

# Sexual Misconduct Complaint Procedures College of Saint Benedict and Saint John's University

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*Nothing in this Policy is intended to create a contract between or among the (1) College of Saint Benedict and Saint John's University and (2) any student, employee, independent contract, vendor, or other individual or entity.*

## **I. INTRODUCTION**

It is the policy of the College of Saint Benedict (CSB) and Saint John's University (SJU) to promptly and equitably investigate and adjudicate formal complaints of Sexual Misconduct, as defined in the institutions' Sexual Misconduct Policy (the "Policy").

The Sexual Misconduct Complaint Procedures (the "Procedures") shall be the exclusive process for handling Sexual Assault and other Sexual Misconduct formal complaints and supersedes all other processes. If a formal complaint implicates the Policy and another CSB and/or SJU policy, the complaint of a violation of the Policy will be handled under the Sexual Misconduct Complaint Procedures and the institutions may, at their discretion and unless an applicable handbook provision states otherwise, consider the other alleged policy violations under the Sexual Misconduct Complaint Procedures or conduct separate proceedings. Allegations of sex discrimination that do not involve Sexual Misconduct will be handled in accordance with the Human Rights Policy.

## **II. RESPONSIBILITY**

At CSB and SJU, the Chief of Staff to the President of each institution serves as the Lead Title IX Coordinator. The Lead Title IX Coordinator(s) shall exercise oversight for issues related to Sexual Misconduct and sex discrimination, the Sexual Misconduct Policy and Sexual Misconduct Complaint Procedures, and maintain institutional records of reports and formal complaints. The Deputy Title IX Coordinator(s) or others designated by the Lead Title IX Coordinators are responsible for the implementation of the Sexual Misconduct Complaint Procedures and case management.

- A. The Dean(s) of Students, who serve(s) as Deputy Title IX Coordinators for Sexual Misconduct complaints involving students, are responsible for the implementation of the Sexual Misconduct Complaint Procedures in cases involving a student.
- B. The Associate HR Director, who serves as a Deputy Title IX Coordinator for Sexual Misconduct complaints involving faculty and staff, is responsible for implementation of the Sexual Misconduct Complaint Procedures in cases involving a faculty or staff member.
- C. If a complaint involves both a student and a faculty or staff member, the Dean(s) of Students and Associate HR Director shall share responsibility for implementing the Sexual Misconduct Complaint Procedures.
- D. If a complaint involves an associate or third party, the Dean(s) of Students and Associate HR Director will determine who should be responsible for implementing the Sexual Misconduct Complaint Procedures.

- E. The Lead Title IX Coordinators are responsible for implementation of the Sexual Misconduct Complaint Procedures regarding appeals.
- F. In all cases, the Lead and Deputy Title IX Coordinator(s) will function as (a) neutral party (parties) in implementing the Sexual Misconduct Complaint Procedures.

Any Title IX Coordinator or Deputy Title IX Coordinator may appoint a designee to fulfill the functions of the Coordinator under the Policy and Procedures. When the Policy and Procedures refer to actions of a Lead Title IX Coordinator or Deputy Title IX Coordinator, these actions may be fulfilled by a Lead Title IX Coordinator, a Deputy Title IX Coordinator, or a designee of a Lead Title IX Coordinator or Deputy Title IX Coordinator. In addition, as used in the Policy and Procedures, Lead Title IX Coordinator and Deputy Title IX Coordinator may refer to a single individual or multiple individuals, in cases when multiple individuals share responsibility for the implementation of the Complaint Resolution Procedures. The parties will be informed of who will serve as the Lead and/or Deputy Title IX Coordinator in a particular Complaint Resolution Process.

### **III. POLICY STATEMENT**

CSB and SJU are committed to maintaining an environment that is free from the physical and emotional threat of Sexual Misconduct. CSB and SJU will not tolerate Sexual Misconduct in any form. As institutions which espouse Catholic and Benedictine values, every community member's awareness of and respect for the rights and human dignity of all persons undergirds community life. These values demand that we strive to create an environment where the sacredness of each person is honored. Sexual Assault, Sexual Harassment and other Sexual Misconduct violate the sacredness of the person, weaken the health of the community, and are antithetical to the missions of our institutions.

For more information, see the Policy.

### **IV. DEFINITIONS AND PROHIBITED CONDUCT**

For definitions applicable in these Procedures, see section I(C) of the Policy. For a list of prohibited conduct, see section I(D) of the Policy.

### **V. INSTITUTIONAL RESPONSE**

CSB and SJU have a moral imperative and legal obligation to take prompt and appropriate action in response to information received regarding an alleged violation of the Sexual Misconduct Policy. Making a report to a Deputy Title IX Coordinator, the CSB Department of Security or SJU Life Safety Services does not require a reporting party to initiate or participate in a Complaint Resolution Process. However, based on information gathered, one or both institutions may determine that the institution(s) have a responsibility to initiate a Complaint Resolution Process (even without the participation of the complainant). See section VI Confidentiality and Request for No Action below for more information.

When a formal complaint involves parties from only one of the institutions, the procedures outlined herein will be addressed by the institution where the parties are students, staff and/or faculty. While the other institution will not be directly involved in responding to the formal

complaint in such matters, in keeping with both institutions' goals under the Policy, the Lead Title IX Coordinator of the institution addressing the formal complaint will apprise the Lead Title IX Coordinator of the other institution of the existence and outcome of all such formal complaints, while respecting privacy of the parties.

## **VI. CONFIDENTIALITY AND REQUEST FOR NO ACTION**

CSB and SJU have an obligation to respond to reports made under this Policy and to take reasonable steps to prevent Sexual Misconduct. Therefore, strict confidentiality cannot be guaranteed. When a report is made to CSB and SJU, CSB and SJU will strive to ensure confidentiality to the extent possible, subject to CSB's and SJU's need to respond to such complaints and to report campus crimes in accordance with applicable law. CSB and SJU will protect a complainant's confidentiality to the extent possible even if the complainant does not specifically request confidentiality.

If a complainant or reporting party asks a Deputy Title IX Coordinator or another appropriate official that his or her name or other identifiable information not be revealed or that the institution(s) take no action, CSB and/or SJU will evaluate the request in the context of their responsibility to provide a safe and nondiscriminatory environment for all students, faculty and staff. CSB and SJU strive to honor any request that a complainant may make to keep any such report confidential or for CSB and SJU not to investigate or respond to such report, but complying with any such request will limit the ability of CSB and/or SJU to look into and respond to a report. CSB and/or SJU will likely be unable to conduct an investigation into the particular incident or to pursue disciplinary action against the respondent and also maintain confidentiality.

Thus, CSB and/or SJU will weigh the request for confidentiality or for no action to be taken against the following factors: the seriousness of the alleged conduct, the respective ages and roles of the complainant and respondent, whether there has been other discrimination, harassment, Sexual Misconduct, or retaliation complaints about the same individual, whether the respondent has a history of arrests or records from a prior school indicating a history of Sexual Misconduct, whether the respondent threatened further Sexual Misconduct or other violence against the complainant or others, whether the Sexual Misconduct was committed by multiple respondents, whether the Sexual Misconduct was perpetrated with a weapon, whether CSB and/or SJU possess other means to obtain relevant evidence of the Sexual Misconduct (e.g., security footage, eyewitness, physical evidence), whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol, at a given location, or by a particular group), and the extent of any threat to the CSB and/or SJU community. The determination of whether to honor the request for confidentiality or for no action will be made by a Deputy Title IX Coordinator.

The presence of one or more of the factors above could lead the institutions to move forward with a Complaint Resolution Process (even without the participation of the complainant). If a Deputy Title IX Coordinator determines that the institutions cannot maintain a complainant's confidentiality or request for no action, a Deputy Title IX Coordinator will inform the complainant prior to starting a Complaint Resolution Process. In such cases, a Deputy Title IX Coordinator may communicate to the respondent that the complainant asked CSB and/or SJU not to investigate and that CSB and/or SJU determined they needed to do so. A complainant can choose not to participate in any Complaint Resolution Process.

In instances where CSB and/or SJU move forward with a Complaint Resolution Process without the participation of the complainant, the complainant will have the same rights as provided to a complainant under this Policy and the Procedures, even if the complainant did not sign the formal complaint.

Anyone with concerns about confidentiality issues is encouraged to speak with a Deputy Title IX Coordinator.

## **VII. GENERAL PROVISIONS**

When CSB and/or SJU receives a formal complaint of a potential Policy violation, the institutions will promptly and equitably respond to the formal complaint pursuant to the guidelines and procedures set forth below. The institutions will provide a fair and impartial Complaint Resolution Process. A fair process is one that treats the parties equitably, provides complainant an opportunity to file a formal complaint alleging a violation of the Policy and an opportunity to present evidence of the allegations prior to a decision on responsibility, provides respondent notice of the allegations and an opportunity to respond to and present evidence related to those allegations prior to a decision on responsibility, and provides both parties an opportunity to challenge the credibility of the other party and any witnesses prior to a decision on responsibility. In cases involving allegations of Sexual Misconduct that is not Title IX Sexual Harassment, the ability to challenge credibility is accomplished through the parties' ability to suggest questions to be asked of the other party and witnesses during the investigation, through the Written Response Statements in response to the investigation report, and through the Written Rebuttal Statements in response to the other party's Written Response Statement as discussed in section VIII. Procedure below.

Each Complaint Resolution Process will require an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institutions and not on the parties. The institutions will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The institutions will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a complaint resolution process.

The Procedures provide different procedures depending on the particular circumstances of a case, including the type of Sexual Misconduct that is alleged. Upon receiving a formal complaint, the Deputy Title IX Coordinator will make a preliminary determination of the procedures that will apply to the complaint resolution process. Prior to providing access to information at the end of the investigation phase, the Deputy Title IX Coordinator will make a final determination as to the procedures that will apply to the access to information phase and the adjudication phase.

If a formal complaint includes both an allegation of Title IX Sexual Harassment and an allegation of Sexual Misconduct that does not meet the definition of Title IX Sexual Harassment, the institutions reserve the right to process the allegations in the same Complaint Resolution Process or to separate

the allegations into separate Complaint Resolution Processes.

- 1. Right to an Advisor.** The complainant(s) and respondent(s) involved in a Complaint Resolution Process involving allegations of (1) Title IX Sexual Harassment or (2) Sexual Assault, Dating Violence, Domestic Violence, and Stalking *occurring outside* of the institutions' education program or activity or against a person *outside* of the United States, have the right to be accompanied to meetings by an advisor of their choice, who may be, but is not required to be, an attorney. Generally, the advisor selected by the complainant or respondent should be free of conflicts of interest in the complaint resolution process and, if a member of the CSB and/or SJU community, the advisor should be free of conflicts in his or her position in the community. An individual has the right to decline a request to serve as an advisor in the complaint resolution process.

The role of the advisor is to support, guide, and/or advise a party during the course of the complaint proceeding. The advisor may accompany the complainant or respondent to interviews or other meetings or proceedings during the Complaint Resolution Process. In selecting an advisor, each party should consider the potential advisor's availability to attend interviews and meetings, which may occur in person. The procedure provides the parties with the right to an advisor of their choice, but does not contemplate or require an adjustment of any deadlines based on a chosen advisor's schedule. As a general matter, the institution(s) will not delay their processes to accommodate the schedules of advisors.

Advisors may confer with their advisee, but, with the exception of the live hearings for cases involving allegations of Title IX Sexual Harassment (discussed below), advisors may not actively participate in the Complaint Resolution Process. The advisor may accompany the complainant or respondent to all meetings relating to the complaint resolution process. The advisor may not appear in lieu of the complainant or respondent or speak on their behalf in either in-person or written communications to CSB or SJU. The advisor may not address, either orally or in writing, any CSB or SJU official including, but not limited to, Deans, the Deputy Title IX Coordinators, the investigator, members of the Title IX Hearing Panel/adjudication panel/adjudicator, or appeal officers. The advisor also may not address the other party (with the exception of live hearings for cases involving allegations of Title IX Sexual Harassment). The advisor may not interrupt or otherwise delay the complaint proceeding.

In Complaint Resolution Processes involving allegations of Title IX Sexual Harassment: At the live hearing, advisors will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions. Additional information about an advisor's role at the live hearing is included in the sections VIII(A) and VIII(B) below. In addition, advisors will receive a copy of all directly-related evidence and the investigation report, as set forth in sections VIII(A) and VIII(B) below.

In complaint resolution processes involving allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside* of the institutions' education program or activity or against a person *outside* of the United States, advisors may have access to information as is described further below in the sections VIII(A) and VIII(B) below.

If a party selects an attorney as an advisor, the advisor's participation in the complaint process is in the role of an advisor and not as an attorney representing a party. The advisor will have access to highly confidential information and is prohibited from sharing information obtained as an advisor during the complaint process with anyone, including other individuals who may be part of an attorney-client relationship with the party.

