

# Sexual Misconduct Policy (Interim) 3.6-1

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## **I. Introduction**

Saginaw Valley State University (SVSU) is committed to creating and maintaining an educational environment free from all forms of sexual misconduct, including sex discrimination and sexual harassment. Consequently, SVSU strictly prohibits sex discrimination, gender and sex-based harassment, dating/domestic violence, sexual assault, sexual exploitation, and stalking. Retaliation of any kind will not be tolerated. These acts have a real impact on the lives of victims. They not only violate a person's feelings of trust and safety, but they can also substantially interfere with an individual's education or professional development.

SVSU will respond promptly and supportively to persons alleged to be victims of sexual misconduct, resolve allegations promptly and accurately under a predictable, fair investigation and hearing process that provides due process protections to alleged victims and alleged perpetrators, and effectively implements remedies for victims. It is the collective responsibility of all members of the SVSU community to foster a safe and secure campus environment.

This policy reflects SVSU's efforts to comply with the requirements of Title IX of the Educational Amendments Acts of 1972, the Elliott-Larsen Civil Rights Act, The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable federal, state, and local laws. Because this policy is a reflection of both the values of the University and the requirements of the law, this Sexual Misconduct Policy is comprehensive, extending beyond the technical requirements of any particular law, to articulate the expected standard of conduct within the University community.

## **II. Scope of Policy**

**Who:** This policy applies to all members of the SVSU community, including students, faculty, staff, visitors, independent contractors, and other third parties who are on campus and involved in or witnessed an incident of sexual misconduct.

**What:** This policy prohibits all forms of sexual misconduct. Please refer to the Prohibited Conduct Section for a complete list of terms and prohibited acts.

**Where:** This policy applies to conduct that occurs on the University campus as well as any off-campus conduct that affects the participation by a member of the SVSU community in a University activity. It also applies to all University Programs and University Activities. Please refer to the Definitions Section of this policy for specific details related to the terms used in this description.

### **III. Role of the Title IX Coordinator**

SVSU has designated ***Dr. Mamie T. Thorns, Vice President for Diversity Equity and Inclusion*** to serve as the University's Title IX Coordinator. She reports directly to the President of the University. Below is her contact information:

**Dr. Mamie T. Thorns**

Vice President for Diversity Equity and Inclusion

260 Wickes Hall

7400 Bay Road

University Center, MI 48710

Phone: 989-964-4068

Fax: 989-964-2827

mtthorns@svsu.edu (<mailto:mtthorns@svsu.edu>)

The Title IX Coordinator shall be notified of all sexual misconduct complaints by the University employee who took the complaint in order for the Title IX Coordinator to oversee the complaint process and provide supportive measures. The Title IX Coordinator is:

- Responsible for overseeing investigations of sexual misconduct involving any community member (student, faculty, staff, administrators, visitors and third parties)
- Responsible for monitoring and overseeing the University's compliance with Title IX and relevant VAWA provisions
- Knowledgeable and trained in University policies and procedures and relevant state and federal laws
- Available to advise any individual, including a Complainant, a Respondent or a third party, about the courses of action available at the University, both informally and formally, and in the community
- Responsible for overseeing and providing reasonable interim measures that protect a Complainant and assure equal access to university programs and activities, including educational and employment opportunities
- Responsible for administering and communicating the complaint procedures
- Available to provide assistance to any University student, employee or third party regarding how to respond appropriately to a report of sexual misconduct
- Responsible for monitoring full compliance with all procedural requirements, record keeping and timeframes outlined in this policy
- Responsible for the coordination and oversight of outreach education and training to increase awareness, and to prevent sexual misconduct in the University community.

#### **IV. Prohibited Conduct**

##### **A. All Sexual Activity Requires Consent**

###### **1. Definition of Consent**

For the purposes of this policy, consent to sexual activity is defined as a clear, unambiguous, and voluntary communication of willingness to engage in specific sexual acts or behavior, expressed by words or clear, unambiguous action. Consent cannot be inferred from the absence of a “no.” A clear “yes,” verbal or otherwise, is necessary. Silence, passivity, past consent, or lack of active resistance does not imply consent.

Consent must be clear and unambiguous for each participant throughout any sexual encounter. Consent to some sexual contact does not imply consent to others, nor does past consent to a given act imply ongoing or future consent. Consent can be revoked at any time.

