



## Title IX Grievance Policy

Administrative Division: Finance and Administration  
Responsible Unit: Human Resources Department  
Contact: MaryAnn Maikisch, Director of Human Resources  
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Who Should Read this Policy: All Employees & Students  
Effective Date: July 1, 2022

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### Policy Statement

Saint Elizabeth University is committed to efficiently and effectively addressing all concerns related to sexual misconduct, sexual harassment and sex discrimination in compliance with federal, state and local laws, including Title IX of the Educational Amendments of 1972.

### Purpose of Policy

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to access equally our educational programs and opportunities.

### The Policy

#### **How does the Title IX Grievance Policy impact other campus disciplinary policies?**

In recent years, "Title IX" has become shorthand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault.

Saint Elizabeth University remains committed to addressing any violations of its policies, whether or not they fall under this policy or other University policies regarding student or employee conduct.

Specifically, our campus has (1) a Code of Conduct for students, a Faculty Handbook for faculty, and an Employee Handbook for employees that defines expected behaviors and University

policies; (2) a Harassment and Discrimination Policy that addresses the types of sex-based offenses constituting a violation of campus policy; and (3) procedures for investigating and adjudicating policy violations.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of an investigation of covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Code of Conduct, faculty or employee handbooks, the Harassment and Discrimination policy, or the Sexual Misconduct policy through a separate grievance proceeding.

The elements established in the Title IX Grievance Policy have no effect and are not transferable to any other policy of the University for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the University and may not be cited for or against any right or aspect of any other policy or process.

### **How does the Title IX Grievance Policy impact the handling of complaints?**

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will investigate and adjudicate different types of reports arising from complaints, as detailed in full throughout Section 2.

## **II. The Title IX Grievance Policy**

### **B. Revocation by Operation of Law**

Any complaints brought to the University's attention prior to the revocation or replacement of the Title IX regulations that became effective on August 14, 2020 will be investigated under this policy. Should the Title IX regulations that became effective on August 14, 2020 be revoked and/or replaced with updated regulations, any conduct covered under the Title IX Grievance Policy that occurred on or after the effective date of the revised regulations shall be investigated and adjudicated under a revised Title IX policy.

### **C. Non-Discrimination in Application**

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Reporting or Responding Party, or witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using the contact information available at <https://ocrcas.ed.gov/contact-ocr>.

### **D. Disability Accommodations**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for

disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

#### **E. Privacy vs. Confidentiality**

Saint Elizabeth University is committed to maintaining the privacy of all individuals involved in a report of sexual misconduct. In some instances, a Reporting Party may choose to take no action or to defer action until a later date in order to maintain anonymity. In these instances, the University reserves the right to limited disclosure and to take appropriate action to ensure the safety and well-being of members of the community.

The privacy of the Reporting and Responding Party will be respected at all times. It is the Reporting Party's decision whether to initiate a formal complaint. If a Reporting Party elects not to file a formal complaint, SEU reserves the right to take action in situations where, in the judgment of University officials, the interests of the wider University community may be affected. The University is obligated by law to take measures to remedy any harassment it confirms.

References made to privacy mean Saint Elizabeth University offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, as appropriate. Saint Elizabeth will limit the disclosure as much as reasonably practicable or permitted within the bounds of this Policy and the Final Rule.

### **III. Definitions**

#### **A. Covered Sexual Harassment**

For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any conduct on the basis of sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- 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 educational institution's education program or activity;
- Sexual assault<sup>1</sup> which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
- Dating violence 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

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<sup>1</sup> Sexual assault is defined in the Clery Act as rape, fondling, incest, and statutory rape.

- 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; and,
  - iii. the frequency of interaction between the persons involved in the relationship.
- Domestic violence, (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 Jersey 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 Jersey.
  - Stalking, 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.

Note that conduct that does not meet one or more of these criteria may still be prohibited under other University policies and/or codes of conduct.