Advisors will be required to sign an Advisor Agreement acknowledging receipt and understanding of these requirements. Failure to comply with these requirements, including violations of confidentiality, or other forms of interference with the complaint proceeding by the advisor may result in the immediate disqualification of the advisor and the institution(s) reserve the right to dismiss the advisor. Parties must notify the Deputy Title IX Coordinator who they have selected as their advisor. CSB and/or SJU will notify a party to the complaint process if another party involved has obtained an advisor and will indicate whether the other party's advisor is an attorney.

- 2. Timing.** CSB and SJU are committed to the prompt and equitable resolution of Sexual Misconduct formal complaints and strive to meet the time frames set forth in these Procedures. However, in some cases, extensions to the timing requirements may be necessary. The Deputy Title IX Coordinator may grant reasonable extensions to timing requirements in these Procedures when warranted by the circumstances. For example, extensions of timing requirements may be granted if the institution(s) have been asked to delay its Procedures during the evidence gathering stage of a criminal investigation, if the allegations of Sexual Misconduct are particularly complex (including, without limitation, allegations that involve multiple incidents and/or multiple individuals and/or numerous witnesses), if parties or witnesses are not available, if there is an intervening school break, if there are unsuccessful attempts at alternative resolution, if there is a need for language assistance or accommodation of disabilities, and for other unforeseen circumstances. Extensions will be no longer than necessary. The complainant and respondent shall receive written notice of any extensions and the reason for the extension.

If a criminal complaint has been filed, CSB's and/or SJU's investigation may be temporarily delayed to allow law enforcement to gather evidence. Such delay may only occur at the request of law enforcement and shall not be any longer than necessary for law enforcement to complete the gathering of evidence. In no case will CSB and SJU wait for the conclusion of a criminal investigation or criminal proceeding to begin their own investigation.

When a time frame for a specific phase of the process, as set forth below, is less than five (5) calendar days, CSB and/or SJU may, in its discretion, use business days to calculate the time frame deadline.

As is discussed in more detail above and below, different procedures apply to cases involving allegations of Title IX Sexual Harassment than to other cases of alleged Sexual Misconduct. The time frames for each phase of the different procedures are as follows:

a. Cases Involving Allegations of Title IX Sexual Harassment

Specific time frames for each phase of the Complaint Resolution Process for formal complaints involving allegations of Title IX Sexual Harassment are set forth in the sections VIII(A) and VIII(B) below. Each phase of the process will generally be as follows:

- Review of formal complaint and notice of allegations to the parties: ten (10) calendar days
- Investigation: forty-five (45) calendar days
- Review of directly-related evidence and investigator consideration of evidence response statements: seventeen (17) calendar days
- Review of investigation report and written response: five (5) calendar days
- Live Hearing and Determination: twenty-five (25) calendar days
- Appeal: twenty (20) calendar days

b. Cases Involving Allegations of Other Forms of Sexual Misconduct

Specific time frames for each phase of the Complaint Resolution Process for formal complaints involving allegations of any other form of Sexual Misconduct are set forth in the sections VIII(A) and VIII(B) below. Each phase of the process will generally be as follows:

- Review of formal complaint and notice of allegations to the parties: ten (10) calendar days
- Investigation: forty-five (45) calendar days
- Review of investigation report and written response/rebuttal, if applicable: ten (10) calendar days
- Adjudication: twenty-five (25) calendar days
- Appeal: twenty (20) calendar days

In any Sexual Misconduct Complaint Resolution Process, the process may include additional days between these phases as the institutions transition from one phase to another. The parties will be notified when each listed phase begins and when it ends. If any transition period will last longer than five (5) calendar days, the parties will be notified of the delay and the reason for it.

Complainants are encouraged to begin the complaint proceeding as soon as possible following an alleged incident. If a complaint is brought forward more than three (3) calendar years after an alleged incident, the Lead Title IX Coordinator, in their discretion, may decline to process a complaint under these Procedures, but reserve the right to take other administrative action as appropriate, including offering reasonably appropriate supportive/interim measures, depending on the specific circumstances of the complaint. Complaints brought forward more than three (3) calendar years after the alleged incident will generally be addressed pursuant to these Procedures if the complaint involves a respondent who is still a member of our community.

- 3. Supportive/Interim Actions and Protective Measures.** At any time after a report of a potential violation of this Policy has been received by CSB and SJU, the Deputy Title IX Coordinator will consider whether supportive/interim measures are reasonably necessary or appropriate to protect the parties and the campus community. For more information see section III(A)(5) Supportive/Interim Measures in the Policy.
- 4. Treatment of Parties.** CSB and SJU strive to treat all individuals involved in a complaint proceeding with respect and dignity and, with regard to complainants, in a manner that does not suggest a complainant is ever at fault for Sexual Misconduct or that he or she should have done something different to avoid becoming a victim. This applies to all campus authorities and all those involved in complaint procedures, and applies during the complaint process and thereafter. The Complaint Resolution Process will be prompt and equitable. In addition, support will be provided to students, faculty, and staff who are engaged in a Complaint Resolution Process. Upon request, counseling services are available to students and the Employee Assistance Program is available to faculty and staff.
- 5. Participation and Silence.** Either party may at any time decline to provide information and/or participate in a Complaint Resolution Process. If, at any time during the Complaint Resolution Process, a complainant or respondent does not participate, CSB and/or SJU may proceed with the Complaint Resolution Process and make a determination based upon the information available, dismiss the formal complaint, or take whatever other steps may be necessary to ensure the integrity of the proceeding. If at any time the complainant declines to participate in the process, the institutions' ability to meaningfully investigate and adjudicate a formal complaint may be limited. A respondent's silence in response to a complainant's allegation will not necessarily be viewed as an admission of the allegation, but may leave the complainant's allegations undisputed. Similarly, a complainant's silence in response to a respondent's denials or defenses will not necessarily be viewed as an admission of the denials or defenses, but may leave the respondent's denials or defenses undisputed. Even if a party decides not to participate or chooses to stop participating at a phase of the process, the party will still be given the option to participate during additional phases of the process.

In cases involving allegations of Title IX Sexual Harassment, if a party is not willing to answer all relevant questions from the other party's advisor, the Title IX Hearing Panel will not be able to rely on any statement of that party in reaching a determination regarding responsibility. The Title IX Hearing Panel, however, will not 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. For more information, see the section VIII(A) and VIII(B) below.

- 6. Conflicts.** If a complainant or respondent has any concern that any individual acting for CSB and/or SJU in the Complaint Resolution Process has a conflict of interest or bias for or against complainants or respondents generally or for or against the individual complainant or respondent, such concern should be reported to the Deputy Title IX Coordinator. Any concern regarding a conflict of interest or bias must be submitted in writing within two (2) calendar days after receiving notice of the person's involvement in the process. The Deputy Title IX Coordinator will review the concerns and take appropriate steps to ensure that no conflicts of

interest or bias exist on the part of anyone investigating or adjudicating a complaint through the Complaint Resolution Process.

If a party feels that the Deputy Title IX Coordinator has a conflict of interest or bias, the party should notify the Lead Title IX Coordinator in writing of the concern within 2 days. In cases where it is determined that a Deputy Title IX Coordinator has a conflict of interest given the nature of the complaint and/or the parties or witnesses involved, or in cases where a Deputy Title IX Coordinator is unavailable, the Lead Title IX Coordinator of the institution of the conflicted individual shall appoint an alternate person to serve as the Deputy Title IX Coordinator. If a Lead Title IX Coordinator has a conflict of interest with respect to a complaint, the President(s) or the President(s)' designee of the institution of the conflicted Lead Title IX Coordinator shall appoint an alternate person to serve as the Deputy or Lead Title IX Coordinator. In cases where the President of CSB or SJU is a party to the complaint or has a conflict of interest with respect to a complaint, the Chair of the Board of Trustees for the institution shall ensure that the institution puts in place appropriate safeguards under the circumstances to ensure that the institution promptly and equitably responds to the formal complaint, including, but not limited to appointment of alternate individuals to serve in roles of Deputy and/or Lead Title IX Coordinator.

The parties should be mindful that the institutions have a small and close-knit campus community. That a party simply knows an individual acting for the institutions under this Policy or has had some limited interaction with such individual generally will not be deemed a disqualifying conflict of interest or bias in most instances. However, CSB and SJU encourage the parties to bring any concern of conflict of interest or bias to the Deputy Title IX Coordinator's attention for consideration.

- 7. Obligation to be Truthful.** All parties and witnesses have an obligation to be truthful in the Complaint Resolution Process. Engaging in dishonesty may be considered retaliation or interference with process under the Policy and/or violate other CSB and/or SJU policies. Engaging in conduct to encourage others to be dishonest in the Complaint Resolution Process also violates the Policy. An allegation that a person has violated the obligation to be truthful will be handled through the procedures identified in section IX. Complaints of Related Misconduct below.
- 8. Trained Officials.** The Complaint Resolution Process will be conducted by individuals who do not have a conflict of interest or bias for or against complainants or respondents generally or for or against the individual complainant or respondent. In addition, those individuals will receive annual training on the definition of Title IX Sexual Harassment; the scope of the institutions' education program or activity; how to conduct an investigation and Complaint Resolution Process, including hearings, appeals, and alternative (informal) resolution processes, as applicable; how to serve impartially, including by avoiding prejudgment of the facts at interest, conflicts of interest, and bias; issues related to sexual harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking; and how to conduct an investigation and decision-making process that protects the safety of all and promotes accountability. Investigators will receive training on issues of relevance to create an investigator report that fairly summarizes relevant evidence. Title IX Hearing Panel members will receive training on any technology to be used at a live hearing and issues of relevance of questions and evidence,

including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. The training is free of bias such as sex stereotypes or generalizations, promotes impartial investigations and adjudications, and includes the following topics, as applicable: relevant evidence and how it should be used, proper techniques for questioning witnesses, basic rules for conducting proceedings, avoiding actual or perceived conflicts of interest, and the institutions' policies and procedures.

- 9. Presumption of Non-Responsibility.** The presumption is that the respondent is not responsible for a Policy violation. The respondent is presumed not responsible until a determination regarding responsibility is made at the conclusion of the Complaint Resolution Process. The respondent will be deemed responsible for a Policy violation only if the appointed Title IX Hearing Panel/adjudication panel concludes that there is sufficient evidence, by a "preponderance of evidence," to support a finding that the respondent more likely than not engaged in Sexual Misconduct.
- 10. Reservation of Flexibility.** These Procedures reflect the desire of the institutions to respond to complaints in good faith and in compliance with legal requirements. The institutions recognize, however, that each case is unique in its presentation and requires that the institutions reserve some flexibility in responding to the particular circumstances of each case. The institutions reserve the right to modify these Procedures or to take other administrative action as appropriate under the circumstances.
- 11. Requests for Reasonable Accommodations.** Individuals who need a reasonable accommodation should contact the Deputy Title IX Coordinator managing their process. The institutions will consider requests for reasonable accommodations submitted to the Deputy Title IX Coordinator on a case-by-case basis. Accommodations the institutions may provide include: (1) Providing reasonable accommodations as required by law to an individual with a disability who requests an accommodation necessary to participate in the complaint resolution process; and (2) Providing an interpreter for individuals who are limited English-language proficient.
- 12. Consolidation of Formal Complaints.** The institutions reserve the right to consolidate formal complaints into one complaint resolution process as to allegations of Sexual Misconduct against more than one respondent, by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of Sexual Misconduct arise out of the same facts or circumstances.
- 13. Dismissal of Formal Complaint Prior to Adjudication.** If the allegations in a formal complaint are initially included in the notice of allegations as allegations of Title IX Sexual Harassment, but facts are gathered during the course of the complaint resolution process that indicate that the alleged conduct does not meet the definition of Title IX Sexual Harassment under this policy, CSB and/or SJU will dismiss the formal complaint as to those allegations. Even if a formal complaint or any allegations of Title IX Sexual Harassment are dismissed, CSB and SJU reserve the right to move forward with a Complaint Resolution Process using the other Sexual Misconduct definitions and the other procedures in the Policy and Procedures, as applicable.

In cases involving allegations of any Sexual Misconduct, the CSB and/or SJU may, at their discretion, dismiss the case prior to adjudication in certain circumstances. Circumstances that may lead to dismissal prior to adjudication include, but are not limited to: the complainant notifies the Deputy Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, the respondent is no longer enrolled or employed by CSB and/or SJU, or specific circumstances prevent the institutions from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If CSB and/or SJU dismiss a formal complaint, CSB and/or SJU will promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. A dismissal of a formal complaint may be appealed as provided below.

**14. Application of Procedures.** When CSB and/or SJU receive a formal complaint of aviolation of the Sexual Misconduct Policy, CSB and/or SJU will generally apply the complaint resolution procedures from the Sexual Misconduct Complaint Procedures that are in effect at the time that the formal complaint is made and generally will apply the Sexual Misconduct definitions from the Sexual Misconduct Policy that was in effect at the time the alleged misconduct occurred. For cases involving allegations of Title IX Sexual Harassment, the institutions will apply the definitions from the policy that is in effect at the time the formal complaint is made to determine what procedures apply and the definitions from the policy that was in effect at the time the alleged misconduct occurred to determine whether a policy violation occurred.

