



# Title IX Sexual Harassment Policy and Procedures

*APPLIES TO: Faculty, staff, students, student employees, graduate associates, appointees, volunteers, suppliers/contractors, and visitors*

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## INTRODUCTION

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Sexual Harassment impedes the realization of the College's mission, and members of the College Community have the right to be free from all forms of it. All members of the College Community are expected to conduct themselves in a manner that maintains an environment free from Sexual Harassment. As such, Holy Cross College does not discriminate on the basis of sex and is committed to providing an educational environment free from sex discrimination.

As a recipient of federal funding, the College is required to comply with Title IX of the Higher Education Amendments of 1972, 10 U.S.C. § 1681 et seq. (Title IX). Title IX is a federal civil rights law that prohibits discrimination on the basis of sex — including pregnancy discrimination and Sexual Harassment — in educational programs and activities. Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.

Sexual Harassment is defined broadly under this Sexual Harassment Policy. Sexual Harassment includes Sexual Assault, Sexual Harassment, Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, Sexual Exploitation, Sexual Misconduct with a Minor, Child Molesting, and sex discrimination, as defined below. Sexual Harassment is a violation of College policy, state and federal civil rights laws, and may violate state and federal criminal laws. When an allegation of Sexual Harassment is brought to an appropriate individual's attention, and a Respondent is found to have violated this policy, the College will issue appropriate sanctions to prevent future misconduct.

The College reserves the right to take whatever measures it deems necessary in response to an allegation of Sexual Harassment in order to protect the rights and personal safety of students, employees, and other members of the College Community. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to local police. Not all forms of Sexual Harassment will be deemed to be equally serious offenses, and the College reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The College will consider the concerns and rights of both the Complainant and the Respondent.

## DEFINITIONS

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The following terms and definitions apply to this Policy.

TERM	DEFINITION
<b>Actual Knowledge</b>	<p>Notice of Sexual Harassment or allegations of Sexual Harassment to a College’s Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute Actual Knowledge. This standard is not met when the only official of the College with Actual Knowledge is the Respondent. The mere ability or obligation to report Sexual Harassment or to inform a Student about how to report Sexual Harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the College. “Notice” includes, but is not limited to, a report of Sexual Harassment to the Title IX Coordinator. Examples of an Employee with authority to institute corrective measures on behalf of the College include Title IX Coordinators, College President, Vice Presidents, Dean of Students and other employees as outlined in Section III: Employee Duty to Report.</p>
<b>Appointee</b>	<p>An individual deemed to have an affiliation with the College in a non-compensatory capacity as designated in the applicable Human Resources Information System.</p>
<b>Complainant</b>	<p>Any person who is reported to have experienced conduct prohibited by this policy, regardless of whether that individual makes a report or participates in the review of that report by the College, and regardless of whether that person is a member of the College Community.</p>
<b>Consent</b>	<p>Permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. 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 clear permission regarding willingness to engage in (and the conditions of) sexual activity.</p> <ul style="list-style-type: none"> <li>A. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.</li> <li>B. Consent may be withdrawn at any time.</li> <li>C. Previous relationships or prior consent cannot imply consent to future sexual acts; this includes “blanket” consent (i.e., permission in advance for any/all actions at a later time/place).</li> <li>D. Consent cannot be given by an individual who one knows to be – or based on the circumstances should reasonably have</li> </ul>

	<p>known to be – substantially impaired (e.g., by alcohol or other drug use, unconsciousness, etc.).</p> <ul style="list-style-type: none"> <li>i. Substantial impairment is a state when an individual 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).</li> <li>ii. This also covers individuals whose substantial impairment results from other physical or mental conditions including mental disability, sleep, involuntary physical restraint, or from the consumption of alcohol or other drugs.</li> <li>iii. Being impaired by alcohol or other drugs will never function as a defense for any behavior that violates this policy.</li> </ul> <p>E. It is the obligation of the person initiating the sexual activity to obtain consent.</p> <p>F. An individual cannot consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or who is coerced by a supervisory or disciplinary authority.</p> <ul style="list-style-type: none"> <li>i. Force: violence, compulsion, or constraint; physically exerted by any means upon or against a person.</li> <li>ii. Coercion: the application of pressure by the Respondent that unreasonably interferes with the Complainant's ability to exercise free will. Factors to be considered include, but are not limited to, the intensity and duration of the conduct.</li> </ul> <p>G. A person who does not want to consent to sex is not required to resist or verbally object.</p> <p>H. Withdrawal of consent can be manifested through conduct and need not be a verbal withdrawal of consent (i.e. crying, pulling away, pushing away, not actively participating, laying there, uncomfortable or upset facial expression).</p> <p>I. Consent may not be given by an individual who has not reached the legal age of consent under applicable law.</p>
<b>Decision Maker</b>	The administrator(s) who oversee(s) any hearing or appeal which takes place as part of the formal resolution process.
<b>Formal Complaint</b>	A complaint filed by the Complainant or the College that triggers the College’s full investigation and hearing process under Title IX.
<b>Investigator</b>	An individual assigned by the Title IX Coordinator to investigate the alleged Sexual Harassment and oversee the investigative hearing.

