

# St. Bonaventure University Gender-Based Discrimination and Sexual Misconduct Policy and Procedures

*(Updated September, 2021; March, 2022; August 18, 2022; September 12, 2022; October 31, 2022)*

## **General Rules of Application**

### **Effective Date**

This Policy became effective on August 14, 2020 with updates as noted, and will only apply to Formal Complaints of alleged violations under this policy brought on or after August 14, 2020.

### **Statement of Intent**

St. Bonaventure University promotes respect for the dignity and integrity of each person. Members of the University community, guests and visitors have the right to an environment free from all forms of gender and sex-based discrimination and misconduct, examples of which can include acts of sexual assault, sexual harassment, domestic violence, dating violence and stalking. All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others. St. Bonaventure University takes reports of gender-based discrimination and sexual misconduct very seriously and treats each report with the utmost care and urgency. When an allegation of discrimination or misconduct is brought to an appropriate administrator's attention, and a Respondent is found to have violated this policy, sanctions will be applied to prevent such actions from being repeated. In addition, accommodative and remedial measures will be offered to mitigate the effects of the conduct. This policy was developed to reaffirm these principles, to provide a mechanism for determining when this policy has been violated, and to provide recourse for those individuals whose rights have been violated.

### **Jurisdiction and Non-Discrimination in Application**

This policy applies to all students, faculty, and staff of St. Bonaventure University. This policy also applies to conduct by third parties that include visiting speakers, contracted professionals, guests of enrolled students, visiting athletic teams, conference attendees, etc. Any member of the St. Bonaventure University community found in violation of these policies may be subject to disciplinary action. This policy also applies regardless of the Complainant's or Respondent's race, creed, color, gender, gender identity, gender expression, ethnicity, national origin, religion, marital status, familial status, pregnancy, age, sexual orientation, veteran status, disability, genetic predisposition status, domestic violence victim status, criminal conviction or any other protected characteristic under applicable local, state or federal law. All requirements and protections are equitably provided to individuals regardless of such status or status as Complainant, Respondent, 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 contact information available at <https://ocrcas.ed.gov/contact-ocr>.

The disciplinary actions the University may take will differ depending on the level of control the University has over the accused. Regardless of the level of disciplinary action that can be taken, St. Bonaventure University is committed to remedying the effects of any sex discrimination, sexual harassment or sexual misconduct and preventing its recurrence.

One or more of the University's personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. The processes described in this policy apply to any situation where a student is the Complainant or Respondent (as defined below). In all other situations, the University reserves the right to apply this process or another applicable University policy or process. The University will apply this process to any situation where the University determines that Title IX requires the application of this process.

### **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 processes described below that do not fundamentally alter the applicable process (es). 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.

### **Overview of Consensual Relationships Policy**

The educational mission of the University is promoted by professionalism in relationships between administrators, faculty, students and staff. Professionalism is fostered by an atmosphere of mutual trust and respect. Trust and respect are diminished when those in position of authority abuse, or appear to abuse, their power.

Sexual relationships between faculty and student, or staff and student, are expressly prohibited. Even when both parties have consented to the development of such relationships, they can raise serious concerns about the validity of the consent, conflicts of interests, and/or unfair treatment of others. Moreover, others may be adversely affected by such behavior because it places the faculty or staff member in a position to favor or advance one student's interests at the expense of others.

Sexual relationships between supervisor and employee are prohibited when a direct evaluative relationship exists. In such cases the University requires that the faculty member, administrator, staff member or employee divest him or herself of the professional responsibility for evaluation and/or cease such conduct.

### **Gender-Based Discrimination and Sexual Misconduct Violations**

St. Bonaventure University prohibits all forms of gender-based discrimination and sexual misconduct. Gender-based discrimination or sexual misconduct can be committed by any person upon any other person, regardless of the sex, gender, sexual orientation, gender identity and/or gender expression of the persons involved in the acts.

This policy sets forth conduct expectations for our community and provides a process for the reporting, investigation and adjudication of alleged violations. This policy applies to alleged conduct violations of Title IX of the Education Amendments of 1972 (i.e., "Title IX Category" violations) and also applies to a broader range of contexts and behaviors inconsistent with the University's commitment to equal opportunity (i.e., "University Standards" violations).

The designation of conduct or allegations as either "Title IX Category" or "University Standards" is not a function of the seriousness of the alleged conduct but rather a function of the scope and coverage of Title IX versus the University's broader jurisdiction to prohibit and discipline a larger scope of inappropriate behavior.

### **Title IX Category Violations**

Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance. This prohibition encompasses discrimination based on a student's gender expression and/or gender identity, including discrimination based on a student's transgender status.

In accordance with Title IX as interpreted by the Department of Education, the University recognizes the following as conduct violations within the meaning of Title IX, provided that the context and circumstances of the conduct fall within the scope of Title IX, including but not limited to that the Complainant was in the United States at the time of the alleged conduct, that the Complainant be participating in or seeking to participate in the University's education program or activity at the time of the complaint, and that the conduct have occurred in the context of the University's education program or activity:

1. Sexual Harassment (as defined by Title IX).
  - a. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
  - b. 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;
2. Sexual assault (as defined in the Clery Act). "Sexual assault" includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving affirmative consent. Sexual assault consists of the following specific acts:
  - a. Rape. The penetration, no matter how slight, of the vagina or anus with any body part or

- object, or oral penetration by a sex organ of another person, without the consent of the victim.
  - b. Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
  - c. Incest. Non-forcible sexual intercourse between persons who are related to each other with in the degrees wherein marriage is prohibited by law.
  - d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent.
3. 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 the Complainant's statement with 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. Dating violence does not include acts covered under the definition of domestic violence.
4. Domestic violence (as defined in the VAWA amendments to the Clery Act), meaning felony or misdemeanor crimes of violence committed by a person who: (A) is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the applicable jurisdiction, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.
5. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person on the basis of sex (including gender, sexual orientation, gender identity or gender expression) that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress. For purposes of this definition:
- a. "Course of conduct" means two or more acts, including but not limited to, acts in which the stalker directly, indirectly 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.
  - b. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
  - c. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the person against whom the stalking was committed.

### University Standards Violations

The University prohibits the following behavior. For purpose of University Standards violations, the below conduct is prohibited even if the conduct occurs off-campus, outside the United States, the Complainant is not participating or seeking to participate in the University's education program or activity, or otherwise in circumstances over which the University does not have influence or control, including but not limited to during University academic breaks. The University retains discretion to not respond to, investigate or adjudicate circumstances in which no University interest is implicated.

- i. **Sexual harassment.** "Sexual harassment" means unwelcome, offensive conduct that occurs on the basis of sex, sexual orientation, self-identified or perceived sex, gender, gender expression, gender identity, gender-stereotyping or the status of being transgender, but that does not constitute sexual harassment as a Title IX Category Violation as defined above. Sexual harassment can be verbal, written, visual, electronic or physical.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation. Instead, the determination is based on a "reasonable person" standard and takes into account the totality of the circumstances. The University considers the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the learning community.

ii. **Sexual assault.** “Sexual assault” includes any sexual act directed against another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving affirmative consent, but that does not constitute sexual assault as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the Complainant was not in the United States at the time of the alleged conduct, because the Complainant was not participating in or seeking to participate in the University’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the University’s education program or activity). Sexual assault consists of the following specific acts:

- (a) Rape. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the affirmative consent of the victim.
- (b) Non-Consensual Sexual Contact. Any intentional touching, however slight, for purposes of sexual gratification or with sexual intent, directly or with any object that is without affirmative consent. Acts of non-consensual sexual contact may include but are not limited to intentional contact (directly or over clothing) with another person’s breasts, buttocks, groin, genitals, or inner thigh, mouth, or touching another with any of these body parts, or making another touch oneself or themselves with or on any of these body parts, or any other intentional sexual touching with any object by a person upon another person, without consent.
- (c) Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (d) Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent.

iii. **Dating violence.** “Dating violence” means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on the Complainant’s statement with 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;

but that does not constitute dating violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the Complainant was not in the United States at the time of the alleged conduct, because the Complainant was not participating in or seeking to participate in the University’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the University’s education program or activity). Dating violence does not include acts covered under the definition of domestic violence.

iv. **Domestic violence.** “Domestic violence” means 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 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, if the conduct does not constitute domestic violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the Complainant was not in the United States at the time of the alleged conduct, because the Complainant was not participating in or seeking to participate in the University’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the University’s education program or activity). This definition does not apply to roommates who have not expressed interest in entering into, or who have not entered into, a dating or sexual relationship.

v. **Stalking.** “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress, but that does not constitute stalking as a Title IX Category Violation as defined above because of basis on which it occurs or the context in which it occurs (for example because the Complainant was not in the United States at the time of the alleged conduct, because the Complainant was not participating in or seeking to participate in the University’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the University’s education program or activity). For purposes of this definition:

- a. “Course of conduct” means two or more acts, including but not limited to, acts in which the stalker directly, indirectly 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.

b. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

c. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the person against whom the stalking was committed.