## 2. Incapacitation

Consent cannot be obtained from someone who is asleep or otherwise mentally or physically incapacitated, whether due to alcohol, drugs, or some other condition. A person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Consent also cannot be obtained by intimidation, threat, coercion, or force, and agreement given under such conditions does not constitute consent. Please see Section XII for definitions of those terms.

Consumption of alcohol or other drugs, impairment, inebriation or intoxication are insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person. Consequently, evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's:

- a. Decision-making ability;
- b. Awareness of consequences;
- c. Ability to make informed judgments; or
- d. Capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person.

Sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not diminish one's responsibility to obtain consent.

## **B. Sexual Misconduct is Prohibited**

As used within this policy, sexual misconduct includes all sex and gender-based harassment; sexual assault, Dating/Domestic Violence, Sexual Exploitation, and Stalking. The University will treat attempts to commit any prohibited conduct as if those attempts had been completed. Definitions and examples of each type of sexual misconduct are provided in the following sections.

### **1. Sex and Gender-Based Harassment**

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- a. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- b. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;

This definition is used for Title IX. By law, an alternative approach is used under Title VII which applies to harassment in the workplace. Employees who have experienced this type of behavior may have recourse under both this policy and a separate SVSU policy: 2.5-2 Anti-

Harassment/Discrimination Policy (<https://www.svsu.edu/operationsmanual/legalcompliance/anti-harassmentdiscriminationpolicy25-2/>).

or

c. Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, even if those acts do not involve conduct of a sexual nature.

Examples of sex and gender-based harassment include, but are not limited to:

- o Explicit sexual pictures are displayed in a professor's office, on the exterior of a residence hall door or on a computer monitor in a public place.
- o A student repeatedly sends sexually oriented jokes around on an email list generated by his English prof. Even when asked to stop he refuses, causing one student in the class to drop the class.

## 2. Sexual Assault

Sexual Assault is having or attempting to have (1) sexual contact or (2) sexual intercourse with another individual by force or threat of force; without consent; or where the person is incapacitated. Specific information regarding both offenses follows:

**Non-Consensual Sexual Contact:** Having sexual contact with another individual:

- a. By force or threat of force;
- b. Without consent; OR
- c. Where that individual is incapacitated.

Non-consensual sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

Examples of Non-Consensual Sexual Contact include, but are not limited to:

- At a campus event, a student seated at a table unzips his pants and forces the student sitting next to him to touch his penis.
- While a student was visiting a friend's dorm room, a neighbor runs into the room naked and hugs him.

**Non-Consensual Sexual Intercourse:** Having or attempting to have sexual intercourse with another individual:

- a. By force or threat of force;
- b. Without consent; or
- c. Where that individual is incapacitated.

Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

Examples of Non-Consensual Sexual Intercourse include, but are not limited to:

- Despite a student repeatedly stating that she did not want to have sex, another student forced his penis into her vagina.
- While a student is passed out from drinking too much, another student pulls down his shorts and puts a finger into his anus.

### 3. Dating/Domestic Violence



It is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the other person. Dating/domestic violence is behavior or physical force that is used to intimidate, manipulate, isolate, frighten, terrorize, coerce, threaten, hurt, or injure someone in order to obtain or maintain power or control over that person. The existence of such a relationship is determined based upon the length, type, and frequency of interaction between the persons involved.

Examples of Dating/Domestic Violence include, but are not limited to:

- A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend.
- An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance.

#### 4. Sexual Exploitation

Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- Exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances;
- Knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge;
- Sexually based bullying; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

## 5. Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress because of fear, intimidation, apprehension or threat. It is the willful course of conduct over time that involves repeated or continuing harassment made against the expressed wishes of another.

Examples of Stalking include, but are not limited to:

- Repeatedly waiting at the classrooms of another student, following her to her car after, and lurking outside her place of employment.
- A student repeatedly shows up at another student's on-campus residence despite being told he or she is not welcome.

### **C. Prohibited Relationships by Persons in Authority**

Sexual or romantic relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or romantic relationships between students and their employers, supervisors, professors, coaches, advisors, or other non-student University employees. Similarly, University employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or romantic relationship with an individual under their direct supervision.

Faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach or otherwise guide students or subordinates should understand the fundamentally asymmetrical nature of the relationship they have with students or subordinates. Romantic or sexual relationships where there is differential in power or authority produce risks for every member of our community and undermine the professionalism of faculty and supervisors. In either context, the unequal position of the parties presents an inherent element of risk and may

raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach or otherwise make decisions or recommendations as to the other person in connection with their employment or education at the University.

Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship. Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly:

- 1) Discontinue any supervising role or relationship over the other person; AND
- 2) Report the circumstances to their direct supervisor.

Failure to fully or timely comply with these requirements is a violation of this policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the University.

The University does not intend to interfere with private choices regarding personal relationships when these relationships do not violate the goals and policies of the University. Any individual may file a complaint alleging harassment or discrimination, including an aggrieved party outside the relationship affected by the perceived harassment or discrimination. Retaliation against persons who report good-faith concerns about consensual relationships is prohibited and constitutes a violation of this policy.

See also the University Personal Involvements Policy 2.6-2

(<https://www.svsu.edu/operationsmanual/humanresources/personalinvolvements26-2/>).

#### **D. Retaliation is Prohibited**

Retaliation is intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator who will promptly investigate and take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of Retaliation include, but are not limited to:

- Threatening to hit the Complainant if she meets with the Title IX Coordinator.
- Excluding an individual from a club activity because he reported another member's sexual misconduct.

## **V. Privacy and Confidentiality**

### **A. Protection of Party Privacy**

Reasonable efforts will be made to protect the privacy of individuals, in accordance with applicable state and federal law, while balancing the need to gather information about sexual misconduct to prevent its recurrence and remedy its effects.

Information about reported sexual misconduct will only be shared with those who “need to know” in order to assist in the assessment, investigation, and resolution of the report. It will also be shared with the other party and the party’s advisor, as required by law. All employees who are involved in the university’s response to reports of prohibited conduct receive specific training about safeguarding private information in accordance with state and federal law.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the university’s FERPA policy. The privacy of an individual’s medical and related records, generally, is protected by the Health Insurance Portability and Accountability Act (“HIPAA”),

excepting health records protected by FERPA. Access to an employee's personnel records may be restricted in accordance with the Freedom of Information Act, and, where applicable, Human Resources Office.

## **B. Confidential Employees**

Laws protect confidentiality in certain relationships, including but not limited to health care providers and licensed counselors, all of whom may engage in confidential communications under Michigan law. The university has designated those individuals "confidential employees." When information is shared with a Confidential Employee, they cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure. For example, Professional Counselors do not have to report sexual misconduct that is disclosed to them when providing services.

Individuals who want to have a confidential discussion of an allegation of sexual misconduct may wish to contact the organizations listed below:

**For Students** - Students can obtain confidential and free counseling at the Campus Mental Health & Wellness Center (<https://www.svsu.edu/mhwc/>) (989) 964-7078.

**For Employees** - Employees can obtain confidential counseling through the Employee Assistance Program at 1-800-448-8326 or [www.lifeadvisorEAP.com](http://www.lifeadvisorEAP.com) (<https://lifeadvisorwellness.com/>).

## **VI. Reporting Sexual Misconduct**

There are two different types of reports that an individual may file: a police report or a report to the University. A person may choose to file one or both types of reports.

### **A. University Reports**

Any person who has experienced, observed, or learned of sexual misconduct may report it by submitting the online form; or via email, telephone or visit to any of the Title IX Advisory Board Members. There is no “wrong way” to report sexual misconduct. The Title IX Advisory Board Members will forward the report to the Title IX Coordinator.

All University employees, including student employees, are required to report sex discrimination and sexual harassment to the Title IX Coordinator whenever they observe it or otherwise become aware of it. The only exception is for Confidential Employees.

Anonymous reports can be filed with the University using the online form ([https://cm.maxient.com/reportingform.php?SaginawValleyStateUniv&layout\\_id=20](https://cm.maxient.com/reportingform.php?SaginawValleyStateUniv&layout_id=20)). The University’s response to an anonymous report will depend in its ability to identify the parties and other information contained in the report. If an anonymous report leads to a formal complaint, notice disclosing the identities of all of the parties involved will be provided to all parties.