## **VIII. PROCEDURE**

The procedure followed by CSB and SJU to resolve Sexual Misconduct formal complaints will vary depending on the status of the respondent. Procedure VII. A. will be followed in all cases in which the respondent is a student. Procedure VII.B. will be followed in all cases in which the respondent is a member of the faculty or staff.<sup>1</sup> Procedure VII.C. will be followed in cases where the respondent is an associate/third party. In addition, as discussed above in the section VII. General Provisions, different procedures apply to the Complaint Resolution Process depending on the particular circumstances of a case, including the type of Sexual Misconduct that is alleged. Further information about the different procedures is provided below.

### **A. Complaint Procedure for Complaints in Which the Respondent is a Student**

The following constitutes the steps which make up the Complaint Resolution Process when the respondent is a student.

The Dean(s) of Students will generally serve as Deputy Title IX Coordinator for Sexual Misconduct formal complaints involving students. If a formal complaint involves both a student and a faculty or staff member, the Dean(s) of Students and Associate HR Director shall share responsibility for implementing the Sexual Misconduct Complaint Procedures.

#### **Step 1: Initial Meeting Between the Complainant and Deputy Title IX Coordinator**

In most cases, the first step of the Complaint Resolution Process is a preliminary meeting between

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<sup>1</sup> Procedure VII. A. will be followed in all cases in which the respondent is a student-employee.

the complainant and a Deputy Title IX Coordinator. The purpose of the preliminary meeting is to allow the Deputy Title IX Coordinator to gain a basic understanding of the nature and circumstances of the report or formal complaint; it is not intended to be a full investigation interview.

As part of the initial meeting with the complainant, the Deputy Title IX Coordinator will:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being of the complainant and the campus, in consultation with appropriate campus officials;
- Notify the complainant of the right to contact law enforcement and seek medical treatment;
- Notify the complainant of the importance of preservation of evidence;
- Identify resources available to the complainant on- and off-campus;
- Notify the complainant of the range of supportive/interim measures with or without filing a formal complaint;
- Provide the complainant with an explanation of the procedural options, including how to file a formal complaint, if not already filed, and the Complaint Resolution Process;
- Inform the complainant of the right to have an advisor of choice, as applicable under the Procedures;
- Discuss the complainant's expressed preference for the manner of resolution and any barriers to proceeding; and
- Explain the institutions' Policy prohibiting retaliation.

All reports and formal complaints of Sexual Misconduct will be reviewed by the Deputy Title IX Coordinator(s) to determine the risk of harm to individuals or to the campus community. Steps will be taken to address these risks in consultation with the members of the Title IX Team.

If the Deputy Title IX Coordinator determines that the report or formal complaint, even if substantiated, would not be a violation of this Policy, they may dismiss the matter or refer it to another applicable disciplinary procedure. The parties will be notified of that determination and the complainant will be informed of other procedures for resolving the formal complaint and of other resources that may be available to the complainant.

## **Step 2: Formal Complaint and Notice of Allegations**

The filing of a formal complaint begins the Complaint Resolution Process under this Policy. The Complaint Resolution Process may be initiated at the request of the complainant upon making a formal complaint to a Deputy Title IX Coordinator, SJU Life Safety, or CSB Campus Security. Students at the SJU School of Theology-Seminary may alternately submit their formal complaint to the Rector or Dean of the School of Theology-Seminary, who will then refer the matter to the Deputy Title IX Coordinator.

In most cases, the complainant files the formal complaint. However, in some cases, the institutions may move forward with a Complaint Resolution Process even if the complainant chooses not to make or move forward with a formal complaint. If the institutions decide that they have an obligation to move forward with a Complaint Resolution Process, the Deputy Title IX Coordinator will sign the formal complaint and the institutions will notify the complainant before proceeding. See section VI. Confidentiality and Request for No Action above for more information. The Deputy

Title IX Coordinator signing the formal complaint does not make the Deputy Title IX Coordinator a party to the Complaint Resolution Process or adverse to the respondent.

When the Deputy Title IX Coordinator has received a formal complaint, the Deputy Title IX Coordinator will assess the formal complaint to determine if it states any allegations of Sexual Misconduct. If the formal complaint alleges Sexual Misconduct, the Deputy Title IX Coordinator will provide a written notice of allegations to the parties who are known. The written notice will include:

- Notice of the institutions' Complaint Resolution Process, including the alternative resolution process;
- Notice of the allegations, including the identities of the parties involved in the incident(s), if known, the conduct allegedly constituting Sexual Misconduct, if known, and the date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made at the conclusion of the complaint resolution process;
- Notice that the parties have the right to an advisor of choice, as applicable under this Policy, who may be, but is not required to be, an attorney;
- Notice that the parties have the right to inspect and review evidence, as applicable under this Policy; and
- Notice of policy provisions that prohibit knowingly making false statements or knowingly submitting false information during the Complaint Resolution Process, including section III(A)(4) Obligation to Act in Good Faith in the Policy and section VII(8) Obligation to be Truthful above.

If the institutions decide to investigate allegations about the complainant or respondent that are not included in the notice provided, the notice will be updated to provide notice of the additional allegations to the parties whose identities are known.

In addition, upon receiving a formal complaint, the Deputy Title IX Coordinator will make a preliminary determination of the procedures that will apply to the Complaint Resolution Process.

When the Deputy Title IX Coordinator has received a formal complaint of Sexual Misconduct, the Deputy Title IX Coordinator will also meet with the respondent and will:

- Notify the respondent of the complaint and alleged Policy violations;
- Provide the respondent an explanation of the Complaint Resolution Process, including the alternative resolution process;
- Notify the respondent of the importance of preservation of evidence;
- Notify the respondent of any supportive/interim measures that have been put in place that directly relate to the respondent (i.e., no-contact order);
- Notify the respondent of available supportive/interim measures;
- Provide the respondent with information about on and off campus resources;
- Inform the respondent of the right to have an advisor of choice, as applicable under these Procedures; and
- Explain the institutions' Policy prohibiting retaliation.

This stage of initial review of the formal complaint by the Deputy Title IX Coordinator and initial notice of the allegations to the parties generally will take no more than ten (10) calendar days. In some cases, more time may be required.

**Options for Resolution.** When the institutions receive a formal complaint of Sexual Misconduct, there are two avenues for resolution: alternative resolution (informal resolution) and formal resolution. The Deputy Title IX Coordinator of the institutions of the parties involved in the complaint proceeding will explain the alternative and formal resolution procedures.

### **Alternative Resolution Process Option**

Following a formal complaint at any time prior to reaching a determination regarding responsibility, the institutions may facilitate an alternative resolution (informal resolution) process. In cases involving allegations of Sexual Assault or more serious Sexual Misconduct, alternative resolution may not be appropriate. In addition, in cases involving allegations that a student employee engaged in Title IX Sexual Harassment against a student, alternative resolution is not appropriate.

If the complainant, the respondent, and the institutions all agree to pursue an alternative resolution, the Deputy Title IX Coordinator will attempt to facilitate a resolution that is agreeable to all parties. The Deputy Title IX Coordinator will not be an advocate for either the complainant or the respondent in the alternative resolution process, but rather will aid in the resolution of the formal complaint in a non-adversarial manner. Under the alternative process, the institutions will only conduct such fact-gathering as is useful to resolve the formal complaint and as is necessary to protect the interests of the parties, the institutions, and the CSB and SJU community.

The institutions will not compel a complainant or respondent to engage in mediation, to directly confront the other party, or to participate in any particular form of alternative resolution. Participation in alternative resolution is voluntary and the complainant and respondent each have the option to discontinue the alternative process and request a formal Complaint Resolution Process by notifying the Deputy Title IX Coordinator in writing at any time prior to reaching an agreed upon resolution. The institution(s) also always has/have the discretion to bypass or discontinue the alternative process and move forward with a formal Complaint Resolution Process. If at any point during the alternative process prior to reaching an agreed upon resolution, the complainant, the respondent, or the institution(s) wish to cease the alternative procedure and to proceed through the formal procedure, the formal procedure outlined below will be invoked.

Prior to engaging in an alternative resolution process, the institutions will provide the parties with a written notice disclosing: the allegations, the requirements of the alternative resolution process, including the circumstances under which the alternative resolution process precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the alternative resolution process, including the records that will be maintained or could be shared. In addition, the institutions will obtain the parties' voluntary, written consent to the alternative resolution process.

The alternative resolution must adequately address the concerns of the complainant, as well as the rights of the respondent and the overall intent of the institution(s) to stop, remedy, and prevent Policy violations. The recommended resolution may include a variety of institutional responses or requirements, including, but not limited to, the following: warning, behavioral contracts, community service hours, restitution, required attendance at educational programs, required assessment

and/or counseling, restriction of privileges, inclusion in the respondent's education record of a finding that the Policy was violated, parental notification and/or probation.

The alternative resolution process ends when a resolution has been reached or when the complainant, the respondent, or the institutions terminate the process. A successful alternative resolution results in a binding agreement between the parties.

If all parties to the formal complaint and the institutions agree in writing to the terms and conditions of the recommended resolution within five (5) calendar days, the case will be resolved without further process under these Procedures. If all parties to the formal complaint and the institutions do not agree in writing to the terms and conditions of the recommended resolution within five (5) calendar days, the formal complaint will move to the formal procedure.

Appeals are not allowed in cases where the parties have reached a resolution of the matter through the alternative resolution process.

The alternative resolution process generally will take no more than fifteen (15) calendar days. In some cases, more time may be required.

### **Formal Complaint Resolution Process Option**

If the formal complaint is not processed or resolved through the alternative resolution process discussed above, the formal complaint will be processed according to the formal resolution process (Steps 3 through 7) outlined below.

#### **Step 3: Investigation**

The formal resolution process will include an investigation conducted by an appointed outside investigator, or at the institutions' discretion, SJU Life Safety or CSB Campus Security. The complainant and the respondent shall receive written notice of the name of the investigator appointed to conduct the investigation. If any party has a concern that the investigator has a conflict of interest or bias, the party should report the concern in writing as indicated in section VII(7) Conflicts above.

The investigator will interview the complainant, respondent and/or other witnesses and may request additional information from the complainant, respondent or others. In addition, the complainant and respondent will have an opportunity to advise the investigator of any witnesses they believe should be interviewed, may suggest questions that they would like asked of the other party or witnesses, including questions challenging credibility, and/or may provide other evidence that they believe should be reviewed by the investigator. The investigator, in consultation with the Title IX Coordinator, has discretion to assess the relevancy of any proposed witnesses, evidence, and questions and, at his or her discretion, may decline to interview witnesses suggested by the parties and may interview witnesses who were not suggested by either party. Similarly, the investigator, at his or her discretion and in consultation with the Title IX Coordinator, may determine whether or not to ask some or all of the questions recommended by the complainant or respondent. All interviews with the complainant, respondent, and other witnesses shall be recorded. The complainant and respondent will be given an equal opportunity to present witnesses they believe should be interviewed, and other inculpatory and exculpatory evidence, as part of the investigation. In cases involving allegations of Title IX Sexual Harassment, any witness that a party

wishes to call at a hearing must be suggested as part of the investigation process, prior to the issuing of the investigation report.

The parties will be notified of a close of evidence date. The parties shall submit any and all information and evidence they would like considered as part of the investigation by the close of evidence date. After the close of evidence date, the parties shall not be permitted to submit new or additional evidence that existed prior to the close of evidence date, unless the investigator determines otherwise.

The investigator shall compile an investigation report that fairly summarizes the relevant evidence. The investigation report may consist of any information, documents, or other evidence that will be provided to the Title IX Hearing Panel/adjudication panel. At the investigator's discretion, such information may include, as applicable: the written complaint, the notice of allegations, any other evidence obtained during the investigation, and the investigator's report of the investigation. The investigation report will include the names of all witnesses interviewed and dates on which interviews took place. The investigator will present the facts gathered, but will not make credibility determinations.

The investigation report will be forwarded to the Deputy Title IX Coordinator who will review the investigation report and has the discretion to ask the investigator for clarification, additional investigation, and/or to have information added, removed, or redacted from the investigation report.

CSB and/or SJU will strive to complete the investigation phase within forty-five (45) calendar days from the date the investigator is appointed, but this time frame may be extended depending on the circumstances of each case. In cases involving allegations of Title IX Sexual Harassment, the institutions will strive to complete the initial investigation in this 45-day time frame, but the final investigation report will not be completed until after the review of directly related evidence.

#### **Step 4: Access to Information**

The procedures in the formal process for all cases of Sexual Misconduct involving student respondents are the same through the investigation phase. Prior to providing access to information, the Deputy Title IX Coordinator will make a final determination as to the procedures that will apply to the access to information phase and the adjudication phase.