Stalking that does not occur on the basis of sex may be addressed as a University Standards Violation as described below.

vi. **Sexual Exploitation.** Sexual exploitation occurs when, without affirmative consent, a person takes sexual advantage of another in a manner that does not constitute another violation under this Policy. Examples of sexual exploitation include, but are not limited to: prostituting another person; observing or recording (whether by video, still photo, or audio tape) of a sexual or other private activity (such as consensual sexual activity, undressing or showering) when there is a reasonable expectation of privacy during the activity, without the affirmative consent of all involved; taking intimate pictures of another, but then distributing the pictures to others without the photographed person's affirmative consent or beyond the boundaries of consent given; engaging in voyeurism; engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of such infection; exposing one's genitals in non-consensual circumstances or nonconsensual disrobing of another person so as to expose the other person's private body parts; causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity, misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections; or forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.

vii. **Retaliation.** St. Bonaventure University will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, including as necessary for the conduct of any investigation, hearing, or judicial proceeding under this Policy.

Retaliation is an adverse act perpetrated to "get back" at a person because the person reported misconduct under this policy, filed a complaint, or participated in an investigation or proceeding conducted pursuant to this policy by the University or by an external agency in any capacity (e.g., as a Complainant, Respondent or witness), or for the purpose of interfering with any right or privilege under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. A person who acts in good-faith is protected from retaliation. The fact that a statement is not determined to be proven or established following investigation and adjudication does not mean that the statement lacked good-faith; a person may provide inaccurate information believing it is accurate, which is still good-faith. If a person who makes a statement knowing that it is false, the person has acted without good faith.

viii. **Gender-Based Discrimination.** Gender-Based Discrimination includes discrimination on the basis of gender, sexual orientation, gender identity, gender expression or domestic violence victim status in any aspect of employment or access to University curricular, co-curricular or extracurricular educational programs and/or resources, including without limitation:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing or grading;
- use of University facilities;

- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans, and disability leave;
- admissions and recruiting standards and practices;
- financial aid and scholarship awarding policies and practices;
- eligibility for academic programs;
- use of student housing;
- participation in extracurricular student activities; and
- other terms and conditions of employment or the student experience.

This policy does not apply to decisions relating to requests for reasonable accommodation due to a disability. Student disability accommodations are handled by the Office of Accessibility Services & Accommodations and pursuant to that office's policies. Work-related disability accommodations are handled by the Human Resources Office and pursuant to that office's policies.

ix. **Other Misconduct Offenses.** The following Other Misconduct Offenses will be addressed under this policy when based on gender, gender identity, gender expression, sexual orientation, or domestic violence victim status:

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of another person;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing (see Hazing Policy of the St. Bonaventure University Student Code of Conduct for definition); and
- Bullying, defined as repeated and or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or emotionally.

### **Additional Applicable Definitions**

#### **Advisor of Choice**

An advisor of choice is a person selected by the Complainant or Respondent to advise and accompany the Complainant or Respondent throughout the investigation and adjudication process. An advisor of choice may be any person, including an attorney. The University does not appoint or pay for an advisor of choice. An advisor of choice's role is limited to the functions further described in this policy.

#### **Affirmative Consent**

Affirmative consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. Whenever the word "consent" is used in this policy, it should be understood to mean affirmative consent as defined here.

The following conditions apply to the term "consent" according to the University:

1. Silence, lack of physical resistance, and/or the absence of a verbal "no", are not forms of consent.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. In other words, it is not an excuse that the person initiating the act was intoxicated or incapacitated due to alcohol or other drugs.
3. Consent can be initially given but withdrawn at any time.
4. When consent is withdrawn or can no longer be given, sexual activity must stop. Once a person says "no," it is established that he or she is not giving consent to a sexual act. However, the absence of a verbal "no" does not constitute consent. Any activity or further encouragement beyond that point could be construed as force, coercion or intimidation.
5. A current or previous dating relationship is not sufficient to constitute consent. Further, past consent to engage in sexual activity with any person cannot be presumed to be consent to sexual activity in the future with the same or a different person. A sexual act must be mutually agreed upon each time it occurs.
6. Consent to one sexual act does not indicate consent to other sexual acts.
7. Consent cannot be given if a person is incapacitated (see definition of "incapacitation"). Sexual activity with

someone whom one should know to be – or based on the circumstances should reasonably have known to be – incapacitated (for example, by disability, sleep, involuntary restraint, or the taking of drugs or alcohol, unconsciousness or blackout) constitutes a violation of this policy.

8 . Consent cannot be given under coercion, force, or threat of physical harm or injury.

9. Consent cannot be given if someone is under the legal age of consent. In New York State, a minor (meaning a person under the age of 17 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 17 years old is a crime as well as a violation of this policy, even if the minor wanted to engage in the act.

### **Coercion**

Coercion is the use of pressure to compel someone to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they deprive another individual of the 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, and threatening to harm oneself if the other party does not engage in the sexual activity. Coercing an individual into engaging in sexual activity violates this Policy in the same way as physically forcing someone into engaging in sexual activity.

### **Complainant**

The term Complainant refers to the person who allegedly experienced the sexual misconduct in violation of the policy. In some cases, the Title IX Coordinator may file a Formal Complaint and thereby initiate an investigation and adjudication process pursuant to this policy. In that instance, the Title IX Coordinator is not the “Complainant”; the Complainant remains the person who allegedly experienced the sexual misconduct.

### **Community Member**

A community member is any person who is enrolled at the University, works for the University, or volunteers for the University.

### **Education Program or Activity**

For the purposes of this Policy, St. Bonaventure University’s “education program or activity” includes locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the conduct at issue is alleged to have occurred, including:

- Any on-campus premises and any building owned or controlled by a student organization that is officially recognized by the University.
- Any off-campus premises that the university has substantial control over.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of St. Bonaventure University’s programs and activities over which the university has substantial control.

### **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 filing the formal complaint, or signed by the Title IX Coordinator, alleging a Title IX Category Violation or University Standards Violation, as defined in this policy, against a Respondent and requesting initiation of the procedures consistent with this policy to investigate the alleged violation(s). A Formal Complaint may be filed with Title IX Coordinator in person, by mail, or by electronic mail by using the contact information provided in this policy. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflict of interest and bias.

### **Force**

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. It includes threats and/or intimidation (implied threats) that overcome resistance or produce purported (but ineffective) consent. It also includes rendering someone incapacitated by administering alcohol or any other drug. NOTE: There is no requirement that a party resists a sexual advance or request, but resistance is a clear demonstration of non-consent. Sexual activity that is forced is by definition non-consensual, but non- consensual sexual activity is not by definition forced.

### **Incapacitation**

Incapacitation is a state where someone lacks the ability to knowingly choose to participate in a specific activity. Incapacitation can result from disability, sleep, lack of consciousness, involuntary restraint, or other factors that prevent voluntary choice. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and therefore unable to consent, but consumption of such substances alone is insufficient to establish incapacitation. In assessing capacity, the University will consider whether the individual had the ability to understand the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or was physically helpless. Possession, use and/or distribution of any of the so-called “date rape” drugs (including Rohypnol, Ketamine, GHB, Burundanga and others) is prohibited, and administering any of these drugs to another and engaging in sexual activity with that person is a violation of this policy.

### **Institution Advisor**

A Complainant or Respondent who does not opt to be accompanied by an advisor of choice at a hearing is entitled to be appointed an advisor by the University at no charge to the party. This advisor is referred to an “institution advisor.” An institution advisor’s primary role is to ask cross-examination questions of the other party during a hearing. An institution advisor does not represent a party in any legal sense. Except for respective questions permitted below, the institution advisor doesn’t advocate or participate in the hearing. Their role is to support and advise the party. The party is responsible for formulating the cross-examination questions the institution advisor will pose during the hearing.

### **Non-Community Member**

A non-community member is any person who is not enrolled at the University, does not work at the University, and does not volunteer for the University. This may include, but is not limited to, a student from another institution, a parent, a visitor to the campus, an employee at a local business, or any member of the public.

### **Privacy vs. Confidentiality**

References made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or University officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean 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, who is responsible for tracking patterns and spotting systemic issues. The University will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### **Relevant Evidence and Questions**

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation 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 Grievance Process:

- Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

### **Reporting Party**

The term Reporting Party refers to the person who made the report. This may or may not be the same as the Complainant, a witness, or a bystander.

### **Respondent**

The term Respondent refers to the person alleged to have committed a violation of this policy. The term “accused” may be used in this policy to refer to the Respondent prior to the time that a Formal Complaint has been made.

### **Sexual Misconduct**

Sexual misconduct is an umbrella term used in this policy to more conveniently refer to any form of conduct prohibited by this policy.

## **Non-Investigatory Measures Available Under the Policy**

### **Supportive Measures**

It is not necessary for a Formal Complaint or report to be made to receive resources or supportive measures. Certain resources and supportive measures may be made available by the Title IX Coordinator, or appropriate designee, in an effort to protect the safety and/or well-being of any member(s) of the campus community. The University Victim Advocate (representative from Connecting Communities in Action Victim Services) can also assist in obtaining supportive measures. Any person needing resources or supportive measures should request them from the Title IX Coordinator or listed Responsible Administrator. The University will maintain as confidential any resources or supportive measures provided, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the resources or protective measures. Supportive measures are intended to address the immediate and ongoing effects of harassment, discrimination, sexual assault, sexual exploitation, dating or domestic violence, stalking or retaliation, or to prevent further harm to a party and to prevent further violations. Supportive measures are non-disciplinary and non-punitive. Supportive measures could include, but are not limited to:

- counseling
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- mutual restrictions, and in certain circumstances one-directional restrictions, on contact between the parties (no contact orders – see below)
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the campus

When supportive measures are issued, affected students have the right to request review of them by an appropriate University Official, appointed by the Title IX Coordinator, or appropriate designee, to reconsider the need for and/or terms of the supportive measures. In addition, if a party's request for a supportive measure is denied, the party will be afforded an opportunity to have the denial promptly reviewed by such a University Official to assess whether the supportive measure is reasonable under the circumstances. The request for review of the denial of, or the need for or details of, supportive measures should be made to the Title IX Coordinator and may be made at any time. Each party will be allowed to submit evidence in support of, or in opposition to, the request to the extent the supportive measures under review affect that party. The University Official's determination is not subject to further review absent changed circumstances.