## **B. Consent**

For the purposes of this Title IX Grievance Policy, “consent” means:

To constitute lack of consent, the acts must be committed either by force, intimidation, or through the use of the victim’s mental incapacity or physical helplessness due to drug or alcohol consumption, mental deficiency, being asleep/unconscious, and/or being under the legal age of consent according to New Jersey law. Agreement given under such conditions does not constitute consent. The definition of consent does not vary based upon particular sex, sexual orientation, gender identity, or gender expression.

Consent must be clear and unambiguous for each participant throughout any sexual encounter. Consent to some sexual acts does not imply consent to others, nor does past consent to a given act imply ongoing or future consent. Consent can be revoked at any time. For all of these reasons, sexual partners must evaluate consent in an ongoing fashion and should communicate clearly with each other throughout any sexual encounter.

## **C. Education Program or Activity**

For the purposes of this Title IX Grievance Policy, Saint Elizabeth University’s “education program or activity” includes:

- any on-campus premises;
- any off-campus premises that Saint Elizabeth University has substantial control over. This includes buildings or property owned or controlled by a recognized student organization; and,

- activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Saint Elizabeth’s programs and activities over which the Institution has substantial control.

**D. Reporting Party**

For the purposes of this Title IX Grievance Policy, Reporting Party means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

**E. Responding Party**

For the purposes of this Title IX Grievance policy, Responding Party means any individual who has been reported to be the alleged perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

**F. Formal Complaint**

For the purposes of this Title IX Grievance Policy, “formal complaint” means a document – including an electronic submission - filed by a Reporting Party with a signature or other indication that the Reporting Party is the person filing the formal complaint, or a document signed by the Title IX Coordinator, alleging sexual harassment against a Responding Party within SEU’s education program or activity and requesting initiation of procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

**G. Relevant evidence and questions**

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the Reporting Party’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the Responding Party committed the conduct alleged by the Reporting Party, or
  - They concern specific incidents of the Reporting Party’s prior sexual behavior with respect to the Responding Party and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

**IV. Making a Report to the University**

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

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

Name: MaryAnn Maikisch

Title: Director of Human Resources / Title IX Coordinator

Office Address: 2 Convent Road, Santa Rita Hall / Office 009

Email Address: mmaikisch@steu.edu

Telephone Number: 973-290-4478

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

All individuals are may obtain resources or report an alleged violation of this policy to the Title IX Coordinator, or any Deputy Coordinator.

The following officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator
- Deputy Title IX Coordinator

The following Officials may provide confidentiality:

- Dr. Susan J. Lasker, Director, Health Services Wellness Center, Founders Hall 973-290-4175
- Zsuzsanna Nagy, Director, Counseling Services, Wellness Center, Founders Hall 973-290-4134

Students and employees may always report to law enforcement. The University strongly encourages persons exposed to sexual or relationship violence to report those offenses to the Florham Park Police Department at 973-377-2200 or the Morris County Prosecutor's Office (973)625-6200. If a Reporting Party chooses to solely report to off-campus law enforcement, the law enforcement officer will not typically notify the Title IX Coordinator. In order for a member of the Saint Elizabeth University community to exercise their rights under this policy, a complaint must be made to the Title IX coordinator.

**V. Non-Investigatory Measures Available Under the Title IX Grievance Policy****A. Supportive Measures**

All parties involved in the Title IX process have the right to receive supportive measures from Saint Elizabeth University. Supportive measures are non-disciplinary and non-punitive. Saint Elizabeth University will determine the nature of these supportive measures in its sole discretion.

As appropriate, supportive measures may include, but not be limited to:

- counseling,
- education,
- extensions of deadlines or other course-related adjustments,
- modifications of work or class schedules,

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All policies are subject to amendment. Please refer to the Saint Elizabeth University Policy Library website (insert website here) for the official, most recent version.

- campus escort services,
- restrictions on contact between the parties (no-contact orders),
- changes in work or housing locations,
- leaves of absence, and,
- increased security and monitoring of certain areas of the campus.

