



## St. Charles Borromeo Seminary Title IX Grievance Procedures

### **I. Overview**

St. Charles Borromeo Seminary (“SCS”) uses these Title IX Grievance Procedures (the “Procedures”) when it receives a report of possible Title IX Misconduct under the Policy Prohibiting Title IX Misconduct (the “Policy”).

The Policy and the Procedures may address the same topic, with the Policy providing more general guidance and the Procedures more specific rules. These Procedures therefore must be read in conjunction with the Policy.

For information regarding available resources or how to make a report, please refer to Section VI and VII of the Policy.

Capitalized terms used and not otherwise defined in these Procedures are defined in the Policy.

### **II. Other Potentially Relevant Policies and Procedures**

SCS has a range of other policies and standards governing the conduct of employees and students, including policies and standards specified in relevant handbooks.

When SCS receives a report of behavior that could violate this Policy as well as other SCS policies, SCS, in its sole discretion, will determine which policy/ies and procedures apply and whether action will be taken under this Policy exclusively or under multiple policies and/or procedures. SCS reserves the right to address reports of behavior that fall outside of the scope of Title IX and this Policy under applicable policies and standards governing the conduct of employees and students.

### **III. Initial Assessment and Intake**

#### **A. Initial Assessment**

When alleged Title IX Misconduct is first reported to the Title IX Coordinator, the Title IX Coordinator will:

- 1) Assess the nature and circumstances of the report—including whether the names and/or other personally identifying information for the Complainant, Respondent, any witnesses, and/or any other individual with knowledge was provided—to facilitate appropriate follow-up; and
- 2) Assess the nature of the allegations to identify the grievance process or resolution options

that might be available.

Where the Title IX Coordinator determines that the Policy does not apply, such as when the report does not describe possible Title IX Misconduct, the Title IX Coordinator may refer the report to another SCS office or process for resolution.

## **B. Intake**

Upon receiving a report of Title IX Misconduct, the Title IX Coordinator will promptly contact the Complainant to (1) discuss the availability of supportive measures; (2) discuss and consider the Complainant's wishes with respect to such supportive measures; (3) inform the Complainant of the availability of such supportive measures with or without filing a Formal Complaint; and (4) explain the process for filing and pursuing a Formal Complaint.

The Title IX Coordinator will also provide the Complainant with a written explanation of available resources, options, and other important Policy information, including the following:

- 1) Support and assistance available through SCS and community resources, including the Complainant's option to seek Supportive Measures regardless of whether they choose to participate in an SCS or law enforcement investigation;
- 2) The Complainant's option to seek medical treatment and information on preserving potentially key forensic evidence and/or other potential evidence;
- 3) The process for filing a Formal Complaint;
- 4) SCS's procedural and grievance options, including the Formal Resolution and Informal Resolution processes;
- 5) The Complainant's right to an advisor of the Complainant's choosing who may be, but is not required to be, an attorney;
- 6) SCS's prohibition of Retaliation against the Complainant, the Respondent, the witnesses, and the reporting parties; how to report acts of Retaliation; and confirmation that SCS will take prompt action when Retaliation is reported;
- 7) The opportunity to discuss with the Title IX Coordinator or designee the Complainant's resources, rights, and options;
- 8) A copy of or a link to the Policy and Procedures; and
- 9) An explanation that parties and witnesses are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.

**If a Formal Complaint is filed**, the Title IX Coordinator will, within 5 business days, (1) provide the Respondent with a written explanation of available resources and options for support; and (2) transmit a written notice to both the Complainant and Respondent that includes:

- 1) Notice of the allegations potentially constituting Title IX Misconduct, including the identities of the parties (if known), the date and location of the alleged incident (if known), and potential Policy violations [note: if, at any point, SCS decides to investigate allegations that are materially beyond the scope of this initial written notice, SCS will provide a supplemental notice describing those additional allegations];
- 2) Notice that a determination regarding responsibility is made at the conclusion of the proceeding and the Respondent is presumed not responsible for the alleged Title IX Misconduct prior to the determination;
- 3) Each party's right to an advisor of their choosing who may be, but is not required to be, an attorney;
- 4) SCS's prohibition of Retaliation against the Complainant, the Respondent, the witnesses, and the reporting parties, how to report acts of Retaliation, and that SCS will take prompt action when Retaliation is reported;
- 5) The opportunity to discuss with the Title IX Coordinator resources, rights, and options;
- 6) A copy of or link to the Policy and Procedures; and
- 7) An explanation that parties and witnesses are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.

