



## SEX DISCRIMINATION, SEXUAL HARASSMENT & SEXUAL MISCONDUCT POLICY

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## I. Introduction

Villa Maria College is committed to providing a learning, working and living environment that promotes personal integrity, civility and mutual respect in an environment free of discrimination on the basis of sex, which includes sexual harassment, sexual assault, dating violence, domestic violence, stalking and others forms of sexual misconduct. Sex discrimination violates an individual's fundamental rights and personal dignity. Villa Maria College strictly prohibits sex discrimination, sexual harassment and other forms of sexual misconduct addressed in this policy. Some of the conduct prohibited by this policy is unlawful, and all of the prohibited conduct is antithetical to the mission of the College.

As a recipient of federal funds, Villa Maria College is required to comply with Title IX of the Education Amendments of 1972, 20 U.S.C. & 1681 et seq., which prohibits discrimination and harassment on the basis of sex in education programs or activities. Pursuant to Title IX and the Violence Against Women Act ("VAWA") and New York Education Law Section 129-B,1 the College also prohibits sexual assault, domestic/dating violence and stalking where it impacts or has the potential to impact the educational or employment environment of a College community member.

This policy provides information about resources and supportive measures available to members of the Villa Mara College community experiencing discrimination or harassment based on sex, including sexual assault, dating violence, domestic violence and stalking. This policy also provides procedures for the investigation and adjudication of allegations of sex discrimination, sexual harassment and other forms of sexual misconduct. Villa Maria College will take reasonable and appropriate remedial action to prevent sex discrimination and harassment and other forms of sexual misconduct, prevent its recurrence, and correct its discriminatory effects on the complainant and others within our campus community.

Individuals have the right to make a report to Campus Security, local law enforcement, and/or state police or choose not to report; to report the incident to Maria Villa College; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from Maria Villa College. A Students' Bill of Rights for cases involving sexual assault, domestic violence, dating violence, or stalking is attached at the end of this policy.

### *Non-Discrimination Statement:*

Villa Maria College does not discriminate on the basis of age, race, religion, creed, color, national or ethnic origin, gender, disability, sex, sexual orientation, domestic violence victim status, marital status, veteran status, military status, predisposed genetic carrier status and any other characteristics or protected status recognized by applicable federal, state or local law. This policy applies to admissions, all terms and conditions of employment, and any other aspect regarding the conduct of College programs and activities Villa Maria College is an Equal Opportunity Employer.

## II. Scope of the Policy

This policy applies to all Villa Marie College students, faculty, and employees, and applies regardless of an individual's sex, race, color, religion, age, national origin, disability, sexual orientation, gender identity/gender expression, familial status, pregnancy, military status, criminal conviction, predisposing genetic characteristics, domestic violence victim status, or other protected status. Under NY state law, employees (including unpaid interns and trainees), students, and non-employees (including independent contractors) and those employed by companies contracting to provide services to the College are protected against sexual harassment, regardless of immigration status.

This policy applies to conduct that takes place on College property and in connection with any program or activity sponsored by the College, regardless of where it occurs. Additionally, off-campus conduct may violate this policy if the conduct creates a threatening or uncomfortable environment on the College campus or within a Villa Marie program or activity, or if the incident causes concern for the safety or security of the College campus community.

Non-community members (e.g., alumni, family or friends of students, vendors, etc.) visiting campus, participating in a program or activity or interacting with College community members are expected to abide by the behavioral expectations in this policy. A complaint against a non-community member (e.g., a visitor to campus, an alum, a vendor or contract employees) will be investigated but no formal policy or procedure applies. The College may opt to ban the non-community member from College property or take other appropriate responsive measures.

## III. Policy and Procedure Summary

This Policy prohibits all forms of sex and gender related misconduct, referred to here as "Sexual misconduct". A person who has experienced Sexual misconduct has several options:

- **A report to a Confidential Resource.** A confidential resource provides emotional and/or medical services and maintains confidentiality. A report to a confidential resource does not result in a College investigation or any other action to respond to the incident.
- **A report to a Responsible Employee.** Certain personnel at the College have the responsibility to receive reports of sexual misconduct and to take action based on those reports. A responsible employee will forward the information about the incident to the Title IX Coordinator. The Title IX Coordinator will discuss options with the reporting person. The assistance the Title IX Coordinator can facilitate includes the following:
  - **Supportive Measures.** Supportive measures are intended to support the individual who experienced sexual misconduct to continue in their involvement in the College's program and activities. Supportive measures include no

- contact orders; academic accommodations; changes in housing assignment; or other academic, residential or work accommodations.
- **Informal Resolution.** An informal resolution is a resolution that the parties (i.e., the person making the allegations and the accused person) agree upon to address the situation. Not all incidents are appropriate for informal resolution, and no party may be forced to accept an informal resolution. This is a voluntary process.
  - **Grievance Process.** A grievance process includes an investigation and adjudication process. The outcome of a grievance process is either that the person accused of Sexual Misconduct is found either responsible or not responsible for having committed a violation of this Policy. A violation results in appropriate sanctions and other remedies to address the violation.

Additionally, the person who experienced a crime has the option to pursue criminal charges:

- **A report to Law Enforcement.** If an incident involves criminal conduct, the victim may make a complaint to law enforcement.

The options for reporting above are not mutually exclusive, and an individual may pursue one option but not the other. An individual may obtain the services of a confidential resource and decide at that time or a later time to report to the College. An individual may report to the College and also make a report to law enforcement, or may make a report to only the College or only to law enforcement. A person seeking to understand their options pursuant to this Policy should reach out to any of the following: Title IX Coordinator, DJ Schier at dschier@villa.edu or Deputy Title IX Coordinator, Brian Emerson at bemerson@villa.edu.

#### IV. Definitions, General:

1. **Advisor of Choice.** An advisor of choice is a person selected by the Complainant or Respondent to advise and accompany the Complainant or Respondent throughout the investigation and adjudication process. An advisor of choice may be any person, including an attorney. The institution does not appoint or pay for an advisor of choice. An advisor of choice's role is limited to the functions further described in this policy.
2. **Affirmative Consent.** Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of affirmative consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.
3. **Coercion.** Coercion is a threat, undue pressure, or intimidation to engage in sexual activity. Coercion is more than an effort to persuade, seduce,

entice, or attract another person to engage in sexual activity. A person's words or conduct are sufficient to constitute coercion if they deprive another individual of the ability to freely choose whether or not to engage in sexual activity.