A written summary of rights, options, supports, and procedures, is provided to all reporting parties and Respondents, whether they are students, employees, guests, or visitors. All reporting parties, Complainants and Respondents receive the following:

- written notification about existing counseling, health, mental health, advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available, both within the institution and in the community;
- written notification about available options for, assistance in, and how to request changes to academic, living, transportation and working situations or protective measures; and
- written explanation of the student or employee's rights and options under this Policy.

### **No Contact Orders**

A no contact order defines specific restrictions on contact between the parties. A no contact order can forbid both direct and indirect contact between the involved parties. Indirect contact includes electronic communication and messages sent via other people. It does not require a party to refrain from attending an event (such as an athletic contest, a campus speaker presentation, etc.) in circumstances where simultaneous attendance can occur without prohibited interaction, for example because the parties are not in close proximity to one another.

### **Orders of Protection**

The Associate Dean for Campus Safety or designee will, upon request, provide reasonable assistance to any member of the campus community in obtaining an order of protection or, if outside of New York State, an equivalent protective or restraining order. The Associate Dean or designee will, additionally:

- provide a copy of an order of protection or equivalent to affected parties when received by the University and provide an opportunity to meet or speak with a University representative, or other appropriate individual, who

can explain the order and answer questions about it, including information from the order about the other person's responsibility to stay away from the protected person or persons;

- provide an explanation of the potential consequences for violating these orders, including but not limited to arrest, additional conduct charges, and emergency removal; and
- provide assistance in contacting local law enforcement to effect an arrest for violating such an order.

### **Emergency Removal**

St. Bonaventure University retains the authority to remove a student Respondent from its program or activity on an emergency basis, where the university (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 violations under this policy justifies a removal.

If the university determines such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. The challenge shall be submitted to and decided on by Title IX Coordinator.

The emergency removal process does not apply to employee Respondents. St. Bonaventure University retains the authority to place a non-student employee Respondent on administrative leave during the grievance process outlined in this policy, consistent with any Staff Handbook or Faculty Status and Welfare Handbook.

### **Confidentiality, Access to Resources and Reporting of Offenses**

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. The University offers a number of confidential and non-confidential resources and reporting options for violations of the Gender-Based Discrimination and Sexual Misconduct policy, which include but are not limited to violations of Sexual Assault, Dating or Domestic Violence, and Stalking.

Certain University employees are considered "confidential" resources. As described below, confidential resources generally will not share information about an individual without the individual's express written permission.

Other employees at the University are non-confidential resources. Some of these employees are required to share information you report with other officials at the institution so the University may take steps to offer resources and supportive measures, and/or prevent the recurrence of gender-based discrimination or sexual misconduct. If you are unsure of an individual's reporting obligations, please ask before disclosing any information you wish to remain confidential.

Even University offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution, or for the Associate Dean for Campus Safety to report statistical information about Clery reportable crimes.

### **Confidential Assistance and Resources**

Confidential disclosure is defined as seeking resources and/or assistance without personally identifiable information about the disclosure being shared with anyone else. If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with counselors in the Center for Student Wellness, clergy within the University acting in their role as clergy (friars or sisters), and/or off-campus resources such as Connecting Communities in Action Victim's Services or Olean General Hospital. All of these resources will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Confidential resources that are University employees will not submit anonymous statistical information for Clery Act purposes.

Quick Reference Contact Information for Confidential Resources:

- **New York State Domestic and Sexual Violence Hotline**-1-800-942-6906
- **University Center for Student Wellness**: 122 Doyle Hall (first floor right side entrance)- 716-375-2310
- **Olean General Hospital Sexual Assault Forensic Examiner (SAFE) Unit**: Report to the OGH Emergency Room- 716-372-0614
- **Connecting Communities in Action**- Victim Services: Toll Free Crisis Hotline- 1-888-945-3970

- **New York State Police 24 Hour Hotline-** 1-844-845-7269 (for reporting to law enforcement, know that your report may not be confidential, but law enforcement is not obligated to share any information with the University)

### **Non-Confidential Resources and Reporting Options**

University employees other than confidential resources may share reports of gender-based discrimination or sexual misconduct with the Title IX Coordinator or Responsible Administrator (and some of them are required to share reports as described below), so that the University may take steps to offer resources and supportive measures and/or prevent the recurrence of misconduct. Non-Confidential officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy.

### **Making a Report to the University (Title IX Coordinator)**

Any person may report sex discrimination or sexual misconduct (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual misconduct), 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: Katie O'Brien  
 Title: Vice President for Student Affairs/Interim Title IX Coordinator  
 Office Address: Reilly Center, Room 205  
 Email Address: [kobrien@sbu.edu](mailto:kobrien@sbu.edu)  
 Telephone Number: 716-375-2011

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.

### **Responsible Administrators**

Should a person want to report an incident of gender-based discrimination or sexual misconduct, they may also report to one of the "Responsible Administrators" listed below. Responsible Administrators have authority to take corrective action on behalf of the University, and will ensure the reporting party has all of their resources and reporting options. Responsible Administrators are required to share all information, including personally identifiable information, with the Title IX Coordinator. Responsible Administrators will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy. *A reporting party who wants to ensure that information is brought to the attention of the proper University officials and that they receive information about available resources and reporting options is strongly encouraged to contact the Title IX Coordinator or another Responsible Administrator listed below.*

Responsible Administrators:

- Interim Title IX Coordinator/Vice President for Student Affairs
  - Kathryn O'Brien-Phone:716.375.2011 or Email: [kobrien@sbu.edu](mailto:kobrien@sbu.edu)
- Deputy Title IX/Student Affairs Compliance Coordinator
  - Haylie Scheer-Phone: 716.375.2109 or Email: [hscheer@sbu.edu](mailto:hscheer@sbu.edu)
- Associate Dean for Campus Safety
  - Gary Segrue-Phone: 716.375.2526 or Email: [gsegrue@sbu.edu](mailto:gsegrue@sbu.edu)
- Associate Dean for Student Life
  - Rob DeFazio-Phone: 716.375.2190 or Email: [RDEFazio@sbu.edu](mailto:RDEFazio@sbu.edu)
- Accessibility Services and Accommodations Director (*formerly Disability Support Services*)
  - Adriane Spencer-Phone: 716.375.2065 or Email: [aspencer@sbu.edu](mailto:aspencer@sbu.edu)
- Chair of the Council on Discrimination and Harassment
  - Dr. Russell Woodruff-Phone: 716.375.2470 or Email: [WOODRUFF@sbu.edu](mailto:WOODRUFF@sbu.edu)
- Deputy Director of Athletics
  - Ryan Clingan-Phone: 716.375.2249 or Email: [rclingan@sbu.edu](mailto:rclingan@sbu.edu)

### **Other Mandatory Reporters**

The following University employees do not have independent authority to implement corrective measures on behalf of the University; however, they are required by University policy to share with the Title IX Coordinator all information,

including personally identifiable information, provided to them regarding potential violations of this policy.

- Dean of the School of Arts & Sciences
- Dean of the School of Education
- Dean of the School of Business
- Dean of the Jandoli School of Communication
- Dean of the School of Health Professions
- Dean of the School of Graduate Studies
- Employees of the Department of Athletics
- Officially Appointed Faculty or Staff Advisors of Recognized Clubs or Other Student Organizations
- Resident Directors
- Resident Advisors

### **Amnesty**

The health and safety of every student at St. Bonaventure University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs, (whether such 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 such incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report Domestic Violence, Dating Violence, Stalking or Sexual Assault to University officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of Domestic Violence, Dating Violence, Stalking or Sexual Assault to University officials or law enforcement will not be subject to the University's Student Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the Domestic Violence, Dating Violence, Stalking, or Sexual Assault.

During the COVID-19 pandemic, a bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of Domestic Violence, Dating Violence, Stalking or Sexual Assault to University officials or law enforcement will not be subject to the University's Student Code of Conduct action for violations of the Community Compact occurring at or near the time of the commission of the Domestic Violence, Dating Violence, Stalking, or Sexual Assault.

### **Campus Security Authorities**

The Jeanne Clery Act mandates that certain crimes are reported for inclusion in the annual security report. In an effort to achieve the most accurate statistics possible, the Jeanne Clery Act has identified Campus Security Authorities as mandated reporters. Campus Security Authority is a Clery specific term that encompasses four groups of individuals:

- A campus police or security department
- Any individual(s) who have responsibility for campus security, but do not constitute a campus police or security department
- Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses
- An official of an institution who has significant responsibility for student and campus activities, including but not limited to, student housing, student discipline and campus judicial proceedings

CSAs must report information about any Clery reportable crime, including Sexual Assault, Dating or Domestic Violence, and Stalking, to the Associate Dean for Campus Safety. They are required to report non-personally identifiable information (nature, date, time, general location, current disposition). CSAs will generally be able to honor a reporting party's request to anonymously report an incident. In compliance with the Clery Act, the University will complete publicly available record keeping, including Clery Act reporting and disclosures, excluding any personally identifying information. A full list of CSAs can be found in the Office of Safety & Security.