##### **a. Cases Involving Allegations of Title IX Sexual Harassment**

###### *Review of Directly Related Evidence*

For formal complaints involving allegations of Title IX Sexual Harassment, the parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the institutions do not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other source. The Deputy Title IX Coordinator or investigator will send such evidence to each party and each party's advisor in electronic format or hard copy. The parties will have a ten (10) calendar day period to review the

evidence and prepare a written response to the evidence (the "Evidence Response Statement"). Each party's Evidence Response Statement may not exceed 2,000 words in length. The Evidence Response Statement must be submitted to the Deputy Title IX Coordinator within the ten (10) calendar day period described above. The Evidence Response Statement may be used as an opportunity to clarify information contained in the directly related evidence, to present the party's viewpoint about whether the evidence directly related to the allegations is relevant and therefore whether it should be included in the investigation report, and to identify evidence previously provided to the investigator that was not included in the directly related evidence which the party believes is directly related and relevant. While the parties may be assisted by their advisors in preparation of the Evidence Response Statement, the Evidence Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Evidence Response Statement.

The parties and parties' advisors may use the evidence reviewed at this step only for purposes of participating in the Complaint Resolution Process and are prohibited from disseminating or otherwise sharing the evidence with any other individual. Prior to being provided the evidence obtained as part of the investigation that is directly related to the allegations, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

The Deputy Title IX Coordinator will review the parties' Evidence Response Statements and may remove or redact any portions of the parties' Evidence Response Statements that exceed the word limit of the statements as set forth above or that otherwise exceed the permitted scope of information that may be considered in the complaint resolution process (such as treatment records without consent or information subject to a legal privilege without a waiver).

The investigator will consider the parties' Evidence Response Statements prior to completion of the investigation report.

All the evidence made available for the parties' review will be available during the hearing.

### *Review of Investigation Report*

For complaints involving allegations of Title IX Sexual Harassment, the Deputy Title IX Coordinator or investigator will send the investigation report to each party and each party's advisor in electronic format or hard copy at least ten (10) days prior to the live hearing. The parties will have a five (5) calendar day period to review the investigation report and prepare a written response to the report (the "Written Response Statement"). Each party's Written Response Statement may not exceed 4,500 words in length. The Written Response Statement must be submitted to the Deputy Title IX Coordinator within the five (5) calendar day period described above. The Written Response Statement may be used as an opportunity to clarify points in the investigation report, identify information previously given to the investigator(s) that is not included in the investigation report which the party believes should have been included, or raise other concerns regarding the evidence. While the parties may be assisted by their advisors in preparation of the Written Response Statement, the Written Response Statement must be submitted by the party, must be the party's

own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Written Response Statement.

The parties and parties' advisors may use the investigation report only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the investigation report with any other individual. Prior to being provided the investigation report, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

The Deputy Title IX Coordinator will review the parties' Written Response Statements. Based on the statements, the Deputy Title IX Coordinator has the discretion to ask the investigator(s) for clarification, additional investigation, and/or to have information removed or redacted from the investigation report. In addition, the Deputy Title IX Coordinator may remove or redact any portions of the parties' Written Response Statements that exceed the word limits of the statements as set forth above or that otherwise exceed the permitted scope of information that may be considered in the complaint resolution process (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

- b. Cases Involving Allegations of Sexual Assault, Domestic Violence, Dating Violence, and Stalking *Occurring Outside* of the Education Program or Activity or Against Person *Outside* of the United States

For complaints involving allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside* of the institutions' education program or activity or against a person *outside* of the United States, the investigation report will be made available for review by the complainant and respondent by making an appointment with the Deputy Title IX Coordinator during regular business hours. The Deputy Title IX Coordinator will provide a five (5) calendar day review and response period for the parties to have access to review the investigation report and prepare a response to the investigation report, as discussed below. The report cannot be photographed, copied, or removed from the Deputy Title IX Coordinator's office or other location provided for review purposes. All parties (and their advisors) may take personal handwritten notes.

Following review of the investigation report, both the complainant and respondent shall have the opportunity to provide a typewritten initial statement (the "Written Response Statement") to add clarifying information, identify information previously given to the investigator that is not included in the investigation report that the party believes should have been included, identify questions a party believes the other party has not yet answered or evidence the other party has not explained, raise other concerns regarding the evidence, and to challenge the credibility of the other party and any witnesses. While the parties may be assisted by their advisors in preparation of the Written Response Statement, the Written Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf, including any external reports. The parties may not address each other in the Written Response Statement. The Written Response Statement shall not exceed 4,500 words. The Written Response Statement must be submitted within the five (5) calendar days provided for review and response described above. Submissions must be made electronically by email to the Deputy Title IX

Coordinator, and must be submitted directly from the complainant or respondent, and not through an advisor or other representative.

The complainant and respondent shall have an opportunity to review the Written Response Statement submitted by the other party and, if desired, may submit a typewritten rebuttal statement (the "Written Rebuttal Statement") not to exceed 2,500 words. The Deputy Title IX Coordinator will provide a two (2) calendar day review and response period for the parties to have access to review the Written Response Statement and prepare a response to the Written Response Statement, as discussed below. The Written Rebuttal Statement may only be used to respond to arguments made in the other party's Written Response Statement and to challenge the credibility of the other party and any witnesses. While the parties may be assisted by their advisors in preparation of the Written Rebuttal Statement, the Written Rebuttal Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf, including external reports. The parties may not address each other in the Written Rebuttal Statement. The parties have the option to read the Written Rebuttal Statement of the other party, but no further responses will be made by either party.

The parties and parties' advisors may use the investigation report and written statements of the other party reviewed at this step only for purposes of participating in the Complaint Resolution Process and are prohibited from disseminating or otherwise sharing the report and written statements with any other individual. Prior to being provided the report and written statements, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

At any time during the investigation and review phases, the Deputy Title IX Coordinator may review the investigation report, the parties' Written Response Statements and Written Rebuttal Statements, and other information or evidence to determine whether additional investigation is necessary, statements and documents submitted by the parties are within the word limit and appropriate scope of the Complaint Resolution Process, and/or information or other evidence contained in the investigation report and the parties' written statements should be removed or redacted. In the event the Deputy Title IX Coordinator requests additional investigation, the parties shall be notified. Information that may be removed or redacted from the parties' written statements includes information that is over the word limit or that exceeds the permitted scope of information that may be considered in the Complaint Resolution Process (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

### **Step 5: Adjudication**

Upon completion of the investigation, the Deputy Title IX Coordinator will compile the adjudication file which will be shared with the Title IX Hearing Panel/adjudication panel. In cases involving allegations of (1) Title IX Sexual Harassment or (2) Sexual Assault, Domestic Violence, Dating Violence, or Stalking *occurring outside* of the institutions' education program or activity or against a person *outside* of the United States, the parties will be given access to any information that is included in the adjudication file to the extent that it includes additional information that the parties did not review as part of the Access to Information step discussed above.

a. Cases Involving Allegations of Title IX Sexual Harassment

Upon completion of the investigation in cases involving allegations of Title IX Sexual Harassment, the matter will be submitted to a Title IX Hearing Panel to hold a live hearing and to make a determination regarding responsibility and, if appropriate, sanctions.

The Title IX Hearing Panel will conduct a prompt and equitable live hearing and adjudication.

*Appointment of the Title IX Hearing Panel*

The Deputy Title IX Coordinator will designate a panel of three adjudicators to serve as the Title IX Hearing Panel. Generally, the Title IX Hearing Panel shall be chosen from a pool of trained faculty and staff and/or outside adjudicators. The institutions reserve the right to appoint any trained individuals who are without conflict or bias to the Title IX Hearing Panel. The Title IX Hearing Panel will not include the Deputy Title IX Coordinator or the investigator from the same matter. If any party has a concern that a member of the Title IX Hearing Panel has a conflict of interest or bias, the party should report the concern in writing as indicated in section VII(7) Conflicts above.

*Live Hearing*

At the live hearing, each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such questions will be conducted directly, orally, and in real time by the party's advisor and will never be conducted by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a question at the hearing, the Title IX Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant in the formal complaint, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party is not willing to answer any relevant question from the other party's advisor, or a witness is not willing to answer any relevant question from either advisor, the Title IX Hearing Panel will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Title IX Hearing Panel, however, will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

All evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint will be made available at the hearing.

The hearing will generally be held by video-conference with the parties, witnesses, and Title IX Hearing Panel located in separate locations and technology enabling the Title IX Hearing Panel and parties to simultaneously see and hear the party or the witness answering questions. The

institutions reserve the right to determine that a hearing will instead be conducted with all participants, including the parties, witnesses, and the Title IX Hearing Panel physically present in the same location. In the event that the live hearing is held with the participants in the same location, at the request of either party, the institutions will provide for the parties to be located in separate rooms with technology enabling the Title IX Hearing Panel and parties to simultaneously see and hear the party or witness answering questions.

The institutions will create an audio or audiovisual recording, or transcript, of any live hearing and, upon request, will make it available to the parties for inspection and review.

### *Institution Appointed Advisors*

If a party does not have an advisor present at the live hearing, the institutions will provide an advisor to the party, without fee or charge to that party, to conduct cross-examination on behalf of that party. If a party will not have an advisor present at the hearing, the party must inform the Deputy Title IX Coordinator at least three (3) calendar days prior to the live hearing so that the institutions may appoint an advisor for the hearing. The appointed advisor's role will be limited to relaying the party's questions to be asked of other parties and witnesses. The appointed advisor shall not perform any function beyond relaying the party's desired questions. The institutions reserve the right to appoint any individual as the institution deem appropriate to act as an advisor at a live hearing. The institutions' appointment of an advisor is final and a party who refuses to work with an appointed advisor at the live hearing will forfeit his or her right to conduct cross-examination or other questioning at the hearing.

### *Live Hearing Procedures*

Additional information about live hearings can be found in the [Live Hearing Procedures](#).

### *Decision-Making Process*

The presumption is that the respondent is not responsible for a policy violation. The respondent will be deemed responsible for a policy violation only if the Title IX Hearing Panel concludes that there is sufficient evidence, by a "preponderance of evidence," to support a finding that the respondent engaged in Sexual Misconduct. If the Title IX Hearing Panel determines that the respondent is responsible for a policy violation, the Title IX Hearing Panel will then determine what sanctions and remedies are warranted.

As discussed above, if a party or witness does not submit to cross-examination at the live hearing, the Title IX Hearing Panel will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Title IX Hearing Panel, however, will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

The Title IX Hearing Panel will communicate the decision to the Deputy Title IX Coordinator of the institutions of the parties.

- 1. Determination of "Not Established Responsible."** If the Title IX Hearing Panel determines that there is not sufficient basis to establish that it is more likely than not that a respondent violated the Policy, the Title IX Hearing Panel will make a determination of "Not Established Responsible." The complainant and respondent will be notified of the "Not Established Responsible" determination and of other steps that may be taken in response to the formal complaint such as "no contact" directives. The complainant will also be apprised of other resources that may be available.

When the Title IX Hearing Panel makes a finding of "Not Established Responsible," but the respondent nevertheless is found to have engaged in inappropriate conduct – for example, inappropriate remarks that do not rise to the level of a violation of the Policy – CSB and/or SJU may, at their discretion, require the respondent to receive appropriate education and/or training. The institutions may also recommend counseling or other support services for the respondent.

**Determination of "Responsible" and Imposition of Remedies and Sanctions.** If the Title IX Hearing Panel determines that it is more likely than not that a respondent violated the Policy, the Title IX Hearing Panel will make a finding of "Responsible" and the Deputy Title IX Coordinator of the institution(s) of the parties will recommend appropriate sanction(s). The Deputy Title IX Coordinator's recommendation will include steps to stop the misconduct, prevent its recurrence, and as appropriate, address its effect on the complainant and the campus community. The Title IX Hearing Panel will review the Deputy Title IX Coordinator's recommendation and will determine appropriate sanctions. Sanctions imposed depend on the severity of the violation, student or employee status of the complainant, and any previous violations that resulted in a finding of "Responsible." Sanctions may include a variety of institutional responses or requirements, as listed in the Policy section VI(A).

- b. Cases Involving Allegations of Other Forms of Sexual Misconduct**

Upon completion of the investigation, in matters involving allegations of Sexual Misconduct that are not Title IX Sexual Harassment, a three-person adjudication panel comprised of individuals selected by the involved institution(s) will be appointed on a case-by-case basis. In most instances, the panel will be comprised of faculty and/or staff selected by the Deputy Title IX Coordinator of the involved institution(s). The Deputy and/or Lead Title IX Coordinator(s) of the involved institutions may also be present at the meetings of the adjudication panel to oversee the process and will, if necessary, answer procedural questions, but shall not have a vote. The list of currently trained adjudicators is located here:

<https://www.csbsju.edu/human-rights/sexual-misconduct/adjudication-panel-members>

The complainant and the respondent shall receive written notice of the adjudication panel members appointed. If any party has a concern that an adjudicator has a conflict of interest or bias, the party should report the concern in writing as indicated in the section VII(7) Conflicts above.

The adjudication panel will review the adjudication file. The adjudication panel may, in their discretion, request additional investigation by the investigator or another appropriate individual. In cases involving allegations of Sexual Assault, Domestic Violence, Dating Violence, and Stalking (that

*occurred outside* of the education program or activity or against a person *outside* of the United States), if such information is shared with the adjudication panel, the parties will be notified and provided access to that information.

