

St. John Fisher University
Sexual Misconduct Policy
Revised Fall 2021

St. John Fisher University (the “University”) is committed to maintaining a community in which learning and working can be carried out in an environment of respect, open-mindedness, and integrity. The University stands opposed to all forms of discrimination, harassment, and violence and will work to prevent such behavior within the University community.

This Sexual Misconduct Policy (“Policy”) prohibits behavior that violates Title IX of the Education Amendments of 1972 (“Title IX”), Title VII of the Civil Rights Act of 1964, and New York’s Enough is Enough Law (Education Law 129-B). This Policy complies with these laws as well as the requirements under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (“Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013. The requirement to not discriminate in the education program or activity of the University extends to admission and employment.

This Policy treats the federal and state laws named above as the baseline for addressing sexual misconduct, and as such the type of behavior prohibited in this Policy include and extend the forms of unlawful conduct defined by federal and state law. Whereas this Policy provides multiple options for resolution of complaints that build on existing laws, regulations, and guidance, and as federal and state laws, regulations, and guidance detail provisions in conjunction with definitions of prohibited conduct, with specific attention to the provisions of Title IX and its federal regulation.

The University prohibits sexual or gender-based violence, sexual or gender-based harassment, sexual assault, sexual exploitation, intimate partner violence including dating violence and domestic violence, stalking, and retaliation. These forms of prohibited behavior are referred to in this Policy interchangeably as “Sexual Misconduct” or “Prohibited Conduct.” The University will respond promptly and equitably to reports of Sexual Misconduct and Prohibited Conduct to eliminate hostile environments created by such behavior and provide equal access to educational programs and activities. This Policy authorizes the University’s Title IX Coordinator, or an authorized designee, to conduct an initial review of reported allegations to determine the proper course of the University’s prompt and equitable responsive actions.

Among its protections, this Policy prohibits Sexual Harassment under Title IX. On May 19, 2020, the United States Department of Education issued a Final Rule, effective August 14, 2020, addressing Sexual Harassment as defined under Title IX and amending part 106 of Title 34 of the Code of Federal Regulations (“Title IX Rule”). This Policy incorporates by reference and implements the requirements of the Title IX Rule. Upon the University’s actual knowledge of Title IX Sexual Harassment as reported to either the Title IX Coordinator or any University official authorized to institute corrective actions, Title IX requires responsive actions by the University (including Supportive Measures) and the implementation of a Grievance Process upon the filing of a Formal Complaint to investigate and adjudicate the reported alleged Title IX Sexual Harassment. Any inquiries about the application of Title IX and its federal regulations to the University (including the Title IX Rule) may be referred to the University’s Title IX Coordinator, the Assistant Secretary of the Department of Education, or both. The Department’s Office for Civil Rights has published its contact information at <https://ocrcas.ed.gov/contact-ocr>.

The University recognizes that sexual misconduct affects individuals of all genders, gender identities, gender expressions, and sexual orientations. All protections under this Policy are equitably provided to individuals regardless of such status.

PART I – THE POLICY’S SCOPE AND AVAILABLE RESOURCES

Defined Roles Related to Policy Reports

Bystander - a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is a violation of this Policy or other University policies.

Complainant – any individual who has reported being or is alleged to be the victim of conduct that is prohibited by this Policy.

Reporting Party – Any person who discloses or reports conduct that is prohibited by this Policy. The person may or may not be the victim or survivor of the alleged conduct. Reports may be made via phone, mail, electronic mail, or in person using the contact information for the Title IX Coordinator, or by any other means that result in the Title IX Coordinator receiving the person’s verbal or written disclosure or report.

Respondent – the individual accused of violating this Policy.

Applicability of this Policy

This Policy is applicable to Prohibited Conduct involving students, faculty, staff, or third parties. Student status under this Policy applies to undergraduate, graduate, and part-time students. In cases where the Respondent is a student, this Policy will apply. In cases where the Respondent is an employee accused of Title IX Sexual Harassment and a Formal Complaint is filed (as defined below), the Title IX Grievance Process stated herein shall apply. In all other cases where the Respondent is an employee of the University, the procedures for resolving sexual misconduct complaints outlined in the Employee Handbook will apply.

All services and protections under this Policy are available to all students equally and applicable to conduct that has a reasonable connection to the University.

Jurisdiction

This Policy covers Prohibited Conduct that occurs:

- On campus
- Off campus, with a reasonable connection to the University
- In the context of a University-related or sponsored educational program or activity, regardless of the location, including study abroad, internships, or athletic activities
- Through the use of University-owned or provided technology resources, or
- When the conduct has continuing adverse effects and creates or continues a hostile environment on campus

The University’s Title IX Coordinator will determine whether the University has jurisdiction or disciplinary authority over the Respondent or the conduct, and whether the reported alleged conduct is specifically subject to the requirements of Title IX. In cases where the University does not have jurisdiction over the alleged conduct, the University will take reasonably available steps to support a Complainant or other community members and provide assistance in identifying external reporting mechanisms.

As part of the University’s evaluation of whether alleged Sexual Harassment is covered by Title IX and subject to the Title IX Grievance Process described below, the University will determine if the alleged conduct occurred within its “education program or activity” as defined under Title IX’s scope to mean: (1) any on-campus premises; (2) any off-campus premises that the University has substantial control over, which includes buildings or property owned or controlled by a recognized student organization; and (3)

activity occurring within computer or internet network, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University's programs or activities over which the University has substantial control. Also, Title IX covers only sexual harassment that occurred within the United States.

If alleged Prohibited Conduct is determined to have occurred outside of the University's "education program or activity" or outside of the United States, and is thereby not subject to Title IX, the University retains its authority to address, investigate and adjudicate such Prohibited Conduct under other provisions of this Policy, its Code of Conduct or any other applicable policy.

The Role of the Title IX Coordinator

Pursuant to Title IX and its regulations (34 C.F.R. Part 106), the Title IX Coordinator is the designated University official with primary responsibility for coordinating compliance with Title IX and other federal and state laws and regulations relating to sex-based discrimination.

Anyone may report sex discrimination, including sexual misconduct or sexual harassment (whether or not the person reporting is the person alleged to be the victim), in person, by mail, by telephone or electronic mail using the below-listed contact information for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving a verbal or written disclosure or report. The University's Title IX Coordinator is available to help students understand their options regarding both receiving support and reporting sexual misconduct. The Title IX Coordinator is unable to guarantee confidentiality but they will maintain privacy to the fullest extent. Additionally, the Title IX Coordinator is responsible for ensuring compliance with Title IX and its regulations, as well as the New York State Education Law 129-B.

The Title IX Coordinator, Meg Flaherty, can be reached Monday-Friday from 8:30 a.m. – 4:30 p.m. by phone at 585-385-8232, by email at titleix@sjf.edu, or after hours by contacting the Residence Director on duty, or Campus Safety & Security.

The Title IX Coordinator:

- Supports those who assist with Title IX compliance;
- Ensures that the University policies and procedures provide prompt and equitable resolutions to allegations of prohibited conduct, including mitigating real or perceived conflicts of interest;
- Annually reviews the University's sexual harassment/misconduct policies;
- Annually reviews the University's educational programs and opportunities for the campus community regarding the topics of sexual misconduct and harassment;
- Informs campus community members about appropriate reporting processes for sexual misconduct allegations involving campus community members;
- Tracks/monitors sexual misconduct allegations involving campus community members;
- Ensures that training, education, and prevention efforts with respect to sexual misconduct allegations are provided for campus community members;
- Provides for mandatory training for those implementing the grievance procedure (Title IX Coordinator, investigators, hearing board members) regarding University policies, formal process procedures, and applicable non-disclosure requirements;
- Promotes the creation and implementation of policies, procedures, and notifications designed to ensure the University's compliance with Title IX;
- Acts as a liaison to the U.S. Department of Education's Office of Civil Rights and other state and federal agencies that enforce Title IX;
- Oversees matters related to the University's compliance with NYS Education Law 129-B.

The Title IX Coordinator maintains broad oversight responsibility but may delegate responsibilities under this Policy to designated administrators or external professionals who will have appropriate training and/or experience. When used in this Policy, the term “Title IX Coordinator” may include an appropriate designee.

Student Rights and Information

Student Bill of Rights Regarding Sexual Misconduct

The University is committed to providing options, support, and assistance to individuals reporting sexual or gender-based violence, sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in University-wide and campus programs, activities, and employment. All individuals reporting these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights afforded by New York State Education Law 129-B section 6443, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad.