Where a Formal Complaint is filed that involves either a student-complaint or student-respondent, or both, the Title IX Coordinator will also notify the seminarians' Formation Advisor.

#### **IV. Resolution Options Following an Initial Assessment**

Upon completion of an initial assessment, the Title IX Coordinator will undertake one of the following actions, with the understanding that as a matter progresses, the action warranted can change, as described in these Procedures.

In all cases, the final decision on whether, how, and to what extent SCS will proceed in response to a report of possible Title IX Misconduct, and whether other measures will be taken in connection with any such report, rests with the Title IX Coordinator.

##### **A. Matters Involving a Formal Complaint**

If a Formal Complaint alleging behavior that could constitute Title IX Misconduct or Retaliation is filed, the Title IX Coordinator will initiate the grievance process, which includes both formal resolution and informal resolution, both of which are discussed at a high level here:

- 1) Formal Resolution Process: This process generally results in a written report containing a summary of the relevant evidence, a hearing that results in a finding and, if appropriate,

corrective action as determined by the appropriate SCS official, and an appeal process. SCS will strive to complete such matters within 120 days of the filing of the Formal Complaint. The parties will be provided with updates on the progress of the resolution process, as needed, and will be alerted, in writing, if the process will go beyond that timeframe.

- 2) Informal Resolution: Informal resolution includes a spectrum of facilitated, structured, and adaptable processes that seek to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the SCS Community. Informal resolution does not include an investigation, hearing, or formal disciplinary action against a Respondent. However, remedies may include any appropriate and reasonable educational, restorative, and accountability-focused measures as agreed to by the parties and approved by the Title IX Coordinator.

Though distinct from Supportive Measures under the Policy, an individual engaged in either resolution option under these Procedures may also request reasonable accommodations related to a disability at any phase in the applicable resolution process through SCS's normal disability accommodation process.

## **B. Matters Involving Third Parties or Non-Participating Complainants**

There are some matters in which a Formal Complaint involves a Respondent unaffiliated with SCS, or the Complainant does not wish to file a Formal Complaint after a report is made. These matters will be addressed as outlined below.

- 1) Formal Complaints Against Unaffiliated Third Parties: Generally, if a report of Title IX Misconduct is made against someone who has no affiliation with SCS, SCS's ability to take direct action against such a person may be limited. SCS will still take steps to inform the Complainant of support and assistance available through SCS resources and resources available from entities outside of SCS (including law enforcement).
- 2) Complainant Request for No Investigation or to Not Participate in an Investigation: In some instances, the Complainant may not wish to file a Formal Complaint or participate in any process (Complainants are encouraged, but not required, to participate in this process). SCS will consider the Complainant's wishes, though SCS retains the discretion to determine whether to proceed without the Complainant's participation. SCS generally will proceed when the Respondent is an Employee.
  - a. In all cases, including those in which the Title IX Coordinator decides to sign a Formal Complaint, the Title IX Coordinator shall remain impartial and is not a Complainant or otherwise a party to the matter.
  - b. In cases where SCS investigates without a participating Complainant, the Title IX Coordinator will notify the Complainant that SCS intends to initiate a process, and that the Complainant is encouraged, but not required, to participate. A Complainant who is not participating in the grievance process will be treated like

a party to the process; this means that the Complainant is entitled to the same rights afforded to them under the Policy and Procedures as if they were participating (e.g. a right to a copy of evidence).

If a Complainant declines to participate in an investigation, SCS's ability to fully investigate and respond to a report of Title IX Misconduct may be limited. Even so, SCS may pursue other steps to limit the effects of the Title IX Misconduct and prevent its recurrence.