### **How Decisions about Confidentiality and Taking Action are Handled**

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases involving alleged or apparent pattern, predation, physical threat, weapons, and/or violence, the University will likely be unable to honor a request for confidentiality or anonymity. If the University determines that it must proceed with an investigation, the reporting party can choose whether they are going to be part of it. The burden of investigation,

disciplinary charges, and consequences is not on the reporting party, but instead rests with the University. In cases where the reporting party requests confidentiality or anonymity, and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action.

### **Medical Attention and the Importance of Preserving Evidence**

For your safety and well-being, immediate medical attention is encouraged. The preservation of evidence relating to sexual violence (including sexual assault) is essential for both law enforcement investigations and campus investigations. All involved parties are encouraged to preserve all evidence relating to the incident. In most cases, DNA evidence needs to be collected within 72 hours in order to be analyzed by a crime lab—but a sexual assault forensic exam can reveal other forms of evidence beyond this time frame that can be useful if you decide to report. Place your belongings, including the clothes you were wearing, in a **paper bag** to safely preserve evidence. Physical evidence should also be collected through a medical examination. Olean General Hospital has a Sexual Assault Forensic Examiner program, designed specifically to conduct physical examinations after an incident of sexual violence, and evidence is collected during this examination. Having this examination does not commit a person to pursuing legal charges against an individual. However, failure to have an accurate examination to collect physical evidence in a timely manner may negatively affect a person's ability to pursue legal charges in the future. Victim Advocates from Connecting Communities in Action Victim Services can explain options for victims to be reimbursed for medical examinations. Even after the immediate crisis has passed, consider seeking support from the University's Health and Wellness Center, or from Victim's Services of Connecting Communities in Action. Other examples of relevant evidence that should be preserved include electronic communications (e.g., e-mails, Twitter, Instagram and text messages), photographs, clothing, bedding, and medical information.

**Olean General Hospital Sexual Assault Forensic Examiner (SAFE) Unit:  
Report to the OGH Emergency Room- 716-372-0614**

### **Law Enforcement**

It is the policy of St. Bonaventure University to notify law enforcement when allegations of felony sexual misconduct occur, typically without providing identifying information about the incident, unless a victim wishes that information to be shared, or an emergency requires disclosure. A victim of a crime is encouraged to, but is not required to, report the incident to law enforcement authorities and pursue criminal charges. The criminal process and the University's disciplinary processes are not mutually exclusive or dependent on each other, meaning that a person may pursue either a criminal complaint, a University complaint, both, or neither. Victims have the option to notify law enforcement directly, or to be assisted in doing so by campus authorities. If requested, campus officials can facilitate reporting to campus or law enforcement, but may also respect a victim's request not to do so.

- **New York State Police 24-Hour Hotline** – 1-844-845-7269 (for reporting to law enforcement, know that your report may not be confidential, but law enforcement is not obligated to share information with the University)
- **Cattaraugus County Sherriff's Department** – 716-938-9191
- **Allegany Police Department** – 716-373-0873
- **911** – Calling 911 is always an option in reporting incidents of sexual assault, domestic/dating violence, and/or stalking. The most appropriate first available law enforcement agency will respond.

### **Discrimination and Misconduct Officials**

Discrimination and misconduct officials are investigators, Hearing Panel members, Appeals Panel members and individuals who facilitate any informal resolution policy and are involved in investigating and adjudicating alleged violations under this policy. Discrimination and Misconduct Officials, and the Title IX Coordinator, will be individuals who receive annual training and participate in ongoing development on issues related to gender-based discrimination, sexual harassment, domestic violence, dating violence, sexual assault, stalking and other forms of sexual misconduct. They will also receive training on the definition of sexual harassment, scope of the university's education program or activity, how to conduct an investigation and grievance process, how to serve impartially, including avoiding pre-judgement of the facts at issue, conflicts of interest, and bias, the effects of trauma, and the rights of the Respondent, including the right to a presumption that the Respondent is "not responsible" until a finding of responsibility is made pursuant to this policy. Decision-makers must also receive training on any technology to be used at live hearings. Panel members and investigators must also receive training on issues of relevance, including how to apply the rape shield protection provided for Complainants. All materials used to train Discrimination and Misconduct Officials for these purposes will be posted on the university website.

Any Discrimination and Misconduct Official assigned to a case shall not have been a party to the case, nor a witness to the case, nor the current faculty advisor to any party in the case, nor a current instructor to or supervisor of any party in the case, nor have any familial relation, professional relationship or close friendship to any party or witness to the case, nor otherwise have any actual or perceived conflict of interest or bias that may give the perception of a lack of ability to fairly perform their role under this policy in connection with the case. If assigned as a Hearing Panel member or Appeals Panel member, they shall not have been an investigator on the case. Any potential conflict of interest or bias shall be disclosed by the affected Discrimination and Misconduct Official as soon as practicable; similarly, any Complainant or Respondent who objects to the participation of a Discrimination and Misconduct Official based upon a conflict of interest or bias shall identify the conflict of interest or bias as soon as practicable. Any conflicts of interest should be reported to the Title IX Coordinator, and the Title IX Coordinator will make the determination as to whether recusal is warranted, and if so, will appoint a non-conflicted replacement. If a party believes the Title IX Coordinator to have a conflict of interest or bias, it should be reported to the Vice President for Finance and Administration, who will make this determination.

### **Delegation of Authority, University Counsel and Use of External Resources**

Any University administrator or official whom this Policy empowers to act may request that the Title IX Coordinator delegate that authority to another appropriate University official, or the Title IX Coordinator in his or her own discretion may delegate that administrator's or official's authority to act to another appropriate person. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a University official named in this Policy from fulfilling his/her designated role.

The Title IX Coordinator may delegate his or her responsibilities and/or authorities under this policy to any other appropriate official.

The University may also utilize appropriately trained personnel for any role under this policy as it may deem necessary or appropriate.

Any University administrator or official involved in implementing this policy may seek the advice of the University's legal counsel, to be coordinated through the Title IX Coordinator.

### **The Grievance Process**

St. Bonaventure University strongly encourages any individual who has been subjected to gender-based discrimination or sexual misconduct, including but not limited to sexual assault, dating or domestic violence, and/or stalking to report the misconduct to University officials and/or law enforcement. The proceedings under this policy will be prompt, fair and impartial from the initial investigation to final result.

### **Filing a Formal Complaint**

The timeframe for the grievance process under this policy begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, typically no longer than one hundred and twenty (120) business days after the filing of the Formal Complaint, provided that the process may be extended with notification to the parties for good reason, including but not limited to the absence of party, a party's advisor, or a witness; concurrent law enforcement activity; breaks in the academic schedule; or the extensions described below. Both parties will be notified simultaneously if the University determines the Grievance Process cannot be concluded within one hundred and twenty (120) business days. The notification will outline the reasons for extension.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. St. Bonaventure University will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further but will receive all notices issued under this Policy.

Nothing in this Policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

### **Informal Resolution**

A Complainant who files a Formal Complaint may elect, at any time, to address the matter through the Informal

Resolution Process. Informal resolution processes can only be used when both parties and the Title IX Coordinator, or designee, agree informal resolution is an appropriate option to resolve the Formal Complaint. Informal resolution can never be used to resolve allegations that an employee sexually harassed a student. All Parties to a Formal Complaint must agree to enter the informal resolution process through an informed written consent. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume (or commence) the grievance process with respect to a Formal Complaint.

#### *Voluntary Informal Resolution Process*

A complainant who files a Formal Complaint may request, at any time, to address the matter through the Informal Resolution Process. Informal resolution processes can only be used when both parties and the Title IX Coordinator, or designee, agree informal resolution is an appropriate option to resolve the Formal Complaint. Factors that the Title IX Coordinator, or designee, may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the respondent is a repeat offender, and whether the parties are participating in good faith. This determination is not subject to appeal. No party should feel intimidated, coerced or threatened to participate in an informal resolution process, and the Title IX Coordinator or designee will not authorize use of the informal resolution process where there is reason to believe that a party's consent to use the process is not truly voluntary.

An Informal Resolution Process is a voluntary process in which a trained facilitator assists the parties in resolving the allegations made by a complainant. One objective of informal resolution is to provide to the parties an opportunity to understand each other's concerns and address them as collaboratively and usefully for the parties as possible, with the assistance of the facilitator.

The intent of an Informal Resolution Process is for the parties to undertake a facilitated discussion regarding the matters at issue related to the allegations to see if they can reach agreement on a resolution that leaves both parties feeling satisfied with that resolution.

Informal resolution can never be used to resolve allegations that an employee sexually harassed a student. The Informal Resolution Process is also not available in a complaint involving more than two parties unless (1) all parties consent to use the Informal Resolution Process, (2) there is an understanding among all parties about what happens when the right of any party to stop the Informal Resolution Process and return or proceed to the formal grievance and hearing process is invoked, and (3) there is an understanding among all parties about whether some parties, but not all, can agree to a resolution.

Supportive measures are available to both parties in the same manner as they would be if the Formal Complaint were proceeding under the formal grievance and hearing process.