All St. John Fisher Students have the right to:

- Make a report to local law enforcement and/or state police
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously
- Make a decision about whether or not to disclose a crime or violation and participate in the conduct or criminal justice process free from pressure by the University
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard
- Be treated with dignity and to receive from the University courteous, fair, and respectful health care and counseling services, where available
- Be free from any suggestion that the Complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations
- Describe the incident to as few University representatives as practicable and not to be required to unnecessarily repeat a description of the incident
- Be protected from retaliation by the University, any student, the Accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the University
- Access to at least one level of appeal of a determination
- Be accompanied by an advisor of choice who may assist and advise a Complainant, or Respondent throughout the Disciplinary Resolution and/or Grievance Process including during all meetings and hearings related to such process
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or Disciplinary Resolution and/or Grievance Process of the University

Additional Rights for Complainants:

- Make a report to the Department of Safety & Security, local law enforcement, and/or state police, or choose not to report
- Report the incident to the University
- Have emergency access to the University’s Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of

disclosure by a Complainant to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. Such officials shall also explain whether he or she is authorized to offer the Complainant confidentiality or privacy, and shall inform the Complainant of other reporting options

- Disclose confidentially the incident to University representatives who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants
- Disclose confidentially the incident and obtain services from the state or local government
- Disclose the incident to the University representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for Complainants
- File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate University representatives for information and assistance. Reports shall be investigated in accordance with institution policy and Complainant's identity shall remain private at all times if said Complainant wishes to maintain privacy
- Disclose, if the Accused is an employee of the University, the incident to the University's Department of Human Resources or the right to request that a confidential or private employee assist in reporting to the appropriate Human Resources authority
- Receive assistance from appropriate institution representatives in initiating legal proceedings in family court or civil court
- To be protected by the University from retaliation for reporting an incident
- To receive assistance and resources from the University, whether or not the Complainant chooses to participate in the University's investigation and/or Title IX Grievance or Disciplinary Resolution Processes
- Withdraw a complaint or involvement from the University process at any time

Definitions of Prohibited Conduct

Sexual Assault

The University defines sexual assault as including non-consensual sexual intercourse and non-consensual sexual contact, which are further defined as:

- Non-Consensual Sexual Intercourse:
 - any penetration (anal, oral, or vaginal), however slight, with any body part (e.g. penis, tongue, finger, hand) or object, by a person upon another person that is without Affirmative Consent or by force or coercion;
 - sexual intercourse with a person who is under the statutory age of consent (which under New York law is 17 years old); or
 - sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (incest).
- Non-Consensual Sexual Contact:
 - any intentional touching, however slight, the intimate parts of another (including over clothing), causing another to touch one's intimate parts, or disrobing or exposure of another without Affirmative Consent. Intimate parts may include the breasts, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner;

- the same conduct not forcibly or against the person's will where the person is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.

Sexual Exploitation

Occurs when one person takes the non-consensual or abusive sexual advantage of others for self-serving advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video, or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Knowingly exposing someone to or transmitting an STI or blood born infection such as Hepatitis or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances, or inducing another to expose their genitals.

Title IX Sexual Harassment

Under Title IX, any conduct on the basis of sex, which occurs within the University's education program or activity in the United States, that entails one or more of the following elements constitutes Sexual Harassment and will be subject to a Title IX Grievance Process upon the Filing of a Formal Complaint:

- A University employee conditioning the provision of a University aid, benefit, or service on an individual's participation in unwelcome sexual conduct (so-called *quid pro quo* harassment);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity;
- Sexual Assault (as defined by the Clery Act), which includes any sexual act directed against another person, without consent of the victim including instances where the victim is incapable of giving consent;
- Dating violence as defined in the Violence Against Women Act ("VAWA") amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of the relationship; (iii) the frequency of interaction between the persons involved in the relationship.
- Domestic violence (as defined by the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York's domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York.
- Stalking (as defined by the VAWA amendments to the Clery Act) meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to – (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

To the extent that reported conduct meets any of the above-described elements of the Title IX Sexual Harassment, but is not jurisdictionally subject to Title IX because it occurred outside of the University's education program or activity or outside of the United States, the University retains the authority to address such conduct and undertake responsive actions, including an investigation and adjudication under its Disciplinary Resolution Process.

Gender Based Harassment

This Policy also prohibits unwelcome verbal, written, online, and/or physical conduct that is sexual, sex-based, gender-based, based on gender identity, gender expression, and/or sexual orientation, which creates a hostile environment *when*:

(1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a University program or activity;

or

(2) Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual;

Or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's educational experience or creates an intimidating, or abusive educational environment. i.e. it is sufficiently serious, pervasive, or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

The fact that a person is offended is not alone enough to establish a violation of this Policy. The University evaluates complaints based on a "reasonable person" standard, taking into account the totality of the circumstances, including the context of the interaction.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- *Physical conduct*: Unwelcome touching, physical assault, impeding, restraining, or blocking movements, unwanted sexual advances within the employment context.
- *Verbal conduct*: Making or using derogatory comments, epithets, slurs, or humor; graphic verbal commentaries about an individual's body; or sexually degrading words used to describe an individual.
- *Visual conduct*: Leering; making sexual gestures; displaying of suggestive objects, pictures, cartoons, or posters in a public space or forum if deemed severe, persistent, or pervasive by a reasonable party.
- *Written conduct*: letters, notes, or electronic communications containing comments, words, or images described above.

Quid Pro Quo (this for that): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, by a person having power or authority over another, when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational or employment progress, development, or performance. This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational or employment program.

Intimate Partner Violence

Intimate-partner violence, also referred to as dating violence, domestic violence, and relationship violence, includes any act of violence or threatened act of violence or abuse against a person who is, or has been involved in, a sexual, dating, domestic, or other intimate relationship with another person. It may involve one act or an ongoing pattern of behavior. Intimate-partner violence may take the form of threats, assault, or violence or threat of violence to one's self, one's sexual or romantic partner, or to the family members or friends of the sexual or romantic partner.

Dating Violence: The term “dating violence” means violence committed by a person:

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship.
 - (ii) The type of relationship.
 - (iii) The frequency of interaction between the persons involved in the relationship.

Domestic Violence: The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

Stalking

Engaging in a course of conduct directed at a specific individual that would cause a reasonable person (under similar circumstances and with similar identities to the Complainant) to fear for their safety or the safety of others, or suffer substantial emotional distress. Acts that together constitute stalking may be direct actions or may be communicated by a third party, and can include acts in which the stalker directly, or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person or interferes with a person’s property. “Substantial emotional distress” is significant mental suffering or anguish, whether or not medical or professional treatment or counseling is sought.

Prohibition Against Retaliation

The University prohibits retaliation against anyone for filing a complaint or participating in any manner in an investigation or hearing in response to an allegation of discrimination or harassment, including allegations of Sexual Misconduct. The University recognizes that retaliation can take many forms including intimidation, threats, coercion, or discrimination, and may be committed by an individual or a group against an individual or a group, and that a Respondent can also be the subject of retaliation by the Complainant or a third party.

Affirmative Consent

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in the sexual activity. Consent can be given by words or actions, as long as those words or action create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of

itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Guidance for consent:

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent may be initially given but withdrawn at any time.
- A verbal “no” constitutes lack of consent, even if it sounds insincere or indecisive.
- Consent to engage in sexual activity with a person(s) does not imply consent to engage in sexual activity with another person(s).
- Individuals with previous or current intimate relationships do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be voluntary and mutually understandable communication that clearly indicates a willingness to engage in sexual activity each time.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent cannot be given when a person is incapacitated or when the person initiating the sexual activity should have reasonably known about the incapacitation. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, and other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

Affirmative consent cannot be obtained through the use of force: Force is the use or threat of physical violence, intimidation, or coercion to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. For this use of force to be demonstrated, there is no requirement that a Complainant resists the sexual advance or request. However, resistance by the Complainant will be viewed as a clear demonstration of non-consent.

- **Intimidation:** Intimidation includes intentionally directing verbal, written, or electronic threats of violence or other threatening behavior(s) toward another person or group that reasonably leads the targeted person(s) to fear for their physical well-being. Intimidation also includes fear inducing behavior(s) that deter or prevent the targeted person(s) from taking legitimate actions that they may otherwise take.
- **Coercion:** Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity, or gender expression, or threatening to harm oneself if the other party does not engage in the sexual activity.

Sexual Activity:

“Sexual Activity” has the same meaning as “sexual act” and “sexual contact” as provided in 18 U.S.C. § 2246(2) and 18 U.S.C. § 2246(3). Therefore, the term “sexual activity” includes the following:

- contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

- contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 17 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Individuals must obtain Affirmative Consent prior to engaging in sexual activity.

