALIATION is defined in this context as punishing or sanctioning a person for either filing a complaint or acting as a witness regarding a complaint of sexual harassment by intimidation, threats, coercion or discrimination.

If you believe you are the victim of Sexual Harassment as described above, contact Matthew Byrne, Executive Director of Risk Management & Title IX Coordinator, TitleIXCoordinator@msmc.edu, 845-569-3597. His office is located at 319 Powell Avenue, 1st floor.

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

Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop.

Past consent does not imply future consent and consent to one form of sexual activity does not imply consent to any other forms of sexual activity. The initiator has the sole responsibility to confirm consent. Coercion, force, intimidation or threat of harm invalidates consent. An individual of minority age cannot give consent.

An INCAPACITATED PERSON is incapable of giving consent. A person is incapacitated if that person is in a physical or mental state such that he or she lacks the ability to make a knowing and deliberate choice to engage in the sexual interaction. For the purposes of this policy, a person who is asleep, unconscious, or involuntarily restrained is incapacitated, without exception. A person may also become incapacitated due to other factors, which may include the use of alcohol and/or drugs to such a degree that the person no longer has the ability to make a knowing or deliberate choice to engage in the sexual interaction. When the question of whether the complainant was incapacitated is at issue, the perspective of a sober, reasonable person in the position of the respondent will be the basis for determining whether the respondent should have known that the complainant was incapacitated and thus incapable of giving consent.

## FALSE CLAIMS

Filing a false claim or grievance against another person or one that is not made in good faith is a serious breach of the College code, and can incur College, civil, and legal penalties. Filing a false police report can be either a misdemeanor or felony under the New York State criminal code, depending on the circumstances.

## CONFIDENTIAL vs. NON-CONFIDENTIAL COUNSELING

Mount Saint Mary College is committed to the safety and well-being of all students, faculty, staff, and visitors. Please be aware that if you are a victim of sexual violence, are considering filing a claim of harassment, or if you simply wish to discuss a possible incident of sexual misconduct, there are individuals on campus with whom you can speak confidentially who will not report a complaint without your permission. They are listed below.

## PRIVILEGED AND CONFIDENTIAL COMMUNICATIONS

Professional, licensed counselors and pastoral counselors who provide mental-health counseling to members of the school community are not required to report any information about an incident to anyone without a complainant's permission.

Below is the contact information for professional and pastoral counselors:

| **Name:** | **Title:** | **Email:** | **Phone:** |
|---|---|---|---|
| Dr. Orin Strauchler | Director of Counseling | orin.strauchler@msmc.edu | 845-569-3547 |
| Fr. Gregoire Fluet | Chaplain, Director of Campus Ministry | gregoire.fluet@msmc.edu | 845-569-3154 |
| Caitlin Kramer | Counselor | caitlin.kramer@msmc.edu | 845-569-3114 |
| Benjamin Greenwald | Counselor | benjamin.greenwald@msmc.edu | 845-569-3433 |

Members of the College community should understand that, if they wish to maintain complete confidentiality, the College may be unable to conduct a thorough investigation into a particular incident or pursue disciplinary action against a respondent.

However, in these cases, the College's confidential professional counselors can still recommend accommodations or changes to a complainant's living, working, or course schedules.

### NON-PROFESSIONAL COUNSELORS

A complainant can seek assistance and support from non-professional counselors without triggering a College investigation that could reveal his or her identity, or the fact that the incident was reported. However, these non-professional counselors are required to report the nature, date, time, and general location of an incident to the Title IX Coordinator within 24 hours of learning of the complaint. For example, they may deem a timely warning to local authorities necessary for the safety of the community. This warning would not include readily identifiable information about the complainant.

Below is the contact information for non-professional counselors and advocates:

| **Name:** | **Title:** | **Email:** | **Phone:** |
|---|---|---|---|
| Dr. Stephen Shapiro | Consulting Physician | Please call | 845-569-3152 |
| Dr. James DiLorenzo | Consulting Physician | Please call | 845-569-3152 |
| Dori Bischof | Director of Health Services, FNP-BC | doreen.bischof@msmc.edu | 845-569-3153 |
| Dina Leduc | Assistant Director of Health Services, RN | dina.leduc@msmc.edu | 845-569-3353 |
| Kely Da Silva | RN-Health Services | kely.dasilva@msmc.edu | 845-569-3647 |
| Barbara Seymour | Administrative Assistant-Health Services | barbara.seymour@msmc.edu | 845-569-3152 |
| Alisha McCorvey | Director of Disability Services | alisha.williams-mccorvey@msmc.edu | 845-569-3641 |

A complainant wishing to file charges may choose to do so either through the College's disciplinary process, criminally, or both.