The Title IX Coordinator, or designee, will offer the Informal Resolution Process to the parties after a Formal Complaint is filed by a complainant. The Title IX Coordinator, or designee, and both parties must consent to use the Informal Resolution Process. At any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution Process and resume (or commence) the grievance process with respect to a Formal Complaint. In some instances, the facilitator in the Informal Resolution Process may terminate the process as well if the facilitator believes at any point in the Informal Resolution Process that one party is not behaving in a way that allows for a productive resolution between the parties. In such circumstances, the University will have discretion to require that the Informal Resolution Process be cancelled and the complainant will return to the formal grievance and hearing process.

All Parties to a Formal Complaint must agree to enter the informal resolution process through an informed written consent. A written notice will be given to both parties before entering an Informal Resolution Process, and both parties must consent to the process in writing. No party should feel intimidated, coerced or threatened to participate in an Informal Resolution Process, or to withdraw from an Informal Resolution Process.

If both parties consent to participate in the Informal Resolution process, the University will assign a facilitator who will act in an independent, impartial manner to facilitate a resolution between the parties. The facilitator will be trained on how to perform the role. All facilitators must have training in the definition of sexual harassment, the scope of the University's education program or activity, how to conduct informal resolutions processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue. The facilitator will also be screened to ensure that such person is free from conflicts of interest and bias.

During the Informal Resolution Process, a facilitator will guide a discussion between the parties. In circumstances where the parties do not wish to meet face to face, either party can request a “caucus” process, and the facilitator will conduct separate meetings and may “shuttle” between the parties.

For the Informal Resolution Process to have the best chance for success, the parties should be free to express themselves. As a result, the information received from both parties during the Informal Resolution Process will be kept confidential by the facilitator. In addition, the facilitator will not be available as a witness in any hearing that may occur should either party terminate the Informal Resolution Process before a resolution. This is in keeping with the concept that the facilitator is impartial and is only facilitating the interaction between the two parties and is not listening or taking notes for any purpose other than assisting the parties. Should the Formal Complaint be returned to the formal grievance and hearing process of this policy, the parties may not disclose information shared by the other party during the process in the hearing. This confidentiality protection does not apply to information that is learned outside the Informal Resolution Process through the investigation or otherwise.

A resolution is reached only if both parties agree. The facilitator will not impose an outcome, although they may assist the parties in suggesting resolutions that appear to meet the parties’ needs. If there is no agreement on a resolution, the complaint is returned to the formal grievance and hearing process outlined in this policy. A party may terminate the informal process at any time before the final written resolution is signed.

The facilitator will draft a document reflecting the agreement between the parties that becomes final once it is signed by both parties. This written and signed resolution indicates that the complaint has been resolved under this policy without the need for further investigation or to pursue the formal grievance and hearing process.

After a written resolution has been finalized, the University will keep a record of the parties’ written consent to the Informal Resolution Process and the written resolution. An Informal Resolution is a final resolution of the matter. In unusual circumstances, the University may decline to accept the parties’ Informal Resolution, in which case the formal grievance and hearing process will commence or resume.

### **Multi-Party Situations**

The University may consolidate Formal Complaints alleging Title IX Category Violations or University Standards Violations against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX Category Violations or University Standards Violations arise out of the same facts or circumstances.

### **Mandatory and Discretionary Dismissal**

In order to comply with Title IX regulations, the Title IX Coordinator must “dismiss” allegations of Title IX Category Violation(s) alleged in a Formal Complaint if, at any time following receipt of the Formal Complaint, it is apparent that the allegations are not within the scope of Title IX, including that the conduct alleged (1) would not constitute sexual harassment, sexual assault, dating violence, domestic violence or stalking as defined as Title IX Category Violations even if proved, (2) did not occur in the University’s education program or activity, or (3) did not occur against a person in the United States. Even if allegations of Title IX Category Violations are subject to dismissal, the University may continue to process the allegations as University Standards Violations if the allegations, if true, would constitute University Standards violations.

The Title IX Coordinator also may (but is not necessarily required to) dismiss a Formal Complaint brought under this policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer enrolled or employed by St. Bonaventure University; or,
- Specific circumstances prevent the university from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below

### **Notice of Allegations and Investigation**

Where a Formal Complaint has been filed, and in the absence of an informal resolution, the Title IX Coordinator will draft and provide the Notice of Allegations and Investigation to the parties. The parties will be notified by their University email accounts if they are a student or employee, and by other reasonable means if they are neither. The University will provide sufficient time for the parties to review the Notice of Allegations and Investigation and prepare a response before any initial interview.

### **Contents of Notice**

The Notice of Allegations and Investigation will include the following:

- Notice of the University's Gender-Based Discrimination and Sexual Misconduct Policy and Informal Resolution Process and a hyperlink to a copy of the processes.
- To the extent known, the identities of the involved parties; the date, time, location and factual allegations concerning the alleged violation; the policy provisions allegedly violated; a description of the investigation and adjudication process; and potential sanctions;
- 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 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, in accordance with this policy;
- A statement that as defined in the Student Code of Conduct (*if applicable*) the University's prohibition on Dishonest Behavior prohibits knowingly making false statements or knowingly submitting false information in the course of a judicial/grievance process, including but not limited to, an investigation, hearing, appeal or informal resolution process; and
- A statement about the University's policy on retaliation.

### **Ongoing Notice**

If, in the course of an investigation, the institution decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and Investigation and are otherwise covered within this Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts 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 allegations.

### **Advisor of Choice and Participation of Advisor of Choice**

The Complainant and Respondent have a right to be accompanied by an advisor of their choice, who may be an attorney, as described below. Any restrictions on advisor participation will be applied equally.

The university has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the university.

St. Bonaventure University will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all participating 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.

The university's obligations to investigate and adjudicate in a prompt timeframe apply to matters governed under this Policy, and the university cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. 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 of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one

provided by the university.

### **Notice of Meetings and Interviews**

St. Bonaventure 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.

### **Delays**

Each party may request a delay in the Grievance Process for 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.

### **Investigation**

#### **General Rules of Investigations**

Where a Formal Complaint has been filed, and in the absence of an informal resolution, the University will appoint an investigator to conduct an investigation into the allegations in the Formal Complaint. The University may appoint any qualified investigator, who may be a person internal or external to the University. The University also may appoint more than one investigator in the University's sole discretion. The investigation is an impartial fact-finding process. The Complainant and Respondent will be provided with notice of the name of the appointed investigator in the Notice of Allegations and an opportunity of not more than three (3) days after the notice to raise an objection to the investigator based on any alleged conflict of interest known to the party. If an objection is raised, the Title IX Coordinator will determine whether a conflict of interest in fact exists and necessitates the replacement of the investigator.

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the investigator elects to audio and/or video record interviews, all involved parties involved in the meeting will be made aware that audio and/or video recording is occurring.

The University's investigation may be temporarily delayed where there is a concurrent law enforcement investigation if necessary to avoid interference with the law enforcement investigation; such a delay will not exceed ten (10) days unless a longer time period is requested and justified by the law enforcement agency.

St. Bonaventure University, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing whether 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 St. Bonaventure University and does not, in and of itself, indicate whether there is responsibility.

St. Bonaventure University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include medical information. St. Bonaventure 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.

The University does not appoint an advisor for a party during the investigation phase of the process.

#### **Inspection and Review of Evidence**

Prior to the completion of the investigation, at a time designated by the Title IX Coordinator, the parties will have an equal opportunity to inspect and review evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will include any evidence that is directly related to the allegations raised in the Formal Complaint, even if that evidence does not end up being relied upon by the University in making a determination regarding responsibility, subject to redaction permitted and/or required by law. All parties must submit any evidence they would like the investigator(s) to consider prior to when the parties' time to inspect and review evidence begins.

The institution will make the evidence available for each party and each party's advisor, if any, to inspect and review (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform). The Institution is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) business days to inspect and review the evidence and, if desired submit a written response by email to the investigator. Based on the parties' written responses the investigator(s) will determine if additional investigation is necessary (and, if so, will complete any additional investigative steps), and will incorporate relevant elements of the responses and any additional relevant evidence into the report.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

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 grievance process outlined in the policy. The parties and their advisors agree not to photograph or otherwise copy the evidence.

### **Investigative Report**

The investigator(s) will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the Title IX Coordinator. At least ten (10) business days prior to a hearing to determine whether there is responsibility for the allegations, the Complainant and Respondent, and each party's advisor, if any, will be provided access to a copy of the investigative report, which may be sent in hard copy or electronic format or made available through an electronic file sharing platform, for each party's review and (if desired) written response. Both parties have the right to review any written response submitted by the other party. 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 and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

### **Hearing**

#### **General**

St. Bonaventure University will not issue a disciplinary sanction arising from an allegation of a conduct violation under this Policy without holding a live hearing, unless otherwise resolved through an informal resolution process. A hearing before a 3-member Hearing Panel designated by the Title IX Coordinator will be convened not less than ten days after the parties have been provided access to the final investigative report, for the purpose of determining whether the Respondent is responsible or not responsible for the charge(s).

The Title IX Coordinator will notify the parties in writing of the date, time, and location of the hearing, the names of the Hearing Panel members, and how to challenge participation by any Hearing Panel member for bias or conflict of interest. Hearings are private, and the only individuals permitted to participate in the hearing are indicated below. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title IX Coordinator for purposes such as accommodation of a disability. Cell phones and recording devices may not be used by the parties or their advisors in the hearing room(s).