Employee/Student Sexual Relationships

Students are not peers of University employees. Therefore, regardless of whether a sexual relationship between a student and a University employee is “consensual,” and regardless of whether or not the relationship constitutes sexual harassment, such relationships are prohibited. All University employees, full and part-time, must refrain from entering into any inappropriate sexual relationships with students (<https://www.sjf.edu/media/services/human-resources/documents/EmployeeHandbook.pdf>). Allegations of inappropriate University employee/student sexual relationships should be reported to the Office of Human Resources (585- 385-8048; hr@sjf.edu) located in Kearney Hall 211. In cases where an employee of the University is a Respondent, the procedures detailed in the Employee Handbook apply.

Understanding Privacy and Confidentiality

St. John Fisher is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. Throughout the process, every effort will be made to protect the privacy of interests of all individuals involved in a manner consistent with the need for a thorough review of the report. Students should be aware, however, that privacy and confidentiality have distinct meanings under this Policy.

Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a).

At St. John Fisher University, reports of sexual misconduct made directly to the Campus Minister or to a staff member in the Health and Wellness Center are confidential. These are the ONLY resources at St. John Fisher University where confidential reports can be made. Confidential means that the information is protected from being disclosed to anyone else, unless required or permitted by law.

Confidential off-campus resources are identified below as “Additional Confidential Resources: Off-Campus.”

Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but will still not disclose information learned from a Complainant or bystander more than necessary to comply with the law, including informing appropriate University officials. Even University officials

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

Responsible Employees

With the exception of those employees specified as Confidential Resources, all University employees, including faculty, staff, administrators, and students who are Resident Assistants, and Peer Mentors are Responsible Employees. Responsible Employees are required to share fully with the Title IX Coordinator, as promptly as practical, any disclosure of Prohibited Conduct of which they are aware. The information that should be reported includes but is not limited to the identities of the parties involved, if known. Faculty are not required to make reports to the Title IX Coordinator when they learn of allegations of Prohibited Conduct through classroom writing assignments or class-related discussions unless the Complainant expressly requests reporting.

Clery Act Reporting

Under the Clery Act, the University must report statistics about certain offenses in its annual security report and provide those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. Individuals can access the University's Clery Act annual security report on the Department of Safety and Security website.

If a report of misconduct discloses a serious or continued threat to the University community, the University may issue a campus wide timely warning to protect the health or safety of the community. The timely warning can take the form of an email and/or the University's designated emergency notification system. The timely warning will not include any identifying information about the Complainant.

The release of the Respondent's name to the general public is guided by the Family Educational Rights and Privacy Act (FERPA) and the Clery Act.

Campus and Community Resources

A Complainant has many options, including seeking counseling or assistance from a confidential resource, making a report under this Policy and/or making a report to law enforcement. The University encourages prompt reporting of Prohibited Conduct to the Title IX Coordinator and (where appropriate) to law enforcement. The University also recognizes that deciding among these options can be difficult and is a personal decision for each student.

Emergency Resources and Law Enforcement

Emergency medical assistance, campus safety, and local law enforcement assistance are available 24/7 both on and off campus. Individuals are encouraged to seek medical treatment as soon as possible following an incident that may pose a threat to safety or physical well-being or following a potential criminal offense. Not only can internal and external injuries be treated, but measures can be taken to combat the possibilities of disease or pregnancy, as well as to collect evidence that could be relevant to criminal charges that may be brought or that might be needed to obtain a protection order.

In an emergency, please contact the Department of Safety & Security at (585) 385-8111 or local law enforcement by dialing 911.

Emergency Medical Care Resources

UR Medicine Urgent Care, Pittsford, 585-203-1055

Rochester Regional Health Immediate Care, Penfield, 585-388-5280

Immediate Care East, Victor, 585-398-1275

Urgent Care by Lifetime Health, Rochester, 585-338-1200

Within 96 hours of an assault, an individual can get a Sexual Assault Forensic Examination (or “SAFE,” commonly referred to as a rape kit) at a local hospital. Completing a SAFE will not require a report to the police, but will help an individual preserve evidence in case they decide at a later date to file a police report. Before obtaining a SAFE, a person should avoid showering, washing, changing clothes, combing hair, drinking, eating, or altering their physical appearance. There should be no charge for a rape kit, but there may be charges for medical or counseling services off campus, and in some cases, insurance may be billed for services. An individual should notify hospital personnel if they do not want their insurance policyholder to be notified about their access to these services.

The New York State Office of Victim Services may also be able to assist in compensating you (victims/survivors) for health care and counseling services, including emergency funds.

More information may be found here: <https://ovs.ny.gov/forensic-rape-examination-fre-direct-reimbursement-program> or by calling 1-800-247-8035.

Local Hospitals with a Sexual Assault Forensic Examiner (SAFE) Program and Sexual Assault Nurse Examiner (SANE):

Strong Memorial Hospital – Emergency Department, 601 Elmwood Ave., Rochester, NY 14642

Rochester General Hospital – Pediatric Emergency Department, 1425 Portland Ave., Rochester, NY 14621

Additional Confidential Resources

On-campus:

Health and Wellness Center, M-F 8:30 a.m. - 4:30 p.m., Wegmans School of Nursing, Suite 107, 585-385-8280.

Campus Ministry, M-F 8:30 a.m. - 4:30 p.m., Campus Center, 585-385-8368.

Off-Campus:

Willow Domestic Violence Center

24-hours a day, Free, Confidential

585-222-7233(talk) 585-348-7233 (text)

SERVICES: 24/7 hotline, emergency shelter, counseling, support groups, children's services, court advocacy, Latina services, dating violence education, prevention education

Restore: Sexual Assault Services

24-hours a day, Free, Confidential

Rochester (Monroe County) Hotline: 585-546-2777

Genesee, Livingston, Orleans & Wyoming Counties Hotline: 800-527-1757

114 University Avenue, Rochester, NY 14605

SERVICES: trained counselors provide crisis intervention and support services to women, children, and men who are survivors of sexual assault, provide information to enable informed choices concerning

medical, legal and counseling needs, offer advocacy and information about client's rights, provide short-term counseling sessions, and legal and medical accompaniment

New York State Police Campus Sexual Assault Victims Unit
5831 Groveland Station Road
Mount Morris, New York 14510
1-844-845-7269
<https://consentfirst.troopers.ny.gov/>

Monroe County Sheriff's Dept. Victim Assistant Program
585-753-4389 789 Linden Avenue, Rochester 14625
SERVICES: crisis support, short-term counseling, referrals, advocacy, case status, and court procedure information

Center for Dispute Settlement
Reynolds Arcade Building, Suite 800 (8th Floor)
16 Main St., Rochester, NY
<http://www.cdsadr.org>
585-546-5110
info@cdsadr.org

Trillium Health
Monday-Friday (hours vary daily)
585-545-7200
259 Monroe Avenue, Rochester, NY 14607
SERVICES: medical care, specialized LGBT Care, on-site pharmacy and lab services, HIV prevention and testing, women's gynecological services, and supportive services

New York State Coalition Against Sexual Assault
24-hours a day, Free, Confidential
New York State Hotline for Sexual Assault and Domestic Violence: 1-800-942-6906

RAINN (Rape, Abuse & Incest National Network)
24-hours a day, Free, Confidential
1-800-656-HOPE (4673)
SERVICES: support from a trained staff member, help finding a local health facility trained to care for survivors of sexual assault that offers services like sexual assault forensic exams, help to talk through what happened, local resources to assist with your next steps toward healing and recovery, referrals for long term support, information about the laws in your community, basic information about medical concerns

Resolve of Rochester, Inc.
Free, Confidential 585-425-1580
P.O. Box 21, Fairport, NY 14450
SERVICES: serves individuals transition from domestic violence, who need individual or group counseling, advocacy, or community referrals as they heal from abuse

IGNITE Advocacy Services for Abused Deaf Victims
VP: 855-812-1001 TTY: 800-787-3224 Voice: 800-799-7233

SERVICES: supports the needs of Deaf, Deaf Blind, and Hard of Hearing survivors of domestic violence and sexual violence, anonymity and confidentiality are strictly honored

Reporting Prohibited Conduct

At the first disclosure by a Complainant to a University representative and upon the Complainant's initial meeting with the Title IX Coordinator, the Complainant will be informed, "*You have the right to make a report to Department of Safety and Security, local law enforcement, and/or state police or choose not to report; to report the incident to St. John Fisher University; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.*"

A Complainant has several choices for both reporting Prohibited Conduct as well as getting more information about their options for reporting and support from the Title IX Coordinator or an authorized designee. A Complainant may choose to use any of the following reporting options simultaneously.