## **B. Police Reports**

To file a report with the police, please contact any of the following organizations:

### **University Police (<https://www.svsu.edu/universitypolice/>)**

South Complex A

Corner of Pierce Road & South Campus

Dispatch (989) 964-4141

### **Saginaw County Sheriff**

Central Dispatch (989) 797-4580

With a police report, The State of Michigan and/or federal law will apply, and the matter will follow the criminal processes through a police investigation, a referral to the Prosecutor’s Office for prosecution and the criminal court system for resolution.

### **C. Reporting Details**

To encourage reporting, individuals who in good faith report sexual misconduct, will not be disciplined by the University for their own personal consumption of alcohol or drugs related to the incident, provided the violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

To promote thorough, and effective investigations, the University strongly encourages individuals to promptly report sexual misconduct. Waiting to make a report makes it more difficult to gather relevant and reliable information.

Individuals who are alleged to have been the victim of sexual misconduct are referred to throughout the process as the "Complainant." Individuals who are alleged to have engaged in sexual misconduct are referred to throughout the process as the "Respondent." If the sexual misconduct was reported by an individual who observed it or learned about it indirectly, that individual will be referred to as the "3rd Party Reporter."

When sexual misconduct is reported, the Title IX Coordinator or designee will provide information about how to file a Formal Complaint and provide Supportive Measures, as appropriate.

### **VII. Supportive Measures**

Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties. They are available before or after the filing of a formal complaint, or where no formal complaint has been filed. Such measures are designed to restore or preserve access to the education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment or deter sexual misconduct. The Title IX Coordinator will provide written notification to both parties about available assistance and oversee the implementation of appropriate supportive measures.

Services provided to either the complainant or the respondent will be kept confidential unless disclosure is necessary to provide the service; for example, a no-contact order requested by one party would have to be disclosed to the other party in order to be implemented.

### **A. Examples of Supportive Measures**

Supportive Measures include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The Complainant's wishes will be considered in the implementation of Supportive Measures. The University will make a fact-specific analysis of appropriate Supportive Measures, taking into account the nature of the educational programs, activities, opportunities, and benefits in which each party is participating. In some cases, Supportive Measures may be continued after a determination of non-responsibility.

### **B. Emergency Removal**

The University is committed to ensuring the safety and well-being of all parties. If an emergency situation requiring a student to be removed from an educational program or activity appears to exist, the Title IX Coordinator in consultation with the University CARE Team will conduct a prompt individualized safety and risk analysis.

If that assessment determines that there is an immediate threat to the physical health or safety of any individual arising from the alleged sexual misconduct, emergency removal may be appropriate. The potential removal will be evaluated with regard to applicable disability laws. Consideration will also be given to the potential to use additional Supportive Measures rather than removal. If the Title IX Coordinator determines that emergency removal is necessary based on this assessment, a written notice will be sent to all parties and the Respondent will have an immediate opportunity to challenge the decision.



A non-student employee may be placed on administrative leave while the formal investigation and hearing process is pending.

### **C. Additional Assistance**

For additional assistance, please contact any of the Campus or Community organizations identified under Resources & Support. If requested, other participants in the process (such as those who reported or witnessed the alleged sexual misconduct) may also be offered appropriate support measures.

## **VIII. Filing a Formal Complaint**

A Formal Complaint is a document filed by a Complainant alleging sexual misconduct against a Respondent and requesting that the University investigate the allegation. The Title IX Coordinator also has the discretion to sign a formal complaint under circumstances including but not limited to allegations of violence, threats, use of weapons, and serial predation.

Once the complaint is filed, the Title IX Coordinator will do an initial assessment to determine if an investigation is appropriate. If an investigation is undertaken, notification that includes the identity of the Complainant and details regarding the allegations will be sent to all parties

To file an institutional complaint, please use the Title IX Sexual Assault and Misconduct Report online form ([https://cm.maxient.com/reportingform.php?SaginawValleyStateUniv&layout\\_id=20](https://cm.maxient.com/reportingform.php?SaginawValleyStateUniv&layout_id=20)) or contact any of the following individuals who have the authority to institute corrective measures:

### **Dr. Mamie Thorns**

Vice President for Diversity Equity and Inclusion

Office of Diversity Programs

Wickes Hall 260

(989) 964-4068

mtthorns@svsu.edu (mailto:mtthorns@svsu.edu)