<b>Respondent</b>	Any member of the College Community who is reported to have engaged in conduct prohibited by this policy.
<b>Retaliation</b>	Any adverse employment or educational action taken against a person because of the person’s participation in a complaint or investigation of discrimination or Sexual Harassment.
<b>Sexual Harassment</b>	<p>A. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;</p> <p>B. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or</p> <p>C. “Sexual assault” as defined in 20 U.S.C.1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).</p> <p>All such acts constitute of Sexual Harassment under this policy.</p>
<b>Student</b>	<p>An individual to whom an offer of admission has been extended, paid an acceptance fee, registered for classes, or otherwise entered into another agreement with the College to take instruction. Student status lasts until an individual graduates, is permanently dismissed, or is not in attendance for two complete, consecutive terms, and includes those with a continuing educational relationship with the College; “Student” also includes registered student organizations. A student organization remains a “Student” for purposes of this policy for one calendar year following the expiration of the organization’s most recent registration.</p> <p>The College reserves the right to administer this policy and proceed with any process provided by this policy even if the student withdraws from the College, is no longer enrolled in classes, or subsequently fails to meet the definition of a student while a disciplinary matter is pending.</p>
<b>Title IX Coordinator</b>	The designated College official with primary responsibility for coordinating the College’s compliance with Title IX. This individual provides leadership for Title IX activities; offers consultation, education, and training; and helps to ensure that the College responds appropriately, effectively, and equitably to all Title IX issues.
<b>College Community</b>	Faculty, staff, students, student employees, graduate associates, appointees, volunteers, suppliers/contractors, and visitors.

## **POLICY DETAILS**

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### **I. SCOPE**

#### **A. Medium**

- i. This policy applies to alleged Sexual Harassment in any medium. Sexual Harassment may manifest in many evolving forms including, but not limited to: physical, verbal, and visual, whether in person or online in any format.

#### **B. Jurisdiction**

- i. The College has a compelling obligation to address allegations and suspected instances of Sexual Harassment when it has Actual Knowledge that this policy has been violated. The College must inform the Respondent of the allegations and may take any further action it deems appropriate, including pursuing an investigation even in cases when the Complainant is reluctant to proceed. The Complainant will be notified in advance when such action is necessary.
- ii. The College's disciplinary response may be limited if the Respondent is a visitor or other third-party or is not subject to the College's jurisdiction.

#### **C. Location**

- i. This policy applies to alleged Sexual Harassment that takes place in a College's educational program or activity, against a person in the United States. This includes locations, events, or circumstances over which the College exercised significant control over both the Respondent and the context in which the Sexual Harassment occurred. Other such reports of sexual harassment occurring outside the scope of this policy may be referred to the student affairs disciplinary conduct procedure.
- ii. This policy also applies to alleged Sexual Harassment that occurs off-campus at University Edge apartments, in any other building owned or controlled by a Student organization that is officially recognized by the College, or in virtual spaces.
- iii. In situations not covered above, but where the Sexual Harassment undermines the security of the College Community or the integrity of the educational process or poses a serious threat to self or others, other applicable College procedures for general misconduct may be applied.

D. This policy is not intended for, and will not be used to, infringe on academic freedom or to censor or punish members of the College Community who exercise their legitimate First Amendment rights.

#### **E. Policy Maintenance**

- i. This policy is managed by the Office of Human Resources and the Title IX Coordinator.
- ii. This policy and the associated procedures will be revised by the Title IX Coordinator.

## **II. RECEIVING SUPPORTIVE MEASURES**

- A. Members of the College Community impacted by Sexual Harassment are encouraged to use counseling and support services, listed in the Resources section.