## **V. Ongoing Assessment & Dismissals**

### **A. Consolidation or Severance of Formal complaints**

SCS, in the sole discretion of the Title IX Coordinator, may consolidate or sever Formal Complaints of Title IX Misconduct. Specifically, the Title IX Coordinator may consolidate multiple Formal Complaints into a single investigation and hearing if the allegations of Title IX Misconduct arise out of the same facts or circumstances. Consolidation might involve a single or multiple Respondents, a single or multiple Complainants, and/or Formal Complaints with another temporal or logical connection. In addition, a Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Title IX Misconduct. If investigations involving multiple Complainants and/or Respondents are consolidated, each party will have access to all of the information that is directly related to the allegations, including information as provided by all involved Complainants, all involved Respondents, and all involved witnesses.

The Title IX Coordinator also has the discretion to sever multiple Formal Complaints into separate investigations, hearings, or appeals. In every circumstance, however, grievance proceedings shall proceed consistent with the Title IX regulations, 34 C.F.R. Part 106.

### **B. Concurrent Legal Proceedings**

At the request of law enforcement, and subject to the provisions in these Procedures pertaining to notifying the Respondent of a Formal Complaint, SCS may agree to temporarily defer proceeding with part or all of its processes until after some or all of the law enforcement investigation is complete (e.g., deferring until the initial law enforcement evidence gathering phase is complete).

### **C. Required Dismissal**

The Title IX Coordinator must dismiss allegations of Title IX Misconduct if at any time after a Formal Complaint is filed, whether before or during the resolution process, the Title IX Coordinator determines that:

- The conduct alleged in the Formal Complaint would not constitute Title IX Misconduct, even if proved; or
- The conduct alleged in the Formal Complaint did not occur in SCS's Program or Activity or to a Complainant who was participating in, or endeavoring to

participate in, such a Program or Activity at the time they signed the Formal Complaint; or

- The alleged conduct occurred outside the geographic boundaries of the United States.

The parties will then be notified in writing that the allegations of Title IX Misconduct are being dismissed, with an explanation of the reason for dismissal. If allegations of Title IX Misconduct are dismissed for one of the above reasons, the parties may appeal that dismissal using the process described below.

In the case of such a dismissal, the Title IX Coordinator may refer the report to another SCS office or process for resolution. Written notice will be provided to the parties in the event of such a referral.

### **C. Other Dismissal and File Closure**

In addition to the reasons stated above for the mandatory dismissal of allegations of Title IX Misconduct, the Title IX Coordinator may dismiss a Formal Complaint of Title IX Misconduct, if at any time during the investigation or hearing:

- The Complainant provides the Title IX Coordinator with written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer enrolled or employed by SCS, or
- Specific circumstances prevent SCS from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event SCS determines that a Formal Complaint, or any discrete allegations therein, should be dismissed, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal.

### **D. Acceptance of Responsibility**

The Respondent may, at any time in the Formal Resolution process, elect to accept responsibility for the Title IX Misconduct. In such circumstances, and with the written consent of both the Respondent and Complainant, the matter will be removed from the Formal Resolution process and finalized instead as a form of Informal Resolution. The investigator will issue a brief investigation report and/or the hearing officer (as applicable) will issue a brief outcome notice summarizing the allegations and stating that the Respondent has accepted responsibility. The matter will then be referred to the appropriate SCS official to determine sanctions.

If the parties both do not consent, the Formal Resolution process will continue.

## **VI. Timelines**

The Title IX Coordinator has authority to extend the timelines/timeframes identified herein for good cause. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; travel and unavailability; a pandemic or other emergency; or the need for language assistance or accommodation of disability. In the case of such an extension, the Title IX Coordinator will notify the affected parties of the extension, including the reason(s) for the extension.

## **VII. Core Principles**

The following core principles apply to all procedural options under the Policy.

**Impartiality.** As applicable, the Title IX Coordinator, investigator, hearing officer, facilitator of Informal Resolution, and the appeal officer each must be impartial and free of any actual conflict of interest or bias.

A Complainant or a Respondent who has concerns that the Title IX Coordinator, investigator (if different than the Title IX Coordinator), hearing officer, facilitator of informal resolution, and/or the appeal officer cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.) may report those concerns to the Title IX Coordinator.<sup>1</sup> The Title IX Coordinator will assess the circumstances and determine whether a different investigator, hearing officer, facilitator of informal resolution, or appeal officer should be assigned to the matter.