## **B. Emergency Removal**

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

## **C. Interim Suspension Policy**

An interim suspension may be imposed on any student by the Dean of Student Life (or designee) when there is reasonable cause to believe, based on available facts, that the continued presence of the student in the community constitutes an immediate threat to (1) the emotional or physical health, safety or welfare of any member of the University community or (2) University property. An interim suspension may also be imposed by the Dean (or designee) if the student's behavior is deemed to be persistently or seriously disruptive to the University community. A student who is subject to an interim suspension will be given the reason(s) for that action in writing. During the interim suspension, a student shall be denied access to the residence halls and/or to the campus (including classes) and/or all other University activities or privileges for which the student might otherwise be eligible until a hearing/meeting can be held to determine the status of the student as a member of the University community. The University retains the right to contact the students' parents or guardians regarding the reason for the interim suspension. Any student who is suspended on an interim basis and returns to the campus or otherwise violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser.

Permission to be on campus for a specific purpose may be granted in writing by the Dean of Student Life (or designee).

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

## **D. Administrative Leave**

Saint Elizabeth University retains the authority to place a non-student employee Responding Party on administrative leave during the Title IX Grievance Process, consistent with SEU's Employee or Faculty Handbook.

## **VI. The Title IX Investigation Process**

A formal report or complaint of sexual harassment or discrimination will be initially evaluated by the Title IX Coordinator or designee, through the steps, as outlined below. A continuation in the process, or referral to another process, does not constitute a determination that a policy has been violated.

After the complaint is investigated, two types of resolution processes may be used: a formal hearing and an informal resolution process.

A Reporting Party who files a formal complaint and who elects the formal hearing process may elect, at any time, to use the informal resolution process instead.

#### **A. Filing a formal complaint**

The timeframe for the Title IX Grievance Process begins with the filing of a formal complaint. The Grievance Process will be concluded within a reasonably prompt timeframe, ordinarily no longer than ninety (90) business days after the filing of the formal complaint. The Grievance Process may be extended by the University for an appropriate reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a formal complaint, a Reporting Party must provide the Title IX Coordinator with a written, signed complaint describing the facts alleged. Reporting Parties are only able to file a formal complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of Saint Elizabeth University, including as an employee. For Reporting Parties who do not meet this criterion, the University will utilize existing policies in the Harassment and Discrimination Policy, and/or the Faculty or Employee Handbook.

Saint Elizabeth University may consolidate formal complaints alleging covered sexual harassment against more than one Responding Party, or by more than one Reporting Party against one or more Responding Parties, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

If a Reporting Party does not wish to make a formal complaint, the Title IX Coordinator may determine a formal complaint is necessary. Saint Elizabeth University will inform the Reporting Party of this decision in writing, and the Reporting Party need not participate in the process further but will receive all notices issued under this Policy and procedures.

Nothing in the Title IX Grievance Policy or any University policy prevents a Reporting Party from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

#### **B. Determining Jurisdiction**

The Title IX Coordinator or designated representative will determine if the Title IX Grievance Process should apply to a formal complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct is alleged to have occurred on or after August 14, 2020;
- The conduct is alleged to have occurred while the Reporting Party was participating in the University's education program or activity; and
- The alleged conduct, if true, would constitute covered sexual harassment or discrimination as defined in this policy.

If all of the elements are met, Saint Elizabeth University will investigate the allegations according to the Title IX Grievance Process.

**1. Allegations Potentially Falling Under Two Policies**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment or discrimination and conduct that would not constitute covered sexual harassment or discrimination, the Title IX Grievance Process will be applied in the investigation and adjudication of all of the allegations.

**2. Mandatory Dismissal**

If the report or complaint is found not to consist of covered sexual harassment or discrimination, the Title IX Coordinator or designee will notify the parties that the formal complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

**3. Discretionary Dismissal**

The Title IX Coordinator, or designee, may, but is not required to, dismiss a formal complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that formal complaint, at any time during the investigation or hearing, if:

- A Reporting Party notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegations raised in the formal complaint and the Title IX Coordinator determines that without the complainant’s withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven ;
  - A Reporting Party refuses to participate in the investigation or resolution process;
  - The Title IX Coordinator determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Prior to dismissing the complaint, the Title IX Coordinator will make reasonable efforts to clarify the allegations with the complainant.
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- If specific circumstances prevent Saint Elizabeth University from gathering evidence sufficient to reach a determination regarding the formal complaint or allegations within the formal complaint.