The adjudication panel will use a preponderance of the evidence standard to determine whether it is more likely than not that the respondent is responsible for a Policy violation. The Deputy and/or Lead Title IX Coordinator(s) are available for consultation, but will not participate in making a decision. Only the members of the adjudication panel and the Deputy and/or Lead Title IX Coordinator(s) may be present during deliberations. A simple majority of adjudication panel members is necessary to find that the respondent is responsible for a Policy violation.

The adjudication panel will communicate the decision to the Deputy Title IX Coordinator of the institutions of the parties.

- 1. Determination of "Not Established Responsible."** If the adjudication panel determines that there is not sufficient basis to establish that it is more likely than not that a respondent violated the Policy, the adjudication panel will make a determination of "Not Established Responsible." The complainant and respondent will be notified of the "Not Established Responsible" determination and of other steps that may be taken in response to the formal complaint such as "no contact" directives. The complainant will also be apprised of other resources that may be available.

When the adjudication panel makes a finding of "Not Established Responsible," but the respondent nevertheless is found to have engaged in inappropriate conduct – for example, inappropriate remarks that do not rise to the level of a violation of the Policy – CSB and/or SJU may, at their discretion, require the respondent to receive appropriate education and/or training. The institutions may also recommend counseling or other support services for the respondent.

- 2. Determination of "Responsible" and Imposition of Remedies and Sanctions.** If the adjudication panel determines that it is more likely than not that a respondent violated the Policy, the adjudication panel will make a finding of "Responsible" and the Deputy Title IX Coordinator of the institution(s) of the parties will determine appropriate sanction(s). The Deputy Title IX Coordinator's determination will include steps to stop the misconduct, prevent its recurrence, and as appropriate, address its effect on the complainant and the campus community. Sanctions imposed depend on the severity of the violation, student or employee status of the complainant, and any previous violations that resulted in a finding of "Responsible." Sanctions may include a variety of institutional responses or requirements, as listed in the Policy section VI(A).

## **Step 6: Notice of Determination**

The complainant and respondent shall receive a simultaneous written notice of outcome.

Prior to being provided the notice of determination, the parties and parties' advisors will be required to sign a non-disclosure agreement. The parties and parties' advisors are prohibited from disseminating or otherwise sharing the notice of determination with any other individual, except

as permitted in the non-disclosure agreement.

For formal complaints alleging (1) Title IX Sexual Harassment or (2) Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside* of the institutions' education program or activity or against a person *outside* of the United States, the written notice shall include the allegations potentially constituting Sexual Misconduct, 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 the parties and witnesses, site visits, methods used to gather other evidence, and hearings held), findings of fact supporting the determination, conclusions regarding the application of the institutions' policy to the facts, the determination regarding responsibility as to each allegation, any imposition of sanctions, whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant, and the rationales for the determination and sanctions (including how the evidence was weighed, how the information supports the result, and the standard of evidence applied). The written notice will also include information about the procedures and permissible bases for appeal, as set forth below, and when the result becomes final. In addition, the written notice shall include any other steps the institutions have taken to eliminate the conduct and prevent its recurrence.

For all other formal complaints of Sexual Misconduct, the written notice shall include the determination of the adjudication panel.

In cases involving allegations of Title IX Sexual Harassment, the written notice of determination will generally be received within twenty-five (25) calendar days from the date the live hearing concluded. In cases involving allegations of other forms of Sexual Misconduct, the written notice of determination will generally be received within twenty-five (25) calendar days from the date the adjudication panel receives the adjudication file. In some cases, more time may be required.

The determination of the Title IX Hearing Panel/adjudication panel may be appealed as provided below. In the event that no appeal is filed within the time periods prescribed below, the decision of the Title IX Hearing Panel/adjudication panel will be final and the sanctions, if any, will be effective.

### **Step 7: Appeal**

The complainant and respondent have the right to appeal a decision to dismiss a formal complaint or any allegations therein, as discussed above in the section VII(14) Dismissal of Formal Complaint Prior to Adjudication above. The parties may also appeal the Title IX Hearing Panel's/adjudication panel's decision regarding responsibility.

Grounds for appeal are as follows:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Deputy Title IX Coordinator, investigator, or Title IX Hearing Panel/adjudication panel had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Disagreement with the finding of the Title IX Hearing Panel/adjudication panel does not constitute a procedural irregularity and is not grounds for an appeal. Appeals should not be requested frivolously. An appeal represents a procedural safeguard for the complainant and respondent.

The complainant or respondent may request an appeal of the decision by submitting a written appeal statement challenging the outcome of the Complaint Resolution Process. For cases involving students from both institutions, the request for an appeal must be typewritten, may not exceed 1,300 words, and must be submitted electronically to the Lead Title IX Coordinator at [TitleIXAppeals@csbsju.edu](mailto:TitleIXAppeals@csbsju.edu) within two (2) calendar days of the party's receipt of the notice of determination. For cases involving students from only one institution, the request for an appeal must be word processed, may not exceed 1,300 words, and must be submitted electronically to a Lead Title IX Coordinator of that institution at [TitleIXAppeals@csbsju.edu](mailto:TitleIXAppeals@csbsju.edu). While the parties may be assisted by their advisors in preparation of the appeal, the appeal statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. Failure to file an appeal or request an extension in a timely manner constitutes a waiver of any right to an appeal.

The Lead Title IX Coordinator will review the appeal statement to determine whether the appeal states a permissible ground for appeal (as set forth above), such that the appeal will be considered. The Lead Title IX Coordinator may remove or redact any portions of the appeal statement that exceed the word limit or that otherwise exceed the scope of information that may be considered in the complaint resolution proceeding (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

If it is determined that the appeal will be considered, the non-appealing party will be notified of the appeal. The non-appealing party may, if desired, submit a written response in support of the outcome, not to exceed 1,300 words. The written response to the appeal must be submitted to the Lead Title IX Coordinator within two (2) calendar days of receiving notice of the appeal. While the party may be assisted by their advisor in preparation of the responsive appeal statement, the responsive appeal statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf.

The Lead Title IX Coordinator will review the responsive appeal statement and may remove or redact any portions of the responsive statement that exceed the word limit or that otherwise exceed the scope of information that may be considered in the complaint resolution proceeding (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

The Lead Title IX Coordinator will appoint one or more appeal officers. The appeal officer(s) will generally be the Vice President(s) for Student Development of the institution(s) of the parties involved in the complaint. The institutions reserve the right to appoint any trained appeal officer who is without conflict of interest or bias. If any party has a concern that an appeal officer has a conflict of interest or bias, the party should report the concern in writing as indicated in section VII(7) Conflicts above.

The Lead Title IX Coordinator generally will compile an appeal file, which may consist of any information, documents, or other evidence that is provided to appeal officer(s). Such information may include, as applicable, the written appeal statement, the responsive appeal statement, the notice of determination, the adjudication file in its entirety or in part, any previously undiscovered evidence (if discovery of new evidence is a ground for the appeal), and any other information determined to be necessary for the appeal officer(s)' decision, at the discretion of the Lead Title IX Coordinator.

For complaints involving allegations of (1) Title IX Sexual Harassment or (2) Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside* of the education program or activity or against a person *outside* of the United States, the appeal file will be made available for review by the complainant and respondent by making an appointment with their Lead Title IX Coordinator during regular business hours. The Lead Title IX Coordinator will provide a two (2) calendar day period for the complainant and respondent to have access to review the appeal file. The appeal file cannot be photographed, copied, or removed from the Lead Title IX Coordinator's office(s) or other location provided for review purposes. All parties (and their advisors) may take personal handwritten notes.

In cases where the appeal file is made available for review as discussed above, the parties and parties' advisors may use the appeal file reviewed at this step and any additional information reviewed during the consideration of the appeal (see below), only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the appeal file or additional information with any other individual. Prior to being provided access to the appeal file or any additional information, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

- a. **Determination of Whether Appeal Has Merit.** The appeal file will be reviewed and considered by the appeal officer(s). The appeal officer(s) will determine whether it is more likely than not that one or more of the above grounds for appeal are satisfied.

If the appeal officer(s) determine there is insufficient evidence to conclude that it is more likely than not that one or more grounds for appeal has been satisfied, the appeal officer(s) may dismiss the appeal. This decision is final and is not appealable. If the appeal officer(s) dismisses the appeal, the sanctions will be effective on the date the decision is provided to the parties.

The appeal officer(s) will provide the complainant and respondent with simultaneous written notice describing the result of the appeal and the appeal officer(s)' rationale for the result. The written notice of the outcome of the appeal will generally be received within 20 (twenty) calendar days of the appeal officer(s) receiving the appeal file. In some cases, more time will be required.

- b. **Determination on Remand.** If the appeal officer(s) determine that there is sufficient evidence to conclude that it is more likely than not that one or more of the above grounds for appeal have been satisfied, the appeal officer(s) will remand the matter for further investigation and/or deliberations by the Title IX Hearing Panel/adjudication panel, and/or

an additional live hearing. The appeal officer(s) will determine whether the matter should be remanded to the previous Title IX Hearing Panel/adjudication panel or whether a new Title IX Hearing Panel/adjudication panel should review the matter. The appeal officer(s) may not change the Title IX Hearing Panel's/adjudication panel's determination or the Hearing Panel/Deputy Title IX Coordinator(s)' imposition of sanctions. Only the Title IX Hearing Panel/adjudication panel reviewing the matter on remand from an appeal may change the determination of the original adjudication panel, and based upon the new determination, only the Hearing Panel/Deputy Title IX Coordinator(s) may modify any of the sanctions previously imposed.

Upon remand, the investigator and Title IX Hearing Panel/adjudication panel shall utilize the same process as required for all Complaint Resolution Processes under this Policy. If the matter is remanded, the determination made on remand will be appealable under the procedures discussed in this section.

In cases involving allegations of (1) Title IX Sexual Harassment or (2) Sexual Assault, Domestic Violence, Dating Violence, and Stalking *occurring outside* of the education program or activity or against a person *outside* of the United States, the parties will receive timely access to view any information and documents – not already provided to the parties during the investigation and initial adjudication phases – that will be used to adjudicate matter on remand.

## **B. Complaint Procedure if the Respondent is a Faculty or Staff Member**

The following constitutes the steps which make up the Complaint Resolution Process when the respondent is a faculty or staff member.

The Associate HR Director will generally serve as Deputy Title IX Coordinator for Sexual Misconduct formal complaints involving faculty and staff. If a formal complaint involves both a student and a faculty or staff member, the Dean(s) of Students and Associate HR Director shall share responsibility for implementing the Sexual Misconduct Complaint Procedures.

### **Step 1: Initial Meeting Between the Complainant and Deputy Title IX Coordinator**

In most cases, the first step of the Complaint Resolution Process is a preliminary meeting between the complainant and a Deputy Title IX Coordinator. The purpose of the preliminary meeting is to allow the Deputy Title IX Coordinator to gain a basic understanding of the nature and circumstances of the report or formal complaint; it is not intended to be a full investigation interview.

As part of the initial meeting with the complainant, the Deputy Title IX Coordinator will:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being of the complainant and the campus, in consultation with appropriate campus officials;
- Notify the complainant of the right to contact law enforcement and seek medical treatment;
- Notify the complainant of the importance of preservation of evidence;
- Identify resources available to the complainant on- and off-campus;

- Notify the complainant of the range of supportive/interim measures with or without filing a formal complaint;
- Provide the complainant with an explanation of the procedural options, including how to file a formal complaint, if not already filed, and the Complaint Resolution Process;
- Inform the complainant of the right to have an advisor of choice, as applicable under the Procedures;
- Discuss the complainant's expressed preference for the manner of resolution and any barriers to proceeding; and
- Explain the institutions' Policy prohibiting retaliation.

All reports and formal complaints of Sexual Misconduct will be reviewed by the Deputy Title IX Coordinator to determine the risk of harm to individuals or to the campus community. Steps will be taken to address these risks in consultation with the members of the Title IX Team.

If the Deputy Title IX Coordinator determines that the report or formal complaint, even if substantiated, would not be a violation of this Policy, they may dismiss the matter or refer it to another applicable disciplinary procedure. The parties will be notified of that determination and the complainant will be informed of other procedures for resolving the formal complaint and of other resources that may be available to the complainant.

## **Step 2: Formal Complaint and Notice of Allegations**

The filing of a formal complaint begins the Complaint Resolution Process under this Policy. The Complaint Resolution Process may be initiated at the request of the complainant upon making a formal complaint to the Deputy Title IX Coordinator, SJU Life Safety or CSB Campus Security. Students at the SJU School of Theology-Seminary may alternately submit their formal complaint to the Rector or Dean of the School of Theology-Seminary, who will then refer the matter to the Deputy Title IX Coordinator.

In most cases, the complainant files the formal complaint. However, in some cases, the institutions may move forward with a Complaint Resolution Process even if the complainant chooses not to make or move forward with a formal complaint. If the institutions decide that they have an obligation to move forward with a Complaint Resolution Process, the Deputy Title IX Coordinator will sign the formal complaint and the institutions will notify the complainant before proceeding. See section VI Confidentiality and Request for No Action above for more information. The Deputy Title IX Coordinator signing the formal complaint does not make the Deputy Title IX Coordinator a party to the Complaint Resolution Process or adverse to the respondent.

