

Interim Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under Title IX of the Educational Amendments of 1972

If you believe you are the victim of Sexual Misconduct, please immediately go to [Section III](#) of this document for resources and reporting information.

A comprehensive listing of on-campus and off-campus resources can be found at <https://sites.sju.edu/support/resources/>.

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Introduction

i. What is the purpose of the Title IX Grievance Policy?

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

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence);
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment; and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Based on the Final Rule, Saint Joseph’s University will implement the following Title IX Grievance Policy, effective August 14, 2020.

ii. How does the Title IX Grievance Policy impact other campus disciplinary policies?

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, Saint Joseph’s University must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process.

Saint Joseph’s University remains committed to addressing all violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. Except for the defined terms listed below, alleged misconduct not falling within the Final Rule’s definition of sexual harassment will be addressed pursuant to one or more of the following:

- 1) [Interim Sexual Misconduct Policy: Policy Regarding Sexual Assault, Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, or Stalking \(www.sju.edu/SMP\)](http://www.sju.edu/SMP)
- 2) [Interim Policy Prohibiting Discrimination, Harassment, and Retaliation \(www.sju.edu/PPDHR\)](http://www.sju.edu/PPDHR)
- 3) Student Handbook, Faculty Handbook, or Administrator/Staff Handbook, as applicable

Please note that alleged misconduct falling under the following listed defined terms (as defined in the applicable policies also listed below) also will be subject to this Title IX Grievance Policy. More specifically, the grievance process for alleged misconduct falling under the following definitions and for allegations potentially falling under two policies will be the grievance process described in Section V, Section VI, Section VII, Section VIII, and Section IX of this Title IX Grievance Policy below:

<u>Policy</u>	<u>Defined Term</u>
Interim Sexual Misconduct Policy: Policy Regarding Sexual Assault, Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, or Stalking	Sexual Misconduct, including: a. Sexual Assault b. Sexual Harassment c. Domestic Violence d. Dating Violence e. Sexual Exploitation f. Stalking
Interim Policy Prohibiting Discrimination, Harassment, and Retaliation	Sexual Harassment

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the University for any violation of the Student Handbook, Faculty Handbook, Administrator/Staff Handbook, employment policies, or any civil rights violation

except as narrowly defined in this policy. This policy does not set a precedent for other policies or processes of the University and may not be cited for or against any right or aspect of any other policy or process.

The Title IX Grievance Policy

I. General Rules of Application

i. Effective Date

This Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to Formal Complaints of sexual harassment brought on or after August 14, 2020. Complaints brought prior to August 14, 2020 will be investigated and adjudicated according to the Title IX Grievance Policy if a case is not complete by that date.

ii. Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under existing policies.

iii. Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the University'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>.

II. Definitions

i. Covered Sexual Harassment

For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo).

2. 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.
3. *Sexual assault* (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. As of August 2020, the Clery Act definition included an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting Program.
4. *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 reporting party's statement and 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. As of August 2020, for the purposes of the Clery Act definition: (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse; (B) Dating violence does not include acts covered under the definition of domestic violence.
5. *Domestic violence* (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the Commonwealth of Pennsylvania, 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 Commonwealth of Pennsylvania.
6. *Stalking* (as defined in the VAWA amendments to the Clery Act), which includes engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress. As of August 2020, for the purposes of this definition under the VAWA amendments to the Clery Act: (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) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Student Handbook; Faculty Handbook; Administrator/Staff Handbook; [Interim Sexual Misconduct Policy: Policy Regarding Sexual Assault, Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, or Stalking](#); and/or [Interim Policy Prohibiting Discrimination, Harassment, and Retaliation](#).

ii. Consent and Incapacitation

For the purposes of this Title IX Grievance Policy, “consent” and “incapacitation” will have the meanings set forth in the [Interim Sexual Misconduct Policy: Policy Regarding Sexual Assault, Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, or Stalking](#).

iii. Education Program or Activity

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

- Any on-campus premises.
- Any off-campus premises that Saint Joseph's University has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Saint Joseph's University's programs and activities over which Saint Joseph's University has substantial control.

iv. Formal Complaint

For the purposes of this Title IX Grievance Policy, “Formal Complaint” means 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 or a Deputy Title IX Coordinator, alleging sexual harassment against a Respondent, about conduct within Saint Joseph's University's education program or activity, and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

v. Complainant

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

vi. Relevant Evidence and Questions

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

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

- Evidence and questions about the 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. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

vii. Respondent

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

viii. 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, Deputy Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Saint Joseph's University will limit the disclosure as much as practicable, even if the Title IX Coordinator, Deputy Title IX Coordinator or designee determines that the request for confidentiality cannot be honored.

ix. Disability Accommodations

This policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the process. The University 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.