**Dr. Marie Rabideau**

Associate Provost for Student Affairs and Dean of Students

Office of Student Affairs

Curtiss Hall 114

(989) 964-2220

rabideau@svsu.edu (mailto:rabideau@svsu.edu)

**Corrie Piotrowski**

Vice President for Human Resources

Wickes Hall 373

(989) 964-2253

cpiotrow@svsu.edu (mailto:cpiotrow@svsu.edu)

Individuals may also report an allegation of sexual discrimination or sexual harassment or concerns about the process to the government. Specifically, incident Reporting to the U.S. Department of Education, Office for Civil Rights is an option for the resolution of discrimination.

To file a complaint with the government, please contact the following offices:

**REGIONAL OFFICE (serving Michigan and Ohio): Office for Civil Rights (OCR)**

U.S. Department of Education

1350 Euclid Avenue, Suite 325

Cleveland, OH 44115-1812

Phone: 216-522-4970

FAX: 216-522-2573

TDD: 800-877-8339

OCR.Cleveland@ed.gov (mailto:OCR.Cleveland@ed.gov)

**NATIONAL HEADQUARTERS:**

Office for Civil Rights (OCR)

U.S. Department of Education

Lyndon Baines Johnson Department of Education Bldg.

400 Maryland Avenue, SW

Washington, DC 20202-1100

Phone: 800-421-3481

FAX: 202-453-6012

TDD: 800-877-8339

OCR@ed.gov

**IX. Processing a Formal Sexual Misconduct Complaint****A. Initial Assessment**

Following receipt of a Formal Complaint of an alleged violation of this Policy, the Title IX Coordinator will conduct an initial assessment, which is typically one to five business days in duration.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a Formal Complaint;  
and/or
- 2) An informal resolution (upon submission of a Formal Complaint); and/or
- 3) A formal investigation and hearing process including an investigation and a hearing (upon submission of a formal complaint).

In determining how to proceed, the Title IX Coordinator will divide the allegations in the Formal Complaint into two categories: (1) allegations of Sexual Misconduct that fall within Title IX (henceforth Category One) and (2) allegations of Sexual Misconduct that are beyond the scope of Title IX (henceforth Category Two). For example, Title IX does not apply to activities outside of the United States because laws created by the United States generally apply only to the United States. However, the University's Sexual Misconduct Policy does apply to students and faculty on study abroad trips. Sexual harassment that occurs on campus would be a Category One allegation. If the same behavior occurred on a study abroad trip, that would be a Category Two allegation.

The Category One allegation will be dismissed under any of the following circumstances:

1. If the conduct did not occur against a person in the United States; and/or
2. If at the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed; and/or
3. If the Respondent is not someone over whom the recipient has control; and/or
4. If the conduct did not occur in the recipient's education program or activity; and/or
5. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved.

The Category One allegation may be dismissed at the discretion of the Title IX Coordinator under any of the following circumstances:

1. If at any time during the investigation or hearing, a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. The Respondent is no longer enrolled or employed by the recipient; or

3. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

Any remaining Category One allegations will be combined with any Category Two allegations and resolved using the process outlined in this policy. If there are no remaining Category One allegations, the Category Two allegations will be resolved using the process outlined in this policy. At the discretion of the Title IX Coordinator, a Formal Complaint containing only Category Two allegations may be resolved utilizing a streamlined process or alternative resolution measures when appropriate.

If Category One allegations are dismissed, a written notification including the reason(s) for dismissal will be provided to both parties. The decision to dismiss a Formal Title IX complaint can be appealed by either party, using the process outlined in section XI.

If a Formal Complaint also implicates other forms of discriminatory and/or harassing conduct prohibited by university policies, the Title IX Coordinator will evaluate all reported allegations to determine whether the allegations may be appropriately investigated together without unduly delaying the resolution of the report of prohibited conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of university policy will be evaluated under the applicable policy, but the investigation and resolution will be conducted in accordance with these procedures.

If a report or Formal Complaint does not involve any students or if it does not implicate any form of sexual misconduct under this policy, the report/Formal Complaint will be processed under the appropriate policies.