Hearings may be conducted with all parties physically present in the same location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling the Hearing Panel and the parties to simultaneously see and hear any party or witness providing information or answering questions. If either party so requests, the hearing will be conducted with the parties located in separate rooms using technology as described in the preceding sentence.

All proceedings will be recorded through audio or audio-visual recording. That recording will be made available to the parties as outlined in this policy.

The Title IX Coordinator may postpone the hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances. If so, the Title IX

Coordinator will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### **Participants in the Live Hearing**

Participants in the hearing will include the members of the Hearing Panel, the Complainant and the Respondent (the Parties), their respective advisors, the investigator(s) who conducted the investigation, and witnesses (solely during their own testimony).

#### *Hearing Panel Members*

No member of the Hearing Panel will also have served as the Title IX Coordinator, investigator, or advisor to any party in the case, nor may any member of the Hearing Panel serve on the appeals body in the case. No member of the Hearing Panel will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case. The Hearing Panel will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing. 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. The Hearing Panel members may be members of the campus community or may be external to the University, as determined by the Title IX Coordinator.

The Hearing Panel may be advised by and/or consult with the University's legal counsel as the Chair of the Hearing Panel deems necessary or appropriate.

#### *Complainant and Respondent (the Parties)*

The parties cannot waive the right to a live hearing. 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 that does not constitute a "statement" by that party. The university will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. If a party does not submit to questioning by a party's advisor at the hearing, the Hearing Panel may nevertheless rely on statements of that party, during the hearing or otherwise, in reaching a determination regarding responsibility, but may also determine what significance to afford those statements in view of the lack of cross examination (for example, the Hearing Panel may determine whether the statements are sufficiently reliable in the absence of cross examination). The Hearing Panel will not, however, draw an inference as to responsibility based solely on a party's absence from the hearing or refusal to answer questions posed by the other party's advisor. The parties shall be subject to the Rules of Decorum outlined below

#### *Advisors*

The Complainant and the Respondent may each have present with them during the hearing an advisor of their choice (at the party's expense, if the advisor is a paid advisor). The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. If a party does not have an advisor present at the hearing, the University will provide, without fee or charge to that party, an advisor of the University's choice for the limited purpose of conducting questioning on behalf of that party as provided in this Policy.

Except with respect to questioning as described below, the advisor's role is limited to consulting with their advisee, and the advisor may not present evidence, address the Hearing Panel during the hearing, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet nondisruptive manner or in writing. The advisor may consult with the advisee verbally outside the hearing during breaks, when such breaks are granted by the Chair of the Hearing Panel.

An advisor's questioning of the other party and any witnesses must be conducted in accordance with the Rules of Decorum outlined below. If the Chair determines that an advisor is not adhering to those rules or other ground rules, the advisor may be required to leave the hearing, and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the University will assign an advisor of the University's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below.

The advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case. 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 on their behalf. If neither a party nor their advisor appear at the hearing, the University will provide an advisor to appear on behalf of the non-appearing party.

Witnesses are not permitted to bring an advisor or other person to the hearing, absent an approved disability accommodation.

#### *Witnesses*

Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. If a witness does not submit to questioning by a party's advisor at the hearing, the Hearing Panel may nevertheless rely on statements of that witness, during the hearing or otherwise, in reaching a determination regarding responsibility, but may also determine what significance to afford those statements in view of the lack of cross examination (for example, the Hearing Panel may determine whether the statements are sufficiently reliable in the absence of cross examination). The Hearing Panel will not, however, draw an inference as to responsibility based solely on a witness's absence from the hearing or refusal to answer questions posed by the other party's advisor.

#### **Rules of Decorum**

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the Complainant and Respondent) and advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
5. The advisor may not yell, scream, badger, or physically "lean in" to a party or witness's personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Hearing Panel Chair.
6. The advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the Hearing Panel or the advisor in cross-examination. When the Hearing Panel Chair determines a question has been "asked and answered" or is otherwise not relevant, the advisor must move on.
8. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

#### **Warning and Removal Process**

The Hearing Panel Chair shall have sole discretion to determine if the Rules of Decorum have been violated. The Hearing Panel Chair will notify the offending person of any violation of the Rules. Upon a second or further violation of the Rules, the Hearing Panel Chair shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Hearing Panel Chair removes a party's advisor, the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the University will assign an advisor of the University's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below.

#### **Relevant Questions Asked in Violation of the Rules of Decorum**

Where an advisor asks a relevant question in a manner that violates the Rules of Decorum, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the Hearing Panel Chair simply because of the manner it was delivered. Under that circumstance, the Hearing Panel Chair will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).

### **Hearing Procedures**

The Chair of the Hearing Panel is in charge of organizing the presentation of information to be considered at the hearing. Generally, the hearing will proceed in the following order:

- 1) Hearing Panel Chair will open and establish rules and expectations for the hearing
- 2) Opportunity for Opening Statement by the Complainant
- 3) Opportunity for Opening Statement by the Respondent
- 4) Questions for the investigator(s) by the Hearing Panel and, if desired, on behalf of Complainant and the Respondent (as described below)
- 5) Questions for the Complainant by the Hearing Panel and, if desired, on behalf of the Respondent (as described below)
- 6) Questions for the Respondent by the Hearing Panel and, if desired, on behalf of the Complainant (as described below)
- 7) Questions for each witness by the Hearing Panel and, if desired, on behalf of Complainant and the Respondent (as described below)
- 8) Opportunity for Closing Statement by the Complainant
- 9) Opportunity for Closing Statement by the Respondent

Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this Policy, any information that the Chair of the Hearing Panel determines is relevant may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. All evidence previously made available to the parties for inspection and review prior to completion of the investigative report as described in this Policy will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of questioning. Absent extraordinary circumstances as determined by the Chair of the Hearing Panel, no party may seek to introduce at the hearing any evidence not previously made available in accordance with the preceding sentence, other than the investigative report itself and any responses to the investigative report submitted by the parties pursuant to this Policy.

The Chair of the Hearing Panel will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant information. Subject to the terms of this Policy, the Chair will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, to alter the order of the proceedings from that described above, and/or to recall parties or witnesses for additional questions as the Chair deems necessary or appropriate. The Chair may impose additional ground rules as Chair may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

### **Questioning Procedures**

The Hearing Panel will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; provided that questions that seek disclosure of information protected under a legally recognized privilege will not be permitted unless the person or entity holding the privilege has waived the privilege in writing. Questioning must be conducted by the party's advisor in accordance with the Rules of Decorum, and never by a party personally. If a party does not have an advisor present at the hearing, the Title IX Coordinator will arrange for the University to provide without fee or charge to that party, an advisor of the University's choice to conduct cross-examination on behalf of that party.

Only relevant questions may be asked by a party's advisor to a party or witness. Before the party or witness answers a question posed by an advisor, the Chair of the Hearing Panel will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The advisor posing the question may request that the Chair reconsider any decision to exclude a question and the Chair, after soliciting the other party's advisor's opinion, will render a final determination. Such decisions by the Chair are final and not subject to further objection or reconsideration during the hearing.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, other than questions and evidence about the Complainant's prior sexual behavior that (a) are offered to prove that someone other than the Respondent committed the alleged misconduct, or (b) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to questioning by a party's advisor at the hearing, the Hearing Panel may

nevertheless rely on statements of that party or witness, during the hearing or otherwise, in reaching a determination regarding responsibility, but may also determine what significance to afford those statements in view of the lack of cross-examination (for example, the Hearing Panel may determine whether the statements are sufficiently reliable in the absence of cross-examination). The Hearing Panel will not, however, draw an inference as to responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions posed by the other party's advisor.

### **Review of Hearing Recording**

The recording of the hearing may be accessed by the parties prior to any appeal. The recording will not otherwise be released except if the University is legally required to do so, such as by an order from a court.

### **Hearing Determinations**

Following conclusion of the hearing, the Hearing Panel will deliberate and render a determination by majority vote as to whether the Respondent is responsible or not responsible for the alleged violation(s). The Hearing Panel will use "preponderance of the evidence" as the standard of proof to determine whether each alleged violation of the Policy occurred. "Preponderance of the evidence" means that the Hearing Panel must determine whether, based on the evidence presented, it is more likely than not that the Respondent engaged in the conduct charged.

### **Sanctioning Procedure for Students**

If the Respondent found responsible for a violation is a student, the Hearing Panel will determine appropriate sanctions. Each party may submit a written personal impact statement to the Title IX Coordinator for consideration by the Hearing Panel in determining an appropriate sanction if there is a finding of responsibility on one or more of the charges. The parties must submit their statements to the Title IX Coordinator prior to the hearing. The Title IX Coordinator will provide each of the parties an opportunity to review any statement submitted by the other party.

In addition to the impact statement(s), if any, factors considered when determining sanctions may include:

- the nature and severity of, and circumstances surrounding, the violation(s);
- the Respondent's state of mind at the time of the violation(s) (intentional, knowing, bias-motivated, reckless, negligent, etc.);
- the Respondent's previous disciplinary history;
- the need for sanctions to bring an end to the conduct; and/or to prevent the future recurrence of similar conduct;
- the need to remedy the effects of the conduct on the Complainant and/or the community;
- the impact of potential sanctions on the Respondent;
- sanctions imposed by the University in other matters involving comparable conduct; and
- any other lawful factors deemed relevant by the Hearing Panel.