Reporting to the University

A Complainant may choose to share information with the University, receive resources and support, and pursue no resolution process at that time. When this is the expressed preference, the Complainant is provided resources and informed of Supportive Measures.

A Complainant can also choose to make a report regarding sexual misconduct to the Title IX Coordinator or Department of Safety and Security. When this is the expressed preference, the Complainant is provided resources, informed of Supportive Measures, and has the opportunity to discuss resolution options.

The **Title IX Coordinator** can be reached Monday-Friday, from 8:30 am - 4:30 pm, Campus Center 206, by phone at 585-385-8232, or by emailing titleix@sjf.edu. After hours, Complainants can contact the Title IX Coordinator through the Residence Director on duty or through Department of Safety and Security.

The **Department of Safety and Security** can be reached 24 hours a day 7 days a week by phone at (585) 385-8111 or in person at the Haffey Hall Lobby.

If what is reported is a violent felony, New York State law requires the University to report the alleged offense to law enforcement within 24 hours of receiving the report. The University's Director of Safety and Security will determine if an incident requires reporting. If law enforcement is contacted, the Complainant may choose their level of participation with law enforcement.

Allegations involving an employee of the University may be reported to the **Office of Human Resources** [(585) 385-8048; hr@sjf.edu] located in Kearney Hall 211. The Title IX Coordinator is available to assist a Complainant in making such a report. The Complainant may also request that a confidential or private employee assist in making the report.

Reporting to Law Enforcement

A report may be made to **Monroe County Sheriff's Department** Victim Assistance Program at 585-753-4389 (<http://www.monroecountysheriff.info/>) or by calling 911.

A report can also be made with the **New York State Police** at:

New York State Police
Campus Sexual Assault Victims Unit
1220 Washington Ave, Building 22
Albany, New York 12226
Dedicated 24-hour hotline: 1-844-845-7269

The University will assist any person in contacting law enforcement officials to report an allegation of sexual misconduct. Additionally, any campus community member may independently report. Law enforcement follows its own procedures. If you choose to contact law enforcement directly, law enforcement may not inform the University of your report. If you wish to make the University aware and involved, please contact the Title IX Coordinator or the Department of Safety and Security.

Upon reviewing the facts of the case, law enforcement may decide to prosecute the matter and further participation with law enforcement may be required. Once criminal charges are initiated, charges can be withdrawn only with the proper consent of the **District Attorney's Office**. The University will act on any information law enforcement shares with the University if there is a concern for the safety of the University community.

St. John Fisher University fully supports all local, state, and federal laws prohibiting sexual misconduct and will cooperate with law enforcement officials who investigate such allegations to the fullest extent allowed under the law. In all cases reported to law enforcement, the University will coordinate its investigations and responses with those of law enforcement. A concurrent investigation will not prevent the University from conducting its own investigation and conduct processes, except for temporary delays requested by law enforcement.

Additional Reporting Options

In addition to the reporting choices above, persons may direct information about their allegations to the Office of Civil Rights, U.S. Department of Education:
<https://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>

The OCR National Headquarters is located at:

**U.S. 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**

Requests for Anonymity

Once a report has been shared with the Title IX Coordinator, a Complainant may request that their identity not be shared with the Respondent (request for anonymity), that no investigation occur, or that no disciplinary action be pursued. The University will carefully balance this request in the context of the University's commitment to provide a safe and non-discriminatory environment for all community members.

Alcohol and/or Drug Use Amnesty

A Complainant or bystander acting in good faith that discloses any incident of domestic violence, dating violence, stalking, sexual harassment, or sexual assault to University officials or law enforcement will not be subject to the St. John Fisher University's Student Code of Conduct for violation of the alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, sexual harassment, or sexual assault.

The health and safety of every student at St. John Fisher University is of the utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether use is voluntary or involuntary) at the time that violence occurs, including but not limited to domestic violence, dating violence, stalking, or sexual assault, may be hesitant to report incidents due to fear of potential consequences for their own conduct. St. John Fisher University strongly encourages students to report domestic violence, dating violence, stalking, sexual harassment, or sexual assault to University officials.

False Reports

The University will not tolerate intentional false reporting of incidents. The University expects truthful and accurate reports as an allegation of sexual misconduct is serious and may have severe consequences for the individuals involved. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a Complainant or witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant or witness may be subject to disciplinary action. It is a violation of the Code of Student Conduct to make an intentionally false report of any policy violation, and may also be a violation of state criminal statutes and civil defamation laws.

Statement of Non-Disclosure

The University will not require any party involved in activities or processes detailed in this Policy to abide by a nondisclosure agreement, in writing or otherwise, that would prevent re-disclosure of information related to procedures, unless otherwise specified by Federal privacy laws (e.g. FERPA). However, the University encourages all parties to respect the privacy of those involved and the integrity of the process when considering disclosure of information.

Supportive Measures

Non-disciplinary, non-punitive individualized supportive measures and services are offered as appropriate and reasonably available to the Complainant, Respondent and/or witnesses. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening any party, including measures designed to protect the safety of all parties and the University's campus and education environment, or to deter further sexual misconduct or harassment. Supportive measures may include, but are not limited to, University No-Contact Orders, changes in academic, work, parking, and/or living situations, if reasonable alternatives exist. The University will maintain as confidential any provided supportive measures, to the extent that maintaining such confidentiality would not impair the University's ability to provide and effectuate such measures.

Supportive Measures are available to the Complainant, the Respondent and/or witnesses whether or not:

- A Formal Complaint is filed
- A report results in an investigation by the University

- A report results in the initiation of either a Title IX Grievance Process or a Disciplinary Resolution
- The Complainant, Respondent and/or witnesses choose to participate in the University's investigation

Interim Actions (Including Emergency Removal)

The Title IX Coordinator may assign an interim action or actions at any time following the receipt of information of an allegation of Prohibited Conduct that is apparently reliable and relates to the safety and/or welfare of any person, University property, or any University function. The assignment of an interim action(s) restricts the Respondent from certain privileges at the University in the interest of safety and/or the well-being of the community or the student themselves; it does not mean the Respondent has been found or presumed to be responsible for the alleged conduct or for any violation of this Policy or the Student Code of Conduct. No such action shall impair any rights of disabled individuals under Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

The evaluation of an interim action must treat Complainants and Respondents equitably and consider all reasonable and appropriate alternatives to minimize an interruption to a student's participation in the University's education program or activities, while protecting the University's community pending an investigation and determination regarding the alleged conduct.

Interim actions against a student may include the following:

- Modification or suspension of the ability of a student to be present in specific areas or buildings on campus
- Modification or suspension of the ability of a student to be present on University property in its entirety
- Modification or suspension of the ability to attend class(es)
- Modification or suspension of the ability to participate in a University-related activity or activities
- The issuance of a No Contact Order.

Interim suspension, or emergency removal, pending the outcome of the processes detailed in this Policy will occur only when the Respondent (either a student or an employee) is determined to present an immediate threat to the health and safety of the University community. In making this determination, the University will conduct a prompt individualized safety and risk analysis, considering the particular Respondent and specific circumstances arising from the allegations posing an immediate threat to a person's health or safety.

In the specific case of an interim suspension or emergency removal of a Respondent (either a student or an employee) who has been reported to be the alleged perpetrator of Title IX Sexual Harassment, as defined above, the Respondent shall have the opportunity to challenge the decision immediately following the interim suspension or emergency removal by providing written notice to the Title IX Coordinator.

The University retains the authority to place a non-student Respondent on administrative leave during the pendency of a Title IX Grievance Process. Further, a non-student Respondent accused of Prohibited Conduct or sexual misconduct of any nature shall remain subject to interim actions as applicable and permitted under University rules and policies governing employment.

The interim action(s) will be communicated in writing to the affected parties, by email or USPS mail, and will be effective immediately. Failure or refusal to take receipt of notification will not negate or postpone the implementation of said interim action.

Interim actions are in effect from the time of issuance until the Title IX Coordinator determines that the reason for imposing the interim action no longer exists and the student receives written notice that the interim action is no longer applicable or until the resolution of the matter.

Both the Respondent and the Complainant shall, upon request, be afforded a prompt review, as reasonable under the circumstances, of the need for and terms of interim actions, including potential modification, and shall be allowed to submit a request in writing and evidence in support of the request to the Title IX Coordinator. The other party may be notified regarding any requests made for changes or modifications. The Title IX Coordinator will conduct a prompt review, as reasonable under the circumstances, of the need for and terms of the interim actions, and will notify both parties of the decision to modify or not.