### REPORTING BY RESPONSIBLE EMPLOYEES

A "Responsible Employee" is a College employee who has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty. The following is a list of employees (or categories of employees) whom the College has designated as Responsible Employees:

- Athletic Coaches and Administrators
- Resident Directors
- Resident Advisors
- Full-time and part-time Faculty
- Administration (excluding professional and pastoral counselors as listed above)
- Academic Coaches

- Advisors to student organizations
- Security and Safety officers and staff

A complainant who wishes to report an incident to a Responsible Employee should consider such communications non-confidential. The College will consider a request for confidentiality when a report is made to such responsible employees, but may nevertheless be required to report it.

Even College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

## WEIGHING THE REQUEST FOR CONFIDENTIALITY

The College has designated the following individuals to evaluate requests for confidentiality once a responsible employee has been informed of alleged sexual harassment or sexual violence:

| **Name:** | **Title:** | **Email:** | **Phone:** |
|---|---|---|---|
| Elaine O'Grady | Vice President for Student | elaine.ogrady@msmc.edu | 845-569-3110 |
| Matthew Byrne | Executive Director of Risk Management & Title IX Coordinator | matthew.byrne@msmc.edu | 845-569-3597 |
| Melissa Caridi | Human Resources Manager/Title IX Deputy Coordinator | melissa.caridi@msmc.edu | 845-569-3229 |

The College will seek consent from reporting individuals prior to conducting an investigation, and will generally honor a request not to investigate unless the College determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the College community. Honoring a request not to investigate may limit the College's ability to meaningfully investigate and pursue conduct charges against an accused individual. Factors used to determine whether to honor such a request include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether the College possesses other means to obtain evidence, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

Requests for confidentiality and/or not to initiate an investigation will be weighed against the College's obligation to provide a safe, non-discriminatory environment for all members of its community.

## PUBLIC AWARENESS/ADVOCACY EVENTS

If you disclose a situation through a public awareness event such as candlelight vigils, protests, or other public events, the College is not obligated to begin an investigation. The College may use the information you provide to inform the need for additional education and prevention efforts.

## INSTITUTIONAL CRIME REPORTING

Reports of certain crimes occurring in certain geographic locations will be included in the Mount Saint Mary College Clery Act Annual Security Report, contained in the Annual Campus Safety Report, in a manner that identifies neither the specifics of the crime nor the identity of the victim/survivor.

The College is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the victim/survivor). A victim/survivor or reporting individual will never be identified in a timely warning.

The Family Educational Rights and Privacy Act allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parent's prior year federal income tax return. Generally, the College will not share information about a report of sexual violence with parents without the permission of the student.

## INTERIM PROTECTION OR RESPONSIVE MEASURES

The College will take appropriate measures promptly if it receives notice of a sexual violence allegation. Interim protections or responsive measures are available without a formal complaint, and are available to both the complainant and respondent in the areas of safety, counseling, housing, and educational accommodations. Interim measures may include, but are not limited to, no-contact orders (meaning that continuing to contact the protected individual is a violation of college policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person); change of housing or place of employment; change of class schedule or location; change of transportation; or change of supervision. Interim measures are available from the time of the incident until a final decision is rendered by the College. Both the accused or respondent and the reporting individual shall, upon request, and consistent with the College's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, and shall be allowed to submit evidence in support of his or her request.