### **Sanctioning Procedure for Faculty or Staff**

If the Respondent 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 Respondent'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 Respondent through the formal complaint process; or
- any past formal or informal complaint against the Respondent 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 Complainant, Respondent, Chair of the CODAH and an appropriate executive officer for both the Complainant and Respondent, and retained in the Chief Human Resources Officer office.

The executive officer will fully implement the recommendations unless they have 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.

### **Sanctions**

The following sanctions may be imposed upon any community member found to have violated the Gender- Based Discrimination and Sexual Misconduct Policy. Ranges for violations are referenced below.

#### **Student Sanctions (where applicable, as defined in the Student Code of Conduct):**

- Written Warning
- Disciplinary Fines
- Community Service
- Attendant Restrictions
- Participation in Educational Activities Addressing the Nature of the Violation
- Disciplinary Probation
- Residence Hall Probation
- Deferred Loss of Campus Residency
- Loss of Campus Residency
- Organizational Sanctions
- Deferred Suspension
- Suspension
- Expulsion
- Withholding of Diploma and/or Degree Conferral
- Revocation of Degree

*Other Actions:* In addition to or in place of the above sanctions, the Hearing Panel may assign any other sanctions as deemed appropriate, including but not limited to the following:

- Mandated counseling so the Respondent has the opportunity to gain more insight into his/her/their behavior.
- A “no contact” directive (including but not limited to continuation of a no contact directive imposed as a supportive measure) prohibiting contact with one or more identified persons, in person or through telephonic, electronic, written or other means. A no contact directive may include additional restrictions and terms.
- Requiring the Respondent to write a letter of apology.
- Requiring unpaid service to the campus or local community stated in terms of type and hours of service.
- Restitution for damage to or misappropriation of property, or for personal injury, and other related costs.
- Loss, revocation or restriction of housing privileges (e.g., exclusion from specified locations or alteration of status in the housing lottery or other selection system).
- Monetary fines.

#### **Employee Sanctions:**

- Warning – written
- Performance Improvement Plan
- Required Counseling
- Written Reprimand
- Formal Apology
- Transfer or reassignment
- Disciplinary Probation

- Non-Renewal of Employment Agreement
- No Contact Order
- Required Training/Education
- Demotion
- Loss of Annual Pay Increase
- Suspension Without Pay
- Suspension With Pay
- Termination

No corrective action will be implemented that violates any provision of a St. Bonaventure University employment contract or collective bargaining agreement.

### **Notice of Outcome**

The Hearing Panel will issue a written determination regarding responsibility to the Title IX Coordinator including the following information:

- A description of the charges that were adjudicated;
- A description of the procedural steps taken from the submission of the Formal Complaint through the determination, including 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 the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the University’s educational programs or activities will be provided to the Complainant; and
- The procedures and permissible bases for the Complainant and Respondent to appeal (described below in “Appeals”).

The Title IX Coordinator will provide the written determination to the parties simultaneously. The determination regarding responsibility will be issued to the parties as soon as practical.

### **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.

### **Transcript Notation**

The following standards for institutional transcript notation apply to any student accused of a violation of any St. Bonaventure University policy that is defined as a crime of violence reportable under the Clery Act:

- Students suspended after a finding of responsibility for said violations will have the following noted on the transcript: “Suspended after a finding of responsibility for a code of conduct violation.”
- Students expelled after a finding of responsibility for said violations will have the following noted on the transcript: “Expelled after a finding of responsibility for a code of conduct violation.”
- Students withdrawing from the University during an investigation, or any time prior to the completion of judicial procedures (including an appeal process), with respect to allegations of said violations, will have the following noted on the transcript: “Withdrew with conduct charges pending.”

Transcript notations for suspensions may be removed by an Appeals Panel, described below. The Appeals Panel may consider appeals for removal of a suspension notation from the official transcript. If granted, the suspension notation will be removed no less than one year after the suspension is completed. Transcript notations for expulsion may not be removed.

### **Withdrawal Prior to Completion of Process**

Students withdrawing from the University during an investigation, or any time prior to the completion of judicial procedures (including an appeal process), to which they are subject as a Respondent, may not be eligible for re-admission to the University or re-enrollment in any courses offered by the University on campus, online, or through any affiliate programs, unless and until the pending charges are resolved to the University's satisfaction.

### **Resignation Prior to Completion of Process**

Employees who resign from the University during an investigation, or any time prior to the completion of judicial procedures or other resolution process (including an appeal process), to which they are subject as a Respondent, may not be eligible for re-hire unless and until the pending charges are resolved to the University's satisfaction.

### **Temporary Withholding of Degree/Diploma; Denial of Participation in Commencement**

The University may withhold a student's degree and/or diploma for a specified period of time and/or deny a student participation in commencement activities if the student is the subject of a pending complaint or investigation, or has disciplinary charges pending. This is not a disciplinary sanction, but is intended to facilitate an equitable resolution of the process.

### **Appeals**

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations and/or (2) a determination regarding responsibility. An Appeals Panel shall be convened when either the Complainant or the Respondent choose to file an appeal. The Appeals Panel composition under this Policy shall be three (3) Discrimination and Misconduct Officials. Appeal Panel members will be free of conflict of interest and bias, and may not have served as investigator, Title IX Coordinator, or Hearing Panel member in the same matter. To appeal, a party must submit their written appeal to the Title IX Coordinator within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter;
- 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, investigator(s), or Hearing Panel members had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter;
- A claim that the sanction imposed is substantially disproportionate to the severity of the violation.

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

If a party appeals, the institution 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.

If the Title IX Coordinator determines the appeal states a proper basis, the Appeals Panel will convene. Principles applicable to consideration of an appeal include the following:

1. The Appeals Panel process is not a "re-hearing" of the case. It will only consider facts and issues relevant to the basis for the appeal, and will not be conducting new investigations.
2. It will be assumed by the Appeals Panel that the original investigation and sanctions of the Hearing Panel are sound, and the burden is on the appealing party to prove otherwise.
3. The Panel may meet with the appealing party and the non-appealing party (if requested), and may meet with anyone else deemed necessary to make their determination, including the investigators in the case.
4. The Panel will make one of the following decisions:

- a. **Finding/Sanction Stands:** If upon review of relevant information the Panel finds that there is no merit to the appeal, or that any issue brought up in the appeal would not change the result of the matter, then the Panel will affirm the finding and (if applicable) the sanction or the dismissal. This decision is final, and the case is closed.
  - b. **Appeal Granted:** If upon review of relevant information the Panel finds that the appellant has met the burden of establishing that one or more grounds for appeal have merit, the Panel has discretion to take action consistent with that determination. That may include, without limitation, in the case of procedural error or new information, remanding the case in whole or in part to the original Hearing Panel or a new Hearing Panel; in the case of disproportionality of a sanction, modifying that sanction as appropriate; or, in the case of a dismissal, reinstating the Formal Complaint or specific allegations in the Formal Complaint that were dismissed.
5. Once an appeal of a case is concluded, no further appeals are allowed, except to the extent that one or more parties seek review of proceedings ordered by the Appeals Panel on remand.

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

The above process is not exclusive of rights afforded to employees and Faculty under the Staff Handbook or Faculty Status and Welfare Handbook.

### **Students' Bill of Rights**

Pursuant to Article 129-B, Section 6443, of the New York State Education Law, in matters related to sexual assault, domestic violence, dating violence and stalking, all students have the right to:

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

### **Rights in Cases Involving Sexual Assault, Domestic/Dating Violence and Stalking**

Pursuant to Article 129-B, Section 6444 of the New York State Education Law, anyone reporting an incident of sexual assault, domestic or dating violence or stalking shall be advised of their rights to:

1. Notify Campus Safety and Security, local law enforcement, and/or New York State Police;
2. Emergency access to a Title IX Coordinator or other appropriately trained official who shall be available upon the first instance of disclosure by a reporting individual and who can provide information, including:
  - a. options to proceed, including the right to make a report to Safety and Security

- (reports to Safety and Security are reported to the Title IX Coordinator), Local Law Enforcement, and/or the New York State Police or choose not to report; to report the incident to the University; to be protected by the University from retaliation for reporting an incident; and to receive assistance and resources from the University, as set out in this Policy;
- b. where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible;
  - c. that the criminal justice process utilizes different standards of proof and evidence than the University's judicial procedures and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney;
  - d. whether the person they are reporting to is authorized to offer confidentiality or privacy; and
  - e. any other reporting options.
3. If they are a student, to contact the University Center for Student Wellness (716-375-2310) where they may be offered confidential resources pursuant to applicable laws/policies and can be assisted in obtaining services for reporting individuals; if they are not a student but are otherwise a member of the University community, or if they are a student but prefer to seek off-campus assistance, to contact non-University confidential resources, including:
    - a. Olean General Hospital Sexual Assault Forensic Examiner (SAFE) Unit (716-372- 0614)
    - b. Connecting Communities in Action –Victim Services (1-888-945-3970)
    - c. New York State Domestic and Sexual Violence Hotline (1-800-942-6906)
  4. Disclose confidentially the incident and obtain services from the state or local government;
  5. Disclose the incident to an official of the University who can offer privacy or, in appropriate cases determined by the Title IX Coordinator, confidentiality, subject to the limitations set forth in this Policy, and can assist in obtaining resources for reporting individuals;
  6. File a report of sexual assault, domestic violence, dating violence, and/or stalking and consult the Title IX Coordinator and other appropriate University personnel for information and assistance. Reports shall be investigated in accordance with University policy. A reporting individual's identity shall remain private if that is what the reporting individual wishes, however privacy is not the same as confidentiality; private information can be shared to implement and fulfill the University's obligations under the law and its Gender-Based Discrimination and Sexual Misconduct Policy;
  7. Disclose, if the Respondent is a University employee, the incident to Human Resources or to request that a private employee assist in reporting to Human Resources;
  8. Receive reasonable assistance from appropriate University representatives if interested in initiating legal proceedings in family court or civil court; and
  9. Withdraw a complaint or involvement from the University processes at any time, with the understanding that in appropriate cases, the University may nonetheless be required to proceed even if the reporting individual does not wish to do so.