When the Deputy Title IX Coordinator has received a formal complaint, the Deputy Title IX Coordinator will assess the formal complaint to determine if it states any allegations of Sexual Misconduct. If the formal complaint alleges Sexual Misconduct, the Deputy Title IX Coordinator will provide a written notice of allegations to the parties who are known. The written notice will include:

- Notice of the institutions' Complaint Resolution Process, including the alternative resolution process;

- Notice of the allegations, including the identities of the parties involved in the incident(s), if known, the conduct allegedly constituting Sexual Misconduct, and the date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made at the conclusion of the complaint resolution process;
- Notice that the parties have the right to an advisor of choice, as applicable under this Policy, who may be, but is not required to be, an attorney;
- Notice that the parties have the right to inspect and review evidence, as applicable under this Policy; and
- Notice of policy provisions that prohibit knowingly making false statements or knowingly submitting false information during the Complaint Resolution Process, including section III(A)(4) Obligation to Act in Good Faith in the Policy and section VII(8) Obligation to be Truthful above.

If the institutions decide to investigate allegations about the complainant or respondent that are not included in the notice provided, the notice will be updated to provide notice of the additional allegations to the parties whose identities are known.

In addition, upon receiving a formal complaint, the Deputy Title IX Coordinator will make a preliminary determination of the procedures that will apply to the Complaint Resolution Process.

When the Deputy Title IX Coordinator has received a formal complaint of Sexual Misconduct, the Deputy Title IX Coordinator will also meet with the respondent and will:

- Notify the respondent of the complaint and alleged Policy violations;
- Provide the respondent an explanation of the Complaint Resolution Process, including the alternative resolution process;
- Notify the respondent of the importance of preservation of evidence;
- Notify the respondent of any supportive/interim measures that have been put in place that directly relate to the respondent (i.e., no-contact order);
- Notify the respondent of available supportive/interim measures;
- Provide the respondent with information about on and off campus resources;
- Inform the respondent of the right to have an advisor of choice, as applicable under these Procedures; and
- Explain the institutions' Policy prohibiting retaliation.

This stage of initial review of the formal complaint by the Deputy Title IX Coordinator and initial notice of the allegations to the parties generally will take no more than ten (10) calendar days. In some cases, more time may be required.

**Options for Resolution.** When the institutions receive a formal complaint of Sexual Misconduct, there are two avenues for resolution: alternative resolution (informal resolution) and formal resolution. The Deputy Title IX Coordinator of the institutions of the parties involved in the complaint proceeding will explain the alternative and formal resolution procedures.

## **Alternative Resolution Process Option**

Following a formal complaint at any time prior to reaching a determination regarding responsibility, the institutions may facilitate an alternative resolution (informal resolution) process. In cases involving allegations of Sexual Assault or more serious Sexual Misconduct, alternative resolution may not be appropriate. In addition, in cases involving allegations that a faculty or staff member engaged in Title IX Sexual Harassment against a student, alternative resolution is not appropriate.

If the complainant, the respondent and the institutions all agree to pursue an alternative resolution, the Deputy Title IX Coordinator will attempt to facilitate a resolution that is agreeable to all parties. The Deputy Title IX Coordinator will not be an advocate for either the complainant or the respondent in the alternative resolution process, but rather will aid in the resolution of the formal complaint in a non-adversarial manner. Under the alternative process, the institutions will only conduct such fact-gathering as is useful to resolve the formal complaint and as is necessary to protect the interests of the parties, the institutions, and the CSB and SJU community.

The institutions will not compel a complainant or respondent to engage in mediation, to directly confront the other party, or to participate in any particular form of alternative resolution. Participation in alternative resolution is voluntary and the complainant and respondent each have the option to discontinue the alternative process and request a formal Complaint Resolution Process by notifying the Deputy Title IX Coordinator, in writing, at any time prior to reaching an agreed upon resolution. The institution(s) also always has/have the discretion to bypass or discontinue the alternative process and move forward with a formal Complaint Resolution Process. If at any point during the alternative process prior to reaching an agreed upon resolution, the complainant, the respondent, or the institution(s) wish to cease the alternative procedure and to proceed through the formal procedure, the formal procedure outlined below will be invoked.

Prior to engaging in an alternative resolution process, the institutions will provide the parties with a written notice disclosing: the allegations, the requirements of the alternative resolution process, including the circumstances under which the alternative resolution process precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the alternative resolution process, including the records that will be maintained or could be shared. In addition, the institutions will obtain the parties' voluntary, written consent to the alternative resolution process.

The alternative resolution must adequately address the concerns of the complainant, as well as the rights of the respondent and the overall intent of the institution(s) to stop, remedy, and prevent Policy violations. The recommended resolution may include a variety of institutional responses or requirements, including, but not limited to, the following: warning, required training, behavioral contracts, community service hours, restitution, required attendance at educational programs, required assessment and/or counseling, restriction of privileges, no contact directives, and/or probation.

The alternative resolution process ends when a resolution has been reached or when the complainant, the respondent, or the institutions terminate the process. A successful alternative resolution results in a binding agreement between the parties.

If all parties to the formal complaint and the institutions agree in writing to the terms and conditions of the recommended resolution within five (5) calendar days, the case will be resolved without further process under these Procedures. If all parties to the formal complaint and the institutions do not agree in writing to the terms and conditions of the recommended resolution within five (5) calendar days, the formal complaint will move to the formal procedure.

Appeals are not allowed in cases where the parties have reached a resolution of the matter through the alternative resolution process.

The alternative resolution process generally will take no more than fifteen (15) calendar days. In some cases, more time may be required.

### **Formal Complaint Resolution Process Option**

If the formal complaint is not processed or resolved through the alternative resolution process discussed above, the formal complaint will be processed according to the formal resolution process (Steps 3 through 7) outlined below.

#### **Step 3: Investigation**

The formal resolution process will include an investigation conducted by an appointed outside investigator, or at the institutions' discretion, SJU Life Safety or CSB Campus Security. The complainant and the respondent shall receive written notice of the name of the investigator appointed to conduct the investigation. If any party has a concern that the investigator has a conflict of interest or bias, the party should report the concern in writing as indicated in section VII(7) Conflicts above.

The investigator will interview the complainant, respondent and/or other witnesses and may request additional information from the complainant, respondent or others. In addition, the complainant and respondent will have an opportunity to advise the investigator of any witnesses they believe should be interviewed, may suggest questions that they would like asked of the other party or witnesses, including questions challenging credibility, and/or may provide other evidence that they believe should be reviewed by the investigator. The investigator, in consultation with the Deputy Title IX Coordinator(s), has discretion to assess the relevancy of any proposed witnesses, evidence, and questions, and, at his or her discretion, may decline to interview witnesses suggested by the parties and may interview witnesses who were not suggested by either party. Similarly, the investigator, at his or her discretion and in consultation with the Deputy Title IX Coordinator(s), may determine whether or not to ask some or all of the questions recommended by the complainant or respondent. All interviews with the complainant, respondent, and other witnesses shall be recorded. The complainant and respondent will be given an equal opportunity to present witnesses they believe should be interviewed, and other inculpatory and exculpatory evidence, as part of the investigation. In cases involving allegations of Title IX Sexual Harassment, any witness that a party wishes to call at a hearing must be suggested as part of the investigation process, prior to the issuing of the investigation report.

The parties will be notified of a close of evidence date. The parties shall submit any and all information and evidence they would like considered as part of the investigation by the close of evidence date. After the close of evidence date, the parties shall not be permitted to submit new or additional evidence that existed prior to the close of evidence date, unless the investigator determines otherwise.

The investigator shall compile an investigation report that fairly summarizes the relevant evidence. The investigation report may consist of any information, documents, or other evidence that will be provided to the Title IX Hearing Panel/adjudication panel. At the investigator's discretion, such information may include, as applicable: the written complaint, the notice of allegations, any other evidence obtained during the investigation, and the investigator's report of the investigation. The investigation report will include the names of all witnesses interviewed and dates on which interviews took place. The investigator will present the facts gathered, but will not make credibility determinations.

The investigation report will be forwarded to the Deputy Title IX Coordinator who will review the investigation report and has the discretion to ask the investigator for clarification, additional investigation, and/or to have information added, removed, or redacted from the investigation report.

CSB and/or SJU will strive to complete the investigation phase within forty-five (45) calendar days from the date the investigator is appointed, but this time frame may be extended depending on the circumstances of each case. In cases involving allegations of Title IX Sexual Harassment, the institutions will strive to complete the initial investigation in this 45-day time frame, but the final investigation report will not be completed until after the review of directly related evidence.

#### **Step 4: Access to Information**

The procedures in the formal process for all cases of Sexual Misconduct involving faculty or staff respondents are the same through the investigation phase. Prior to providing access to information, the Deputy Title IX Coordinator will make a final determination as to the procedures that will apply to the access to information phase and the adjudication phase.

##### **a. Cases Involving Allegations of Title IX Sexual Harassment**

###### *Review of Directly Related Evidence*

For formal complaints involving allegations of Title IX Sexual Harassment, the parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the institutions do not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other source. The Deputy Title IX Coordinator or investigator will send such evidence to each party and each party's advisor in electronic format or hard copy. The parties will have a ten (10) calendar day period to review the evidence and prepare a written response to the evidence (the "Evidence Response Statement"). Each party's Evidence Response Statement may not exceed 2,000 words in length. The Evidence Response Statement must be submitted to the Deputy Title IX Coordinator within the

ten (10) calendar day period described above. The Evidence Response Statement may be used as an opportunity to clarify information contained in the directly related evidence, to present the party's viewpoint about whether the evidence directly related to the allegations is relevant and therefore whether it should be included in the investigation report, and to identify evidence previously provided to the investigator that was not included in the directly related evidence which the party believes is directly related and relevant. While the parties may be assisted by their advisors in preparation of the Evidence Response Statement, the Evidence Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Evidence Response Statement.

The parties and parties' advisors may use the evidence reviewed at this step only for purposes of participating in the Complaint Resolution Process and are prohibited from disseminating or otherwise sharing the evidence with any other individual. Prior to being provided the evidence obtained as part of the investigation that is directly related to the allegations, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

The Deputy Title IX Coordinator will review the parties' Evidence Response Statements and may remove or redact any portions of the parties' Evidence Response Statements that exceed the word limit of the statements as set forth above or that otherwise exceed the permitted scope of information that may be considered in the complaint resolution process (such as treatment records without consent or information subject to a legal privilege without a waiver).

The investigator will consider the parties' Evidence Response Statements prior to completion of the investigation report.

All the evidence made available for the parties' review will be available during the hearing.

#### *Review of Investigation Report*

For complaints involving allegations of Title IX Sexual Harassment, the Deputy Title IX Coordinator or investigator will send the investigation report to each party and each party's advisor in electronic format or hard copy at least ten (10) days prior to the live hearing. The parties will have a five (5) calendar day period to review the investigation report and prepare a written response to the report (the "Written Response Statement"). Each party's Written Response Statement may not exceed 4,500 words in length. The Written Response Statement must be submitted to the Deputy Title IX Coordinator within the five (5) calendar day period described above. The Written Response Statement may be used as an opportunity to clarify points in the investigation report, identify information previously given to the investigator(s) that is not included in the investigation report which the party believes should have been included, , or raise other concerns regarding the evidence. While the parties may be assisted by their advisors in preparation of the Written Response Statement, the Written Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Written Response Statement.

The parties and parties' advisors may use the investigation report only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing

the investigation report with any other individual. Prior to being provided the investigation report, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

The Deputy Title IX Coordinator will review the parties' Written Response Statements. Based on the statements, the Deputy Title IX Coordinator has the discretion to ask the investigator(s) for clarification, additional investigation, and/or to have information removed or redacted from the investigation report. In addition, the Deputy Title IX Coordinator may remove or redact any portions of the parties' Written Response Statements that exceed the word limits of the statements as set forth above or that otherwise exceed the permitted scope of information that may be considered in the complaint resolution process (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

- b. Cases Involving Allegations of Sexual Assault, Domestic Violence, Dating Violence, and Stalking *Occurring Outside* of the Education Program or Activity or Against a Person *Outside* of the United States

For complaints involving allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside* of the institutions' education program or activity or against a person *outside* of the United States, the investigation report will be made available for review by the complainant and respondent by making an appointment with the Deputy Title IX Coordinator during regular business hours. The Deputy Title IX Coordinator will provide a five (5) calendar day review and response period for the parties to have access to review the investigation report and prepare a response to the investigation report, as discussed below. The report cannot be photographed, copied, or removed from the Deputy Title IX Coordinator's office or other location provided for review purposes. All parties (and their advisors) may take personal handwritten notes.