In addition, individuals have the right to receive the following protections and accommodations:

- To receive assistance from Campus Security or other college officials in obtaining an Order of Protection, or if outside of New York State, an equivalent protective or restraining order;
- To receive a copy of the Order of Protection or equivalent (when such has been received by the College) and have an opportunity to meet or speak with a College official who can explain the Order and answer questions about it, including information from the Order about the accused's responsibility to stay away from the protected person(s) [**NOTE**: such burden does <u>not</u> rest on the protected person(s), but rather on the accused];
- To an explanation of the consequences for violating these orders, which include, but are not limited to arrest, additional conduct charges, and interim suspension;

- To receive assistance from Campus Security to call on and assist local law enforcement in effecting an arrest for violating such an Order;
- When the accused or respondent is a student determined to present a continuing threat to the health and safety of the community, to have the accused subject to interim suspension, pending the outcome of a conduct process;
- When the accused is not a student but is a member of the College community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and rules and policies of the College.

The College determines if a student is a continuing threat to the health and safety of the community by evaluating each instance on an individual basis and applying current threat assessment guidelines. The Vice President for Students will consult with the Director of Security & Safety, and/or the Title IX Coordinator, and may convene the Assessment and Care Team (ACT), whose mission is to identify members of the MSMC community who may pose a threat to the safety and well-being of themselves or others, if further review is warranted.

When a case involves a foreign student, the College will work with a SEVIS Designated School Official if the student's course load is likely to drop below full-time status as a result of the alleged incident. (Threatening a student with deportation or invoking a student's immigration status in an attempt to deter testimony in such cases is a violation of the investigative process and applicable Federal law.)

The College does not require a complainant to participate in any investigation or disciplinary proceeding.

## GRIEVANCE PROCEDURES

Every student has the right to request that student conduct charges be filed against the accused.

When the College opens an investigation that may lead to disciplinary action under this policy, it will provide written notice to the responding party. Such notice will include the allegation(s), the section of code allegedly violated, identity of the parties involved, and the date and location of the incident. Each party will receive written notice in advance of any interview or hearing involving that party with sufficient time to prepare for meaningful participation. The College has established a two-part grievance procedure.

Initiation of an Informal procedure is appropriate for allegations of non-violent acts, if the student so chooses the Informal procedure. If the parties are unable to reach a resolution through the Informal procedure, the grievance may be moved to Formal proceedings.

Any investigations of allegations of rape, sexual assault, or other acts of sexual violence begin automatically with Formal proceedings.

Both parties (the complainant and respondent) have procedural rights in disciplinary proceedings arising from allegations of sexual misconduct. These include:

1. The right to have a person of their choice accompany them throughout the disciplinary hearing (reporting individuals have this same right);
2. The right to exclude their own prior sexual history with persons other than the other party in the hearing, or their own mental health diagnosis and/or treatment from admittance in the College disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction;

3. The right to a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault;
4. The right to an investigation that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest;
5. The right to have the College's disciplinary proceedings run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay;
6. The right to be informed promptly of the outcome of the hearing.

Informal Procedure**:** Some complainants may not be sure if their complaint meets the criteria defined in the College's policy; or simply may wish to see the problem resolved as quickly and quietly as possible. In such situations, the complainant is encouraged to talk over the situation with a responsible College official.

Please note that in all cases, individuals are free to take their concerns regarding sexual harassment to any of these College officers: the Vice President for Students, the Vice President for Finance and Administration, or the Vice President for Academic Affairs, should the Informal procedures described above seem inappropriate.

Students may discuss their concerns with the Director of Counseling, Vice President for Students, or other responsible Student Affairs administrators. The administrator, with the student's permission, will seek a satisfactory resolution.

Formal Procedure: Those who allege sexual misconduct involving rape, sexual assault, or sexual harassment can file a written, signed, formal complaint immediately. In addition, anyone who does not wish to go through the informal procedure or feels the informal procedure was not resolved appropriately can file a formal complaint. The complaint should describe the relevant dates, times, places, names of persons involved, and the nature of the alleged event, as well as the names and contact information of any potential witnesses. The procedure to be followed differs, based on whether the alleged offender is a student, faculty member, administrator, staff member or guest of the College.

Students: When the respondent is a student, adjudication will occur according to the College's Student Judicial Code and the procedures described in the Student Handbook. The written complaint is to be given to the Vice President for Students. If the Office of Student Affairs determines that there is reasonable cause to believe that a violation of the Code has occurred, the accused student will normally be notified in writing within ten (10) business days of receipt of the complaint. Notification time may take longer if necessary for completion of the investigation.