III. Making a Report Regarding Covered Sexual Harassment to the University

i. Title IX Coordinator and Deputy Title IX Coordinators

The University's Title IX Coordinator coordinates the University's compliance with Title IX and oversees the University's investigation and resolution process for reports of sexual harassment. The Title IX Coordinator is supported by three University administrators who serve as Deputy Title IX Coordinators. The Title IX Coordinators and the Deputy Title IX Coordinators are knowledgeable

and trained in state and federal laws that apply to matters of sexual harassment, as well as University policy and procedure.

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

Contact Information for the Title IX Coordinator:

Lexi Morrison

Director of Title IX & Equity Compliance
Title IX Coordinator
Campion Student Center, Room 243E
5600 City Avenue
Philadelphia, PA 19131
titleix@sju.edu | 610-660-1145

Contact Information for the Deputy Title IX Coordinators:

Thomas Sheibley

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Wolfington Hall
5600 City Avenue
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tsheible@sju.edu | 610-660-3125

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The terms of Section III.E and Section III.F.1 of the [Interim Sexual Misconduct Policy: Policy Regarding Sexual Assault, Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, or Stalking](#) will also apply to reports of conduct violating this Policy.

A comprehensive listing of on-campus and off-campus resources can be found at <https://sites.sju.edu/support/resources/>.

IV. Non-Investigatory Measures Available Under the Title IX Grievance Policy

i. Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from Saint Joseph's University regardless of whether they desire to file a complaint, which may include the following, as reasonably available and appropriate in the University's determination: counseling, extensions of deadlines or other course related adjustments, modifications of work or class schedules, campus escort services from the Office of Public Safety & Security, changes in work or housing locations, leaves of absence, options to obtain modification of or relief regarding financial aid, and increased security and monitoring of certain areas of the campus. The University may also implement temporary mutual contact restrictions between the Complainant and Respondent for the protection of either or both parties. The University mutual contact restriction prevents the Respondent from contacting the Complainant in any way, including via third parties, and vice versa. When appropriate, temporary campus area restrictions may also be put in place. Supportive measures are non-disciplinary and non-punitive.

ii. Emergency Removal

Saint Joseph's University retains the authority to remove a Respondent from Saint Joseph's University's program or activity on an emergency basis, where Saint Joseph's 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 covered sexual harassment justifies a removal.

If Saint Joseph's University determines such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

iii. Administrative Leave

Saint Joseph's University retains the authority to place a non-student employee Respondent on administrative leave during the Title IX Grievance Process, consistent with the Faculty Handbook, the Administrative Staff/Handbook or the applicable collective bargaining agreement or employment agreement

V. The Title IX Grievance Process

i. Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than *ninety (90) calendar days* after the filing of the Formal Complaint, provided that the process may be extended for a good reason, including but not limited to the absence of a party, a party's Advisor, or a Witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator or a Deputy Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this policy if they are currently participating in, or attempting to participate in, the education programs or activities of Saint Joseph's University, including as an employee. For Complainants who do not meet this criterion, the University will utilize existing policies and procedures contained in the Student Handbook; Faculty Handbook; Administrator/Staff Handbook; [Interim Sexual Misconduct Policy: Policy Regarding Sexual Assault, Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, or Stalking](#); and/or [Interim Policy Prohibiting Discrimination, Harassment, and Retaliation](#).

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator or a Deputy Title IX Coordinator may determine a Formal Complaint is necessary. Saint Joseph's 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 and process.