4. **Complainant.** The term Complainant refers to the person who allegedly experienced the sexual misconduct in violation of the policy whether or not a formal complaint is filed. In some cases, the Title IX Coordinator may file a formal complaint and thereby initiate an investigation and adjudication process pursuant to this policy. In that instance, the Title IX Coordinator is not the "Complainant"; the complainant remains the person who allegedly experienced the sexual misconduct.
5. **Consent.** As used in this policy, term "consent" always refers to "affirmative consent" (defined above).

By way of further explanation, consent is free and informed permission. Consent given verbally is evidenced by affirmative agreement to engage in specific sexual activity. Consent through action is active participation in the specific sexual activity. Past consent to sexual activity cannot be presumed to be consent to engage in the same sexual activity in the future. Consent can be withdrawn at any time, and, if so, the sexual activity must cease. Consent to some sexual activity (e.g., kissing, fondling) cannot be presumed consent for other sexual activity (e.g., intercourse). Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.

Certain conditions prevent a person from being able to consent. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. A person cannot consent if they are unaware of the who, what, when and how of a sexual interaction. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol or drugs or other intoxicants may be incapacitated and therefore unable to consent.

A person who has been drinking or using drugs is still responsible for ensuring that the person has the other person's affirmative consent and/or appreciating the other person's incapacity to consent. This means that, even if the accused was drunk or high and, as a result, did not realize that the other person was not consenting to or was unable to consent to sexual activity, the person who committed the non-consensual act is still responsible for having violated this policy.

Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.

6. **Formal Complaint.** A formal complaint refers to a written complaint filed in accordance with the grievance process below. A formal complaint is necessary to initiate an investigation and adjudication process.
7. **Institution Advisor.** A Complainant or Respondent who does not opt to be accompanied by an advisor of choice at a hearing is entitled to be appointed an advisor by the College at no charge to the party. This advisor is referred to an “institution advisor” who may be but need not be an attorney. The Institution Advisor is selected by the College and may be a person internal or external to the College. An institution advisor’s role is limited to asking cross-examination questions of the other party during a hearing. An institution advisor does not represent a party in any legal sense. The party is responsible for formulating the cross-examination questions the institution advisor will pose during the hearing.
8. **Reporting Party.** The term Reporting Party refers to the person who made the report. This may or may not be the same as the Complainant, a witness, or a bystander.
9. **Respondent.** The term Respondent refers to the person alleged to have committed a violation of this policy.
10. **Sexual Misconduct.** Sexual misconduct is an umbrella term used in this policy to more conveniently refer to any form of conduct prohibited by this policy.

#### V. **Definitions, Conduct Violations:**

This policy sets forth conduct expectations for our community and provides a process for the reporting, investigation and adjudication of alleged violations. This policy applies to alleged conduct violative of Title IX of the Education Amendments of 1972 (i.e., “Title IX Category” violations) and also applies to a broader range of contexts and behaviors inconsistent with the College’s commitment to equal opportunity (i.e., “College Category” violations).

The designation of conduct or allegations as either “Title IX Category” or “College Category” is not a function of the seriousness of the alleged conduct but rather a function of the scope and coverage of Title IX versus the College’s broader jurisdiction to prohibit and discipline a larger scope of inappropriate behavior.

##### A. **Title IX Category Violations**

Title IX of the Education Amendments of 1972 provides: “No person in the United States shall, on the basis of sex, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” “On the basis of sex” includes sex, gender, sexual orientation, gender identity and transgender status.

In accordance with Title IX as interpreted by the Department of Education, the College recognizes the following as conduct violations within the meaning of Title IX, provided that the context and circumstances of the conduct fall within the scope of Title IX, including but not limited to that the complainant was in the United States at the time of the alleged conduct, that the complainant be participating in or seeking to participate in the College's education program or activity at the time of the complaint, and that the conduct have occurred in the context of the College's education program or activity:

1. **Sexual harassment.** "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:
  - a. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct (commonly referred to as a "quid pro quo");
  - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity (commonly referred to as a sexually or gender-based "hostile environment").
  
2. **Sexual assault.** "Sexual assault" is a sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault consists of the following specific acts:
  - a. Rape. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
  - b. Nonconsensual Sexual Contact. The touching of the private body parts (including the genital area, anus, groin, buttocks and breast), whether the contact is over or under clothing, of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.

3. **Dating violence.** “Dating violence” means violence committed by a person on the basis of sex: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.
4. **Domestic violence.** “Domestic violence” means violence on the basis of sex committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the College is located, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
5. **Stalking.** “Stalking” is engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. Stalking that does not occur on the basis of sex may be addressed under as a College Category Violation as described below.

## B. College Category Violations

The College prohibits the following behavior. For purpose of College Category violations, the below conduct is prohibited even if the conduct occurs off-campus, outside the United States, the Complainant is not participating or seeking to participate in the College’s education program or activity, or otherwise in circumstances over which the College does not have influence or control, including but not limited to during College academic breaks. The College retains discretion to not respond to, investigate or adjudicate circumstances in which no College interest is implicated.

1. **Sex Discrimination.** Sex discrimination is an act that disadvantages a person and that occurs because of the affected individual’s sex, gender, self-identified or perceived sex, sexual orientation, gender identity, or gender expression, gender-stereotyping or the status of being transgender. Examples of sex discrimination include, but are not limited to, denying a student a research opportunity because of the student’s gender; giving a student a lower grade than they deserved because of the student’s gender; denying an employee a raise because of the employee’s sex. A person who believes that they have been discriminated against based on sex with respect to an academic or employment decision is generally entitled to bring a complaint pursuant



to this policy in addition to any other College process or procedure that may be available (such as a grade appeal policy or appeal procedures for work performance or promotion).

2. **Sexual harassment.** “Sexual harassment” means unwelcome, offensive conduct that occurs on the basis of sex, sexual orientation, self-identified or perceived sex, gender, gender expression, gender identity, gender-stereotyping or the status of being transgender, but that does not constitute sexual harassment as a Title IX Category Violation as defined above. Sexual harassment can be verbal, written, visual, electronic or physical.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation. Instead, the determination is based on a “reasonable person” standard and takes into account the totality of the circumstances. The College considers the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the learning or working community.