No Contact Orders

The conditions of a No Contact Order, whether as an interim action or a University sanction, are as follows:

As the University deems appropriate, a No Contact Order separates two or more parties from each other in the interest of safety and/or the well-being of the students or the community.

Students with a No Contact Order should have:

- No physical contact with the other party
- Should a student who is the subject to a No Contact Order (the Accused/Respondent or a third party) find themselves in the same location as the protected party (the Complainant/Reporting Party), it is the responsibility of the covered person to remove themselves in a reasonable time and manner without directly contacting the protected party.
- No verbal contact with the other party
- No written contact with the other party
- No telephone contact with the other party
- No electronic contact with the other party
- No contact with the other party/parties via third parties

When a University facility is limited (e.g. dining hall, athletic facility, etc.) the University may establish an equitable schedule for both parties to access and utilize University facilities, services, and programs.

If contact is made in violations of the No Contact Order, the following steps should be taken:

- Immediately report the contact to either the Office of Safety & Security (585-385-8111 or Haffey Hall Lobby) or the Title IX Coordinator (585-385-8232 or titleix@sjf.edu, 206 Campus Center);
- If the contact is written or electronic, attempt to save and not delete it. Please bring this information with you when you report to the Office of Safety and Security or the Title IX Coordinator;
- Do not respond to the contact. Whether it is in person, verbal, writing, electronic, third party, etc. responding to the contact may be considered a violation of the policy and could result in additional interim or student conduct action.

When the University determines on the basis a good faith report that a No Contact Order has been violated, the University will take action through the Student Conduct Process. A range of measures may result, including:

- Additional interim action(s) or sanction(s) (e.g. interim suspension, residence hall changes, etc.)
- Contacting law enforcement for a formal order of protection or appropriate action

- Referral to the Student Conduct Hearing Process, which entails the full range of potential outcomes detailed on the St. John Fisher University Student Conduct website

Both the Respondent and the Complainant shall, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a No Contact Order, including potential modification, and shall be allowed to submit evidence in support of the request. The other party will be notified regarding any requests made for changes or modifications. The Title IX Coordinator will conduct a prompt review, reasonable under the circumstances, of the need for and terms of the No Contact Order, and will notify both parties of the decision to modify or not.

Orders of Protection

A Complainant can get assistance from the Office of Safety & Security (585-385-8111) and the Title IX Coordinator to obtain an order of protection or equivalent protection order. The Complainant will have an opportunity to receive a copy of the order or protection when received by the University. They further will have an opportunity to meet or speak with the Department of Safety & Security officials who can explain the order and answer questions about it (including information from the order about the Accused’s responsibility to stay away from the protected person(s) and the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension). Complainants can receive assistance from the Department of Safety & Security to call on and assist local law enforcement in order to effect an arrest.

PART 2: THE UNIVERSITY’S PROCESSES TO INVESTIGATE AND RESOLVE REPORTS OF PROHIBITED CONDUCT

The Three Options

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of this Policy. The University uses three processes to resolve reports of Prohibited Conduct under this Policy, as applicable:

- **Title IX Grievance Process:** required procedures for a grievance process consistent with the Department of Education’s Title IX Rule to address allegations of Title IX Sexual Harassment, which proceed upon the filing of a “Formal Complaint.” A Formal Complaint is a document – including an electronic submission – filed by a Complainant with a signature or other indication that the Complainant is the person submitted the document, or signed by the Title IX Coordinator, alleging that the Respondent engaged in Title IX Sexual Harassment (as defined above) that occurred within the University’s “education program or activity” (as defined above), and requesting the initiation of procedures consistent with Title IX’s requirements to investigate and adjudicate the alleged conduct. At the time of the filing of the Formal Complaint, the Complainant must be participating or attempting to participate in the University’s education program or activity.
- **Disciplinary Resolution Process:** formal procedures that involve an investigation, adjudication and, if appropriate, the imposition of sanctions in all matters of alleged Sexual Misconduct and Prohibited Conduct that are not subject to a Title IX Grievance Process.
- **Informal Resolution:** a framework that includes informal or restorative options for resolving reports that typically do not involve disciplinary action against a Respondent.

The Title IX Coordinator will determine the appropriate resolution process after conducting an Initial Review of the reported information, consulting with the Complainant, considering campus safety, and evaluating the University's obligation to maintain an environment free from harassment and discrimination.

Standard of Proof

In all stages of procedure under either the Title IX Grievance Process or the Disciplinary Resolution Process, the University applies the preponderance of the evidence standard of proof (more likely than not) when determining whether the Policy has been violated.

Time Frame for Resolution

The University will seek to complete the appropriate resolution process as promptly as possible, consistent with the need to conduct sensitive and informed fact-gathering to ensure an equitable and unbiased resolution. This Policy designates reasonably prompt timeframes for the major stages of the investigation and resolution process (typically set forth in business days), but the University may extend any timeframe in this Policy for good cause. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; or for other legitimate reasons, such as intervening breaks in the University calendar, University finals periods, the complexity of the investigation, the volume of information, number of witnesses, length of the written record, and/or the severity and extent of the alleged misconduct.

While requests for delays by the parties may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a report under this Policy. Reasonable requests for delays by the parties may serve to extend the time period for resolution of the report. The Title IX Coordinator has the authority to determine whether an extension is required or warranted by the circumstances. The University will notify the parties in writing of any extension of the timeframes for good cause, the reason for the extension and the length of the extension.

Advisor of Choice

Each party has the right to consult with an advisor of their choosing. Except as noted below under the Title IX Grievance Process, the advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation or whose role in the process does not otherwise create a conflict of interest. The parties may be accompanied by their respective advisor at any meeting or proceeding related to the resolution of a report under this Policy. While the advisor may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner delay, disrupt or interfere with meetings and/or proceedings, except as to the advisor's right to conduct cross-examination during a hearing held under the Title IX Grievance Process. The University will not unduly delay the scheduling of meetings or proceedings based on an advisor's unavailability. An advisor may be asked to meet with the Title IX Coordinator in advance of any proceedings to understand the expectations of the role, privacy considerations, and appropriate decorum.

Under a Title IX Grievance Process, the following provisions also apply:

- An advisor of choice may be any person the Complainant or Respondent choose, including an individual who is otherwise involved in the incident(s) or resolution process.

- As detailed below, the advisor may ask relevant questions of the other party and/or any witnesses for the purposes of cross-examination during the hearing.

Initial Review

The Title IX Coordinator is responsible for an Initial Review of disclosures and/or reports of potential violations of the Title IX and Sexual Misconduct Policy. The goal of this Initial Review is to provide an integrated and coordinated response to reports of sexual misconduct. The Initial Review will consider the nature of the report, the safety of the individual and of the campus community, and the Complainant's expressed preference for resolution. The Initial Review will proceed to the point where a reasonable assessment of the safety of all involved parties and the community can be made.

In order to protect the safety of the campus community, the Title IX Coordinator may need to proceed with an investigation even if a Complainant specifically requests that the matter not be pursued. The Title IX Coordinator may also initiate an investigation of potential violations of this Policy even absent a formal report or identified Complainant or Respondent and even if a report has been withdrawn. In such a circumstance, the Title IX Coordinator will take into account the Complainant's articulated concerns, the safety of the campus community, fairness to all individuals involved, and the University's obligations under Title IX. The Title IX Coordinator will balance the Complainant's request against the following factors in reaching a determination on whether the request can be honored:

- the totality of the known circumstances;
- whether the Respondent has a history of violent behavior or is a repeat offender;
- whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
- the increased risk that the Respondent will commit additional acts of violence;
- whether the Respondent used a weapon or force;
- whether the Complainant is a minor; and
- whether the University possesses other means to obtain relevant evidence such as security footage;
- whether available information reveals a pattern of perpetration at a given location or by a particular group;
- fairness considerations for both the Complainant and the Respondent;
- the University's obligation to provide a safe and non-discriminatory environment; and
- any other available and relevant information.