Nothing in the Title IX Grievance Policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process. A comprehensive listing of on-campus and off-campus resources can be found at <https://sites.sju.edu/support/resources/>.

ii. Multi-Party Situations

Saint Joseph's University may consolidate Formal Complaints alleging covered sexual harassment 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 covered sexual harassment arise out of the same facts or circumstances.

iii. Determining Jurisdiction

The Title IX Coordinator or a Deputy Title IX Coordinator will determine if the Title IX Grievance Process should apply to a Formal Complaint. The process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator or a Deputy Title IX Coordinator:

1. The report is received by Saint Joseph's University or the University has actual knowledge of the conduct on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;

3. The conduct is alleged to have occurred in Saint Joseph University's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

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

iv. Allegations Potentially Falling Under Two Policies

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

v. Mandatory Dismissal

If any one of these elements are not met, the Title IX Coordinator or a Deputy Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below. Dismissal of a Formal Complaint under this Title IX Grievance Policy will not affect the University's ability or discretion to address any alleged misconduct under other University policies, procedures and handbooks. See the section titled "Notice of Removal" below.

vi. Discretionary Dismissal

The Title IX Coordinator or a Deputy Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A Complainant notifies the Title IX Coordinator or a Deputy 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 Saint Joseph's University; or
- If specific circumstances prevent Saint Joseph's University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Each party may appeal this dismissal using the procedure outlined in "Appeals," below. Dismissal of a Formal Complaint under this Title IX Grievance Policy will not affect the University's ability or discretion to address any alleged misconduct under other University policies, procedures and handbooks. See the section titled "Notice of Removal" below.

vii. Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the University will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their

institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

viii. Notice of Removal

Upon dismissal for the purposes of Title IX, Saint Joseph's University retains discretion to utilize the policies and procedures contained in the Student Handbook; Faculty Handbook; Administrator/Staff Handbook; [Interim Sexual Misconduct Policy: Policy Regarding Sexual Assault, Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, or Stalking](#); and/or [Interim Policy Prohibiting Discrimination, Harassment, and Retaliation](#) or any applicable collective bargaining agreement or employment agreement to determine if a violation has occurred. If so, Saint Joseph's University will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the respective process.

ix. Notice of Allegations

The Title IX Coordinator or a Deputy Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the University receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional 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 prepare a response before any initial interview.

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

x. Contents of Notice

The Notice of Allegations will include the following:

- Notice of the University's Title IX Grievance Process and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the 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, as required under 34 C.F.R. § 106.45(b)(5)(iv).

- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi).
- A statement that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

xi. Ongoing Notice

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance 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 charges.

xii. Advisor of Choice and Participation of Advisor of Choice

Saint Joseph's University will provide the parties equal access to advisors and support persons; 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 a 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, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of Saint Joseph's University.

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

Saint Joseph's University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other University policies apply to matters governed under this policy, and Saint Joseph's 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, a Deputy Title IX Coordinator or designee. Saint Joseph's University will not be obligated to delay a meeting or hearing under this process more than five (5) business 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 Saint Joseph's University.

xiii. Notice of Meetings and Interviews

Saint Joseph's 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.

VI. Investigation

i. General Rules of Investigations

Saint Joseph's University will designate a qualified Investigator of its choosing to perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

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

Saint Joseph's 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 information. Saint Joseph's 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 and disprove the allegations) as described below.

ii. Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the 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 be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

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

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The University will provide the evidence made available for each party and each party's advisor, if any, to inspect and review electronically, through the use of a Google shared drive or similar

technology selected by the University in its sole discretion. A Google email account is required to access this shared drive. The University 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 submit a written response by email to the Investigator. The Investigator will consider the parties' written responses before completing the Investigative 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 Title IX Grievance Process. Once signed, this Agreement may not be withdrawn. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

The parties and their advisors agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

iii. Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the Investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the Investigative Report.

iv. Investigative Report

The Investigator will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) business days prior to the hearing for each party's review and written response. The Report will be provided electronically, through the use of a Google shared drive or similar technology selected by the University in its sole discretion. A Google email account is required to access this shared drive. The University is not under an obligation to use any specific process or technology to provide the Report and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

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.

The Investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

VII. Hearing

i. General Rules of Hearings

Saint Joseph's University will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through the use of Zoom Video Communications, Inc., or comparable platform selected by the University in its sole discretion. This platform will enable participants simultaneously to see and hear each other. At its discretion, Saint Joseph's University may delay or adjourn a hearing based on technological errors not within a party's control.