## **III. EMPLOYEES WITH AUTHORITY TO INSTITUTE CORRECTIVE MEASURES**

- A. The College designates certain employees who have the authority to institute corrective measures on its behalf. Under this policy, their knowledge of Sexual Harassment conveys Actual Knowledge to the College.
- B. The following employees have been designated by the College as having the authority to initiate corrective measure on its behalf: :
- i. Title IX Coordinator(s)
  - ii. President of the College
  - iii. Vice Presidents
  - iv. Dean of Students
- C. When one of the above employees learns of alleged sexual harassment, that employee should contact the appropriate Title IX Coordinator as soon as possible.
- Gwen DeMaegd – Title IX Coordinator for faculty or staff - 574.239.8349  
[gdemaegd@hcc-nd.edu](mailto:gdemaegd@hcc-nd.edu) or [titleix@hcc-nd.edu](mailto:titleix@hcc-nd.edu)
  - Catherine Ficker – Deputy Title IX Coordinator for students - 574.239.8310  
[cficker@hcc-nd.edu](mailto:cficker@hcc-nd.edu)
  - Adam DeBeck– Deputy Title IX Coordinator for students – 574.239.8338  
[ADeBeck@hcc-nd.edu](mailto:ADeBeck@hcc-nd.edu)
- D. Employees may have additional reporting obligations provided by law and/or other College policies.
- E. Corrective action may be taken against any individual who has a duty to report and who fails to respond in a manner consistent with the provisions of applicable laws, regulations, policies, and procedures

## **IV. EMPLOYEE DUTY TO REPORT (MANDATORY REPORTERS)**

*All College employees have reporting responsibilities to ensure the College can take appropriate action.*

- A. All College employees, except those exempted by legal privilege of confidentiality or expressly identified as a confidential reporter, have an obligation to report incidents of Sexual Assault. Any employee who receives a disclosure of Sexual Assault or becomes

aware of information that would lead a reasonable person to believe that a Sexual Assault may have occurred involving anyone covered under this policy, must report all known information immediately.

B. In addition to the requirement of reporting incidents of Sexual Assault, the following members of the College Community have an additional obligation to report all other incidents of Sexual Harassment, when they receive a disclosure of Sexual Harassment or become aware of information that would lead a reasonable person to believe that Sexual Harassment may have occurred involving anyone covered under this policy. These individuals must report the incident within five workdays of becoming aware of such information:

- i. Executive officers;
- ii. Deans, directors, department heads/chairs (including those serving in assistant or associate roles);
- iii. Supervisors who have hiring or firing power over at least three employees who are not student or post-doc employees;
- iv. Faculty and staff who serve as advisors to or coaches of College-recognized student groups;
- v. Any individual, whether an employee or not, who serves as a coach of a club sports team;
- vi. All individuals working in Student Life, including resident assistants, as well as all individuals working in Athletics
- vii. Campus Security Authorities designed by the College under the Clery Act not otherwise specified in this provision; and
- viii. Individuals serving in any of the positions described above on an acting or interim basis.

C. Employees are not required to report disclosures of information regarding Sexual Harassment pursuant to this policy in the following circumstances, unless an individual covered under this policy is implicated or the individual is explicitly seeking assistance from the College:

- i. At public survivor support events including, but not limited to: “Take Back the Night,” candlelight vigils, protests, and survivor speak-outs;
- ii. To student-employees when they are operating outside of their official work capacity; or

Employees with a duty to report should refer to the Employee Resources for Responding to Relationship & Sexual Violence pamphlet. Contacting a Title IX Coordinator to share all known information will satisfy the employee duty to report.

A. Employees may have additional reporting obligations provided by law and/or other College policies.

B. The following categories of employees are exempt from the duty to report Sexual Assault and other Sexual Harassment, due to their legal or professional privilege of confidentiality or their designation by the College as a confidential reporter:

- Professional and pastoral counselors:
  - a) A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the College community and who is functioning within the scope of that license or certification and their College employment.
    1. This definition applies even to professional counselors who are not employees of the College but are under contract to provide counseling at the College.
    2. This also includes an individual who is not yet licensed or certified as a counselor but is acting in that role under the supervision of an individual who is licensed or certified (e.g., a Ph.D. counselor-trainee acting under the supervision of a professional counselor at the College).

Tom DeHorn, L.M.H.C., L.C.A.C.

Director of Counseling and Health

574.239.8383 [tdehorn@hcc-nd.edu](mailto:tdehorn@hcc-nd.edu)

Or confidentially to: [counselingservices@hcc-nd.edu](mailto:counselingservices@hcc-nd.edu)

- b) A pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling and is functioning within the scope of that recognition and their role at the College.

- In this context, a pastor or priest who is functioning as an athletic director or as a Student advocate would not be exempt from the reporting obligations.
  - The College has determined that Priests are confidential resources, only within the Sacrament of Confession.
- Nurse and/or Physician at the Campus Student Health Center. The student health center is located in the Pfeil Athletic Center - room 116. 574-239-1067, or email the office at [healthservices@hcc-nd.edu](mailto:healthservices@hcc-nd.edu).
  - Other employees with a professional license requiring confidentiality who are functioning within the scope of that license or certification and their College employment.