**Presumption of Good Faith Reporting.** SCS presumes that reports of Title IX Misconduct are made in good faith. As a reminder, making a false report or giving false information is a violation of the Policy and may be a basis for discipline.

**Presumption of Non-Violation and Standard of Proof – Preponderance of the Evidence.** The Respondent is presumed not to have violated the Policy unless it is determined through applicable procedures that a preponderance of the evidence supports a finding of a Policy violation.

**Participation by the Parties and Witnesses is Voluntary.** The Complainants, the Respondents, or the witnesses may choose to participate or decline to participate in the Formal Resolution process. However, even if a Complainant or a Respondent declines to participate, SCS may deem it necessary to continue to investigate the allegations in the Formal Complaint. Non-participation by a party or witness may impact the outcome of the Formal Resolution process. Coercing any party or witness to not participate in the Formal Resolution process constitutes Retaliation and violates SCS policy.

---

<sup>1</sup> To the extent a party would like to raise a concern about the Title IX Coordinator, this report may be made to the Most Reverend Timothy C. Senior, Rector at 610-785-6200 / bsenior@scs.edu instead.

**Expectations of Complainant, Respondent, and Witnesses.** The Complainant, the Respondent, the Witnesses, and others sharing information with the investigator are expected to provide all relevant information at the time of their interview, or as soon as otherwise possible, and to be truthful and complete in their responses throughout the process. A party or Witness who participates in the process is expected to participate in a live interview if requested. Similarly, a person who elects to participate is expected to participate in all aspects of the process (e.g., a witness who participates in a live interview is expected to make themselves available for a hearing if requested to do so).

**Advisors.** Throughout the process, a Complainant or a Respondent may have an advisor of their choice. An advisor is an individual chosen by a party to provide support and guidance to them during the investigation process. An advisor may but is not required to be an attorney.

A party may request to consult with their advisor at any point. However, the advisor may not represent or otherwise speak for the party they are supporting, except when a hearing occurs as part of the Formal Resolution Process. In such hearings, the advisor may ask the other party and witnesses relevant questions. If a party does not have an advisor available at the hearing, SCS will provide for an advisor to ask questions on behalf of that party, as described in the Formal Resolution process in Section VII of these Procedures.

Investigators, decision-makers, and the Title IX Coordinator have the right at all times to determine what constitutes acceptable behavior on the part of an advisor and to take appropriate steps to ensure compliance with the Policy.

**Sexual Predisposition and Prior Behavior of the Complainant.** Questions and evidence about the Complainant's sexual predisposition are never relevant. Questions and evidence about the Complainant's prior sexual behavior are not relevant, unless (1) offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or (2) the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, and are offered to prove Consent. For example, if the question being determined is whether Consent was given through mutually understandable words or actions, information about the manner in which Consent has previously been communicated between the parties may be relevant in determining whether Consent was sought and given during the incident in question. The decision-maker (e.g., the hearing officer or the investigator, as applicable) will determine the relevance of such information. Prior sexual contact between a Complainant and a Respondent is not relevant to prove character or reputation and will never be used for those purposes.

**Prior or Subsequent Conduct of the Respondent.** Prior or subsequent conduct of the Respondent is not relevant to prove character or reputation and will never be used for these purposes, but may be considered for other purposes, such as determining pattern, knowledge, intent, or the Respondent's reasons for taking the alleged action. For example, evidence of a pattern of Title IX Misconduct by the Respondent, either before or after the incident in question, may be deemed relevant to the determination of whether the Respondent violated the Policy or engaged in inappropriate behavior. A finding in a previous investigation that the Respondent violated the Policy by engaging in similar conduct may be relevant evidence of a pattern of



behavior. Likewise, evidence in a previous investigation that the Respondent engaged in similar behavior, but the behavior was not at that time determined to be at a sufficient level to constitute a Policy violation, may be relevant to assessing severity, persistence and/or pervasiveness, as applicable, or relevant evidence of a pattern, in a subsequent investigation.

The relevance of pattern evidence will generally be determined based on an assessment of whether the previous or subsequent conduct was similar to the conduct under investigation or indicates a pattern of Title IX Misconduct. The decision-maker (e.g., the hearing officer or the investigator, as applicable) will determine the relevance of such information.

