

Saint Mary's College Policy on Sex/Gender-Based Harassment, Discrimination and Misconduct against Students

INTRODUCTION

Members of the Saint Mary's College community have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others and maintain an environment that emphasizes the dignity and worth of all. The college believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and establish a mechanism for determining when those expectations have been violated.

The college's sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

The college uses the preponderance of the evidence (also known as "more likely than not") as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like "guilt," "innocence" and "burdens of proof" are not applicable, but the college never assumes a responding party is in violation of college policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

TITLE IX COORDINATOR

The college's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports to the President of the college. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the college Title IX Coordinator:

Kris Urschel

Title IX Coordinator
106 Facilities Building
574-284-4542
kurschel@saintmarys.edu
Director of Human Resources

Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at: www.saintmarys.edu/campus-safety/anonymous-crime-report
Note that these anonymous reports may prompt a need for the institution to investigate.

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
FAX: 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to Rich Nugent, College Counsel at rnugent@saintmarys.edu.

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

The college recognizes that sexual misconduct is an act of violence and not an act of sexual intimacy.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

Romantic and/or sexual relationships between an employee and a student are relationships between individuals in inherently unequal positions. No employee shall engage in or solicit a romantic and/or sexual relationship (consensual or otherwise) with a student. Romantic and/or sexual relationships between a student and an employee are forbidden as unprofessional conduct and are in opposition to the Mission of the College. An "employee" includes any College staff, administrator, or faculty. A "student" includes any undergraduate or graduate student. The consensual nature of such a relationship does not constitute a defense to a complaint of sexual harassment, sexual assault, or related unprofessional conduct.

SEXUAL VIOLENCE -- RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Carefully consider the possible ramifications of sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- **DON'T MAKE ASSUMPTIONS** about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you **DO NOT** have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.

- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Acts of sexual intimacy outside of marriage is a violation of the Code of Student Conduct.

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

- 1. Sexual Harassment**
- 2. Non-Consensual Sexual Contact (or attempts to commit same)**
- 3. Non-Consensual Sexual Intercourse (or attempts to commit same)**
- 4. Sexual Exploitation**

1. SEXUAL HARASSMENT

Sexual harassment is:

- unwelcome, sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct. Anyone experiencing sexual harassment in any college program is encouraged to report it immediately to the Title IX Coordinator or Deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
 - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the college's educational and/or employment, social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- By a person having power or authority over another constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational and/or employment progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

2. NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

3. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.
- Forcing someone to penetrate an orifice (anal, vaginal, oral) with the penis, object, tongue or finger.

4. SEXUAL EXPLOITATION

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

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;

- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

ADDITIONAL APPLICABLE DEFINITIONS:

- Consent:
 - Consent is
 - clear, and
 - knowing, and
 - affirmative, conscious and voluntary,
 - words or actions,
 - that give permission for specific sexual activity.
 - Consent is active, not passive.
 - Silence, in and of itself, cannot be interpreted as consent.
 - Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
 - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
 - Previous relationships or prior consent cannot imply consent to future sexual acts.
 - Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
 - In order to give consent, one must be of legal age.
 - Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
 - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
 - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
 - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
- This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the consumption of alcohol and/or drugs. Possession, use and/or distribution of any of these substances, including

Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy.

- Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).
 - Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
 - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
- This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.

Examples

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never had done it but for Bill’s incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn’t want it, she could have left. **Bill is responsible for violating the college Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**

2. Julie is a junior at the college. Beth is a sophomore. Julie comes to Beth's residence hall room with some mutual friends to watch a movie. Julie and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Julie and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Julie verbally expresses her desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Julie takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Julie to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation?
Julie would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Julie, to make sure that she has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Julie had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.