Corrective action may be taken against any individual who has a duty to report and who fails to respond in a manner consistent with the provisions of applicable laws, regulations, policies, and procedures.

## V. REPORTING ALLEGATIONS OF SEXUAL HARASSMENT

A. Any person may report sexual harassment. This includes::

- i. Students
- ii. Employees
- iii. Parents
- iv. Any College Community member or other individual who is directly involved in, observes, or reasonably believes that Sexual Harassment may have occurred.

B. Reports can be made to the Title IX Coordinators in the following ways:

**Gwen DeMaegd**, Title IX Coordinator for faculty or staff

- i. In-Person: Driscoll room 104E
- ii. Mail: 54515 St. Road 933 N. PO Box 308 Notre Dame, IN 46556
- iii. Phone: 574-239-8349
- iv. Email: [gdemaegd@hcc-nd.edu](mailto:gdemaegd@hcc-nd.edu) or [titleix@hcc-nd.edu](mailto:titleix@hcc-nd.edu)

**Catherine Ficker**, Deputy Title IX Coordinator for students

- v. In-Person: Vincent 169
- vi. Mail: 54515 St. Road 933 N. Notre Dame, IN 46556
- vii. Phone: 574-239-8310
- Email: [cficker@hcc-nd.edu](mailto:cficker@hcc-nd.edu)

**Adam DeBeck**, Deputy Title IX Coordinator for students

- viii. In-Person: Vincent 170
- ix. Mail: 54515 St. Road 933 N. Notre Dame, IN 46556
- x. Phone: 574-239-8338
- Email: [adebeck@hcc-nd.edu](mailto:adebeck@hcc-nd.edu)

C. Making a report to the College and to law enforcement are mutually exclusive events. Making a report to the College does not preclude the individual from filing a report of a crime with law enforcement nor does it extend time limits that may apply in criminal processes. Filing a report with law enforcement is not a prerequisite of making a report with the College. However, individuals may request assistance from the Title IX Coordinator or designee to notify law enforcement.

Agency	Contact Information
St. Joseph County Police	574-235-9611
Campus Safety and Security	574-239-8312

## **VI. CONFIDENTIALITY AND PRIVACY**

- A. The College recognizes the importance of confidentiality and privacy. See the Resources section for a list of confidential support, non-confidential support, and medical resources. Information received in connection with the reporting, investigation, and resolution of allegations will be treated as private and will only involve individuals whom the College determines are necessary to conduct an appropriate investigation, to provide assistance and resources to parties, to perform other appropriate College functions, or when the College is required to provide information under the law.
- B. If an incident is disclosed or reported to the College and the individual requests that no investigation be conducted or disciplinary action be taken, the Title IX Coordinator or designee will explain that the College prohibits Retaliation and explain the steps the College will take to prevent and respond to Retaliation if the individual participates in a resolution process. The Title IX Coordinator or designee will evaluate the request to determine whether the College can honor the request while still providing a safe and nondiscriminatory environment.
- C. A decision to proceed despite an individual's request will be made on a case-by-case basis after an individualized review, and the Complainant will be notified if such a decision is made. If the College proceeds with an investigation, the Complainant is under no obligation to proceed as a part of the investigation.
- D. All individuals involved in the process should observe the same standard of discretion and respect for everyone involved in the process.

## **VII. RETALIATION**

Retaliation is prohibited by College policy and law. As stated in the Sexual and Discriminatory Harassment Policy:

- A. The College will not tolerate retaliation in any form against any individual who makes an allegation, files a report, serves as a witness, assists a complainant, or participates in an investigation of discrimination or harassment.
- B. Retaliation is a serious violation that can subject the offender to discipline, up to and including termination of employment and/or suspension or dismissal of a student, independent of the merits of the underlying allegation.
- C. Allegations of retaliation should be reported to the Title IX Coordinator.

## **VIII. INVESTIGATION AND RESOLUTION OPTIONS**

- A. Initial Assessment

- i. The Title IX Coordinators review all reports of Sexual Harassment under this policy for an initial assessment of the reported information. The available resolution options will be guided by the availability of information or evidence suggesting that a policy violation may have occurred; the College's obligation to investigate and provide appropriate remedies to eliminate, prevent, and address the effects of the prohibited conduct; and the desire of the Complainant to participate in an investigation or other resolution.
- ii. Upon completion of an initial assessment, the Title IX Coordinator or designee will determine the available options for resolution and will communicate the options to the parties.