## **VIII. The Formal Resolution Process**

In the Formal Resolution Process, after an investigation, a live hearing occurs in which the parties' advisors have the opportunity to ask questions of the other party and the witnesses. The finding may be appealed.

### **A. Investigation**

An investigation affords both the Complainant and the Respondent an opportunity to submit information and other evidence and to identify witnesses. To be clear, although the parties have the option to submit evidence and suggest witnesses to be interviewed, the burden of gathering information in the investigation ultimately lies with SCS. There is a presumption in every investigation that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

#### **(1) Role of Investigator**

When the Formal Resolution Process is initiated, the Title IX Coordinator, in their discretion, will designate an investigator who will be responsible for gathering evidence directly related to the allegations at issue in the Formal Complaint.<sup>2</sup>

The investigator does not have a decision-making role in the process and is not an advocate for either the Complainant or the Respondent at any point in the process. The investigator is responsible for conducting an investigation as described in these Procedures. The investigator can also serve as a resource to provide parties with information about the resolution processes, and can assist in identifying and connecting the parties with other resources.

#### **(2) Notice of Investigation and Interviews**

The Complainant, Respondent, and any witnesses will receive written notice of the date, time, location, and purpose of any interviews with sufficient time to prepare for the interview.

---

<sup>2</sup> The Title IX Coordinator may designate someone either internal or external to SCS as the investigator. The Title IX Coordinator may also designate themselves as the investigator.

### **(3) Evidence**

The burden of gathering evidence sufficient to reach a determination in the adjudication lies with SCS, and the investigator in particular, and not with the parties. However, each party will be given the opportunity, and is encouraged, to identify witnesses, provide other relevant information—such as documents, communications, photographs, and other evidence—and suggest questions to be posed to the other party and witnesses.

Although SCS is responsible for gathering evidence sufficient to reach a determination regarding responsibility, all parties are expected to share relevant information and/or any information requested by the investigator, and to do so as early in the process as possible (or upon request). Failure to do so may lead the hearing officer to draw a negative inference from a refusal to provide information that the hearing officer knows or reasonably believes exists. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

The investigator will review all information identified or provided by the parties as well as any other evidence they obtain. The investigator has the discretion not to interview a witness if they do not possess relevant evidence, or if the evidence provided would be cumulative. Evidence directly related to the allegations in the Formal Complaint obtained as part of the investigation will be shared with the parties for their review and comment, as described below.

### **(4) Investigation Timeframe**

Although the length of each investigation may vary depending on the totality of the circumstances, SCS strives to complete each investigation within forty-five (45) business days of the transmittal of the written notice of allegations. Additional time beyond 45 days may be necessary to ensure the integrity and completeness of the investigation to: (1) comply with a request by law enforcement for a temporary delay to gather evidence; (2) accommodate the availability of parties and/or witnesses; (3) address the need for language assistance or accommodation of disabilities; (4) account for SCS breaks or vacations; (5) account for case complexities including the number of witnesses and volume of information provided by the parties; or (6) for other legitimate reasons

The parties will be provided with updates on the progress of the investigation, as needed, and will be alerted, in writing, if the process will go beyond the 45-day timeframe.

### **(5) Access to the Evidence**

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the investigator will transmit to each party and their advisors, if any, in either electronic or hard copy form, all evidence that is directly related to the allegations raised in the Formal Complaint.

Thereafter, the Complainant and the Respondent will have ten business days in which to submit

to the investigator a written response, which the investigator will consider prior to completing the investigation report. The Complainant and the Respondent must submit any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigator. As parties are encouraged to provide all relevant evidence as early as possible in the process, any party providing new evidence in their response to the evidence should identify whether that evidence was previously available to them, and if so, why it was not previously provided. The parties' feedback will be attached to the investigation report.

## **(6) Investigation Report**

After receiving any comments submitted by either party, or after the ten-business-day comment period has lapsed without comment, the investigator will, as appropriate, pursue any additional investigative steps as needed (as determined by the investigator) and issue an investigation report. The written investigation report will summarize the steps taken during the investigation, fairly summarize the relevant evidence collected, list any material facts on which the parties agree, and list material facts on which the parties do not agree.