The notice will include:

1. The name of the complainant;
2. The nature of the complaint, including the specific code sections alleged to have been violated, applicable conduct procedures and the sanctions that may result;
3. The time and place of the hearing. All Student Conduct Hearings will be scheduled during the College's regular business hours. (9 a.m. – 5 p.m., Monday - Friday);

4. Notice of the right of both parties to have witnesses;
5. Notice of the right of both parties to present relevant information;
6. The names of others who will be present at the hearing (if known), including the names of the hearing officers on the Hearing Panel;
7. Notice that a Document File compiled by the Office of Student Affairs with statements from the complainant(s), respondent, student(s), and witnesses, and any other documentary information will be available to the respondent, complainant, and their campus advisors for review at least three (3) days prior to the Student Conduct Hearing. An appointment is required to review the Document File.

### Rights afforded to the Complainant and Respondent in a Formal Hearing (when a student is the accused)

• Throughout the investigation, both parties shall have an equal opportunity to present relevant witnesses and other evidence.

• All school-imposed restrictions and permissions shall be extended to both parties in regard to their advisor/advocate.

• If one party is permitted to submit third-party expert testimony, then both parties shall be allowed to do so.

• Both the complainant and respondent are permitted to have an advisor of their choice or have advisors appointed for them by the Vice President for Students. Advisors may be members of the College community (e.g., coaches or faculty members) or attorneys paid for by the students.

• Advisors may be present at the Student Conduct Hearing, but they may not answer for students, make objections, or pose questions.

• The right to receive written or electronic notice, provided in advance of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed;

•The right to make an impact statement during the point of the proceeding when the decision maker is deliberating on appropriate sanctions;

•The right to choose whether to disclose or discuss the outcome of a conduct or judicial hearing.

Faculty members: When the respondent is a faculty member, the written complaint is provided to the Vice President for Academic Affairs (VPAA). The VPAA will appoint a teaching faculty member to chair a hearing board consisting of one other faculty member and an administrator/staff member. All of the participants in the hearing board will be chosen from a pool of trained faculty/administrators/staff who will undergo annual sexual misconduct training as mandated under Title IX. The VPAA shall turn over the complaint to the hearing board, whose chair shall monitor the hearing, rule on procedure, and deliver a written decision on the case within a reasonably prompt timeframe after receipt of the complaint. Appeals from the decision of the hearing board on matters of procedure, sanctions, or new evidence not available at the time of the hearing may be made in writing to the President of the College within 6 working days of the decision being delivered. The President shall make the final decision on the outcome of the case within 15 days of receipt of the appeal.

Administrators and staff: When the respondent is an administrator or a staff member, the written complaint is given to the Director of Human Resources (if the Director of Human Resources is the respondent in the complaint, the complaint is given to the Vice President for Finance and Administration). The Director of Human Resources shall chair a hearing board that includes a faculty member and an administrator/staff member, chosen from a pool of trained faculty/administrators/staff who will undergo annual sexual misconduct training as mandated under Title IX. The chair of the hearing board shall monitor the hearing, rule on procedure, and deliver a written decision on the case within a reasonably prompt timeframe after receipt of the complaint. Appeals from the decision of the hearing board on matters of procedure, sanctions, or new evidence not available at the time of the hearing may be made in writing to the President of the College within 6 working days of the decision being delivered. The President shall make the final decision on the outcome of the case within 15 days of receipt of the appeal.

## POTENTIAL OUTCOMES

Both complainant and respondent shall be notified concurrently in writing of the outcome of the hearing within a reasonably prompt timeframe after receipt of the complaint. The College shall inform the complainant as to whether it found that the conduct occurred as alleged, any individual remedies offered or provided to the complainant, any sanctions to be imposed on the alleged offender, and other steps the institution plans to take to resolve the matter.

In cases where sexual violence is found to have occurred, the complainant shall be informed of the institution's final determination and any disciplinary sanctions to be imposed on the respondent. The respondent shall not be notified of individual remedies offered or provided to the complainant.

## APPEALS

An appeal from a student conduct hearing decision on matters of procedure, sanctions, or newly-discovered evidence that was unknown or not available at the time of the original hearing may be made by written letter or email to the Vice President for Students within six business days of receipt of the determination. A three-member panel designated by the Vice President for Students, not involved in the grievance previously, will consider all appeal requests. Both parties have a right to appeal.