3. **Sexual assault.** “Sexual assault” is a sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. but that does not constitute sexual assault as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity). Sexual assault consists of the following specific acts:

- a. **Rape.** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
- b. **Nonconsensual Sexual Contact.** The touching of the private body parts (including the genital area, anus, groin, buttocks and breast), whether the contact is over or under clothing, of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

- c. Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - d. Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent.
4. **Dating violence.** “Dating violence” means violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: a) the length of the relationship; b) the type of relationship; and c) the frequency of interaction between the persons involved in the relationship; but that does not constitute dating violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example, because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity).
5. **Domestic violence.** “Domestic violence” means violence committed by a or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the College is located, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction, if the conduct does not constitute domestic violence as a Title IX Category Violation as defined above because of the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College’s education program or activity).
6. **Stalking.** “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress, but that does not constitute stalking as a Title IX Category Violation as defined above because of basis on which it occurs or the context in which it occurs (for example because the complainant was not in the United States at the time of the alleged conduct, because the

complainant was not participating in or seeking to participate in the College's education program or activity at the time of the complaint, or because the conduct did not occur in the context of the College's education program or activity).

7. **Sexual Exploitation.** Sexual exploitation occurs when, without affirmative consent, a person takes sexual advantage of another in a manner that does not constitute another violation under this Policy. Examples of sexual exploitation include, but are not limited to: prostitution, acts of incest, observing or recording (whether by video, still photo or audio tape) of a sexual or other private activity (such as consensual sexual activity, undressing or showering) without the affirmative consent of all involved; taking intimate pictures of another, but then distributing the pictures to others without the photographed person's affirmative consent; engaging in voyeurism, engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of such infection; or exposing one's genitals in non-consensual circumstances.
  
8. **Retaliation.** Retaliation is an adverse act perpetrated to "get back" at a person because the person reported sexual misconduct, filed a complaint, or participated in an investigation or proceeding conducted pursuant to this policy by the College or by an external agency. An act of retaliation may be anything that would tend to discourage an individual from reporting sexual misconduct, pursuing an informal or formal complaint, or from participating in an investigation or adjudication as a party or a witness. A person who acts in good-faith is protected from retaliation. The fact that a statement is not determined to be proven or established following investigation and adjudication does not mean that the statement lacked good-faith; a person may provide inaccurate information believing it is accurate, which is still good-faith. If a person who makes a statement knowing that it is false, the person has acted without good-faith.

## VI. **Support & Assistance**

**Seek a safe place.** Villa Maria College Title IX officers, Campus Security officers, Local police officers (typically Cheektowaga or Buffalo Police Departments), and the New York State Police can help you do this. Officers at the local police and New York State Police are specifically trained to respond to the needs of a victim of a sexual offense. They can also make you aware of support and advocacy services and advise you about reporting procedures and requirements.

**Consider seeking medical assistance.** Those who seek a medical examination may obtain one for free, paid by the office of victim services (<https://ovs.ny.gov/>). The

College recommends that students seek medical examination at one of the following facilities that has a trained SANE nurse available:

- Buffalo General Medical Campus
- DeGraff Memorial Hospital
- Kenmore Mercy Hospital
- Mercy Ambulatory Care Center
- Mercy Hospital
- Millard Fillmore Suburban Hospital
- Sisters of Charity Hospital – Main Campus
- Sisters of Charity Hospital – St. Joseph Campus

The closest location to Villa Maria College to have an exam is Sisters of Charity Hospital – St. Joseph Campus located at 2605 Harlem Rd, Cheektowaga, NY 14225 (716) 891-2400. More information about SANE/SAFE program through Crisis Services can be found on-line: <http://crisisservices.org/rape-domestic-violence/what-is-sexual-violence/> Consider taking a full change of clothing, including shoes, for use after a medical examination. When seeking medical attention, a person may choose whether or not to speak to the police at the hospital or any other time. If they do, the option to choose whether to file charges against the respondent will exist.

Private physicians are not required to notify the police. If a victim desires police involvement, they may request this contact. Also, with a private physician, survivors may have to ask for a rape kit to be completed. Please keep in mind: having a rape exam does not mean that survivors are mandated to press charges. This action only keeps the survivor's options open.

**Preserve evidence.** In the event that sexual assault or sexual violence occurred, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. (The decision to press charges does not have to be made at this time. However, following these procedures will help preserve this option for the future.) Survivors should not bathe, urinate, douche, brush teeth, or drink liquids. Clothes should not be changed but if they are bringing all the original clothing to the hospital in a paper bag. (Plastic bags damage evidence.)

## VII. **Confidential and Non-Confidential Resources**

### Understanding Confidentiality

Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to College officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). Licensed mental health counselors and pastoral counselors are examples of Villa Maria employees who may offer confidentiality.

The College encourages any person who has experienced sexual assault or other forms of sexual misconduct to talk to someone about what happened, so she or he can get the support needed. There are a variety of confidential resources available to members of

the College community. Some of these resources maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.”

The obligation to keep information in confidence is inherent for certain Villa Maria professionals on campus, such as licensed social workers, licensed psychologists, and pastoral and professional counselors (including licensed mental health counselors). Many off-campus resources such as rape crisis centers are also confidential, and with the exception of certain child abuse and imminent threats, individuals working in such organizations have no obligation to report information back to the reporting individual’s campus.

A confidential resource does not reveal the information shared with him/her/them without the disclosing person’s consent. (There may be instances where a confidential resource must disclose information in a criminal or civil court proceeding, but those are very limited circumstances.) A list of confidential resources is provided below. The only College employees who can offer confidentiality are those listed as confidential resources below.

A non-confidential resource is a person who is permitted to share information with others with a need to know. A College employee who is a non-confidential resource will disclose to as few individuals as possible, but a non-confidential resource does not have the ability to promise that he/she/they will not tell others within the College about the information that has been shared with him/her/them.

It is important to note that all other Villa Maria employees who do not fall within the categories listed as confidential resources are required to report known incidents of sexual assault or other forms of sexual misconduct, so they are NOT confidential resources. However, even Villa Maria offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Be aware that certain Villa Maria officials with significant responsibility for student and employee activities may be mandated reporters required by law to disclose the occurrence of an event if and when it comes to their attention. If you make a report to an official who is required by law to disclose the occurrence of the event, but you request confidentiality and decline to file a formal complaint, the Title IX coordinator will evaluate the confidentiality request, by weighing the request against the College’s obligation to provide a safe, non-discriminatory environment for all members of its community. If it is determined that the College cannot honor the individual’s request for confidentiality, the individual will be informed by the Title IX Coordinator and will be offered privacy to the greatest extent possible. If it is determined that the incident can be kept confidential and the individual’s request will be honored, Villa Maria will still assist with academic, housing, transportation, and other reasonable supportive measures and available accommodations.