The investigator may exclude and/or redact information or evidence from the investigative report as follows:

- Information that is not relevant to the allegations raised in the Formal Complaint;
- Information about a Complainant's prior or subsequent sexual behavior, unless such information falls into one of the exceptions described above; and
- Medical or mental health information, treatment, and/or diagnosis, unless the treated party consents.

When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator.

The Title IX Coordinator will provide the investigation report and evidence file to the parties simultaneously, along with information regarding the hearing process. The parties will have ten business days to review the investigation report and provide a written response to the Title IX Coordinator (who will transmit the investigation report, the evidence file, and the parties' responses to the hearing officer).

## **B. Hearing Process**

### **(1) Hearing Officer**

After receipt of the investigation report, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and make a decision as to whether or not the Respondent(s) violated the Policy provisions at issue by a preponderance of the evidence. The Title IX Coordinator, in their discretion, may appoint an individual internal or external to SCS to serve as the hearing officer.

The hearing officer has broad authority to determine the order of presentation, timing, overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and, with rationale, what cross-examination questions will or will not be permitted. The hearing officer also is responsible for maintaining an orderly, fair, and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person(s).

Hearing officers will be informed of the identities of the parties so that they can identify any conflict of interest to the Title IX Coordinator or designee. At the discretion of the Title IX Coordinator, an alternate hearing officer will be assigned. The parties will be notified of the identity of the selected hearing officer in advance of the hearing, and parties may, within three calendar days of such notice, object to the hearing officer by providing a written statement as to why the party believes that the hearing officer has a conflict of interest or bias. The Title IX Coordinator will make decisions regarding such objections and the appointment of alternate hearing officers, as necessary. If a potential conflict of interest is discovered outside of the three days, it is within the discretion of the Title IX Coordinator to appoint an alternate hearing officer.

## **(2) Notice of Hearing**

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer's appointment and setting a date and time for the hearing. The hearing may not be held any earlier than ten days from the date of transmittal of the written notice.

## **(3) Hearing Location**

On the date and time specified in the written notice, the hearing officer will convene and conduct a hearing. The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors.

By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary SCS personnel together in the same physical location. However, upon request of either party, or in the discretion of the Title IX Coordinator or hearing officer, the parties will be separated into different rooms, or may participate from different remote locations. When the hearing is conducted in this manner, the use of audio and video technology will enable the parties and other participants to participate simultaneously and contemporaneously.

## **(4) Conduct of the Hearing and Relevance**

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the hearing officer, the Title IX Coordinator, and other necessary SCS personnel.

The "directly related" evidence collected as part of the investigation process will be made

available at the hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing officer.
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility.
- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect.
- Opportunity for each party to make a brief closing argument.

Subject to the discretion of the hearing officer, hearings will ordinarily begin with introductory remarks by the hearing officer, followed by the hearing officer asking relevant initial questions of the parties. During this portion of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise address the hearing officer or anyone else present at the hearing.

After the hearing officer has asked their initial questions of the parties, if any, the hearing officer will permit each party's advisor to ask the other party all relevant questions and follow-up questions, including those challenging credibility. The hearing officer may ask follow-up questions as necessary. Subject to the discretion of the hearing officer, the questioning of witnesses will generally follow a similar process, whereby the hearing officer will pose relevant questions to witnesses, and then the parties' advisors will be permitted to ask relevant questions of witnesses. **Cross-examination of the parties and witnesses by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by the party personally.**

Only relevant cross-examination and other questions may be asked of a party or Witness. Before a Complainant, a Respondent, or a Witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the Complainant's sexual predisposition are not relevant. Questions and evidence about the Complainant's prior sexual behavior are not relevant unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent or due process would otherwise require such questions and evidence under applicable laws.

Information protected under a legally recognized privilege (e.g., privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), are not considered unless the information is relevant and the person holding the privilege has waived the privilege.

#### **(5) Participation of Advisors**

Both parties must be accompanied by an advisor to the hearing. If a party does not have an advisor for the hearing, SCS will provide an advisor of SCS's choice for that party.