**B. Investigative Resolution**

The Title IX Coordinator resolves a report of Sexual Harassment through investigative resolution when the alleged Sexual Harassment, if true, would be prohibited under applicable College policy. In instances when informal resolution is inappropriate, when the party requests, or when the College requires formal investigation, the College will consider the concerns and rights of all parties and provide a prompt, fair, impartial, and equitable process.

## **IX. REMEDIES**

- A. When the College makes a finding of a policy violation, it will take steps, whether individual or systemic, to stop the alleged Sexual Harassment, prevent its recurrence, and remedy the discriminatory effects on the Complainant and others, as appropriate.
- B. Corrective Actions/Sanctions
  - i. When the Respondent is a student, potential sanctions include formal reprimand, disciplinary probation, suspension, dismissal, and other appropriate educational sanctions.
  - ii. When the Respondent is an employee, corrective actions may be taken pursuant to the *Rules of Conduct and Progressive Disciplinary Procedure*. Disciplinary corrective actions may include a verbal or written reprimand, suspension without pay, disciplinary probation, or discharge.
- C. Any corrective actions or sanctions will not take effect until any appeals have been completed.
- D. Interim Supportive Measures
  - i. Supportive measures will be made available to both the Complainant and Respondent whether or not a Formal Complaint is filed to ensure equal access to the College's education and employment programs and activities. The Title IX Coordinator or designee will conduct an individualized assessment and will review requests from Complainant and Respondent to determine supportive measures that are appropriate and reasonably available at no cost to the Complainant or Respondent. Supportive measures may include, but are not limited to:

- a. No contact directives;
  - b. Referral to campus and community resources for victim advocacy, counseling, health services, legal assistance, immigration assistance, disability services;
  - c. Modification of work or class schedules;
  - d. Change in work or housing locations;
  - e. Change in reporting relationship;
  - f. Consideration of leave requests.
- ii. During the period of any investigation a Respondent can be put on administrative leave if they are an employee of the College. If the Respondent is a student of the College, they may be removed from educational activities following an individualized safety and risk analysis determining that the Respondent poses an imminent threat to the physical health or safety of anyone due to the allegations made. If a Student is removed from educational activities in this way, they have the right to challenge the determination of the safety and risk analysis.
  - iii. The Title IX Coordinator or designee will coordinate the provision of interim supportive measures. Parties will not be required to arrange such measures by themselves but may need to participate in communication with supervisors, faculty, and other College employees with a need to know.
  - iv. The College will maintain as confidential any supportive measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures.

**E. Other Remedial Measures**

- i. When the College is unable to proceed with investigative resolution, such as lack of information in the report or request by the Complainant that an investigation not move forward, the College may refer the case to Student Affairs

**X. FALSE ALLEGATIONS**

- A. It is a violation of this policy for anyone to make a false allegation of Sexual Harassment in bad faith. Corrective actions or sanctions may be imposed on individuals who in bad faith make false allegations of Sexual Harassment.
- B. The absence of a finding of a policy violation is not equivalent to finding that the Complainant acted in bad faith.

**XI. PROCESS ABUSE**

- A. No member of the College Community may:
  - i. Obstruct, prohibit, exert improper influence over, or interfere with any individual making a report, participating in a process, or carrying out a responsibility covered by this policy;
  - ii. Make, in bad faith, materially false statements in or related to a process covered by this policy;

- iii. Disrupt or interfere with the orderly conduct of any proceeding conducted under this policy; or
- iv. Fail to comply with any directive, sanction, or corrective action issued pursuant to this policy.

## **XII. TRAINING**

- A. Appropriate training completed by the coordinators, investigators and the hearing panel are posted on the website. All new faculty, staff, and students are required to complete online Sexual Harassment and Title IX training as directed by the College.

## **PROCEDURE**

### **I. INITIAL ASSESSMENT**

- A. Upon receiving a report, the Title IX Coordinator will provide information to the Complainant on the availability of supportive measures, the right to file a Formal Complaint, and how to file a Formal Complaint.
- B. The Title IX Coordinators or designee review all reports of Sexual Harassment under this for an initial assessment of the reported information. Available resolution options will be guided by the availability of information and evidence suggesting that a policy violation may have occurred; the College's obligation to investigate and provide appropriate remedies to eliminate, prevent, and address the effects of the prohibited conduct; and the availability or desire of the Complainant to participate in an investigation or other resolution.
- C. Upon completion of an initial assessment, the Title IX Coordinator or designee will determine the available options for resolution and inform the complainant of the need to file a formal complaint to proceed. If determined informal resolution is an option, the Deputy Title IX Coordinator will send written notification of the allegations and obtain signatures of both parties as agreement to participate in informal resolution.
- D. If the Complainant or the College elects to file a Formal Complaint and proceed with a formal resolution process the Deputy Title IX Coordinator will provide written notice of investigation to the parties within ten days including:
  - i. The actual allegations of facts that constitute Sexual Harassment and any evidence that supports this;
  - ii. That there is a presumption of innocence in their favor;
  - iii. That all parties are entitled to an advisor of their choice;
  - iv. That all parties can inspect and review evidence; and,
  - v. Information regarding any code of conduct provisions that prohibit false statements made in bad faith.