Privacy – Privacy may be offered by an individual when such individual is unable to offer confidentiality but shall still not disclose information learned from a reporting individual

or bystander to a crime or incident more than necessary to comply with applicable laws, including informing appropriate Villa Maria officials. Although most Villa Maria employees are not confidential resources, they can still offer “privacy.” This means that an employee may have to share information pursuant to federal or state law or college policy with certain other Villa Maria employees, but they will not share the private information beyond what is required or needed to comply with law and policy, and will otherwise limit re-disclosure as much as possible. Privacy of the records specific to the investigation is maintained in accordance with New York State law and, with respect to student records, the federal Family Educational Rights and Privacy Act of 1974 (FERPA) statute. Any public release of information to comply with the timely warning provisions of the Jeanne Clery Act (Clery Act) will not release the names of victims or information that could easily lead to a victim’s identification.

Villa Maria will make every effort to ensure that you are asked to describe the incident to as few representatives of Villa Maria as possible, and are not required to unnecessarily repeat a description of the incident.

The following Confidential Resources are available to members of the College community. The College’s on-campus health, counseling and pastoral services noted below are available to students free of charge.

#### On-Campus Confidential Resources

- The Villa Maria Care Center is located on the ground floor of the Library Building. The Director is Kasha LeBron, who can be reached at (716) 961-1821 or [klebron@villa.edu](mailto:klebron@villa.edu)

#### Off-Campus Confidential Resources

- Crisis Services (716) 834-3131 <http://crisisservices.org/>
- 24 Hour Erie County Domestic Violence Hotline (716) 862-HELP Shelter: 716-884-6000
- 24 Hour NYS Domestic & Sexual Violence Hotline 1-800-942-6906
- NYS Police Sexual Assault Hotline – 1-844-845-7269

The following Non-Confidential Resources are available to members of the College community who may want to pursue a report and/or formal complaint.

#### On-Campus Non-Confidential Resources

- Campus Security – Individuals may, but are not required to, report Sexual Misconduct to Villa Marie Campus Security. Campus Security is not a law enforcement agency, and will communicate the report to the College Compliance

Officers responsible for receiving and responding to reports of alleged Sexual Misconduct. Campus Security can be reached at 716-870-7176.

- Title IX Coordinator, DJ Schier, 716.961.1878, [dschier@villa.edu](mailto:dschier@villa.edu), Main Building Ground Floor across from Room 14

### VIII. Reporting to Law Enforcement

Any person may call 911 or Campus Security, which can be reached at 716-870-7176, for immediate safety assistance. Campus Security can also assist the individual in making a report of a crime to local law enforcement.

Individuals may, but are not required, to report a sexual offense to local law enforcement for the purposes of documentation or investigation. Individuals may contact local law enforcement as follows:

1. **Cheektowaga Police (Villa Maria College campus is in Cheektowaga, NY).** 3223 Union Road, Cheektowaga, New York 14227. Emergencies 9-1-1. Non-Emergency Phone: (716) 686-3500. <http://cpdny.org/>
2. **Buffalo Police.** 74 Franklin Street, Buffalo, NY 14202. Emergencies 9-1-1. Non-Emergencies (716) 851-4444. <https://www.bpdny.org/>
3. **New York State Police Campus Sexual Assault Victims Unit.** Non-emergency- toll free hotline to report Campus Sexual Violence to the New York State Police: 1-844-845-7269. Specific contact: S/Inv Thomas Gibbons, Troop A (north). Non-Emergencies 716-239-0298 [Thomas.Gibbons@troopers.ny.gov](mailto:Thomas.Gibbons@troopers.ny.gov).

Villa Maria College Campus Security staff can assist students in contacting local law enforcement at any time. If you choose to contact law enforcement, you may have the further option, but are not required to, pursue the case through the criminal justice system.

You should be aware that there are significant differences between Villa Maria's formal adjudication process, meaning investigation and hearing process, and the criminal justice system. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. Villa Maria's policy seeks to determine whether an individual has violated college policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated College policy may be suspended, expelled, terminated from employment or otherwise restricted from full participation in the College community.

### Orders of Protection

Orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence by a College community member or other person. Individuals who have been subjected to sexual assault or other forms



of sexual misconduct may have a right to obtain a court order to protect themselves from the perpetrators. Villa Maria will enforce all applicable no contact orders, restraining orders, and similar lawful orders issued by a criminal, civil, or tribunal court, to the extent required by law.

An order of protection is issued by the court to limit the behavior of someone who harms or threatens to harm another person. It is used to address various types of safety issues, including, but not limited to situations involving domestic violence. Family Courts, criminal courts, and Supreme Courts can all issue orders of protection. An order of protection may direct the offending person not to injure, threaten or harass you, your family, or any other person(s) listed in the order. You may learn more about obtaining an Order of Protection in New York State here: <https://www.nycourts.gov/faq/orderofprotection.shtml>

Campus Security, or other College officials, will, upon request, provide reasonable assistance to any member of the campus community in obtaining an order of protection or, if outside of New York State, an equivalent protective or restraining order, including providing that person with:

- A copy of an order of protection or equivalent when received by the College and providing that person with an opportunity to meet or speak with a College representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the other person's responsibility to stay away from the protected person or persons;
- An explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension; and
- Assistance in contacting local law enforcement to effect an arrest for violating such an order of protection.

If you have obtained an Order of Protection, please present the information to Campus Security, a Title IX Officer, or the Dean of Student Affairs for assistance on campus. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to law enforcement officials or the local district attorney's office.

## **IX. Reporting to the College and Formal Complaint Process**

### **A. Reporting to Campus Compliance Officers**

A Responsible Employee is an individual designated by the College to respond on the College's behalf to allegations of violations of this Policy. A Responsible Employee is a Non-Confidential Resource. The College has Campus Compliance Officers who are specially trained to receive reports under this policy and assist community members in understanding their rights and options.