Each party's advisor must conduct any cross-examination of the other party and any witnesses. Apart from conducting cross-examination, the parties' advisors do not have a speaking role at the hearing; an advisors' participation is limited to conferring with the party at intervals set by the hearing officer.

A party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, at the discretion of the hearing officer.

#### **(6) Participation of Parties and Witnesses**

As explained above, a party or witness who elects to participate in a SCS process is expected, although not compelled, to participate in all aspects of the process.

If a party or witness elects to not participate in the live hearing or participates in the hearing but refuses to answer some or all of the questions posed by the other party through their advisor, the Hearing Officer will not rely on any statement of the non-participating party or witness in reaching a determination regarding responsibility.

**“Statements”** for purposes of the hearing means factual assertions made by a party or witness. Statements might include factual assertions made during an interview or conversation, written by the individual making the assertions (including those found in a Formal Complaint), and memorialized in the writing of another (e.g. in an investigative report, police report, or medical record).

Where evidence involves intertwined statements of both parties (e.g. a text message exchange or an email thread) and one party refuses to participate in the hearing or submit to questioning about the evidence while the other does participate and answer questions, the statements of only the participating party may be relied on by the hearing officer.

The hearing officer will never draw any inferences based solely on a party's or witness's absence or refusal to answer questions. If a party does not appear for the hearing, their advisor may still appear for the purpose of asking questions of the other party and witnesses. If a non-participating party's advisor also does not appear for the hearing, SCS will appoint an advisor to participate in the hearing for the purpose of asking questions of the other party on behalf of the

non-participating party.

Parties are reminded that, consistent with the prohibition on Retaliation, intimidation, threats of violence, and other conduct intended to cause a party or witness to not appear for a hearing are expressly prohibited.

### **(7) Witnesses**

Generally, the hearing officer will exclude from the hearing any witness who was not previously identified to the other party. If the party wishing to present a witness has clearly demonstrated that a witness not interviewed during the investigation was not reasonably available (or not reasonably known to the parties) at the time of the investigation or that the witness is likely to have information that has significant relevance to a material fact at issue in the investigation, the hearing officer has the discretion to allow that witness to be interviewed. The interview will generally be conducted by the investigator and a summary of information provided by the witness will be made available to both parties for their review and comment prior to the hearing.

The hearing officer also may, at their discretion, exclude witnesses or witness testimony that the hearing officer considers irrelevant or duplicative. The hearing officer will explain any decision to exclude a witness or testimony as not relevant.

As noted above, in the event that any witness refuses to attend the hearing, or attends but refuses to submit to some or all of the questioning by the parties' advisors, the statements of that witness, whether given during the investigation or during the hearing, will not be considered by the hearing officer in reaching a determination of responsibility. The hearing officer will not draw an inference about the determination regarding responsibility based solely on witness's absence from the live hearing and/or refusal to submit to questioning by the parties' advisors.

### **(8) Electronic Devices and Record of Hearing**

A Respondent, Complainant, advisor, and/or Witness may not bring electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) into a hearing room, unless authorized by the Hearing Officer.

The Title IX Coordinator will arrange for there to be an audio recording, audiovisual recording, or transcript (or combination) of the hearing. The recording/transcript will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal, and will be kept on file by SCS for seven years.

### **(9) Deliberation and Determination**

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with relevant testimony and non-testimonial evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible during the hearing.

The hearing officer will resolve disputed facts and reach a determination regarding whether the facts constitute one or more violations of the Policy as alleged in the Formal Complaint using a preponderance of the evidence standard.

### **(10) Sanctions and Remedies**

In the event the hearing officer determines that the Respondent is responsible for violating the Policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate SCS official with disciplinary authority over the Respondent and such official will determine any sanctions to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

In keeping with SCS's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, SCS has wide latitude in the imposition of sanctions and remedies tailored to the facts and circumstances of the Title IX Misconduct, the impact of the conduct on the Complainant and SCS community, and accountability for the Respondent. Sanctions may also serve to remedy the discriminatory effects of the Title IX Misconduct on the Complainant and others, including any systemic actions found to be appropriate for the broader SCS community. Remedies will be designed to restore or preserve equal access to SCS's Program or Activity. Other interventions may include targeted or broad-based educational programming or training.