**4. Notice of Dismissal**

Upon reaching a decision that the formal complaint will be dismissed, the institution will promptly send written notice of the dismissal of the formal complaint or any specific allegation within the formal complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

**5. Notice of Removal**

Upon dismissal for the purposes of Title IX, SEU retains the discretion to utilize other University policies, handbooks, or the Code of Conduct to determine if a violation of University policy has occurred. If so, Saint Elizabeth University will promptly send written notice of the dismissal of the formal Title IX complaint and will remove the Title IX-related allegations from the conduct process.

**6. Appeal**

Any party may appeal a decision on jurisdiction or a dismissal determination using the process set forth in “Appeals,” below.

#### **D. Notice of Allegations**

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the institution receives a formal complaint of the allegations.

The parties will be notified via their University email accounts if they are a student or employee, and by other reasonable means if they are neither.

Saint Elizabeth University will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before an initial interview.

The Title IX Coordinator or designee may determine that the formal complaint must be dismissed on the grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the formal complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

#### **1. Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the University’s Title IX Grievance Policy and a hyperlink to the process;
- Notice of the allegations potentially constituting covered sexual harassment or discrimination, 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 Reporting Party; the conduct allegedly constituting covered sexual harassment or discrimination; and the date and location of the alleged incident(s), if known;
- A statement that the Responding Party is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance 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 raised in the formal complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tend to prove or disprove the allegations, whether obtained from a party or other source;
- A statement that parties knowingly making a material misstatement of fact, falsifying evidence or testimony, will be subject to disciplinary actions;
- A statement that retaliation is prohibited, and,
- A statement that individuals who believe that they have been the subject of a false complaint of conduct in violation of this policy may meet with the Title IX Coordinator to discuss the allegations. The filing of a complaint that does not result in a finding of a policy violation is not alone evidence of the intent to file a false complaint

## **2. Ongoing Notice**

If, in the course of an investigation, the University decides to investigate allegations about the Reporting or Responding Parties that are not included in the Notice of Allegations and are otherwise covered as "sexual harassment" or discrimination falling within the Title IX Grievance Policy, the University will notify the parties whose identities are known of the additional allegations via their University email accounts and/or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

### **E. Advisor of Choice and Participation of Advisor.**

Saint Elizabeth University will provide the parties equal access to advisors and support persons; any restrictions on an advisor's participation will be applied equally to both parties.

Students participating as Reporting or Responding Parties in this process may select an advisor of their choice and the advisor may accompany the Responding or Reporting Parties to any meeting or hearing to which they are required or are eligible to attend. Except where explicitly stated by this policy, advisors shall not participate directly in the process.

Saint Elizabeth University will not intentionally schedule meetings or hearings on dates where the advisors for all parties are not available, provided that the advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Saint Elizabeth University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other University policies apply to matters governed under this Policy, and Saint Elizabeth University cannot agree to extensive delays solely to accommodate the schedule of an advisor. The Title IX Coordinator or designee shall make the determination of what is reasonable. The University will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an advisor and may offer the party the opportunity to obtain a different advisor of choice or utilize one provided by the University.

### **F. Notice of Meetings and Interviews**

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

The Reporting Party and the Responding Party may request a one-time delay in the Title IX Grievance Process of up to five business days for a good cause (granted or denied in the sole judgment of the Title IX Coordinator, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five-day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be

granted, while a request for a five-day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

## **G. Investigative Process**

### **1. General Rules of Investigations**

Investigator(s) designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

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

The University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or about whom the records include information. The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove or disprove the allegations) as described below.

Evidence obtained in the investigation that is determined in the reasoned judgment of the Investigator not to be directly related to the allegations in the formal complaint will not be disclosed, or may be appropriately redacted to avoid disclosure of personally identifiable information. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a “privilege log” that may be reviewed by the parties and their advisors, if any.