## **B. Formal Investigation**

The Title IX Coordinator or designee will notify the parties in writing of the commencement of an investigation. Such notice will

- 1) Identify the Complainant and the respondent;

- 2) Specify the date, time (if known), location, and nature of the alleged prohibited conduct;
- 3) Identify potential policy violation(s);
- 4) Include information about the parties' respective expectations under the policy and these procedures;
- 5) Explain the prohibition against retaliation;
- 6) Instruct the parties to preserve any potentially relevant evidence in any format; and
- 7) Direct the recipient to a copy of the policy and these procedures.

The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the investigators conclude that there is sufficient evidence, by a preponderance of the evidence, to support a finding that the Respondent violated the policy. (Please see the Definition Section of this Policy for a more detailed description of the preponderance of evidence standard of proof.)

Under the direction of the Title IX Coordinator, the investigators may meet separately with the Complainant, Respondent, and any pertinent witnesses. They may also review other relevant information offered by either party or discovered independently by the investigators. Written notice of the interview including the date, time, location, participants and purpose of the meeting will be provided to each party with sufficient time to prepare to participate. A separate notice will be provided for each interview or meeting. During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the investigators to each other or to any witness.

At any time during an investigation, the Complainant, Respondent, or any witness may provide a written statement, other supporting materials, or identify other potential witnesses, regarding the matter under review.

At any point during the investigation, if it is determined there is no reasonable cause to believe that university policy has been violated, the Title IX Coordinator has the authority to terminate the investigation and end resolution proceedings.

### **C. Advisors**

Throughout the process, the Complainant or Respondent may have an Advisor present at any meeting they participate in that is related to the investigation of the reported sexual misconduct.

An Advisor is a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any. Both parties are strongly discouraged from selecting an Advisor who is also a witness who will be interviewed by the Investigators regarding their independent knowledge of events related to the allegation. Selecting a Witness as an Advisor may prevent the Investigators from making an accurate assessment of the credibility of the information offered by that individual. The Complainant or Respondent may choose an attorney as an Advisor, but it shall be at his/her own expense.

The Advisor may be present but may not participate in any meeting related to the investigation, other than to advise the Complainant or Respondent.

### **D. Evidence Review and Comment Period**

Prior to the conclusion of the investigation, the investigators will provide the parties and their respective Advisors (if so desired by the parties) a draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including the evidence upon which the investigators does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual

behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if 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 the purpose of this Policy, a "business" day is a day when the University is open and conducting regular University operations. Business days do not include weekends, holidays that close the University, and days where emergency conditions warrant University closure.

The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, including any additional relevant evidence, make any necessary revisions, and finalize the report.

The Title IX Coordinator will review the written report and send it simultaneously, to both the Complainant and Respondent. The University neither encourages nor discourages the subsequent disclosure or sharing of the written notification by either person.

## **E. Hearing Process**

Provided that the complaint is not resolved, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing and appoint a Hearing Officer to oversee the hearing process.

The purpose of the hearing is to provide both parties with an opportunity to have their advisors ask questions of those individuals who provided information that will be used to determine whether the Sexual Misconduct Policy was violated and to determine what if any sanctions will be applied. Technology will be used to allow the parties to participate in the hearing from separate rooms.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.



The hearing officer(s) will use the preponderance of the evidence standard. The Title IX Coordinator will provide written procedures and guidelines to assist the parties and hearing officer(s) through the hearing process.

After the hearing is conducted, the hearing officer will prepare a final report that includes the following information:

- 1) Identification of the allegations potentially constituting sexual misconduct;
- 2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- 3) Findings of fact supporting the determination;
- 4) Conclusions regarding the application of the Sexual Misconduct Policy to the facts;
- 5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant;
- 6) The procedures and permissible bases for the complainant and respondent to appeal.

At the conclusion of the investigation, and, if applicable, the hearing, both the Complainant and Respondent will receive simultaneous written notification of the outcome and the rationale for the outcome from the Title IX Coordinator. The Title IX Coordinator will oversee the implementation of sanctions if any.

## **X. Sanctions**

### **A. Sanctions for Students**

Any student who violates this Policy will be subject to the range of remedial actions (in accordance with University Code of Student Conduct), which for students, range from probation to expulsion, depending on the totality of the circumstances of the incident, and taking into account any previous Student Code violations.