When you disclose an incident to a representative of Villa Maria College, you will be directed to one of the following individuals listed below, who will assist you. You will be presented a copy of this policy, and will be made aware of your rights and options. All



who make a report will be informed that they have the right to make a report to local law enforcement, and/or NYS Police, or choose not to report; to report the incident to Villa Maria College Compliance Officers; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from Villa Maria College. Individuals are encouraged to report an alleged violation of this policy to any one of the **Villa Maria College Compliance Officers** identified below:

- DJ Schier  
Title IX Coordinator, Dean of Students  
716.961.1878  
dschier@villa.edu  
Main Building, Ground Floor across from Room 14
- Brian Emerson  
Deputy Title IX Coordinator, Executive Vice President, Civil Rights  
Compliance Officer  
716.961.1838  
bemerson@villa.edu  
Main Building, Across from Business Office

An individual who reports an incident to a College employee or office other than one of the Campus Compliance Officers listed above risks that the information may not be acted upon by the College. Therefore, a person who wishes for the College to take action is strongly encouraged to report to one of the individuals listed above.

While the individuals listed above are not a Confidential Resource, College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary and on a need-to-know basis for the Title IX Coordinator to provide individuals with their options, investigate and/or seek a resolution.

### Reporting Workplace Sexual Harassment

In compliance with New York State law, sexual harassment, when committed by an employee, is considered a form of employee misconduct. Employees who believe that

they are being subjected to harassment or discrimination in violation of this Policy, or who have witnessed or otherwise become aware of behavior prohibited by this Policy should promptly report that behavior to a supervisor, the Human Resources Manager, the Title IX Coordinator, or a member of the College's administration. With respect to sexual harassment of employees, any College supervisor or manager who receives a complaint or information about workplace sexual harassment is required to take appropriate action. Appropriate action may include immediately intervening if harassment is witnessed by the supervisor or manager, and in all instances includes reporting the situation to the Title IX Coordinator. In addition to being subject to discipline if they themselves engage in sexually harassing conduct or retaliation, individuals with supervisory authority over other College employees will be subject to discipline for knowingly allowing sexual harassment to continue.

### Anonymous Reports

Students and employees may make an anonymous report that will be sent to campus security and the Campus Compliance officers at: <https://www.villa.edu/campus-life/campus-security/anonymous-reporting>

## **B. Supportive Measures**

Once a report is made under this Policy, the complainant will be contacted by the Title IX Coordinator and offered individualized support as more fully described below. A report that triggers supportive measures need not be a formal complaint, and it may be made by a third-party (i.e., someone other than the complainant himself/herself). Once the respondent is informed of a report or a formal complaint, the respondent will be contacted by the Title IX Coordinator and offered individualized support as more fully described below.

Supportive measures are intended to restore or preserve, to the extent practicable, equal access to the College's educational programs and activities and protect the safety of all parties without unreasonably burdening the other party or parties. As required by federal regulation, these supportive measures must be non-disciplinary and non-punitive to the parties.

Supportive measures could include, but are not limited to:

- Changes or adjustment in academics such as the extension of deadlines or other course-related adjustments or allowing a withdrawal from a course without penalty;
- Changes to housing, transportation and campus working situations if those changes are requested by a party and reasonably available;
- Mutual "No Contact" orders and, possibly, in rare cases, such as when legal restraining orders or orders of protection have been issued, one-way no contact orders.
- Access to campus escorts or other reasonable security or monitoring measures;

- Counseling services; and
- Interim removal of a student from College will only be done pursuant to the Emergency Removal protocol, discussed below.

The Title IX Coordinator is responsible for coordinating the implementation of supportive measures, including coordinating with the various College departments and offices that may be involved. Supportive measures will be offered free of charge.

If a party's request for a supportive measure is denied, the party will be afforded an opportunity to have the denial promptly reviewed to assess whether the supportive measure is reasonable under the circumstances. In addition, each party will, upon request, be afforded the opportunity for a prompt review of the need for and the terms of no contact orders and other supportive measures that have been implemented, including the potential modification of these measures, to the extent that the party is affected by the measure(s) being reviewed. Requests to review a decision with regard to the denial of or need for supportive measures, including a no contact order, should be submitted in writing to Title IX Coordinator, DJ Schier, who is the Dean of Students. Each party will be allowed to submit evidence in support of, or in opposition to, the request to the extent the supportive measures under review affects that party. Additional information about how to request a review will be included in a written communication that will outline the supportive measures offered and any that were requested by the party but denied.

### **C. Emergency Removal of Student Respondents**

In some cases, the College may undertake an emergency removal of a student respondent in order to protect the safety of College community, which may include contacting local law enforcement to address imminent safety concerns.

Emergency removal is not a substitute for reaching a determination as to a respondent's responsibility for the sexual harassment allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person's physical health or safety, which may arise out of the sexual harassment allegations.

Prior to removing a student respondent through the emergency removal process, the College will undertake an individualized safety and risk analysis. If the individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student, including the student respondent, or other individual justifies removal, then a student respondent will be removed. This is the case regardless of the severity of the allegations and regardless of whether a formal complaint was filed.

After determining a student respondent is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator will provide written notice of the emergency removal to both the complainant and respondent. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision.

If a student respondent disagrees with the decision to be removed from campus, the respondent may appeal the decision. The respondent must provide written notice of the intent to appeal, which shall include the substance of the appeal, to the Title IX Coordinator, DJ Schier, at dschier@villa.edu within 10 days of receiving the notice of removal. The burden of proof is on the student respondent to show that the removal decision was incorrect. The Dean of Students will issue a determination in response to the request and notify both parties of the determination.

This section applies only to student respondents. Employee respondents are not subject to this section and may be placed on administrative leave pursuant to the College's policies and/or collective bargaining agreements during the pendency of a Title IX grievance process.

#### **D. Disability Accommodation**

A Complainant or Respondent with a disability who requires accommodation in the complaint, investigation, hearing or any other phase of the process is responsible for disclosing the need for accommodation to the Title IX Coordinator. The Title IX Coordinator may consult with the appropriate College offices and officials in deciding whether to grant a disability accommodation request.

#### **E. Amnesty for Students**

The health and safety of every student at the College is of utmost importance. Villa Maria College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to the College's officials or law enforcement will not be subject to the College's code of conduct action (including but not limited to action under this policy) for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

#### **F. Grievance Process**

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

A formal complaint is necessary to initiate the College's grievance process, meaning an investigation and adjudication process. A formal complaint must be in written form and must be signed by the complainant. A third-party or anyone other than the victim of the misconduct may not file a formal complaint. However, a formal complaint may be filed by a parent or guardian of a minor person.