Following review of the investigation report, both the complainant and respondent shall have the opportunity to provide a typewritten initial statement (the "Written Response Statement") to add clarifying information, identify information previously given to the investigator that is not included in the investigation report that the party believes should have been included, identify questions a party believes the other party has not yet answered or evidence the other party has not explained, raise other concerns regarding the evidence, and to challenge the credibility of the other party and any witnesses. While the parties may be assisted by their advisors in preparation of the Written Response Statement, the Written Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf, including any external reports. The parties may not address each other in the Written Response Statement. The Written Response Statement shall not exceed 4,500 words. The Written Response Statement must be submitted within the five (5) calendar days provided for review and response described above. Submissions must be made electronically by email to the Deputy Title IX Coordinator, and must be submitted directly from the complainant or respondent, and not through an advisor or other representative.

The complainant and respondent shall have an opportunity to review the Written Response Statement submitted by the other party and, if desired, may submit a typewritten rebuttal statement (the "Written Rebuttal Statement") not to exceed 2,500 words. The Deputy Title IX

Coordinator will provide a two (2) calendar day review and response period for the parties to have access to review the Written Response Statement and prepare a response to the Written Response Statement, as discussed below.

The Written Rebuttal Statement may only be used to respond to arguments made in the other party's Written Response Statement and to challenge the credibility of the other party and any witnesses. While the parties may be assisted by their advisors in preparation of the Written Rebuttal Statement, the Written Rebuttal Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf, including external reports. The parties may not address each other in the Written Rebuttal Statement. The parties have the option to read the Written Rebuttal Statement of the other party, but no further responses will be made by either party.

The parties and parties' advisors may use the investigation report and written statements of the other party reviewed at this step only for purposes of participating in the Complaint Resolution Process and are prohibited from disseminating or otherwise sharing the report and written statements with any other individual. Prior to being provided the report and written statements, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

At any time during the investigation and review phases, the Deputy Title IX Coordinator may review the investigation report, the parties' Written Response Statements and Written Rebuttal Statements, and other information or evidence to determine whether additional investigation is necessary, statements and documents submitted by the parties are within the word limit and appropriate scope of the Complaint Resolution Process, and/or information or other evidence contained in the investigation report and the parties' written statements should be removed or redacted. In the event the Deputy Title IX Coordinator requests additional investigation, the parties shall be notified. Information that may be removed or redacted from the parties' written statements includes information that is over the word limit or that exceeds the permitted scope of information that may be considered in the Complaint Resolution Process (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

### **Step 5: Adjudication**

Upon completion of the investigation, the Deputy Title IX Coordinator will compile the adjudication file which will be shared with the Title IX Hearing Panel/adjudicator. In cases involving allegations of (1) Title IX Sexual Harassment or (2) Sexual Assault, Domestic Violence, Dating Violence, or Stalking *occurring outside* of the institutions' education program or activity or against a person *outside* of the United States, the parties will be given access to any information that is included in the adjudication file to the extent that it includes additional information that the parties did not review as part of the Access to Information step discussed above.

#### **a. Cases Involving Allegations of Title IX Sexual Harassment**

Upon completion of the investigation in cases involving allegations of Title IX Sexual Harassment, the matter will be submitted to a Title IX Hearing Panel to hold a live hearing and to make a

determination regarding responsibility and, if appropriate, sanctions.

The Title IX Hearing Panel will conduct a prompt and equitable live hearing and adjudication.

#### *Appointment of the Title IX Hearing Panel*

The Deputy Title IX Coordinator will designate a panel of three adjudicators to serve as the Title IX Hearing Panel. Generally, the Title IX Hearing Panel will be chosen from a pool of trained faculty and staff and/or outside adjudicators. The institutions reserve the right to appoint any trained individuals who are without conflict or bias to the Title IX Hearing Panel. The Title IX Hearing Panel will not include the Deputy Title IX Coordinator or the investigator from the same matter. If any party has a concern that a member of the Title IX Hearing Panel has a conflict of interest or bias, the party should report the concern in writing as indicated in section VII(7) Conflicts above.

#### *Live Hearing*

At the live hearing, each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such questions will be conducted directly, orally, and in real time by the party's advisor and will never be conducted by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a question at the hearing, the Title IX Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant in the formal complaint, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party is not willing to answer any relevant question from the other party's advisor, or a witness is not willing to answer any relevant question from either advisor, the Title IX Hearing Panel will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Title IX Hearing Panel, however, will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

All evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint will be made available at the hearing.

The hearing will generally be held by video-conference with the parties, witnesses, and Title IX Hearing Panel located in separate locations and technology enabling the Title IX Hearing Panel and parties to simultaneously see and hear the party or the witness answering questions. The institutions reserve the right to determine that a hearing will instead be conducted with all participants, including the parties, witnesses, and the Title IX Hearing Panel physically present in the same location. In the event that the live hearing is held with the participants in the same location, at the request of either party, the institutions will provide for the parties to be located in separate rooms with technology enabling the Title IX Hearing Panel and parties to simultaneously

see and hear the party or witness answering questions.

The institutions will create an audio or audiovisual recording, or transcript, of any live hearing and, upon request, will make it available to the parties for inspection and review.

#### *Institution Appointed Advisors*

If a party does not have an advisor present at the live hearing, the institutions will provide an advisor to the party, without fee or charge to that party, to conduct cross-examination on behalf of that party. If a party will not have an advisor present at the hearing, the party must inform the Deputy Title IX Coordinator at least three (3) calendar days prior to the live hearing so that the institutions may appoint an advisor for the hearing. The appointed advisor's role will be limited to relaying the party's questions to be asked of other parties and witnesses. The appointed advisor shall not perform any function beyond relaying the party's desired questions. The institutions reserve the right to appoint any individual as the institution deem appropriate to act as an advisor at a live hearing. The institutions' appointment of an advisor is final and a party who refuses to work with an appointed advisor at the live hearing will forfeit his or her right to conduct cross-examination or other questioning at the hearing.

#### *Live Hearing Procedures*

Additional information about live hearings can be found in the [Live Hearing Procedure](#).

#### *Decision-Making Process*

The presumption is that the respondent is not responsible for a policy violation. The respondent will be deemed responsible for a policy violation only if the Title IX Hearing Panel concludes that there is sufficient evidence, by a "preponderance of evidence," to support a finding that the respondent engaged in Sexual Misconduct. If the Title IX Hearing Panel determines that the respondent is responsible for a policy violation, the Title IX Hearing Panel will then determine what sanctions and remedies are warranted.

As discussed above, if a party or witness does not submit to cross-examination at the live hearing, the Title IX Hearing Panel will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Title IX Hearing Panel, however, will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

The Title IX Hearing Panel will communicate the decision to the Deputy Title IX Coordinator of the institutions of the parties.

- 1. Determination of "Not Established Responsible."** If the Title IX Hearing Panel determines that there is not sufficient basis to establish that it is more likely than not that a respondent violated the Policy, the Title IX Hearing Panel will make a determination of "Not Established Responsible." The complainant and respondent will be notified of the "Not Established Responsible" determination and of other steps that may be taken in response to the formal complaint such as "no contact" directives. The complainant will also be apprised of

other resources that may be available.

When the Title IX Hearing Panel makes a finding of “Not Established Responsible,” but the respondent nevertheless is found to have engaged in inappropriate conduct – for example, inappropriate remarks that do not rise to the level of a Policy violation – CSB and/or SJU may, at their discretion, require the respondent to receive appropriate education and/or training. The institutions may also recommend counseling or other support services for the respondent.

## 2. Determination of "Responsible" and Imposition of Remedies/Sanctions.

- i. **Faculty Respondent:** If the Title IX Hearing Panel determines that it is more likely than not that a faculty member respondent violated the Policy, the Title IX Hearing Panel will make a finding of "Responsible" and the Provost will determine appropriate sanction(s). The Provost’s determination will include steps to stop the misconduct, prevent its recurrence and, as appropriate, address its effect on the complainant and the campus community. Sanctions imposed depend on the severity of the violation, student or employee status of the complainant, and any previous violations that resulted in a finding of “Responsible.” Sanctions will be determined and administered in accord with these Procedures and the Policy. The Policy and Procedures supersedes the Faculty Handbook as to allegations of Sexual Misconduct. Sanctions may include a variety of institutional responses or requirements, as listed in the Policy section VI(B).
- ii. **Staff Respondent:** If the Title IX Hearing Panel determines that it is more likely than not that a staff member violated the Policy, the Title IX Hearing Panel will make a finding of "Responsible" and the Divisional Vice President, in consultation with the Human Resources Director, will determine the appropriate sanctions, which shall be determined and administered in a manner consistent with the Administrative and Support Staff Handbook. The Divisional Vice President’s determination will include steps to stop the misconduct, prevent its recurrence and, as appropriate, address its effects on the complainant and the community. Sanctions imposed depend on the severity of the violation, student or employee status of the complainant, and any previous violations that resulted in a finding of “Responsible.” Sanctions may include a variety of institutional responses or requirements, as listed in the Policy section VI(B).

### b. Cases Involving Allegations of Other Forms of Sexual Misconduct

Upon completion of the investigation, in matters involving allegations of Sexual Misconduct that are not Title IX Sexual Harassment, an adjudicator will be appointed. In cases of alleged Sexual Misconduct by a staff member, the Director of Human Resources will generally serve as the adjudicator on issues of whether the Policy has been violated. In cases of alleged Sexual Misconduct by a faculty member, the Dean of the Faculty will generally serve as the adjudicator on issues of whether the Policy has been violated. An alternative adjudicator may be appointed by the

Deputy Title IX Coordinator in cases involving a conflict of interest, the appearance of a conflict of interest, or in other appropriate circumstances.

The complainant and the respondent shall receive written notice of the adjudicator appointed. If any party has a concern that an adjudicator has a conflict of interest or bias, the party should report the concern in writing as indicated in the section VII(7) Conflicts above.

The adjudicator will review the adjudication file. The adjudicator may, in his or her discretion, request additional investigation by the investigator or another appropriate individual. In cases involving allegations of Sexual Assault, Domestic Violence, Dating Violence, and Stalking (that *occurred outside* of the education program or activity or against a person *outside* of the United States), if such information is shared with the adjudicator, the parties will be notified and provided access to that information.

The adjudicator will use a preponderance of the evidence standard to determine whether it is more likely than not that the respondent is responsible for a Policy violation. The Deputy Title IX Coordinator shall be available to consult with the adjudicator, but will not participate in making the decision.

The adjudicator will communicate the decision to the Deputy Title IX Coordinator of the institutions of the parties.

1. **Determination of "Not Established Responsible."** If the adjudicator determines that there is not sufficient basis to establish that it is more likely than not that a respondent violated the Policy, the adjudicator will make a determination of "Not Established Responsible." The complainant and respondent will be notified of the "Not Established Responsible" determination and of other steps that may be taken in response to the formal complaint such as "no contact" directives. The complainant will also be apprised of other resources that may be available.

When the adjudicator makes a finding of "Not Established Responsible," but the respondent nevertheless is found to have engaged in inappropriate conduct – for example, inappropriate remarks that do not rise to the level of a Policy violation – CSB and/or SJU may, at their discretion, require the respondent to receive appropriate education and/or training. The institutions may also recommend counseling or other support services for the respondent.

2. **Determination of "Responsible" and Imposition of Remedies/Sanctions.**

- a. **Faculty Respondent:** If the adjudicator determines that it is more likely than not that a faculty member respondent violated the Policy, the adjudicator will make a finding of "Responsible" and the Provost will determine appropriate sanction(s). The Provost's determination will include steps to stop the misconduct, prevent its recurrence and, as appropriate, address its effect on the complainant and the campus community. Sanctions imposed depend on the severity of the violation, student or employee status of the complainant, and any previous violations that resulted in a finding of "Responsible." Sanctions will be determined and administered in accord with these Procedures and the Policy. The Policy and

Procedures supersedes the Faculty Handbook as to allegations of Sexual Misconduct. Sanctions may include a variety of institutional responses or requirements, as listed in the Policy section VI(B).

- b. **Staff Respondent:** If the adjudicator determines that it is more likely than not that a staff member violated the Policy, the adjudicator will make a finding of "Responsible" and the Divisional Vice President, in consultation with the Human Resources Director, will determine the appropriate sanctions, which shall be determined and administered in a manner consistent with the Administrative and Support Staff Handbook. The Divisional Vice President's determination will include steps to stop the misconduct, prevent its recurrence and, as appropriate, address its effects on the complainant and the community. Sanctions imposed depend on the severity of the violation, student or employee status of the complainant, and any previous violations that resulted in a finding of "Responsible." Sanctions may include a variety of institutional responses or requirements, as listed in the Policy section VI(B).

### **Step 6: Notice of Determination**

The complainant and respondent shall receive a simultaneous written notice of outcome.

Prior to being provided the notice of determination, the parties and parties' advisors will be required to sign a non-disclosure agreement. The parties and parties' advisors are prohibited from disseminating or otherwise sharing the notice of determination with any other individual, except as permitted in the non-disclosure agreement.