Remedial actions may include, but are not limited to, one or more of the following:

- 1) Completion of the Rehabilitation Program
- 2) Developmental/Educational Assignments
- 3) Expulsion
- 4) Fines
- 5) Referral for Counseling
- 6) Restitution
- 7) Restrictions
- 8) Temporary University Suspension
- 9) University Housing Probation
- 10) University Housing Suspension
- 11) University Probation
- 12) University Suspension
- 13) Warning

In addition to the sanctions applied to students found responsible for sexual misconduct, the University may find it helpful or necessary to request or require others to undertake specific steps designed to eliminate the misconduct, prevent its recurrence, or remedy its effects.

Examples include, but are not limited to, the following:

- Requesting or requiring a University entity to conduct training for its staff or members;
- Making involved parties aware of available academic support services;
- Making involved parties aware of available counseling or medical services;
- Revising University policies, practices, or services.

Respondents may also be subject to civil action or criminal prosecution because conduct that violates the University's Sexual Misconduct Policy may also violate state or federal laws.

## **B. Sanctions for Faculty or Staff**

A review of the findings of the investigation shall occur pursuant to the employee's collective bargaining agreement, where applicable, or in accordance with the applicable SVSU policy. If the Respondent is a member of the faculty or staff, possible sanctions are as follows:

**Formal Reprimand:** Written documentation of a failure to abide by SVSU policy or procedures maintained in the employee's personnel file.

**Educational Programs:** Participation in educational programs, such as training, workshops, seminars, or other educational activities.

**Revocation of SVSU privileges:** Revocation of SVSU privileges, such as participation in extra-curricular or volunteer activities, for a definite or indefinite period of time.

**Campus Restrictions:** Limitations on the times and/or places where the employee may be present on campus.

**No contact orders:** Prohibition on all forms of contact with certain people.

**Suspension:** Exclusion from work, with or without pay, and other related activities as set forth for a definite period of time.

**Termination:** Permanent separation from employment.

### **C. Sanctions for Contractors, Guests, Volunteers and Other Third Parties**

If the Respondent is a contractor, guest, volunteer, or other third party, possible sanctions are as follows:

**Trespass Warning:** Notice that future visits to the SVSU campus may result in a citation for trespassing.

**Campus Restrictions:** Limitations on the times and/or places where the person may be present on campus.

**No Contact Orders:** Prohibition on all forms of contact with certain people.

**Relationship Termination:** Termination of the person's relationship with SVSU

## **XI. Appeals Process**

Either party may appeal the outcome of the matter except where a Respondent has accepted an agreement under the sanctioning process outlined above. A party may seek review only on the following grounds:

- 1) The procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- 3) The Title IX Coordinator, investigator(s), or decision-maker(s) had 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.

Both the Complainant and the Respondent have the right to appeal the decision. To request an appeal, a party must submit a written request indicating the specific grounds for the appeal to the Title IX Coordinator within five (5) business days of the date of the notification of the University's Final Decision.

The Title IX Coordinator will appoint an appeal decision-maker(s) or panel, who is “bias-free” and “conflict of interest-free”, to review the record related to the hearing decision.

If the appeal decision-maker concludes that there are no relevant issues of concern, he or she will affirm the final decision and sanctions. The decision is final. Participating parties will be notified simultaneously, in writing.

If the appeal decision-maker identifies issues of concern, he or she will issue a revised final report that reflects the results of the appeal. All participating parties will be notified simultaneously, in writing.

## **XII. Definitions**

**Advisor:** A person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

**Coercion:** The improper use of pressure to compel another individual to initiate or continue sexual activity against the individual’s will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation or gender identity and threatening to harm oneself if the other party does not engage in the sexual activity.

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual misconduct.

**Confidential Employee:** A confidential employee does not have to report sexual misconduct. Confidential employees include (1) any employee who is a licensed mental-health professional (e.g., licensed counselors and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient who is a student and (2) any employee providing administrative, operational and/or related support for such health care providers in their performance of such services. A confidential employee will not disclose information about prohibited conduct to the University’s Title IX

Coordinator without the student's permission subject to the exceptions set forth in the confidentiality section of this policy). Every University employee is designated as either a, "Confidential Employee", or a "Responsible Employee".

