

## **Rights of Parties During Investigation, Sanctioning and Appeal**

A Student's Bill of Rights, a Faculty and Staff Bill of Rights and an additional statement of Rights in Cases Involving Sexual Assault, Domestic Violence, Dating Violence or Stalking are attached to this Policy as Appendix A.

### **Rights of the Reporting Person.**

The reporting person under this Policy has:

- 1) the right to provide a personal statement before any sanction is imposed;
- 2) the right to make his/her statement without directly confronting the respondent;
- 3) the right to be notified in advance in writing (including electronically) of any meeting they are required or eligible to attend and the purpose of that meeting;
- 4) the right not to have his or her past sexual history with the other party considered, unless determined to be directly relevant to the matter at hand, and the right to not have their prior sexual history with other persons considered as part of a responsibility determination;
- 5) the right to ask that witnesses relevant to the case be interviewed as part of the investigation and to submit other evidence for consideration; however, the investigator(s) may establish a reasonable limit on the number of witnesses and also place reasonable restrictions on the consideration of any proffered information;
- 6) the right to appeal a decision to the extent provided for in this Policy;
- 7) the right to raise any issues of conflict of interest related to individuals serving in official roles under this Policy;
- 8) the right to decline to answer a question during the investigatory and/or review process. However, the investigation and review proceeds based on the information provided;
- 9) the right to have their own mental health diagnoses and/or treatment excluded during any responsibility determination.

### **Rights of the Respondent.**

The respondent under these procedures has:

- 1) the right to be informed of the factual allegations concerning any alleged violation, the date, time and place of the alleged violation; a reference to the Policy provisions violated and possible sanctions;
- 2) in the course of the investigatory and adjudicatory process, the right to be presumed not responsible for a violation unless and until a finding of responsibility has been made;
- 3) the right to provide a personal statement before any sanction is imposed;
- 4) the right to make his/her statement without directly confronting the complaining party
- 5) the right to be notified in advance in writing (including electronically) of any meeting they are required or eligible to attend and the purpose of the meeting;
- 6) the right not to have his or her past sexual history with the other party considered, unless determined to be directly relevant to the matter at hand, and the right to not have their prior sexual history with other persons considered as part of a responsibility determination (prior findings and sexual assault, domestic violence, dating violence and stalking may be considered in determining a sanction, as may other aspects of the respondent's overall record);
- 7) the right to ask that witnesses relevant to the case be interviewed as part of the investigation and to submit other evidence for consideration. However, the investigator(s) may establish a reasonable limit on the number of witnesses and also place reasonable restrictions on the consideration of any proffered information;
- 8) the right to appeal a decision to the extent provided for in this Policy;
- 9) the right to raise any issues of conflict of interest related to individuals serving in official roles under this Policy;
- 10) the right to decline to answer a question during the investigatory and/or review process. However, the investigation and review proceeds based on the information provided;
- 11) the right to have their own mental health diagnoses and/or treatment excluded during any responsibility determination.

## **University's Procedures for Investigation of Gender-Based Discrimination and Sexual Misconduct**

St. Bonaventure University strongly encourages any individual who has been subjected to gender-based discrimination or sexual misconduct to report the misconduct to University officials and/or law enforcement. A reporting party has the right and can expect to have reports taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through these procedures. The University's main concern is that reporting parties receive the help and guidance essential for beginning the process of healing, while also giving consideration to the welfare of the campus community.

Anyone wishing to report incidents of gender-based discrimination or sexual misconduct should do so through Safety and Security Services, Residential Staff (RAs or RDs), the reporting party's supervisor, a CODAH Advocacy Officer, or directly with the Title IX Coordinator (Director of Human Resources) or Deputy Coordinators. Investigations (including Judicial Sanctioning Board proceedings, if applicable) will ordinarily take no longer than 60 days. However, the nature of a complaint and/or extenuating circumstances (such as the time of the academic year, the timing of University break periods, the effect of concurrent criminal proceedings, etc.) may require an extension of that timeframe.

Complaints will be considered according to the following procedure:

1. Once a report is received, information is shared with the Title IX Coordinator and/or a Deputy Coordinator.
2. Preliminary information gathering will occur to determine whether or not a formal investigation is appropriate.
3. Some complaints may be resolved through conflict resolution in lieu of a formal investigation. Conflict resolution may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal process to resolve conflicts. The Title IX Coordinator and Deputy Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, the Title IX Coordinator and/or Deputy Coordinator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies, in which case the complaint is resolved. The Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions. Conflict resolution will not be used to address complaints of sexual assault or violent behavior of any kind, or in other cases of serious violations of policy. It is not necessary to pursue conflict resolution first in order to make a formal complaint, and anyone participating in conflict resolution can stop that process at any time and request a formal process.
4. If a formal investigation is deemed appropriate, the Title IX Coordinator will appoint investigators to the case. If it is determined a formal investigation is not appropriate, the University will offer the reporting party and/or alleged victim accommodations, which may include "No Contact" orders if requested.
5. The University may, but shall not be obligated to, delay the institution of its processes when criminal charges on the basis of the same behaviors that invoke this process are being investigated. Such delays will not last more than ten calendar days except when law enforcement authorities specifically request and justify a longer delay. University action will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.
6. In each case, a responding party is entitled to a presumption that he or she is "not responsible" until a finding of responsibility is made pursuant to the provisions of this policy. The responding party will receive written notice, prior to any interview or meeting he or she is required or entitled to attend, referencing the specific policy provisions alleged to have been violated and the specific possible sanctions. This notice will also include the date, time, location and factual allegations concerning the alleged violation(s) to the extent known.
7. Investigators will seek to conduct interviews with any individuals who may be able to provide information pertaining to the potential violation, or other potential violations that may become apparent through the course of the investigation. They will also gather, examine and assess relevance of evidence, or other