3. Kathy and Jenny are at a party. Kathy is not sure how much Jenny has been drinking, but she is pretty sure it's a lot. After the party, she walks Jenny to her room, and Jenny comes on to Kathy, initiating sexual activity. Kathy asks her if she is really up to this, and Jenny says yes. Clothes go flying, and they end up in Jenny's bed. Suddenly, Jenny runs for the bathroom. When she returns, her face is pale, and Kathy thinks she may have thrown up. Jenny gets back into bed, and they begin to have sexual intercourse. Kathy is having a good time, though she can't help but notice that Jenny seems pretty groggy and passive, and she thinks Jenny may have even passed out briefly during the sex, but she does not let that stop her. When Kathy runs into Jenny the next day, she thanks her for the wild night. Jenny remembers nothing, and decides to make a report to the Title IX Coordinator. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kathy should have known that Jenny was incapable of making a rational, reasonable decision about sex. Even if Jenny seemed to consent, Kathy was well aware that Jenny had consumed a large amount of alcohol, and Kathy thought Jenny was physically ill, and that she passed out during sex. Kathy should be held accountable for taking advantage of Jenny in her condition. This is not the level of respectful conduct the college expects.**

OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as
 - a. Repeated and/or severe
 - b. Aggressive behavior
 - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
 - d. That is not speech or conduct otherwise protected by the 1st Amendment.
6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other;
 - a. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
 - b. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
 - c. Married employees are witnessed in the parking lot, with one partner slapping and scratching the other in the midst of an argument.
7. Stalking
 - a. Stalking 1:
 - i. A course of conduct
 - ii. Directed at a specific person
 - iii. On the basis of actual or perceived membership in a protected class
 - iv. That is unwelcome, AND
 - v. Would cause a reasonable person to feel fear
 - b. Stalking 2:
 - i. Repetitive and Menacing
 - ii. Pursuit, following, harassing and/or interfering with the peace and/or safety of another

c. Examples of Stalking:

- i. A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus job site requesting that they go out on a date together.
- ii. A graduate student working as a on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together."

8. Any other college policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

RETALIATION

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of college policy and will not be tolerated.

SANCTIONS

The following sanctions may be imposed upon any student/student organization of the community found to have violated the Sex/Gender-Based Harassment, Discrimination and Misconduct Policy. Factors considered in sanctioning are defined in the Code for Student Conduct. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination as stated in the Code for Student Conduct:

Student Sanctions

- Warning
- Disciplinary Probation
- Residential Relocation
- Residence Hall Dismissal
- College Dismissal
- College Expulsion
- Revocation of admission
- Revocation of degree
- Withholding Degree
- Other Actions

Sanctioning for Sexual Misconduct

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.*

Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of dismissal or expulsion.

- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.*

*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. All sanctions are subject to review by the Title IX Coordinator. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

CONFIDENTIALITY, PRIVACY AND REPORTING

Confidentiality and Reporting of Offenses Under This Policy

All college employees (faculty, staff, administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On

campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate college officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at college:

Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- Health and Counseling Services(574-284-4805)
- Belles Against Violence (574-284-4081)
- Campus Ministry pastoral ministers (574-284-5391)

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. These employees will submit semesterly anonymous, aggregate statistical information to the Title IX Coordinator for Clery Act purposes unless they believe it would be harmful to a specific client or patient.

Formal Reporting Options

All college employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator or Deputy Coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, student edited publications, human subjects research, or events such as Take Back the Night marches or speak-outs should not be reported to the Title IX Coordinator by employees.

If a victim 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 victim may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the college will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the college to honor that request, the college will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the college when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Division of Student Affairs, College Security, College Counsel and the Behavioral Concerns Team. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Kris Urschel

Title IX Coordinator

106 Facilities Building

574-284-4542

kurschel@saintmarys.edu

Director of Human Resources

Failure of a non-confidential employee, as described in this section, to immediately report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of college policy and can be subject to disciplinary action for failure to comply with college policies.

Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that college administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The college will ensure that a victim's name and other identifying information is not disclosed, while still

providing enough information for community members to make safety decisions in light of the danger.

Additional Policy Provisions

a. Attempted violations

In most circumstances, college will treat attempts to commit any of the violations listed in the *this policy* as if those attempts had been completed.

b. False Reports

The college will not tolerate intentional false reporting of incidents. It is a violation of the Code of Student Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

c. Amnesty for Victims and Witnesses

The college community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to college officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to college officials, and that witnesses come forward to share what they know. To encourage reporting, the college pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, as student who has been drinking underage might hesitate to help take a sexual misconduct victim to campus security). The college pursues a policy of amnesty for students who offer help to others in need.

d. Parental Notification

The college reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The college may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the college will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The college also reserves the right to designate which college officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

QUESTIONS AND ANSWERS

Here are some of the most commonly asked questions regarding the college's sexual misconduct policy and procedures.