## II. DISMISSAL OF A COMPLAINT

- A. In the event that prior to, or in the course of, an investigation, the College determines that the allegations fail to meet the definition of Sexual Harassment or did not occur while in the United States and under the College's educational program or activity, the investigation and formal complaint will be dismissed. Formal complaints may still be resolved through procedures set forth in the Student Code of Conduct.
- B. The College reserves the right to dismiss the formal complaint and stop the investigation if:
  - i. The Complainant notifies the Title IX Coordinator in writing that they wish to withdraw their formal complaint;
  - ii. The Respondent is no longer enrolled in or employed by the College; or
  - iii. Specific circumstances prevent the school from gathering sufficient evidence to reach a determination about allegations (e.g. lack of participation in the investigative process by parties or witnesses).
- C. If the College dismisses the formal complaint for any reason, either party may appeal the decision as outlined in this policy's appeals process.

## III. INFORMAL RESOLUTION

- A. Informal resolution may be utilized in some circumstances if a formal complaint is filed. Informal resolution is a voluntary, remedies-based and educational/formative process designed to allow the respondent to accept responsibility, repair and acknowledge harm to the complainant or to the College community. The goal with informal resolution is to address allegations of prohibited conduct, identify effects of the behavior and create a resolution to address and prevent future behavior.
- B. The usage of an informal resolution process is limited in a number of ways:
  - i. Informal resolution is unavailable if the Respondent is an employee of the college.
  - ii. Informal resolution may only be used if any and all parties to an investigation agree to it.
- C. In all cases, the College will inform the parties of the right to end the informal resolution process at any time. If a party chooses to end the informal resolution process, the College will inform the complainant of options, including the option to begin the investigative resolution process.
- D. The College will provide a facilitator, mediator, or decision-maker that is free from conflicts of interest and has received appropriate training in order to facilitate resolution of the formal complaint.
- E. Informal resolution can take any form that the parties agree upon. The facilitator or designee will work with the parties to develop a form of resolution that adequately resolves the needs of the parties. This may include:
  - iii. *Facilitated Formative Dialogue*: A structured and facilitated conversation between two or more individuals, including, but not limited to the complainant and the

respondent, which allows for voices to be heard and perspectives to be shared. Depending on stated interests, participants may work towards the development of a shared agreement.

- iv. *Indirect Formative Dialogue*: Individual conversations with both the complainant and the respondent and/or other participants which allows for voices to be heard and perspectives to be shared. Depending on stated interests, participants may work towards the development of a shared agreement
- F. Depending on the form chosen, it may be possible for a complainant to maintain anonymity throughout the informal resolution process.
- G. As part of the resolution process, additional measures (including, but not limited to educational programming, training, regular meetings with an appropriate college individual or resource, extensions of no contact orders, or counseling sessions) may be agreed upon.

#### **IV. FORMAL RESOLUTION & HEARINGS**

- A. The Title IX Coordinator may resolve a report of Sexual Harassment through its formal resolution process when the alleged Sexual Harassment, if true, would be prohibited under applicable College policy. In instances when informal resolution is inappropriate, when any party requests, or when the College requires formal investigation, the College will consider the concerns and rights of all parties and provide a prompt, fair, impartial, and equitable process.
- B. Investigation
- i. Following the filing of a formal complaint, an Investigator will be assigned to the case by the Title IX Coordinator. During the investigation, the Investigator will seek to meet separately with the Complainant, Respondent, and any relevant witnesses who may have information relevant to the incident. The Investigator may also gather or request other relevant information or evidence when available and appropriate. Both the Complainant and Respondent will be asked to identify witnesses and provide other relevant information in a timely manner to facilitate prompt resolution of the case. All investigations are done by a dedicated member of the Title IX team.
  - ii. Although both the Complainant and Respondent are advised to participate in the investigation process to enable a fair and equitable resolution to any case, neither the Complainant nor the Respondent are required to participate in the investigation process.
  - iii. Formal complaints of sexual harassment may be consolidated where the allegations arise out of the same facts or circumstances.
  - iv. During the investigation process, parties have an equitable right to:
    - a. Receive notice of the allegations before participating in an interview with sufficient time to prepare for meaningful participation;