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

The parties and their advisors agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

The parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

ii. Continuances or Granting Extensions

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

iii. Participants in the Live Hearing

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

Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
 - For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media,

including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the Formal Complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>.

- Saint Joseph's University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- If a party does not submit to cross-examination, the Hearing Officer cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.
- The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).
- The parties shall be subject to the institution's [Decorum Policy](#).

The Hearing Officer

- The hearing body will consist of a single Hearing Officer.
- The Hearing Officer shall render a determination of responsibility regarding the allegations made.
- The Hearing Officer shall not have served as the Title IX Coordinator, Deputy Title IX Coordinator, Investigator, or Advisor to any party in the case, nor shall they serve on the appeals panel in the case.
- The Hearing Officer shall not 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 Officer shall 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 may raise an objection regarding the Hearing Officer's actual or perceived conflicts of interest or bias, in writing no more than 24 hours after each party has been informed of the name of the Hearing Officer. The Title IX Coordinator shall decide on all objections and replace any disqualified Hearing Officers.

Advisor of Choice

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will provide an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of 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. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, Saint Joseph's University will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors shall be subject to the institution's [Decorum Policy](#), and may be removed upon violation of those Rules.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a Witness does not submit to cross-examination, as described below, the Hearing Officer cannot rely on any statements made by that Witness in reaching a determination regarding responsibility, including any statement relayed by the absent Witness to a Witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).
- Witnesses shall be subject to the institution's [Decorum Policy](#).

iv. Hearing Procedures

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

- The Hearing Officer will open and establish rules and expectations for the hearing.
- The Parties will each be given the opportunity to provide opening statements.
- The Hearing Officer will ask questions of the Parties and Witnesses.
- Parties will be given the opportunity for live cross-examination after the Hearing Officer conducts their initial round of questioning; During the Parties' cross-examination, the Hearing Officer will have the authority to pause cross-examination at any time for the purposes of asking the Hearing Officer's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Officer. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Officer to use statements made by the Party.

v. Live Cross-Examination Procedure

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

Before any cross-examination question is answered, the Hearing Officer will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Hearing Officer may be deemed irrelevant if they have been asked and answered.

vi. Review of Recording

The audiovisual recording of the hearing will be available for review by the parties. The audiovisual recording of the hearing will not be provided to parties or advisors of choice.

VIII. Determination Regarding Responsibility**i. Standard of Proof**

Saint Joseph's University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this policy. This means that the investigation and hearing determine whether it is more likely than not that a violation of the policy occurred.

ii. General Considerations for Evaluating Testimony and Evidence

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

The Hearing Officer shall not draw inferences regarding a party or Witness' credibility based on the party or Witness' status as a Complainant, Respondent, or Witness, nor shall it base its judgments in stereotypes about how a party or Witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or Witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or Witness' testimony is non-linear or incomplete, or if the party or Witness is displaying stress or anxiety.

The Hearing Officer will afford the highest weight relative to other testimony to first-hand testimony by parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a Witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be afforded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that Saint Joseph's University allow parties to call "expert Witnesses" for direct and cross examination. Saint Joseph's University does not provide for expert Witnesses in other proceedings. While the expert Witness will be allowed to testify and be crossed as required by the Final Rule, the Hearing Officer will be instructed to afford lower weight to non-factual testimony of the expert relative to fact Witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact Witnesses, regardless of whether the expert Witness testimony is the subject of cross examination and regardless of whether all parties present experts as Witnesses.

The Final Rule requires that Saint Joseph's University allow parties to call character Witnesses to testify. Saint Joseph's University does not provide for character Witnesses in other proceedings. While the character Witnesses will be allowed to testify and be crossed as required by the Final Rule, the Hearing Officer will be instructed to afford very low weight to any non-factual character testimony of any Witness.

The Final Rule requires that Saint Joseph's University admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Hearing Officer will be instructed to afford lower weight to such processes relative to the testimony of fact Witnesses.

Where a party or Witness' conduct or statements demonstrate that the party or Witness is engaging in retaliatory conduct, including but not limited to Witness tampering and intimidation, the Hearing Officer may draw an adverse inference as to that party or Witness' credibility.

iii. Remedies and Sanctions

In connection with each finding of responsibility, the Hearing Officer will consult with a Sanctioning Officer to determine appropriate remedies, including disciplinary sanctions.