Does information about a report remain private?

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with the college's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. The college will not disseminate information and/or written materials to persons not involved in the resolution process without the consent of both parties. Witnesses are also required to maintain the privacy of information shared with them during interviews and/or hearings. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the college, though both parties are allowed to share their perspectives and experiences. All parties, including witnesses, involved in an allegation are strongly encouraged to maintain the privacy of information and/or written materials.

In all resolutions of sexual misconduct, the complainant and the respondent will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain college administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the college, Vice President for Student Affairs, Director of Security and College Counsel). [If there is a report of an act of alleged sexual misconduct to a conduct officer of the college and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities]. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an "Annual Security Report" of campus crime statistics. This statistical report does not include personally identifiable information.

Will my parents be told?

No, not unless you tell them. Whether you are the reporting party or the responding party, the College's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. College officials may directly inform parents/guardians when requested to do so by a student, in a life-threatening situation, and/or a student has been dismissed or expelled from the college.

Will the responding party know my identity?

Yes, if the college determines there is reasonable cause to believe a violation has occurred and investigates the matter. The responding party has the right to know the identity of the reporting party. If there is a hearing, the college does provide an opportunity for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

Do I have to name the responding party?

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party, but doing so may limit the institution's ability to respond comprehensively.

What do I do if I am accused of sexual misconduct?

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advisor; anyone may serve as your advisor. You may also contact the Assistant Vice President for Student Affairs, who can explain the college's procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor or seek other community assistance. See below regarding legal representation.

Will I (as a victim) have to pay for counseling/or medical care?

Not typically for services provided by the college or when the college makes a referral to an outside provider for treatment on behalf of the student.

What about legal advice?

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the County Prosecutor's office. You may want to retain an attorney if you are considering filing a civil action or are the responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the responding party and the reporting party may also use an attorney as their advisor during the campus' resolution process. Attorneys are subject to the same restrictions as other advisors in the process as described here in the Code of Student Conduct. The college counsel does not provide legal advice to the parties.

How is a report of sexual misconduct decided?

The college investigates allegations of sex/gender based harassment, discrimination or misconduct to determine whether there is evidence to indicate a policy violation is "more likely than not." This standard, called the preponderance of the evidence, corresponds to an amount of evidence indicating a policy violation is more than 50% likely.

What about changing residence hall rooms?

You may request a room change if you want to move. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you prefer that the responding party be moved to another residence hall, that request will be evaluated by the Title IX Coordinator or Deputy to determine if it can be honored. Other assistance and modifications available to you might include:

- Assistance from college support staff in completing a room relocation;
- Arranging to dissolve a college housing agreement and pro-rating a refund;
- Help with finding an off-campus residential alternative;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.) or otherwise implementing academic assistance;
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;

- Escorts to and from campus locations;
- On or off-campus counseling assistance;
- Transportation assistance or support;
- Other accommodations for safety as necessary.

What should I do about preserving evidence of a sexual assault?

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the Hospital Emergency Room, before washing yourself or your clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at the Saint Joseph's hospital is usually on call 24 hours a day, 7 days a week (call the Emergency Room if you first want to speak to the nurse; ER will refer you). A college employee can also accompany you if requested. Campus Security can provide transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

Will a complainant be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?

No. The seriousness of sexual misconduct is a major concern and the college does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the

reporting of sexual misconduct. The college provides amnesty from any consequences for minor policy violations that occur during or come to light as the result of a victim's report of sexual misconduct.

Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the reporting party's memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present matter.

What should I do if I am uncertain about what happened?

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's Title IX Coordinator (not confidential), health and counseling services (confidential), BAVO (confidential), or a pastoral minister in Campus Minister (confidential).

This policy was adapted from the ATIXA sex/gender-based harassment, discrimination and sexual misconduct model policy, 2015.

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