- b. A process with reasonably prompt timeframes, with extensions for good cause, as described in the Procedure section below;
  - c. Present relevant information to the Investigator, including evidence and witnesses;
  - d. Receive timely and equal access to any relevant information, documentation, and evidence gathered during the investigation;
  - e. Have an advisor of their choosing, or through appointment by the College, including an attorney, advocate, or other support person who is not a potential witness in the investigation or could otherwise compromise the investigation, who provides support throughout the formal resolution process, including being present for any meetings or hearings; and
  - f. Investigators who are adequately trained to resolve cases of alleged Sexual Harassment, are familiar with applicable policies and procedures, and who do not have a conflict of interest or bias for or against either party.
- v. The College must provide a written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings to all parties whose participation is invited or expected with sufficient time for the party to prepare to participate.
  - vi. The College will not restrict the ability of a Complainant or Respondent to discuss the allegations under investigation or to gather and present relevant evidence.
  - vii. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
  - viii. Following the completion of the investigation, the Investigator will complete an investigative report on the allegations contained in the formal complaint. Before the report is finalized, the Investigator will send to each party and their advisors an electronic or hard copy of all evidence that is directly related to the allegations. The College must include all evidence directly related to the allegations, even if the investigator does not intend to rely on that evidence in making a determination of responsibility. The parties then have at least ten days to provide a written response, which the Investigator will consider before finalizing the investigative report. The finalized report is then circulated for no less than ten days before a hearing is held.

### C. Hearings

- i. All hearings are overseen by a Decision Maker(s). All Decision Maker(s) have received special training on how to be impartial and are assigned to cases by the Title IX Coordinator to avoid any bias and present an objective analysis of the evidence. In no case is the Investigator for a given case also the Decision Maker(s).
- ii. The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the investigation and hearings.

- iii. The Decision Maker(s) will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived it.
- iv. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.

Hearings are not legal proceedings and do not follow courtroom procedure or the formal rules of evidence. During any hearings, each party must have an advisor present to ask questions to the other party. This advisor does not need to be licensed to practice law and may be a person of the party's choice or, if they do not have an advisor, the College will provide an advisor for them. The advisors provided by the College are trained faculty and staff members of the College community.

- v. Questioning & Cross-Examinations
  - a. The Decision Maker(s) may question individual parties and witnesses.
  - b. Parties will have the opportunity to cross-examine the party or witness. Parties may never ask questions directly, and questions must be asked to the other party through the use of a party's advisor. All questions asked must be relevant. Any questions determined not to be relevant by the Decision Maker(s) are not required to be answered.
  - c. If a party or witness is absent from the live hearing or refuses to answer cross-examination or other questions, the Decision Maker(s) may not rely on any statement of that person in reaching a determination of responsibility. The Decision Maker(s) also may not draw an inference about the determination regarding responsibility based solely on a party's or witness' absence from the live hearing or refusal to answer cross-examination or other questions.
- vi. If, at any point during the hearing, the Decision Maker(s) determines that unresolved issues exist that could be clarified through additional investigation time, the Decision Maker(s) may suspend the hearing and reconvene it in a timely manner that accommodates further investigation.
- vii. Hearings may be conducted virtually through the use of technology at the College's discretion. If either the Complainant or Respondent asks to be in separate rooms, the College must grant this request and provide appropriate technology to allow for simultaneous participation.
- viii. All hearings will be memorialized through an audio or audiovisual record or transcript of the live hearing. The recording or transcript will be made available for parties to inspect and review following their completion.

#### D. Resolution

- i. The Decision Maker(s) will communicate his or her decision to both parties, concurrently. The Decision Maker(s) will communicate the decision in writing and orally as soon as possible after the hearing. In all cases, the Decision

Maker(s) will send the parties a final outcome letter within ten days of the conclusion of the hearing.

- ii. The Decision Maker(s) base all conclusions by examining all evidence from the investigation and the hearing. Their conclusion is based on the preponderance of the evidence standard: If, the evidence indicates that it is more likely than not that Respondent committed the alleged act(s) then Respondent will be found responsible for violating this policy.
- iii. The Decision Maker(s)'s written decision must include the following information:
  - a. Identification of the allegations potentially constituting Sexual Harassment;
  - b. 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;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of the College's code of conduct to the fact;
  - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctioned imposed upon the Respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided; and
  - f. The procedures and permissible bases for either party to appeal.
- iv. If the Respondent is found responsible for violating this policy, the Decision Maker will consult with the appropriate individuals in order to determine the corrective actions and/or sanctions to resolve the case. Any such corrective actions and/or sanctions will be outlined in the Decision Maker(s)'s written decision.