For formal complaints alleging (1) Title IX Sexual Harassment or (2) Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside* of the institutions' education program or activity or against a person *outside* of the United States, the written notice shall include the allegations potentially constituting Sexual Misconduct, 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 the parties and witnesses, site visits, methods used to gather other evidence, and hearings held), findings of fact supporting the determination, conclusions regarding the application of the institutions' policy to the facts, the determination regarding responsibility as to each allegation, any imposition of sanctions, whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant, and the rationales for the determination and sanctions (including how the evidence was weighed, how the information supports the result, and the standard of evidence applied). The written notice will also include information about the procedures and permissible bases for appeal, as set forth below, and when the result becomes final. In addition, the written notice shall include any other steps the institutions have taken to eliminate the conduct and prevent its recurrence.

For all other formal complaints of Sexual Misconduct, the written notice shall include the determination of the adjudicator.

In cases involving allegations of Title IX Sexual Harassment, the written notice of determination will generally be received within twenty-five (25) calendar days from the date the live hearing

concluded. In cases involving allegations of other forms of Sexual Misconduct, the written notice of determination will generally be received within twenty-five (25) calendar days from the date the adjudicator receives the adjudication file. In some cases, more time may be required.

The determination of the Title IX Hearing Panel/adjudicator may be appealed as provided below. In the event that no appeal is filed within the time periods prescribed below, the decision of the Title IX Hearing Panel/adjudicator will be final and the sanctions, if any, will be effective.

### **Step 7: Appeal**

The complainant and respondent have the right to appeal a decision to dismiss a formal complaint or any allegations therein, as discussed above in the section VII(14) Dismissal of Formal Complaint Prior to Adjudication above. The parties may also appeal the Title IX Hearing Panel's/adjudicator's decision regarding responsibility.

Grounds for appeal are as follows:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Deputy Title IX Coordinator, investigator, or Title IX Hearing Panel/adjudicator had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Disagreement with the finding of the Title IX Hearing Panel/adjudicator does not constitute a procedural irregularity and is not grounds for an appeal. Appeals should not be requested frivolously. An appeal represents a procedural safeguard for the complainant and respondent.

The complainant or respondent may request an appeal of the decision by submitting a written statement of appeal challenging the outcome of the Complaint Resolution Process, not to exceed 1,300 words, no later than two (2) calendar days after receiving the notice of determination. The appeal shall be directed to the Lead Title IX Coordinator of the institution of the appealing party. While the parties may be assisted by their advisors in preparation of the appeal, the appeal statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. Failure to file an appeal or request an extension in a timely manner constitutes a waiver of any right to an appeal.

The Lead Title IX Coordinator will review the appeal statement to determine whether the appeal states a permissible ground for appeal (as set forth above), such that the appeal will be considered. The Lead Title IX Coordinator may remove or redact any portions of the appeal statement that exceed the word limit or that otherwise exceed the scope of information that may be considered in the complaint resolution proceeding (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

If it is determined that the appeal will be considered, the non-appealing party will be notified of the appeal. The non-appealing party may, if desired, submit a written response in support of the

outcome, not to exceed 1,300 words. The written response to the appeal must be submitted to the Lead Title IX Coordinator within two (2) calendar days of receiving notice of the appeal. While the party may be assisted by their advisor in preparation of the responsive appeal statement, the responsive appeal statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf.

The Lead Title IX Coordinator will review the responsive appeal statement and may remove or redact any portions of the responsive statement that exceed the word limit or that otherwise exceed the scope of information that may be considered in the complaint resolution proceeding (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

The Lead Title IX Coordinator will appoint one or more appeal officers. The appeal officer(s) will generally be the Dean of the Faculty, the Academic Dean, Vice Presidents of the institutions or other senior level officers of the institutions. The institutions reserve the right to appoint any trained appeal officer who is without conflict of interest or bias. If any party has a concern that an appeal officer has a conflict of interest or bias, the party should report the concern in writing as indicated in section VII(7) Conflicts above.

The Lead Title IX Coordinator generally will compile an appeal file, which may consist of any information, documents, or other evidence that is provided to the appointed appeal officer. Such information may include, as applicable, the written appeal statement, the responsive appeal statement, the notice of determination, the adjudication file in its entirety or in part, any previously undiscovered evidence (if discovery of new evidence is a ground for the appeal), and any other information determined to be necessary for the appeal officer's decision, at the discretion of the Lead Title IX Coordinator.

For complaints involving allegations of (1) Title IX Sexual Harassment or (2) Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside* of the education program or activity or against a person *outside* of the United States, the appeal file will be made available for review by the complainant and respondent by making an appointment with their Lead Title IX Coordinator during regular business hours. The Lead Title IX Coordinator will provide a two (2) calendar day period for the complainant and respondent to have access to review the appeal file. The appeal file cannot be photographed, copied, or removed from the Lead Title IX Coordinator's office(s) or other location provided for review purposes. All parties (and their advisors) may take personal handwritten notes.

In cases where the appeal file is made available for review as discussed above, the parties and parties' advisors may use the appeal file reviewed at this step and any additional information reviewed during the consideration of the appeal (see below), only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the appeal file or additional information with any other individual. Prior to being provided access to the appeal file or any additional information, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

- a. **Determination of Whether Appeal Has Merit.** The appeal file will be reviewed and considered by the appointed appeal officer. The appeal officer will determine whether it is more likely than not that one or more of the above grounds for appeal are satisfied.

If the appeal officer determines that there is insufficient evidence to conclude that it is more likely than not that one or more grounds for appeal has been satisfied, the appeal officer may dismiss the appeal. This decision is final and is not appealable. If the appeal officer dismisses the appeal, the sanctions will be effective on the date the decision is provided to the parties.

The appeal officer will provide the complainant and respondent with simultaneous written notice describing the result of the appeal and the rationale for the result. The written notice of the outcome of the appeal will generally be received within 20 (twenty) calendar days of the appeal officer receiving the appeal file. In some cases, more time will be required.

- b. **Determination on Remand.** If the appeal officer determines that there is sufficient evidence to conclude it is more likely than not that one or more of the above grounds for appeal have been satisfied, the appeal officer will remand the matter for further investigation and/or deliberations by the Title IX Hearing Panel/adjudicator, and/or an additional live hearing. The appeal officer will determine whether the matter should be remanded to the previous Title IX Hearing Panel/adjudicator or whether a new Title IX Hearing panel/adjudicator should review the matter. The appeal officer may not change the Title IX Hearing Panel's/adjudicator's determination or sanctions. Only the Title IX Hearing Panel/adjudicator reviewing the matter on remand from an appeal may change the determination of the original Title IX Hearing Panel/adjudicator, and based upon the new determination only the Provost (in cases involving a faculty member) or Divisional Vice President (in cases involving a staff member) may modify any of the sanctions previously imposed.

Upon remand, the investigator and Title IX Hearing Panel/adjudicator shall utilize the same process as required for all Complaint Resolution Processes under this Policy. If the matter is remanded, the determination made on remand will be appealable under the procedures discussed in this section.

In cases involving allegations of (1) Title IX Sexual Harassment or (2) Sexual Assault, Domestic Violence, Dating Violence, and Stalking *occurring outside* of the education program or activity or against a person *outside* of the United States, the parties will receive timely access to view any information and documents – not already provided to the parties during the investigation and initial adjudication phases – that will be used to adjudicate matter on remand.

### **C. Complaint Procedure if the Respondent is an Associate or Third Party**

Any individual who has a concern about potential Sexual Misconduct by an Associate or third party should report their concern to the Deputy and/or Lead Title IX Coordinator. If a formal complaint involves an associate or third party, the Dean(s) of Students and Associate HR Director will determine who should be the Deputy Title IX Coordinator for that matter.

Upon receiving a report of potential Sexual Misconduct by an associate or third party, the Deputy and/or Lead Title IX Coordinator will involve the appropriate administrative officials to make a determination of how to handle the complaint. The administrative official, in consultation with the Lead or a Deputy Title IX Coordinator, may exercise discretion to determine an appropriate investigative and adjudication process based on the facts and circumstances. The administrative official will document the report received, process used, and the outcome and will submit such information to the Lead Title IX Coordinator. CSB and/or SJU will notify the parties and, if applicable, employing entities that contract with CSB and/or SJU, of the outcome of the complaint. Associates and third parties generally may not appeal the decision made, unless the appropriate administrative official determines otherwise.

### **IX. COMPLAINTS OF RELATED MISCONDUCT**

Any complaint relating to retaliation or interference with process in violation of this Policy, or violations of supportive/interim measures, sanctions, the obligation to act in good faith, the obligation to be truthful, or a nondisclosure agreement should be reported promptly to the Deputy Title IX Coordinator. The institutions will provide a prompt and equitable process for the resolution of complaints alleging retaliation or interference with process or violations of supportive/interim measures, sanctions, the obligation to act in good faith, the obligation to be truthful, or a nondisclosure agreement and will take appropriate action against any individual who engages in such conduct.

When CSB and/or SJU receives a complaint of retaliation or interference with process or of violations of supportive/interim measures, sanctions, the obligation to act in good faith, the obligation to be truthful, or a nondisclosure agreement, the Deputy Title IX Coordinator may exercise discretion to determine an appropriate responsive process based on the facts and circumstances. At the Deputy Title IX Coordinator's discretion, options for resolution include but are not limited to informal discussions and resolution facilitated by the Deputy Title IX Coordinator, investigation and/or determination by the Deputy Title IX Coordinator, or assignment of a designated individual to investigate the complaint and/or determine an appropriate response. This process will be separate and distinct from the Complaint Resolution Procedures outlined above for addressing Sexual Misconduct formal complaints. The Deputy Title IX Coordinator will document the complaint received, the process used, and the outcome. The institutions will notify the parties of the outcome of the complaint. In instances where the outcome of the process results in a suspension longer than one year, expulsion, or termination of employment, the impacted individual may appeal the decision in accordance with the appeal rights set forth in this Policy.

## X. EXTERNAL COMPLAINTS

Nothing in the Policy or these Procedures is intended to interfere with the right of any individual to pursue other avenues of recourse which may include, but is not limited to, filing a complaint with the United States Department of Education's Office for Civil Rights (OCR). If you filed a complaint under the Policy and believe the institution(s)' response was inadequate, or you otherwise believe you have been discriminated against by the institution(s), you may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education based in Chicago or the Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Department of Justice.

Web Address: <http://www2.ed.gov/about/offices/list/ocr/index.html>

Mailing Address: US Department of Education Office for Civil Rights  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Avenue SW  
Washington, DC 20202-1100

Telephone: 800-421-3481

Fax: 202-453-6012

TDD: 800-877-8339

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

## XI. CONTACT INFORMATION

College of Saint Benedict	
Lead Title IX Coordinator	Tamara Hennes-Vix <a href="mailto:thennesvi001@csbsju.edu">thennesvi001@csbsju.edu</a> , 320-363-5943
Vice President for Student Development Deputy Title IX Coordinator	Mary Geller <a href="mailto:mgeller@csbsju.edu">mgeller@csbsju.edu</a> , 320-363-5601
Dean of Students Deputy Title IX Coordinator	Jody Terhaar <a href="mailto:jterhaar@csbsju.edu">jterhaar@csbsju.edu</a> , 320-363-5270
Sr Human Resources Partner Deputy Title IX Coordinator	Chantel Braegelmann <a href="mailto:Cbraegem001@csbsju.edu">Cbraegem001@csbsju.edu</a> , 320-363-5071

Human Resources Director Deputy Title IX Coordinator	Erin Muckerheide <a href="mailto:EMUCKERHE001@CSBSJU.EDU">EMUCKERHE001@CSBSJU.EDU</a> , 320-363-5511
Security Director	Darren Swanson <a href="mailto:dswanson@csbsju.edu">dswanson@csbsju.edu</a> , 320-363-5000
<b>Saint John's University (including School of Theology and Seminary)</b>	
SOT Director of Student Services Lead Title IX Coordinator	Patty Weishaar <a href="mailto:pweishaar@csbsju.edu">pweishaar@csbsju.edu</a> , 320-363-2113
VP for Student Development Deputy Title IX Coordinator	Michael Connolly <a href="mailto:mconnolly@csbsju.edu">mconnolly@csbsju.edu</a> , 320-363-3171
Sr Human Resources Partner Deputy Title IX Coordinator	Chantel Braegelmann <a href="mailto:cbraegelm001@csbsju.edu">cbraegelm001@csbsju.edu</a> , 320-363-5071
Life Safety Services Director	Shawn Vierzba <a href="mailto:svierzba@csbsju.edu">svierzba@csbsju.edu</a> , 320-363-2144
Dean, School of Theology and Seminary Deputy Title IX Coordinator, effective 7/1/22	Shawn Colberg <a href="mailto:Scolberg@csbsju.edu">Scolberg@csbsju.edu</a> , 320-363-3188
Assistant Dean Deputy Title IX Coordinator	Jeff Glover <a href="mailto:Jglover001@csbsju.edu">Jglover001@csbsju.edu</a> , 320-363-2045

As changes are made in the persons holding these positions, current information will be available on the [CSB/SJU Title IX website \(www.csbsju.edu/joint-student-development/title-ix\)](http://www.csbsju.edu/joint-student-development/title-ix).