Sanctions for a finding of responsibility for student-Respondents include, but are not limited to, warning, suspension, and expulsion. Sanctions for findings of responsibility for employee-Respondents include, but are not limited to, warning, suspension, and dismissal from employment.

### **(11) Written Decision**

After reaching a determination and consulting with the appropriate SCS official and Title IX Coordinator regarding sanctions and remedies, the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Title IX Misconduct and the section(s) of the Policy alleged to have been violated;
- A description of the procedural steps taken by SCS from receipt of the Formal Complaint through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing;
- Findings of fact that support the determination;



- Conclusions regarding the application of definitions of Title IX Misconduct in the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- The discipline determined by the appropriate SCS official and whether any ongoing support measures or other remedies as determined by the Title IX Coordinator will be provided; and
- A description of SCS's process and grounds for appeal.

The hearing officer's written determination will be simultaneously transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal.

SCS strives to issue the hearing officer's written determination within fourteen (14) business days of the conclusion of the hearing.

### **C. Appeal**

Either party may appeal the determination, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity that materially affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome; and/or
- The Title IX Coordinator, investigator, or hearing officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that materially affected the outcome.

No other grounds for appeal are permitted.

A party must file an appeal within five business days of the date on which they receive notice of dismissal or determination appealed from. The appeal must be submitted in writing to the Title IX Coordinator. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the Title IX Coordinator will conduct an initial evaluation to confirm that the appeal is timely filed. If the appeal is not timely, the Title IX Coordinator will dismiss the appeal and provide written notice of the same to the parties.

If the appeal was timely filed, the Title IX Coordinator will appoint an internal or external appeal officer and refer the appeal to that person. The appeal officer will first conduct an initial evaluation to confirm that the appeal invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within five business days.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

Although the length of each appeal will vary depending on the totality of the circumstances, SCS strives to issue the appeal officer's written decision within 21 business days of an appeal being filed.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

## **IX. Informal Resolution**

Informal Resolution is an alternative resolution process that does not include an investigation or hearing. Informal Resolution is typically a spectrum of facilitated, or structured, and adaptable processes between the Complainant, the Respondent, and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the SCS community.

Informal Resolution options include but are not limited to mediation, referral of the parties to counseling programs, targeted or broad-based educational and training programs, direct communication with the Respondent by the Complainant, communication with the Respondent by the Title IX Coordinator or an SCS administrator, or other forms of restorative justice.

Informal Resolution is not available in cases involving a Seminarian-Complainant and Employee-Respondent. Moreover, some alleged violations of the Policy may not be appropriate for Informal Resolution. The Title IX Coordinator reserves the right to determine whether Informal Resolution is appropriate in a specific case.

Informal Resolution may be available, under appropriate circumstances, at any time prior to reaching a determination regarding responsibility. However, the Informal Resolution process

may not commence unless and until a Formal Complaint is filed.

Before the Title IX Coordinator commences the Informal Resolution process, both parties must provide informed consent in writing. In addition, where both parties and SCS determine that Informal Resolution is worth exploring, SCS will provide the parties with a written notice disclosing:

- the allegations of the Formal Complaint;
- the requirements of the Informal Resolution process; and
- any consequences resulting from participating or withdrawing from the process, including the records that may be maintained by SCS.

At any time prior to reaching a resolution, either party may withdraw from the Informal Resolution process and proceed with the formal grievance process for resolving the Formal Complaint.

Once an Informal Resolution is agreed to by all parties, the resolution is binding, and the parties generally are precluded from resuming or starting the Formal Resolution process related to that Formal Complaint. Any breach of the terms of an Informal Resolution agreement may result in disciplinary action.

Informal Resolution will typically be completed within thirty (30) business days after the process commences. Situations that are resolved through Informal Resolution are usually subject to follow-up after a period of time to assure that resolution has been implemented effectively.

## **X. Record Retention**

SCS shall retain for a period of seven years after the date of case closure: the official file relating to a Formal Resolution (including any investigation hearing, sanctioning, and/or appeals processes) or informal resolution involving allegations of Title IX Misconduct. In cases in which a Respondent was found to have violated the Policy and was expelled or terminated, SCS may retain such official case files indefinitely.