### **2. Inspection and Review of Evidence**

All parties must submit to the Investigator(s) all evidence to be considered prior to the beginning of the parties’ time to inspect and review evidence. Prior to the completion of the investigative report, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the formal complaint. It will include any:

- i. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility; and,
- ii. inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

Saint Elizabeth University will send the evidence made available to each party and each party’s advisor, if any, to inspect and review through an electronic or hard copy. The Institution shall have the sole discretion in terms of determining the format and any restrictions or limitations on access. The parties and their advisors must sign an agreement not to disseminate any of the

evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process.

Additionally, the parties and their advisors must agree not to photograph or otherwise copy the evidence.

The parties will have 10 business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report and provide copies of the parties' written responses to all parties and their advisors if any.

### **3. Investigative Report**

Investigator(s) designated by the Title IX Coordinator will create an Investigative Report that summarizes relevant evidence, and will provide that report to the parties at least ten (10) business days prior to the hearing in an electronic format for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the Investigator, but only to provide a fair summary of that evidence. Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove or disprove the allegations - relevant evidence) will be referenced in the Investigative Report. The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

## **VII. Hearing**

### **A. General Rules of Hearings**

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

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

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn

### **B. Continuances or Granting Extensions**

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

### **C. Participants in the Live Hearing**

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

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

- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered. Saint Elizabeth will not threaten, coerce, intimidate or discriminate against either party in an attempt to secure the party's participation.
- Cross examination of either party or any witnesses is required unless a party waives their right to cross examination. The parties may not cross-examine each other or any witnesses; this is done by each party's advisor. The decision-maker(s) may rely on any relevant evidence in reaching the decision on responsibility or non-responsibility. The decision-maker(s) must adequately assess the credibility of the parties and witnesses to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.
- The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions
- The parties shall be subject to the institution's employee or faculty handbook, or student code of conduct, as appropriate.

#### **2. The Decision-Maker(s)**

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

#### **3. Advisor of Choice**

- The parties have the right to select an advisor of their choice, who is not required to be an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing the party is permitted to attend; however, the advisor is not permitted to participate or speak on behalf of the party, except for the purpose of cross-examination during the hearing process.
- The parties themselves are not permitted to conduct cross-examination; the advisor must conduct it. Parties may submit questions to the decision-maker(s) who will determine which questions they ask of any party or witness. If a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.

- The advisor is not prohibited from having a conflict of interest or bias in favor of, against Reporting or Responding, for, or against Reporting or Responding Parties in general.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination and may also submit questions to the decision-maker(s) on their behalf.
- If neither a party nor their advisor appears at the hearing, Saint Elizabeth University will provide an advisor to appear on behalf of the non-appearing party.
- Advisors shall be subject to the institution's employee or faculty handbook, or student code of conduct, as appropriate, and may be removed upon violation of policies contained within. If the advisor is removed from the hearing, the institution will appoint the party a new advisor.

#### **4. Witnesses**

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.
- Witnesses shall be subject to the institution's employee or faculty handbook, or student code of conduct, as appropriate, and may be removed upon violation of policies contained within.

#### **D. Hearing Procedures**

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

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

#### **E. Live Cross-Examination Procedure**

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

Before any cross-examination question is answered, the decision-maker(s) will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the decision-maker(s), might be deemed irrelevant if they have been asked and answered.

#### **F. Review of Recording**

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

#### **G. Determination Regarding Responsibility**

##### **1. Standard of Proof**

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

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

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

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

A witness's testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of the specific facts of what occurred.

Parties are permitted to call "expert witnesses" for direct and cross-examination.

Character witnesses will be allowed to testify and be questioned.

A party may request that the results of a polygraph test be admitted.