A formal complaint is a document filed by a complainant or signed by the College's Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation. The respondent may be either a student or an employee or a visitor, independent contractor, intern, or volunteer of the College. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail to:

DJ Schier, Title IX Coordinator, Dean of Students  
716.961.1878, dschier@villa.edu  
Main Building, Ground Floor across from Room 14240 Pine  
Ridge Road Buffalo, NY 14225

In order to qualify as a formal complaint, the document must contain the complainant's physical or electronic signature, or otherwise indicate that the complainant is the person filing the formal complaint.

If a complainant declines to sign a formal complaint or does not wish to participate in the complaint and adjudication process, or the complainant's identity is unknown, and the Title IX Coordinator determines there is sufficient cause to file a formal complaint, the Title IX Coordinator may file a formal complaint. In such cases, the Title IX Coordinator is not considered to be a complainant or other party under this Policy.

The Title IX Coordinator will consider the wishes of the complainant not to proceed with the investigation and adjudication process. However, the Title IX Coordinator may file a formal complaint if the Title IX Coordinator determines that the allegations are such that it would be unreasonable not to proceed despite the wishes of the complainant.

In making this determination, the Title IX Coordinator will consider, among other factors: the risk that the alleged perpetrator will commit additional acts of sexual misconduct or other violence, which may be assessed by evaluating:

- whether there have been other complaints about the same alleged perpetrator;
- whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
- whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
- whether the sexual violence was committed by multiple perpetrators whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;

- whether the College possesses other means to obtain relevant evidence of the prohibited conduct (e.g., security cameras or personnel, physical evidence);
- whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

Additionally, where the respondent is not enrolled at the College and is not employed by the College, the College may decline to process the complaint through the Grievance Process. The College may take the steps it deems appropriate under the circumstances.

If the Title IX Coordinator determines that the Complainant's request that the College not conduct an investigation can be honored, the College will still assist with academic, transportation, employment, and other reasonable and available supportive measures.

If the Title IX Coordinator determines that the Complainant's request that the College not conduct an investigation cannot be honored, and an investigation is necessary, the College will notify the Complainant and take immediate action as necessary to protect and assist him/her and, if the Complainant declines to file a formal complaint, the Title IX Coordinator will do so.

#### **b. Mandatory Dismissal of Title IX Category Charges**

The Title IX Coordinator will review a formal complaint filed by a Complainant. In order to comply with Title IX regulations, the Title IX Coordinator must "dismiss" the Title IX Category violation(s) if it is apparent that the allegations are not within the scope of Title IX, including that the conduct alleged:

- would not constitute sexual harassment as defined in Section XX, even if proved,
- did not occur in the College's education program or activity, or
- did not occur against a person in the United States.

Notice of dismissal of the Title IX Category violation(s) will be in writing and issued to both the Complainant and Respondent. The Title IX Coordinator may determine at any point in the process that facts have emerged that require the dismissal of a Title IX Category violation. A decision to dismiss a Title IX Category violation is immediately appealable by the complainant, pursuant to the appeals section set forth in this Policy.

Even if Title IX Category violations are subject to dismissal, the College may continue to process the allegations as College Category violations, assuming that the allegations, if true, would constitute College Category violations.

c. **Discretionary Dismissal of Title IX Category Charges**

The Title IX Coordinator may, but is not required to, dismiss formal complaints in the following circumstances:

- When the complainant withdraws a formal complaint;
- When the respondent is no longer enrolled in or employed by the College; and
- Where specific circumstances prevent the College from gathering evidence (such as where a complainant refuses to cooperate but does not withdraw a formal complaint).

The decision to dismiss or not to dismiss a charge under these circumstances will depend on the totality of the situation.

X. **Informal Resolutions Policy**

A. **Informal Resolution Process**

An Informal Resolution Process is a voluntary process in which a trained facilitator assists the parties in resolving the allegations made by a complainant. An Informal Resolution prioritizes educational and conciliatory approaches over more adversarial contestation of the facts. One objective of the Informal Resolution is to provide to the parties an opportunity to hear each other's concerns and address them as collaboratively and usefully for the parties as possible, with the assistance of the facilitator.

The intent of an Informal Resolution Process is for the parties to undertake a facilitated discussion regarding the matters at issue related to the allegations to see if they can reach agreement on a resolution that leaves both parties feeling satisfied with that resolution. The Informal Resolution Process is not available if the respondent in a sexual misconduct complaint is a faculty or staff member of College and the complainant is a student. Supportive measures are available to both parties in the same manner as they would be if the formal complaint were proceeding under the formal grievance and hearing process.

B. **Steps Prior to the Informal Resolution Process**

The Title IX Coordinator will offer the Informal Resolution Process to the parties after a formal complaint is filed by a complainant. Both parties must consent to use the Informal Resolution process. Either party in an Informal Resolution process may terminate it at any time and the complaint will proceed to the formal grievance and hearing process. In some instances, as detailed below, the facilitator in the Informal Resolution process may terminate the process as well.

A written notice will be given to both parties before entering an Informal Resolution Process, and both parties must consent to the process in writing. No party should feel intimidated, coerced or threatened to participate in an Informal Resolution Process, or to withdraw from an Informal Resolution Process.

If both parties consent to participate in the Informal Resolution process, the College will assign a facilitator who will act in an independent, impartial manner to facilitate a resolution between the parties. The facilitator will be trained on how to perform the role. The facilitator will also be screened to ensure that such person is free from conflicts of interest and bias.

### **C. How the Process Works**

The facilitator will schedule one or more meetings with the parties. The facilitator will assist the parties in communicating information and opinions to the facilitator and each other regarding the allegations in an effort to find common ground and a resolution of the allegations that is satisfactory to both parties. The facilitator may meet separately with each party to explore the party's views about the allegations and desired outcome from the process. Either party can elect to have any meeting occur so that the parties are in different rooms and the facilitator "shuttles" between the parties.

The facilitator's role is to conduct the Informal Resolution process in a way that is impartial and does not favor one party over the other. The facilitator will not be available as a witness in any hearing that may occur should either party terminate the Informal Resolution process before a resolution. This is in keeping with the concept that the facilitator is impartial and is only facilitating the interaction between the two parties and is not listening or taking notes for any purpose other than assisting the parties.

Should the Formal Complaint be returned to the formal grievance and hearing process of this policy, the parties may not disclose information shared by the other party during the informal resolution process in the hearing. This confidentiality protection does not apply to information that is learned outside the Informal Resolution process through the investigation or otherwise.