Based upon the Title IX Coordinator's Initial Review, the University will proceed with one of the following options:

1. Proceed under the **Title IX Grievance Process**. This process requires a Formal Complaint, as noted above, alleging Title IX Sexual Harassment within the University's education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Process to investigate and adjudicate the allegations. A Complainant must file the Formal Complaint with the Title IX Coordinator.
2. Proceed under the **Disciplinary Resolution Process**. This process addresses all alleged Sexual Misconduct that does not fall within the definition of Title IX Sexual Harassment and is therefore not subject to the Title IX Grievance Process. This process will occur when a Complainant requests an investigation of the alleged Sexual Misconduct, where the Title IX Coordinator determines to proceed with an investigation even when a Complainant requests that no investigation be pursued, or where an Informal Resolution is not appropriate or available.
3. Proceed with **Informal Resolution (available only under certain conditions)**. This will always require the consent of the Complainant. The consent of the Respondent is also required when the form of resolution involves the Respondent.
4. If **outside the scope** of this Policy, refer the matter to another appropriate office or department for resolution under the relevant policy.
 - a. In the event that a report alleges violations of both the St. John Fisher Code of Conduct and this Policy (in accordance with amnesty for alcohol and drug use as specified in this Policy), the allegations will be separated and documentation will be appropriately redacted to preserve the privacy of individuals involved. The charges relevant to the Code of Conduct will be referred to the Student Conduct or Office or Human Resources for resolution.
5. If the Complainant expresses a preference to share information, but not pursue any further action at this time, and there is no immediate or continuing threat to an individual or the campus community, **the disclosure will be documented with the Title IX Coordinator only.**

Dismissal of a Formal Complaint Alleging Title IX Sexual Harassment

In certain instances, the University must dismiss a Formal Complaint and not proceed further with a Title IX Grievance Process. In other instances, the University has the discretion to dismiss a Formal Complaint or any of its allegations, but is not required to do so. In the event that the University dismisses a Formal Complaint, it still retains the right to take all appropriate actions under this Policy's Disciplinary Resolution Process or an Informal Resolution, as well as may be appropriate under any other code of conduct or policy.

Mandatory Dismissal of a Formal Complaint

The University must dismiss a Formal Complaint and must not proceed further with a Title IX Grievance Process when (i) the alleged conduct would not constitute Title IX Sexual Harassment (as defined above), even if proved, (ii) did not occur in the University's education program or activity, or (iii) did not occur against a person in the United States.

Permissive Dismissal of a Formal Complaint

The University may dismiss a Formal Complaint, but is not required to do so, if at any time during the investigation or hearing under the Title IX Grievance Process: (i) the Complainant notifies the Title IX

Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any of its allegations, (ii) the Respondent is no longer enrolled at the University or a University employee, or (iii) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or its allegations.

Right to Appeal the Dismissal of a Formal Complaint

Both parties will receive written notice of the dismissal of a Formal Complaint and decision not to proceed further with a Title IX Grievance Process, which will state the University's reasons for the action. Either party may appeal the dismissal of a Formal Complaint. Within five (5) business days after the written notice of the dismissal, an appeal must be submitted in writing to the Vice President of Student Affairs and Dean of Students, Campus Center 206, or mthornton@sjf.edu in cases involving a student Respondent. In any case involving an Employee respondent, the appeal must be submitted to the Assistant Vice President of Human Resources or Provost, as designated by the Title IX Coordinator.

The limited grounds for an appeal of the dismissal of a Formal Complaint are as follows:

- A procedural irregularity affected the outcome of the dismissal determination;
- New evidence that was not reasonably available at the time of the dismissal determination that could have affected its outcome;
- The Title IX Coordinator or the person who made the dismissal determination had a conflict of interest or bias against an individual party, or for or against complainants or respondents in general, that affected the outcome.

Informal Resolution

If all parties voluntarily agree in writing to participate in an Informal Resolution that does not involve a full investigation and adjudication after receiving full disclosure of the allegations and their options under a Title IX Grievance Process or a Disciplinary Resolution Process and if the University determines that the particular Title IX complaint is appropriate for such a process, the University may facilitate an Informal Resolution, including mediation, to assist the parties in reaching a voluntary resolution. Before the parties agree to participate in an Informal Resolution, the University shall inform them in writing of the extent of confidentiality parameters that will apply to the process and whether any statements or evidence discussed or exchanged during the process may be used in either a Title IX Grievance Process or Disciplinary Resolution Process. Upon its completion, the result of an Informal Resolution may not be appealed by either party. An Informal Resolution is available any time up to a final decision under a Title IX Grievance Process or a Disciplinary Resolution Process.

Additionally, in an Informal Resolution of matters addressing Title IX Sexual Harassment, the following provisions also apply:

- An Informal Resolution will not be required as a condition of continued enrollment, or participation in a University program or activity.
- An Informal Resolution may not occur unless a Formal Complaint has been filed.
- Completing an Informal Resolution precludes the parties from resuming a Title IX Grievance Process arising from the same allegations. However, any time prior to agreeing to a resolution, any party may withdraw from the Informal Resolution and resume the Title IX Grievance Process.
- Informal Resolutions are not permitted to resolve a Formal Complaint alleging sexual harassment of a student by a University employee.

The Title IX Grievance and Disciplinary Resolution Processes

For Formal Complaints alleging Title IX Sexual Harassment, the University will proceed under the Title IX Grievance Process, consistent with the requirements of the Department of Education's Title IX Rule. If any provision in this Policy may be deemed to be inconsistent with the Title IX Rule, the Title IX Rule's requirements supersede and control the application of the University's Title IX Grievance Process. For all other matters not subject to the Title IX Grievance Process and involving alleged Prohibited Conduct under this Policy, the University will proceed under its Disciplinary Resolution Process. The processes are substantially similar in many respects and involve a notice of allegations, investigation, adjudication through a hearing, and a right to an appeal. Specific differences between the two processes are noted below.

Throughout their participation and responsibilities in either process, the Title IX Coordinator, the investigator, decision-makers, or any person designated to facilitate an Informal Resolution, may not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Respondent is presumed to be not responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the process.

Notice of Allegations

At the outset of the investigative process under the Title IX Grievance Process or the Disciplinary Resolution Process, the University shall provide a written notice to all parties who are known, which will include the following information:

- Notice of the applicable process (Title IX Grievance Process or Disciplinary Resolution Process), including information about the availability of an Informal Resolution.
- Notice of the allegations potentially constituting a policy violation, and sufficient details known at the time the notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant, the conduct at issue, and date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations at issue, including evidence that the University does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.

If, in the course of an investigation, the University decides to investigate allegations about a party that are not included in the previously issued notice and entail Prohibited Conduct under this Policy, the University will notify the parties of the additional allegations. The parties will be provided sufficient time to review the additional allegations before any initial interview on such matters.

Investigation

Under the Title IX Grievance Process or the Disciplinary Resolution Process, the University will conduct a prompt and equitable investigation to gather relevant information to the determination, by a

preponderance of the evidence, whether Prohibited Conduct occurred. The investigation will be impartial and will be conducted by trained individuals who have no actual bias or conflict of interest against any party or against Complainants or Respondents generally.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest with the University, not the Complainant and Respondent. The University cannot 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 to the party, unless the University obtains that party's voluntary, written consent to do so.

The Title IX Coordinator has the discretion to consolidate multiple reports into a single investigation if evidence relevant to one incident is relevant to the others. Consolidation might involve multiple Complainants and a single Respondent, multiple Respondents, or conduct that is temporally or logically connected.

In the investigation process, a Complainant and Respondent should expect that:

- The investigation will be prompt, thorough, and equitable.
- The investigation will include interviews with all reasonably available involved parties, including witnesses and other persons with first-hand knowledge.
- The Complainant and Respondent will have the opportunity to ask questions of each other and witnesses ("cross-examine") via the investigators.
- The Complainant and Respondent shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- There will be a complete review of any related, relevant documents.
- The disclosure of facts to parties and witnesses will be limited to what is reasonably necessary to conduct a fair and thorough investigation.
- Participants in the investigation will be advised of the importance of maintaining privacy throughout the process, but the University shall not restrict the ability of each party to discuss the allegations under investigation or to gather or present relevant evidence.
- At any time during the investigation, the investigator will make recommendations to appropriate University officials for Supportive Measures for the Complainant, Respondent, and/or witnesses.
- An investigation will result in a written report that, at a minimum, includes a statement of the allegations, the issues, and a summary of the information being forwarded to the Title IX Coordinator.
- The University will inform the parties at regular intervals of the status or progress of the process.

Timing of the Investigation

The goal of the University is to complete the fact-gathering portion of the investigation within approximately fifty (50) business days, depending upon the complexity of the case and the availability of witnesses and relevant evidence.

Review of Case Materials

When the investigation is complete, the investigator(s) complete a Report of Investigation for the Title IX Coordinator. Upon receipt of the report, the Title IX Coordinator will notify the Respondent and the Complainant of the conclusion of the Investigation phase and their right to review the entirety of the case file (subject to appropriate redaction, including as permitted and/or required by law) and review and comment on their respective statements and evidence prior to the hearing. Following the opportunity for

review and comment, the Title IX Coordinator forwards the case to a Sexual Misconduct Committee Hearing and initiates scheduling and notifications of a Sexual Misconduct Committee Hearing.