## **V. APPEALS PROCESS**

- A. If either party disagrees with the outcome of the Decision Maker(s)'s determination, they may file a written appeal with the Title IX Coordinator within ten days of receiving the Decision Maker(s)'s written decision.
- B. Appeals may be filed due to:
  - i. A procedural irregularity that affected the outcome.
  - ii. New evidence being discovered that was not reasonably available at the time of the determination or dismissal.

- iii. A conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter of the Investigator or investigator(s), or decision-maker(s).

C. The College Provost, as the appeal authority for students, will examine all evidence in order to determine if the appeal has merit. The Provost will make an unbiased objective conclusion as to the appeal’s merit and issue a written decision describing the result of the appeal and the rationale for the result; and will provide the written decision simultaneously to both parties.

**VI. RECORDKEEPING**

A. The College shall maintain all records relating to Formal Complaints of Sexual Harassment, as well as all training materials used under this Policy, for seven years.

**RESPONSIBILITIES**

Position of Office	Responsibilities
Human Resources	Title IX Coordinator

**RESOURCES**

**SUPPORT RESOURCES**

Community Served	Scope/Purpose	Office/Agency	Contact Information	Confidentiality
Anyone	Provides legal services (e.g. civil protection orders, crime victim compensation, and criminal proceedings guidance) to eligible Students	Family Justice Center of St. Joseph County 533 N. Niles Ave., South Bend, IN 46617	574-234-6900	Confidential
Anyone	Anti-sexual violence organization that partners with local rape crisis centers across the country. Two resources available: 1) National Sexual Assault Hotline ( <a href="https://ohl.rainn.org/online/">https://ohl.rainn.org/online/</a> ) online chat format; 2) National Sexual Assault Hotline – free, confidential services 24/7.	The Rape, Abuse and Incest National Network (RAINN) ( <a href="http://rainn.org">rainn.org</a> )	800-656-HOPE (4673)	Confidential
Anyone	Provides private counseling for an array of personal, work-related, and daily living challenges to current employees and students	Campus Counseling and Health Office V-174	Tom DeHorn 574-239-8383 <a href="mailto:counselingservices@hcc-nd.edu">counselingservices@hcc-nd.edu</a>	Confidential

Anyone	Coordinates Title IX compliance; leads Title IX activities; provides education and training.  Intakes Title IX student concerns or complaints.	Title IX Coordinator D-104A  Deputy Title IX Coordinators V-169, V-170	Gwen DeMaegd 574-239-8349 <a href="mailto:gdemaegd@hcc-nd.edu">gdemaegd@hcc-nd.edu</a>  Catherine Ficker 574-239-8310 <a href="mailto:cficker@hcc-nd.edu">cficker@hcc-nd.edu</a>  Adam DeBeck 574-239-8338 <a href="mailto:adebeck@hcc-nd.edu">adebeck@hcc-nd.edu</a>	Non-Confidential
Anyone	Responds to criminal conduct on campus	Campus Safety & Security	574-239-8312	Non-Confidential

### MEDICAL RESOURCES

Community Served	Scope/Purpose	Office/Agency	Contact Information	Confidentiality
Students	On-Campus Student Health Clinic	Campus Student Health Center	574-239-1067 <a href="mailto:healthservices@hc-nd.edu">healthservices@hc-nd.edu</a>	Confidential
Anyone	Local hospital in Mishwaka with a 24/7 Sexual Assault Nurse Examiner  Local Hospital in South Bend provides emergency care and evidence collection	St. Joseph Regional Medical Ctr. 5215 Holy Cross Pkwy. Mishawaka, IN 46545  Memorial Hospital 615 N. Michigan St. South Bend, IN 46601	574-335-5000  574-647-1000	Confidential

## CONTACTS

Subject	Office	Telephone	Email/URL
Policy Questions	Office of Human Resources	574.239.8349	<a href="mailto:gdemaegd@hcc-nd.edu">gdemaegd@hcc-nd.edu</a>
To Make a Report	Office of Human Resources Title IX Deputy Coordinator Title IX Deputy Coordinator	574-239-8349 574-239-8310 574-239-8338	<a href="https://www.hcc-nd.edu/report-incident_or_titleix@hcc-nd.edu">https://www.hcc-nd.edu/report-incident_or_titleix@hcc-nd.edu</a>
Title IX Questions	Title IX Coordinator Deputy Title IX Coordinator	574-239-8349 574-239-8310 574-239-8338	<a href="mailto:gdemaegd@hcc-nd.edu">gdemaegd@hcc-nd.edu</a> <a href="mailto:cficker@hcc-nd.edu">cficker@hcc-nd.edu</a> <a href="mailto:adebeck@hcc-nd.edu">adebeck@hcc-nd.edu</a>