### **D. Possible Outcomes of the Process**

A resolution is reached only if both parties agree. The facilitator will not impose an outcome, although they may assist the parties in suggesting resolutions that appear to meet the parties' needs. If there is no agreement on a resolution, the complaint is returned to the formal grievance and hearing process outlined in this policy. A party may terminate the informal process at any time before the final written resolution is signed. If an agreement is reached, the facilitator will draft a document reflecting the agreement between the parties that becomes final once it is signed by both parties. This written and signed resolution indicates that the complaint has been resolved under this policy without the need for further investigation or to pursue the formal grievance and hearing process. If an Informal Resolution Process does not result in an agreed-upon resolution, the complaint returns to the formal grievance and hearing process outlined in this Policy.



## XI. **Investigation Procedures**

### **A. Appointment of Investigator**

Where a formal complaint has been filed, and in the absence of an informal resolution, the College will appoint an investigator to conduct an investigation into the allegations in the formal complaint. The investigation is an impartial fact-finding process.

The College may appoint any qualified investigator, who may be a person internal or external to the College. The College also may appoint more than one investigator in the College's sole discretion. Generally, if the formal complaint involves employees, the Director of Human Resources will conduct the investigation. If the Title IX Coordinator is implicated in the report, the President will be responsible for designating an investigator to conduct the investigation. If, in a rare case, it would be inappropriate for the Title IX Coordinator or President to designate an investigator to conduct the investigation, then the Chair of the Board of Trustees will make this designation.

### **B. Temporary Delay Due to Concurrent Law Enforcement Investigation**

The College's investigation may be temporarily delayed where there is a concurrent law enforcement investigation if necessary to avoid interference with the law enforcement investigation. Any such delay shall not exceed ten (10) days unless the law enforcement agency requests and justifies a longer delay.

### **C. Notice of Investigation**

The Complainant and Respondent shall receive a Notice of Investigation & Allegations (NOIA) referencing the violation(s) of this policy alleged to have been committed and the range of possible disciplinary sanctions and remedies following any determination of responsibility. The NOIA will include, to the extent known:

- the identities of the involved parties;
- the date, time, location and factual allegations concerning the alleged violation;
- the policy provisions allegedly violated;
- a description of the investigation and adjudication process;
- potential sanctions;
- the right to an advisor of their choice, who may be, but is not required to be, an attorney;
- their right to inspect and review evidence in accordance with this policy;
- notice that knowingly making false statements or knowingly submitting false information is prohibited under the Student Code of Conduct; and
- that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process

If, in the course of the investigation, the College decides to investigate allegations that are not included in the notice initially provided to the parties, the Title IX Coordinator or designee will provide notice of the additional allegations to the parties.

#### **D. Notice of and Opportunity to Object to Investigator**

The Complainant and Respondent will be provided with notice of the name of the appointed investigator and an opportunity of not more than two (2) days after the notice to raise an objection to the investigator based on any alleged conflict of interest known to the party. If an objection is raised, the Title IX Coordinator will determine whether a conflict of interest in fact exists and necessitates the replacement of the investigator.

#### **E. Meetings and Interviews to Gather Information**

The Complainant and Respondent will be provided with advance written notice of the date, time, location, participants, and purpose of any meeting or interview in which they are invited to or expected to participate. The Complainant and Respondent have a right to be accompanied by an advisor of their choice, who may be an attorney. The College does not appoint an advisor for a party during the investigation phase of the process.

The Complainant and the Respondent will be given an equal opportunity to present information. This includes the opportunity to present fact or expert witnesses and other evidence that the party believes tends to prove or disprove the allegations. However, at all times, the burden of gathering evidence remains with the College. The investigator may decline to interview any witness or to gather information the investigator finds to be not relevant or otherwise excludable (e.g., sexual history of the complainant with a person other than the respondent, materials subject to a recognized privilege, medical records in the absence of a release by the subject of the records, etc.). The investigator will determine the order and method of investigation.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, other than questions and evidence about the Complainant's prior sexual behavior that (a) are offered to prove that someone other than the Respondent committed the alleged misconduct, or (b) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or interviews. If the investigator elects to audio and/or video record interviews, all involved parties involved in the meeting or interview will be made aware that audio and/or video recording is occurring.

#### **F. Opportunity for Inspection and Review of Evidence**

The Complainant and Respondent will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on

in reaching a determination. The parties and their advisors may not make photocopies or take photographs of the materials and are prohibited from disseminating any of the materials subject to inspection and review with any individuals outside of those engaged in the grievance process. Prior to the conclusion of the investigative report, the Complainant and Respondent, and each party's advisor of choice, if any, will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the evidence, subject to redaction permitted and/or required by law. The Complainant and Respondent will be provided with at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The investigator will determine if additional investigation is necessary and, if so, will complete any additional investigative steps.

### **G. Investigative Report**

At the conclusion of the investigation, the investigator will complete a written investigative report that fairly summarizes the relevant evidence. The investigator need not include information in the investigative report that the investigator determines not relevant or otherwise excludable. The investigator will submit the investigative report to the Title IX Coordinator.

At least ten (10) days prior to a hearing to determine whether there is responsibility for the allegations, the Complainant and Respondent, and each party's advisor if any, will be provided a copy of the investigative report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law.

### **H. Consolidation of Cases**

The Title IX Coordinator may determine that cases where the allegations arise out the same set of facts should be consolidated for purpose of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaints filed by the parties against each other, multiple complaints by a single complainant against a respondent, or multiple complaints by a single complainant against multiple respondents.

### **I. Investigation Timeframe**

The College will endeavor to complete an investigation within forty (45) days. An investigation may be extended for good cause, such as witness unavailability, breaks in the academic schedule, or other similar circumstances.

## **XII. Hearing Procedures**

### **A. General**

A hearing before a Hearing Officer designated by the Title IX Coordinator will be convened not less than ten days after the parties have been provided access to the final

investigative report, for the purpose of determining whether the Respondent is responsible or not responsible for the charge(s). The Hearing Officer may be a member of the campus community or may be external to the College, as determined by the Title IX Coordinator.

The Title IX Coordinator will notify the parties in writing of the date, time, and location of the hearing, the name of the Hearing Officer, and how to challenge participation by the Hearing Officer for bias or conflict of interest. Bias or conflict of interest will be judged by an objective standard (whether a reasonable person would conclude the decision maker is biased).