During an Investigation under the Title IX Grievance Process, the following provisions also apply:

- Prior to the completion of the Investigation Report, the University will send to each party and the party's advisor, if any, the evidence subject to review in a watermarked electronic or hard copy format.
- Parties have ten (10) business days to submit a written response, which the investigator(s) will consider prior to completion of the Investigation Report.
- Following receipt and consideration of written responses, the investigator(s) will finalize the report and it will be sent to the parties. Parties will have at least ten (10) business days to review the report before the hearing.

Suspension-In-Process (Applicable to the Disciplinary Resolution Process)

Following receipt of the Report of Investigation, if the Title IX Coordinator is unable to determine that a policy violation occurred and accordingly a Sexual Misconduct Hearing Committee would not be able to adjudicate the case, the Complainant and Respondent will be notified that the process has been suspended-in-process. Both parties may submit a written appeal of the suspension-in-process, and each party will have an opportunity to respond to such an appeal. Any appeal will be reviewed by a committee, pursuant to this Policy. New information or evidence may lift the suspension-in-process and may be submitted to the Title IX Coordinator at any time.

This suspension-in-process option does not apply to a case in a Title IX Grievance Process. As noted above, under the Title IX Grievance Process, the Title IX Coordinator reviews the Formal Complaint to determine whether its allegations require a Mandatory Dismissal or may be subject to a Permissive Dismissal.

Sexual Misconduct Committee Hearing

A Sexual Misconduct Committee Hearing (hereafter referred to as the "Hearing") takes place between the Respondent, Complainant, the Sexual Misconduct Hearing Committee (hereafter referred to as the "Committee") and any witnesses with first-hand knowledge of the relevant facts. The Title IX Coordinator and/or University Counsel may be present to monitor the proceedings. Hearings are private and closed to everyone except the involved persons. At their discretion, the Committee chair may request that a representative from the Department of Safety and Security be present throughout the hearing as well to ensure the safety of the proceedings and participants.

Notice/Appearence Letter

The Respondent and Complainant will receive an "appearance letter" for a Hearing with the following information:

- The date, time, location and factual allegations concerning the violation
- The specific codes and University policies allegedly violated
- Possible sanctions
- The time, date, and location of the Hearing and contact information of the Committee chair
- The need to be present and prepared for participation in the Hearing and that the Hearing will proceed at the scheduled time, date, and location if the you choose not to attend or participate in the Hearing
- Information about requesting accommodations for the Hearing through the Student Accessibility Services

- The opportunity to have an advisor present in the pre-Hearing meeting and at the Hearing, including a party's right to request that the University appoint an advisor to conduct the permitted cross-examination of witnesses during a Hearing held under the Title IX Grievance Process
- The process for requesting witnesses with first-hand knowledge of the relevant facts
- Options for alternative accommodations for participation in the Hearing, including not being in the same space as the other party
- Information regarding community resources, information regarding retaliation, and information regarding nondisclosure of information

The Respondent's appearance letter will further contain the option to acknowledge full, partial, or no responsibility for the alleged violations.

Barring unusual or exigent circumstances, the Complainant and Respondent will be served the appearance letter at least five (5) business days prior to the hearing date. Both parties will be served the appearance letter through their University email address. It is the responsibility of the parties involved to check their University email address for this and all official communication from the University.

Witnesses

The Complainant and Respondent may both request that witnesses with first-hand knowledge of relevant facts participate in a Hearing. Witnesses may not participate solely to speak about an individual's character. [Requests for witnesses](#) must be made to the Title IX Coordinator at least 48 hours before the Hearing.

In hearings held as part of the Disciplinary Resolution Process only, if a witness is unavailable to attend the Hearing, the witness may fill out a statement of fact form through the Department of Safety and Security that will be used in lieu of the witness's testimony at the Hearing. Statements must be completed at least 48 hours before the Hearing. In a Title IX Grievance Process, the witness must attend the hearing and be subject to cross-examination in order for the witness' prior statements to be considered.

The Title IX Coordinator has the discretion to request that witnesses with first-hand knowledge of relevant facts participate in the Hearing even if the witness has not been requested by the Respondent(s) and/or Complainant(s).

It is the responsibility of the person requesting the witness to ensure the witness attends the Hearing. If a witness does not appear at the scheduled date and time of the Hearing, the Hearing will proceed without the participation of the witness. Although a witness may be requested to participate in a Hearing, they are not required or obligated to participate. Retaliation against any witness is a violation of this Policy.

Whenever possible, witnesses will be contacted prior to the Hearing with information and options regarding their participation in the Hearing, resources, retaliation, nondisclosure information, and information about requesting accommodations for the Hearing through the Student Accessibility Services. Witnesses may also schedule a pre-hearing meeting with the Title IX Coordinator to discuss hearing procedures and their participation in the process.

As appropriate, witnesses may be contacted after the Hearing with information regarding resources, retaliation, and non-disclosure information. Witnesses are not notified of the outcome of the Hearing.

Advisors

Advisor requests must be submitted to the Title IX Coordinator at least 48 hours before the Hearing. It is the responsibility of the person requesting the advisor to ensure the advisor attends the Hearing. In a hearing held under the Disciplinary Resolution Process, if an advisor does not appear at the scheduled date and time of the Hearing, the Hearing will continue without the participation of the advisor. Although an advisor may be requested to attend the Hearing, they are not required or obligated to attend or participate, except as to the party's right to have an advisor conduct a cross-examination of witnesses during a Hearing under a Title IX Grievance Process. Retaliation against any requested advisor is strictly prohibited. The Title IX Coordinator will assess requests by a party for more than one advisor and retains full discretion whether to approve such requests.

Except as to the party advisor's right to conduct cross-examination in a Hearing under a Title IX Grievance Process, the advisor is not permitted to directly address anyone other than their advisee, at any time, including asking any question or speaking on behalf of their advisee. Should an advisor violate the terms of this role they will be asked to leave the Hearing by the Committee Chair and will be asked to leave the room where the Hearing is being conducted. The Complainant and Respondent must ensure that their advisor complies with this Policy.

Whenever possible, the advisor will receive written information prior to the Hearing regarding their participation in the Hearing, resources, retaliation, and nondisclosure information. The advisor will not receive written notification of the outcome of the Hearing.

Hearing Attendance

The Respondent and Complainant are encouraged, but not required, to attend the Hearing. If the Respondent or Complainant has a conflict with the date and/or time of the Hearing it is their responsibility to contact the Title IX Coordinator directly to reschedule. The Title IX Coordinator will assess requests by a party for a change in the date and/or time of the Hearing, and will grant a change for good cause. The Hearing may take place without the Respondent and/or Complainant if they fail to appear at the scheduled time and place.

Hearing Proceedings

The following is a general description of procedures for the Hearing. These procedures may vary as appropriate for specific Hearings.

1. Everyone present in the Hearing (including the Committee, Respondent, Complainant, witnesses, and advisors) will be introduced, their role in the process and expectations of behavior will be explained and review Hearing Proceedings.
2. The witnesses will leave the Hearing room.
3. Members of the Committee will review the Hearing materials which include the alleged violations, and the findings of fact from the report(s) of investigation. The review of materials will be sufficient to provide a summary of the investigation phase of the process assuming the Respondent and Complainant have reviewed the case materials prior to the Hearing.
4. The Complainant and Respondent respond to the report(s) of investigation and case materials.
5. Members of the Committee will ask the Complainant and Respondent relevant questions regarding the incident and case materials.
6. Witnesses will be invited into the hearing room individually to provide any relevant first-hand information. At this time, members of the Committee will ask the witness any relevant questions in regard to the incident. The witness will leave the room after sharing their information.
7. During the Hearing under the Disciplinary Resolution Process, both the Complainant and the Respondent will have an opportunity to submit questions to the Committee chairperson for

consideration to present to any witnesses (including each other) for cross-examination purposes. During the Hearing under the Title IX Grievance Process, the parties' advisors shall be entitled to conduct live cross-examination of a party or witness.

8. The Complainant and Respondent will be offered an opportunity to make a summary statement.
9. The Chair will review the privacy of the proceedings and case materials, interim measures, that the Complainant and Respondent will be simultaneously notified of the Committee decision via their University e-mail, the appeal process, and that any interim actions or measures remain in place until otherwise notified.
10. The Complainant and Respondent submit their Impact Statement to the Chair of the Committee.
11. All persons but the Committee are dismissed and the Committee considers the case materials and information presented to determine responsibility or non-responsibility for the alleged violation(s) and appropriate sanctions (if applicable).
 - a. If there is a finding of responsibility, the Committee reads and reviews the Impact Statements, taking them into consideration when determining potential sanction(s).