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

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

The written determination regarding responsibility will be issued simultaneously to all parties through their University email account, or other reasonable means, as necessary. The Determination will include:

- Identification of the allegations potentially constituting covered sexual harassment or discrimination;

- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding which section of the Code of Conduct, Sexual Misconduct Policy, and Employee or Faculty Handbook, if any, it was determined that the Respondent had or had not violated.
- For each allegation:
- A statement of, and rationale for, a determination regarding responsibility;
  - A statement of, and rationale for, any disciplinary sanctions imposed on the Responding Party; and
  - A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the University’s programs and/or activities will be provided by the University to the Reporting Party; and
  - The University’s procedures and the permitted reasons for the Reporting and Responding Parties to appeal the determination (described below in “Appeal”).

**4. Timeline of Determination Regarding Responsibility**

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

**5. Finality**

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

**VIII. Appeals**

Each party may appeal:

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

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

The limited grounds for appeal are as follows:

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

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

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All policies are subject to amendment. Please refer to the Saint Elizabeth University Policy Library website (insert website here) for the official, most recent version.

If a party appeals, the University will, as soon as practicable, notify the other party in writing of the appeal; however, the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

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

Appeals will be decided by an appeal decision-maker, who will be free of conflict of interest and bias against either party or Reporting Parties and Responding Parties in general, and will not have served as an investigator, Title IX Coordinator, or hearing decision-maker in the grievance process.

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

#### **IX. Retaliation**

Saint Elizabeth University will keep the identity of any Reporting Parties, Responding Parties and witnesses, confidential, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, or as required by law..

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

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

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment. As a result, the University may not pursue drug or alcohol charges against students reporting offenses involving sexual harassment and misconduct based on their personal consumption of drugs or alcohol at or near the time of the incident. However, any such violation cannot have imperiled the health or safety of any other person. Amnesty does not preclude the University from pursuing educational measures, including discussion of the drug or alcohol offense regarding the risks and consequences of such activity.

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

## **Appendix A**

### **Informal Resolution**

#### **What is an Informal Resolution to a Title IX Complaint?**

Informal Resolution is a process through which parties voluntarily engage with an impartial Informal Resolution Facilitator (IRF) to discuss remedies to resolve a formal complaint under the University Sexual Misconduct or Title IX Sexual Harassment policies. Informal Resolution is a non-disciplinary process separate from the University's investigation and hearing process.

Informal Resolution does not include any factual investigation or substantive determination under University policy. While parties may agree to a restriction, resulting in a binding agreement, the Agreement and the Resolution will not appear on any transcript or disciplinary record. Though individual cases may vary, Informal Resolutions aim to stop, remedy, and prevent any occurrence of sexual violence and sexual harassment. The Reporting Party is provided the opportunity to articulate their needs and develop terms designed to address those needs in a tailored, fact-specific manner. The Responding Party acknowledges the harm and addresses that harm without determining policy violation/s or formal disciplinary action.

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

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

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

#### **How are the terms developed?**

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

- The Informal Resolution Officer (IRF) works first with the Reporting Party to draft terms.
- The IRF will consider whether the terms will stop, remedy, and prevent future harm and may suggest alternative or additional terms.
- The IRF will confirm the agreed-upon terms in writing with the Reporting Party before contacting the Responding Party.
- The IRF will contact the Reporting and the Responding Parties to advise that the Reporting Party has made allegations and would like to engage in an informal resolution. If the Responding Party chooses to engage in the informal resolution process, the Responding Party will receive the suggested terms and have the opportunity to make counter-suggestions.
- Generally, the parties will not meet together but will meet with the IRF separately to develop terms.

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

An informal resolution process is administered by the Title IX Office and complies with the Title IX Policy. Should one or both parties fail to comply with the informal resolution, the Reporting Party may request a formal hearing under Section \_\_\_ of this policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## Informal Resolution Agreement for Complainant

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

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

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

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

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

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

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

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

\_\_\_\_\_  
**Reporting Party’s Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Informal Resolution Officer**

\_\_\_\_\_  
**Date**



## Informal Resolution Agreement for Respondent

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

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

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

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

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

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

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

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

\_\_\_\_\_  
**Responding Party's Signature**

\_\_\_\_\_  
**Date**

**Reporting Party**

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

\_\_\_\_\_  
**Reporting Party's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Informal Resolution Officer**

\_\_\_\_\_  
**Date**