The appeal panel will review the appeal request(s). When any party requests an appeal, the other party (parties) will be notified and joined in the appeal.

Where the appeal panel finds that at least one of the grounds (matter of procedure, sanctions or newly discovered evidence) is met, and proceeds, additional principles governing the hearing of appeals include the following:

- Decisions by the appeal panel are to be deferential to the original decision, making changes to the finding only where there is clear error, and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings of the grievance. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original hearing panel unless otherwise directed by the Vice President for Students or designee.
- Sanctions imposed by the hearing panel are implemented immediately unless the Vice President for Students or designee determines their implementation should be stayed in extraordinary circumstances, pending the outcome of the appeal.

• The Vice President for Students or designee will, on behalf of the appeal panel, submit the recommendation of the appeal panel to the College President. The Vice President for Students or designee, in consultation with the President, will review the matter for procedural errors and issue the final decision on behalf of the College within 10 business days of the date on which the hearing panel made its recommendation. The decision will be final and binding within the College Student Judicial Code Structure in all cases.

• All parties will be informed of whether the grounds for an appeal are accepted and the outcome of the appeal.

• Once an appeal is decided, the outcome is final: further appeals are not permitted.

• If the complaint is dismissed, the College shall delete records of the proceedings from the respondent's record, as appropriate.

• Both parties shall have the right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeal process concludes, unless otherwise required by law.

Appeals from conduct of faculty members, administrators, or staff shall be handled in the faculty, administrators, and staff section of this policy.

An employee may also file a complaint with the following agencies:

Equal Employment Opportunity Commission (EEOC) at the New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10004; the New York State Division of Human Rights at 99 Washington Avenue, Albany, New York 12210; or the United States Department of Education, Office for Civil Rights at 32 Old Slip, 26th Floor, New York, New York 10005.

A student may also file a complaint with the following agencies:

United States Department of Education, Office for Civil Rights at 32 Old Slip, 26th Floor, New York, New York 10005; and the New York State Division of Human Rights at 99 Washington Avenue, Albany, New York 12210.

## TRANSCRIPT NOTATIONS

For students who, after a formal conduct procedure, have been found responsible for a crime of violence (including forcible and non-forcible sex offenses, robbery, aggravated assault, criminal homicide, burglary, motor vehicle theft, and arson), the College will make a notation on the transcript of such students that they were "*Suspended After a Finding of Responsibility for a Code of Conduct Violation*" or "*Expelled After a Finding of Responsibility for a Code of Conduct Violation*." For respondents who withdraw from the College while such conduct charges are pending, and decline to complete the disciplinary process, the College will make a notation on the transcript of such students that they "*Withdrew with Conduct Charges Pending*."

To request that a transcript notation be removed after a suspension ends, a student must submit a written request to the Vice President for Students; this request will be considered one year from the date of the suspension's end. The Vice President for Students, in consultation with other College officials, will review the request and any documentation provided. After conducting a thorough review, the Vice President for Students will make a recommendation to the College President, who will render a decision on behalf of the College. The decision will be final within the College Student Judicial Code Structure. The student will be notified of the outcome, in writing, and, if the request is granted, the transcript notation will be removed within ten (10) business days following notification.

Factors considered in review of requests include:

- The conduct of the student subsequent to the disciplinary violation;
- The nature of the disciplinary violation; and
- The information provided by the student in the request.

If a transcript notation is removed, a Student Affairs hold will remain on the student's record. Students seeking re-enrollment after Disciplinary Suspension must follow the procedures under definition in the Student Code of Conduct, Article II.

Students may seek the removal of a transcript notation for a suspension in accordance with the procedures outlined in Article III, The Student Conduct Hearing of the Student Code of Conduct, located in Section XII of the Student Handbook, except that such notation shall not be removed prior to one year after conclusion of the suspension. Notations for expulsion shall not be removed.

If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed. Notations for expulsion shall not be removed.

## NON-RETALIATION

The College prohibits any retaliatory behavior, including, but not limited to intimidation, reprisal, and harassment, directed against complainants and/or witnesses in an investigation pursuant to this grievance procedure.