Hearings will be recorded by the University. Committee deliberations will not be recorded. No audio or other recording of a Hearing is permitted by any other person. The recordings of the hearing will be preserved and maintained for at least seven (7) years from the Hearing, and parties will have fair access to the record.

Particular Hearing Provisions Applicable to the Title IX Grievance Process:

- The Hearing panelists cannot be the Title IX Coordinator or investigator(s).
- The parties cannot waive the right to a live hearing.
- If a Complainant or Respondent does not have an advisor present at the live hearing, the University will provide, without fee or charge, to that party an advisor.
- During the live hearing, a party's advisor is permitted to ask relevant questions of the other party or witnesses (live cross-examination).
- Questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about a Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- Before a Complainant, Respondent, or witness answers a cross-examination question, the Committee must first determine whether the question is relevant and, if applicable, explain a decision to exclude a question as not relevant.
- If deemed reliable and relevant by the Committee, and not otherwise excluded under this Policy, the Committee may consider the statements of persons who were not present at the hearing, or persons who were present at the hearing but who nevertheless were not subject to cross-examination.
- The University may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered pursuant to the Investigation and Hearing processes.
- The Committee will not draw 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.

Procedure for Determining Responsibility

The Complainant and Respondent will receive simultaneous written notification of the outcome of the Hearing which will include the allegations potentially constituting Prohibited Conduct, a description of the procedural steps taken during the process, the factual findings supporting the determination, the rationale and conclusions applying the provisions of this Policy to the facts, the sanction(s) if applicable. The parties will also be notified of their right to appeal and the process for completing an appeal in the written notice of outcome. In cases hearing under a Disciplinary Process Resolution, sanctions assigned will be effective immediately.

In order to determine responsibility regarding any alleged violations, the Committee reviews all relevant information (inculpatory and exculpatory) presented through the investigation and hearing processes. The Committee does not consider a Respondent's previous findings of responsibility when determining responsibility in the current matter. The determination of responsibility for a violation of this Policy and/or the student code of conduct will be made if in the judgment of the Committee that the conduct was more likely than not to have occurred ("the preponderance of the evidence" standard of proof).

Prior Sexual History/Mental Health Information: A party may present evidence of their *own* prior sexual history with persons other than the other party, and mental health diagnoses and/or treatment, and may prohibit the *other* party from seeking to present testimony or other evidence of the same.

The sexual history of the Complainant or Respondent will never be used to prove character or reputation. Evidence related to the prior sexual history of the parties is generally not used in determining whether a violation of this Policy has occurred and will only be considered when a determination is made that it is directly relevant to the investigation. For example, if Affirmative Consent is at issue, the sexual history between the parties may be relevant to determine the nature and manner of communications between the parties, which may inform the determination whether Affirmative Consent was sought and reasonably appeared to have been given during the incident in question. As set forth in the Affirmative Consent definition, even in the context of a relationship, Consent on one occasion does not constitute Affirmative Consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain injury, to provide proof of a pattern, or to address another specific issue raised in the investigation. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

Prior Incidents: Past findings of domestic violence, dating violence, stalking, or sexual assault through University or law enforcement processes may be admissible at the disciplinary stage that determines sanction (if applicable). Similarly, previous findings of responsibility for false reporting as defined in this Policy may be taken into consideration at the time of deliberation and sanctioning (if applicable).

Impact Statements

Impact statements are presented at the Hearing after a finding of responsibility where the Committee is deliberating on appropriate sanctions, if any. A Complainant's impact statement is a written statement describing the impact of the prohibited conduct and expressing a preference about the potential sanctions to be imposed. A Respondent's impact statement is a written statement explaining any factors that the respondent believes should mitigate or otherwise be considered in determining the potential sanctions imposed.

Potential Outcomes

When there is a finding of responsibility, University sanctions will be assigned. For students, these may include, but are not limited to: written warnings, disciplinary probation, suspension, expulsion, as well as educational assignments and referrals. The complete list of University sanctions applicable to students is listed on the [Student Code of Conduct website](#).

If the Hearing results in suspension, the student may not re-enroll at the University for a prescribed period of time. Before re-enrollment at the University, the student will need to meet with the Title IX Coordinator to discuss the student's progress in completing any assigned sanctions associated with the suspension and eligibility to resume enrollment at St. John Fisher University. Upon any re-enrollment, the student will be placed on Disciplinary Probation for the remainder of the academic career. The student's transcript will reflect "W" (withdrawn) for all courses in which the student was enrolled for the semester. Tuition, room and board charges, as applicable, will be prorated based on the University Refund Policy. The date used to determine any refund is the date of this finding or the date of any interim action related to this finding, whichever date is earlier. Persons suspended from the University are considered to be Persona Non Grata (PNG) from the University until any successful re-enrollment at the University.

Disciplinary action and sanctions for staff employees and faculty members will be determined by the Assistant Vice President of Human Resources and/or the employee's manager and/or higher administration, in accordance with the University's existing employment practices. Sanctions against a faculty member are subject to the Faculty Statutes as applicable.

Appeal Process

Under the Title IX Grievance Process and the Disciplinary Resolution Process, both parties have the right to one level of appeal. Requests for an appeal should be made by completing an [Appeal Request Form](#). The Appeal Request Form must be received within five (5) business days of the receipt of the written notification of outcome letter.

When requesting an appeal, the appealing party must demonstrate in writing that one or more of the following applies to their situation:

- Procedural irregularity that affected the outcome of the matter (i.e. University's failure to follow its procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, the investigator(s) or decision-maker(s) had a conflict of interest or bias against for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter; or
- The sanction imposed was not in keeping with the gravity of the violation

Both parties are notified when an appeal is requested, and notified again within five (5) business days if the appeal request has been granted. From the time of the notification that the appeal is requested, parties have five (5) business days to review and respond to the request.

An impartial review panel, free from conflicts of interest, reviews the Appeal Request Form. The Appeal Panel can dismiss the appeal for failing to state a grounds for appeal, affirm the original findings, amend the original sanctions, send the case back to the Hearing Committee, or convene a new Hearing Committee. In cases where sanction(s) are amended or rejected, a rationale will be specified. The Respondent and Complainant will be notified simultaneously of the written outcome of the appeal request within a prompt timeframe, reasonable under the circumstances. The review panel does not rehear cases.

Effect of Withdrawal and Transcript Notation

For those crimes of violence, as defined by the Clery Act, that St. John Fisher University is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and appeal, if any, shall include the following notation:

- “Suspended after a finding of responsibility for a code of conduct violation”
- “Expelled after a finding responsibility for a code of conduct violation”

Additionally, the transcript of any student who withdraws from the University following the receipt of a notice of investigation and declines to complete the disciplinary process shall include the following notation:

- “Withdrew with conduct charges pending”

Transcript Notation Review Process

When a student is suspended from the University, a notation has been placed on her/his transcript and the student may request a review of the notation for removal.

To request a review, the student must submit a letter to the Title IX Coordinator requesting the removal of the notation which also includes the following information:

- A personal statement detailing the student’s time away from the University and outlining both positive contributions the student has made to the community and personal growth.
- Two (2) character reference letters. (Letters from family members are not acceptable.)

The Title IX Coordinator will review the request and may require additional information. Following a review of the request, the Title IX Coordinator may subsequently require speaking to or meeting with the student regarding the request before making a decision.

If a notation is removed from a transcript this does not erase the student’s conduct history; it modifies the student’s transcript upon the request being granted. In no case shall the transcript notation for suspension be removed prior to one year after the conclusion of the suspension. Notations for expulsion shall not be removed from transcripts.

Student Conduct Records

Documentation from all processes and any appeals become part of the students’ student conduct file, considered to be part of the student’s educational record, and are maintained by the Title IX Coordinator. Outcomes may be released to University officials on a "need-to-know" basis. Student records may be released to persons and agencies external to the University with the student’s permission, or in compliance with the law. Records subpoenaed or ordered by a judge may be released without a student’s permission. A record may also be released if it is in the University’s legal interest to do so.

In cases where the University is the Complainant in an Informal Resolution or Disciplinary Resolution, the final results of the proceeding may be disclosed to the victim in the allegation, in accordance with FERPA. The final results are defined as the decision or determination made by the decision-makers, the name of the student, the violation committed, and any sanction (if applicable) imposed by the University against the student. Sanction information may include a description of the action, the date of imposition, and its duration. The recipient is prohibited from re-disclosing the information provided.

All student conduct files are maintained for seven (7) years after the most recent finding of responsibility. These student conduct records are destroyed at the end of the appropriate time period. Records pertaining to students who are suspended or expelled are maintained permanently.