resources, brought forward throughout the course of the investigation. The investigators have the authority to investigate all allegations of collateral misconduct, meaning that they may consider allegations of gender-based discrimination or sexual misconduct, but also may hear any allegations of additional conduct or policy violations that are alleged to have occurred as part of the same set of circumstances as the alleged gender-based discrimination or sexual misconduct, even though those collateral allegations may not otherwise fall within this policy. Accordingly, investigations should be conducted with as wide a scope as necessary. Final determination of whether the investigation will deal with collateral misconduct will be made by the Title IX Coordinator.

8. Prior to the investigators completing their final report and making a determination of responsibility, the investigators will notify the Title IX Coordinator, and the Title IX Coordinator will notify the parties, that the report is substantially complete. The parties may then submit a written request to the Title IX Coordinator, to be received within 48 hours of that notice, to review the investigators' report and relevant information in the case file. A requesting party shall be given a 7 calendar-day period during which access to this material will be made reasonably available for a scheduled review. Access is limited to the requesting party and their advisor, who may not make photocopies or take photographs of the materials. Each party may also submit during this same 7-day period a final statement for consideration by the investigators prior to determination. (The University reserves the right to redact material from the file as permitted and/or required by law.) Any written statement provided by a party may be reviewed by the other party, who will have 24 hours to submit a written response to the Title IX Coordinator. After this period, the investigation will be considered complete unless, in exceptional circumstances, the investigators conclude that it is necessary to reopen the investigation based on the statement(s) and/or response(s) provided by one or both parties.
9. After the investigation is complete, and based on the *preponderance of the evidence standard* ("more likely than not"), investigators will determine whether it is "more likely than not" the responding party(s) violated one or more policies and prepare the final report. Investigators will provide the final report to the Title IX Coordinator. **This is the finding in the case.** Final reports will include documented summary of interviews, evidence, credibility assessments, any other factual support for the investigators' findings and any timely received statements and responses submitted by the parties as described in paragraph 8 above.
10. The Title IX Coordinator and/or Deputy Coordinator will inform the reporting party and responding party in writing of the outcome of the investigation, including the relevant findings of fact and the rationale for the determination. If the determination is that the responding party is responsible for one or more violations, the Title IX Coordinator and/or Deputy Coordinator will determine the appropriate sanctioning body dependent on whether the responding party is a faculty/staff member, or student.
11. Should a student be accused of a violation of the Gender-Based Discrimination or Sexual Misconduct Policy, they are NOT subject to the same process and procedure outlined in the Code of Conduct under the "Judicial Process", and the processes and procedures in this policy will be followed instead. There is no hearing to determine responsibility, as that is the purpose of the investigation process. If there is a determination by the Title IX Coordinator and/or Deputy that the case should move forward for sanctioning, a Judicial Sanctioning Board will be called to determine sanctions.
12. If the responding party found responsible for a violation is a faculty or staff member, the Title IX Coordinator will consult with the chair of CODAH and the appropriate executive officers to review:
  - the responding party's personnel file;
  - any past informal complaint where there has been a finding of discrimination and/or harassment;
  - a finding of discrimination and/or harassment by the responding party through the formal complaint process; or
  - any past formal or informal complaint against the responding party that was not judged to be a spurious complaint.

After this history has been taken into consideration, the Title IX Coordinator and Chair of CODAH will make their final recommendation for corrective action to the appropriate executive officer for implementation, if appropriate. Copies of the final recommendation will be sent to the reporting party, responding party, Chair of the CODAH and an appropriate executive officer for both the reporting party and responding party, and retained in the Director of Human Resources office. This process will be done within 60 days of the registration of the complaint in writing unless there are extenuating circumstances.

The executive officer will fully implement the recommendations unless she/he has good reason not to.

An executive officer who, for whatever reason, chooses not to fully implement the recommendations will explain her/his reasons for this decision in writing (insofar as possible) or in a face-to-face meeting with the Title IX Coordinator and Chair of CODAH.

After disposition and/or implementation of the corrective actions, the executive officer must notify the reporting party, Title IX Coordinator and Chair of CODAH, in writing, of the disposition and/or corrective actions that have been implemented.

13. Each party shall have the right to exclude from consideration, for purposes of determining responsibility, the party's sexual history with persons other than the other party, their mental health diagnosis, or mental health treatment. Prior disciplinary violations may be considered for purposes of assessing sanctions.