**Education program or activity:** Includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

**Formal Complaint:** A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual misconduct against a Respondent and requesting that the University investigate the allegation.

**Force:** the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. For the use of force to be demonstrated, there is no requirement that a Complainant resist the sexual advance or request. However, resistance by the Complainant will be considered a clear demonstration of non-consent. An example is: "Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want."

**Intimidation:** the use of implied threats or acts that cause an unreasonable fear of harm in another.

**Mandatory Reporter:** A responsible employee is required to report to the Title IX Coordinator all relevant details (obtained directly or indirectly) about an incident of prohibited conduct that involves any student as a Complainant, Respondent, and/or witness. Mandatory Reporters include all staff, faculty, Resident Assistants, Graduate Assistants, and all other student employees, when disclosures are made to any of them in their capacities as employees. Every University employee is designated as either a, "Confidential Employee", or a "Mandatory Reporter".

**Preponderance of Evidence:** The investigator's findings of responsibility for sexual misconduct will be made using the preponderance of the evidence standard of proof. This standard requires that the information supporting a finding of responsibility be more convincing than the information in opposition to it. Under this standard, individuals are presumed to not have engaged in sexual misconduct unless a preponderance of the

evidence supports a finding that sexual misconduct occurred. If the weight of the evidence suggesting a violation is equal to or less than the weight of the evidence suggesting no violation occurred (i.e. 50-50), the determination will be that no violation occurred.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct.

**Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve access to the recipient's education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipients' educational environment or deter sexual harassment.

**3<sup>rd</sup> Party Reporter:** An individual who reports sexual misconduct that he or she observed or learned about indirectly. A person who was not personally the target of sexual misconduct.

**Title IX Coordinator:** By law, SVSU must have a Title IX Coordinator who is responsible for overseeing all facets of Title IX compliance in the University community. This individual not only supervises enforcement of the Sexual Misconduct Policy, he or she is also actively engaged in educating the community and implementing programs designed to prevent sexual misconduct. For more detailed information, see the section of this policy entitled the "Role of the Title IX Coordinator."

**University Activity:** All campus and school-related activities, including, but not limited to, student organizations (academic, Greek, multicultural, religious, service, social and support, sports and recreational), community organizations with student and/or faculty participation, and all other educational or extracurricular events hosted by or at the University.

**University Campus:** The University campus includes any building or property owned or controlled by SVSU and used in direct support of, or in a manner related to, the school's educational purposes, including residence halls, dining halls, and public property within or immediately adjacent to and accessible from campus. This also

includes any building or property not within the same reasonably contiguous geographic area of SVSU that supports or relates to the school's educational purposes and is frequently used by students.

**University Programs:** All educational, extracurricular, athletic, or other campus programs.

**Witness:** An individual who was not directly involved in a sexual misconduct incident but has information that is relevant to the investigation of an allegation of sexual misconduct.

### **XIII. Resources and Assistance**

#### **Related Policies & Forms:**

- Anti-Harassment/Discrimination Policy 2.5-2  
(<https://www.svsu.edu/operationsmanual/legalcompliance/anti-harassmentdiscriminationpolicy25-2/>) -  
The University's non-discrimination policies apply to how this Sexual Misconduct Policy is administered.
- Personal Involvements Policy 2.6-2  
(<https://www.svsu.edu/operationsmanual/humanresources/personalinvolvements26-2/>)
- Privacy Act aka FERPA 6.5-1  
(<https://www.svsu.edu/operationsmanual/legalcompliance/privacyactakaferpa65-1/>)
- Minors on Campus 9.1-1 (<https://www.svsu.edu/operationsmanual/healthsafety/minorsoncampus91-1/>) -  
CARE Team (<https://www.svsu.edu/studentaffairs/cardinalcarenotes/>)

### **XIV. Appendix:**

This policy describes how SVSU prevents, investigates, and addresses incidents of sexual misconduct consistent with its values and with the requirements of:

- Title IX of the Educational Amendments Acts of 1972 Elliott-Larsen Civil Rights Act



- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act Violence Against Women Act of 1994 (VAWA)
- The University's Affirmative Action/Equal Opportunity Statement
- Board of Control Resolution RES - 2291 October 22, 2018, and
- Other applicable federal, state, and local laws