For information on filing a report or seeking resources, including intervention, mental health counseling, and medical services go to [www.sbu.edu/life-at-sbu/conduct-at-sbu/gender-based-sexual-misconduct](http://www.sbu.edu/life-at-sbu/conduct-at-sbu/gender-based-sexual-misconduct) or contact the Interim Title IX Coordinator (Katie O'Brien, Vice President for Student Affairs) at 716-375-2011. In addition, information on sexually transmitted infections and sexual assault forensic examinations can be obtained from University Center of Student Wellness, if a student, or from the hospital listed above, if an employee or student. Certain resources are also available to victims of crimes through the New York State Office of Victim Services, [www.ovs.ny.gov](http://www.ovs.ny.gov).

Individuals reporting violations under this Policy to the Title IX Coordinator or a Responsible Administrator, receive the following at the time of notification:

- Written notification about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available to victims, within the University and/or in the community;
- Written notification to victims about available options for, assistance in, and how to request changes to, academic, living, transportation and working situations or protective measures; and
- Written explanation of the student or employee's rights and options provided when a student or employee reports to the institution that they have been a victim of a violation under this Policy.

## **Additional Information**

### **Distribution of Policies and Procedures**

The St. Bonaventure University Gender-Based Discrimination and Sexual Misconduct Policy and Procedures as they relate to SBU students can be found in the Student Code of Conduct. The Student Code of Conduct is located online at [www.sbu.edu/codeofconduct](http://www.sbu.edu/codeofconduct), or by going to the Student Affairs webpage at [www.sbu.edu](http://www.sbu.edu).

Students, faculty and staff can also locate the Student Code of Conduct and the Gender-Based Discrimination and Sexual Misconduct policy and procedures on MySBU under general links. Hard copies of the Student Code of Conduct can be obtained by contacting the Student Affairs Division, 716-375-2512, or by going to the Student Affairs Office, Reilly Center 203. Additionally, the Gender-Based Discrimination and Sexual Misconduct Policy and Procedures are available in the University's Clery Act Annual Security Report, published on the Student Affairs page of the University website, and hard copies are available in both the Safety and Security Office on the first floor of Robinson Hall, and in the Student Affairs Office.

### **Training and Prevention Programming**

St. Bonaventure University prohibits all forms of sexual misconduct including all crimes of dating violence (relationship/intimate partner violence), domestic violence, sexual assault and stalking. In an effort to reduce the risk of gender-based discrimination and sexual misconduct occurring on campus and among community members, St. Bonaventure University utilizes a range of campaigns, strategies and initiatives to provide awareness, education, risk reduction and prevention programming.

It is the policy of St. Bonaventure University to offer programming to prevent sexual misconduct, including but not limited to domestic violence, dating violence, sexual assault (including stranger and known offender assaults) and stalking, each year. Educational programs are offered to raise awareness for incoming students and employees, and are often conducted during new student and new employee orientation and during an incoming student's first semester. These programs and others offered throughout the year include strong messages regarding not just awareness, but also primary prevention (including normative messaging, environmental management and bystander intervention), and discuss institutional policies on gender-based discrimination and sexual misconduct as well as the federal and New York State definitions of domestic violence, dating violence, sexual assault, stalking and consent in reference to sexual activity. Bystander engagement is encouraged through safe and positive intervention techniques and by empowering third-party intervention and prevention such as calling for help, using intervention-based apps, identifying allies and/or creating distractions.

Programs also offer information on risk reduction that strives to empower victims, how to recognize warning signals and how to avoid potential attacks, and do so without victim-blaming approaches. Throughout the year, ongoing awareness and prevention campaigns are directed to students and employees, including faculty, often taking the form of campaigns, guest speakers, events, and programs sponsored by student clubs and organizations.

Specifically for students, the University requires students to complete annual on-line training through Everfi. Everfi's Sexual Assault Prevention (SAP) Suite engages students as they progress through their time at the University, fosters healthy relationships, and prepares them to recognize and respond to sexual assault and harassment when it occurs. Everfi's Sexual Assault Prevention Program provides information about:

- sexual violence, relationship violence, and stalking,
- alternatives for intervening in situations you see happening and supporting friends and other members of our community, and
- resources both on and off campus.

***First-Year Students Sexual Assault Prevention for Undergraduates*** enables first-year students to recognize sexual assault and harassment behavior, identify healthy and unhealthy relationship practices, and equips students with essential skills to navigate consent-based conversations and engage in bystander intervention safely.

***Continuing Students Sexual Assault Prevention for Ongoing Students*** empowers students beyond their first year by strengthening their consent and relationship skills, and their ability to intervene when friends engage in unsafe or unhealthy behavior. Building on students' developmental experiences, this course prepares them to navigate professional environments using realistic scenarios and increases survivor empathy through understanding the impact of trauma.

***Graduate Students Sexual Assault Prevention for Graduate Students*** equips graduate students with the tools needed to

navigate new and complex relationships including how to identify and respond to harassment from a faculty member or advisor, other workplace-based harassment, how to respectfully engage with undergraduate students, and how to respond to student disclosures.

The University also utilizes **Bringing in the Bystander**® curriculum to teach student bystanders how to safely intervene in instances where sexual violence, relationship violence or stalking may be occurring or where there may be risk that it will occur. This program is required for first year students during Welcomes Days, with several additional sessions throughout the academic year for athletes, clubs and organizations, and interested students.

Participants in the program:

- gain an understanding of what bystander responsibility is through the presentation of concepts and examples
- have the opportunity to apply the concept of bystander responsibility to their own past experiences
- gain an understanding of individual and situational factors that facilitate appropriate bystander intervention
- have the opportunity to apply the concept of bystander responsibility to sexual and relationship violence and stalking
- are able to identify the range of unacceptable sexual behaviors and become aware of the prevalence and context of sexual violence
- understand the variety of negative consequences of sexual and relationship violence and stalking for victims and communities
- increase their empathy for victims
- understand the role community members can play in preventing sexual and relationship violence and stalking and reducing its negative consequences
- cultivate skills in identifying situations where bystander intervention may be appropriate
- gain experience in working through the decision process with regard to bystander behaviors including the costs and benefits of intervention
- gain knowledge of resources that are available to support bystanders and victims/survivors
- express motivation and commitment to be an active bystander
- learn to describe the range of potential bystander behaviors and situations where action might be appropriate.

In addition to the above programs, education and awareness continues throughout the academic year with ongoing events including, but not limited to: National Domestic Violence Awareness Month Information Tabling, In Their Shoes, Take Back the Night, Clothesline Project, One Love Amor del Bueno, Behind the Post, Affirmative Consent Workshops, Spin to Win Relationship Trivia, and Love Song Trivia.

### **Interpretation/Other Issues**

Final interpretation of this Policy is vested in the Title IX Coordinator, who will have discretion to construe any uncertain or disputed provisions. Issues that are not specifically addressed in this Policy may be resolved by the Title IX Coordinator in his/her discretion.

### **Coordination with Other Policies**

A particular situation may potentially invoke one or more University policies or processes. The University reserves the right to determine the most applicable policy or process and to utilize that policy or process.

This Policy does not apply to decisions relating to requests for reasonable accommodation due to a disability. Academic disability accommodations are handled by the Office of Accessibility Services & Accommodations and pursuant to that office's policies. Work-related disability accommodations are handled by the Office of Human Resources and pursuant to that office's policies.

### **Policy Compliance**

Any person with a concern about the University's handling of a particular matter should contact the Interim Title IX Coordinator, Katie O'Brien at kobrien@sbu.edu.

The U.S. Department of Education, Office for Civil Rights is a federal agency responsible for ensuring compliance with Title IX. OCR may be contacted at:

400 Maryland Avenue,  
SW Washington, DC  
20202-1100  
(800) 421-3481  
Facsimile: 202-453-6012 TDD#: 877-521-2172  
E-mail: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

### **Clery Act Compliance**

The University is required to include for statistical reporting purposes the occurrence of certain incidents in its Annual Security Report (ASR). Names of individuals involved in incidents are not reported or disclosed in ASRs.

### **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that the University must issue timely warnings for reported incidents that represent a serious or continuing threat to members of the campus community. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the alleged victim/Complainant will not be disclosed.

### **Disclosure of Results of Disciplinary Proceedings to Next of Kin**

Upon request, St. Bonaventure University will disclose the results of any disciplinary proceeding conducted by the institution against a student who is the alleged perpetrator of any crime of violence or non-forcible sex offense (incest or statutory rape) to the alleged victim's next of kin if the victim is deceased as a result of the offense.