The Sanctioning Officer shall not have served as the Title IX Coordinator, Deputy Title IX Coordinator, Investigator, or Advisor, nor shall they serve on the Appeals Board. The Sanctioning Officer shall not have a conflict of interest or bias in favor of or against the Complainant or Respondent, and shall be trained on topics including how to serve impartially.

Factors considered when determining a remedy and/or sanction may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to prevent the future recurrence of prohibited conduct
- The need to remedy the effects of prohibited conduct on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Hearing Officer and Sanctioning Officer

The remedies and sanctions will be implemented as soon as reasonably feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

Possible sanctions are listed in Appendix D of the Interim Sexual Misconduct Policy. The sanctions described in Appendix D of the Interim Sexual Misconduct Policy are not exclusive of, and may be in addition to, any sanctions specified in applicable employment agreements and collective bargaining agreements, and any actions taken or sanctions imposed by external authorities.

iv. Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment.
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and Witnesses, site visits, methods used to gather other evidence, and hearings held.
3. Findings of fact supporting the determination.
4. Conclusions regarding which section of the code of conduct, if any, the Respondent has or has not violated.
5. For each allegation:
 - a. A statement of, and rationale for, a determination regarding responsibility;
 - b. A statement of, and rationale for, any disciplinary sanctions the University imposes on the Respondent; and
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant.
6. The procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal").

v. Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Saint Joseph's University within ten (10) business days of the completion of the hearing.

vi. Finality

The determination regarding responsibility becomes final either on the date that the institution 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.

IX. Appeals

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations, and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

Appeals should be delivered via email to titleixappeals@sju.edu.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);

- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, Deputy Title IX Coordinator, Investigator(s), Hearing Officer, or Sanctioning Officer 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.

Appeals and responses must be prepared by and submitted by the parties involved (the Complainant and/or the Respondent). Third parties may not submit an appeal or response on behalf of a party involved. Appeals submitted for other reasons, or past the five (5) business day deadline articulated above, shall not be considered.

Appeals and responses shall be no longer than ten (10) single-spaced typewritten pages, using size 12 Times New Roman font and 1-inch margins. Submissions that do not meet these standards may be returned to the party for correction, but the timeline will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Responding to an Appeal

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

The non-appellant (or opposite appellant, if both the Complainant and the Respondent appeal) shall be provided an opportunity to inspect and respond to the appeal submitted by the appellant. The opportunity to inspect shall be scheduled within five (5) business days of the appeal period expiring. A written response to the other party's appeal, if any, must be delivered, in writing, within 48 hours of the opportunity to inspect, via email to titleixappeals@sju.edu.

The appellant shall be provided an opportunity to inspect the other party's response. No additional responses are accepted as appeal documentation at that point from either party.

The University's Evaluation of an Appeal

Appeals shall be decided by the Title IX Appeals Panel, comprised of three trained University administrators, appointed by the Associate Provost / Vice President of Student Life or their designee. Members of the Title IX Appeals Panel shall be free of conflict of interest and bias, and not otherwise involved in the matter under appeal (e.g. have served as the Investigator, Title IX Coordinator, Deputy Title IX Coordinator, Hearing Officer, Advisor to any party in the case, or Witness).

The Title IX Appeals Panel will review all available information pertaining directly to the appeal and render a decision, requiring a majority vote (two out of three panel members). The outcome of the appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

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.

X. Retaliation

Saint Joseph's 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 Title IX Grievance 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, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

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

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

Complaints alleging retaliation may be reported to the University and shall be addressed as any other complaint brought under this Policy.

XI. Amnesty for Students who Report Sexual Harassment

The University encourages reporting. The University recognizes, however, that a student who has been drinking or using drugs at the time of the incident may be hesitant to make a report because of potential consequences for their own conduct. A student who reports sexual harassment will not be subject to disciplinary action by the University for their personal consumption of alcohol or drugs at or near the time of the incident. The University may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. Amnesty for a student who reports sexual harassment may extend to other violations of the University's Community Standards, provided that any such violations did not and do not place the health or safety of any other person at risk.