Participants in the hearing will include the Hearing Officer, the Complainant and the Respondent, their respective advisors, the investigator(s) who conducted the investigation, and witnesses (solely during their own testimony). Hearings are private. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title IX Coordinator for purposes such as accommodation of a disability. Cell phones and recording devices may not be used by the parties or their advisors in the hearing room(s).

Hearings may be conducted with all parties physically present in the same location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Hearing Officer and the parties to simultaneously see and hear any party or witness providing information or answering questions. If either party so requests, the hearing will be conducted with the parties located in separate rooms using technology as described in the preceding sentence.

The Title IX Coordinator may postpone the hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances.

## **B. Procedural Matters**

The Hearing Officer is in charge of organizing the presentation of information to be considered at the hearing. Generally, the hearing will proceed in the following order:

1. Opportunity for Opening Statement by the Complainant
2. Opportunity for Opening Statement by the Respondent
3. Questions for the investigator(s) by the Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)]
4. Questions for the Complainant by the Hearing Officer and, if desired, on behalf of the Respondent (as described below)
5. Questions for the Respondent by the Hearing Officer and, if desired, on behalf of the Complainant (as described below)

6. Questions for each witness by the Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)
7. Opportunity for Closing Statement by the Respondent
8. Opportunity for Closing Statement by the Complainant

Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this Policy, any information that the Hearing Officer determines is relevant may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. All evidence previously made available to the parties for inspection and review prior to completion of the investigative report as described above will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of questioning. Absent extraordinary circumstances as determined by the Hearing Officer, no party may seek to introduce at the hearing any evidence not previously made available in accordance with the preceding sentence, other than the investigative report itself and any responses to the investigative report submitted by the parties pursuant to review and exchange provision above.

The Hearing Officer will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant information. Subject to the terms of this Policy, the Hearing Officer will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, and/or to recall parties or witnesses for additional questions as the Hearing Officer deems necessary or appropriate. The Hearing Officer may impose additional ground rules as the Hearing Officer may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

### **C. Advisors**

The Complainant and the Respondent may each have present with them during the hearing an advisor of their choice (at the party's expense, if the advisor is a paid advisor). If a party does not have an advisor present at the hearing, the College will provide, without fee or charge to that party, an Institution Advisor of the College's choice for the limited purpose of conducting questioning on behalf of that party as provided in this Policy.

Except with respect to questioning as described below, the advisor's role is limited to consulting with their advisee, and the advisor may not present evidence, address the Hearing Officer during the hearing, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet nondisruptive manner or in writing. The advisor may consult with the advisee verbally outside the hearing during breaks, when such breaks are granted by the Hearing Officer. An advisor's questioning of the other party and any witnesses must be conducted in a respectful, nonintimidating and non-abusive manner. If the Hearing Officer determines that an advisor is not adhering to these or other ground rules, the advisor may be required to leave the hearing, and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the

College will assign an Institution Advisor of the College's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below.

Witnesses are not permitted to bring an advisor or other person to the hearing, absent an approved disability accommodation. The Hearing Officer may be advised by and/or consult with the College's legal counsel as the Hearing Officer deems necessary or appropriate.

#### **D. Questioning Procedures**

The Hearing Officer will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; provided that questions that seek disclosure of information protected under a legally recognized privilege will not be permitted unless the person or entity holding the privilege has waived the privilege in writing. Questioning must be conducted by the party's advisor in a respectful, nonintimidating and non-abusive manner, and never by a party personally. If a party does not have an advisor present at the hearing, the Title IX Coordinator will arrange for the College to provide, without fee or charge to that party, an Institution Advisor of the College's choice to conduct cross-examination on behalf of that party.

Only relevant questions may be asked by a party's advisor to a party or witness. Before the party or witness answers a question posed by an advisor, the Hearing Officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Such decisions by the Hearing Officer are final and not subject to objection or reconsideration during the hearing.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, other than questions and evidence about the Complainant's prior sexual behavior that (a) are offered to prove that someone other than the Respondent committed the alleged misconduct, or (b) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the hearing by a party's advisor as described above, the Hearing Officer may not rely on any statement of that party or witness, during the hearing or otherwise, in reaching a determination regarding responsibility. The Hearing Officer will not draw an inference as to responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination questions.

The hearing will be recorded through either an audio recording or transcript. That recording or transcript will be made available to the parties, upon request, for inspection and review. Prior to obtaining access to the recording or transcript, the parties and their advisors must acknowledge in writing that they will not disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the grievance process.

## E. Hearing Determinations

Following conclusion of the hearing, the Hearing Officer will deliberate and render a determination as to whether the Respondent is responsible or not responsible for the alleged violation(s). The Hearing Officer will use “preponderance of the evidence” as the standard of proof to determine whether each alleged violation of the Policy occurred. “Preponderance of the evidence” means that the Hearing Officer must determine whether, based on the evidence presented, it is more likely than not that the Respondent engaged in the conduct charged.

Each party may submit a written personal impact statement to the Title IX Coordinator for consideration by the Hearing Officer in determining an appropriate sanction if there is a finding of responsibility on one or more of the charges. The parties must submit their statements to the Title IX Coordinator within 24 hours after the conclusion of the hearing. The Title IX Coordinator will provide each of the parties an opportunity to review any statement submitted by the other party.

In addition to the impact statement(s), if any, factors considered when determining sanctions may include:

- the nature and severity of, and circumstances surrounding, the violation(s);
- the Respondent’s state of mind at the time of the violation(s) (intentional, knowing, bias-motivated, reckless, negligent, etc.);
- the Respondent’s previous disciplinary history;
- the need for sanctions to bring an end to the conduct; and/or to prevent the future recurrence of similar conduct;
- the need to remedy the effects of the conduct on the Complainant and/or the community;
- the impact of potential sanctions on the Respondent;
- sanctions imposed by the College in other matters involving comparable conduct; and
- any other lawful factors deemed relevant by the Hearing Officer.

The following are the sanctions that may be imposed upon students or organizations singly or in combination:

- Warning: A formal statement that the behavior was unacceptable and that further infractions of any College policy, procedure, or directive may result in more severe disciplinary action.
- Probation: A written reprimand for violation of the Policy, providing for more severe disciplinary sanctions in the event that the Respondent is found in violation of any College policy, procedure, or directive within a specified period of time. Terms of the probation will be specified and may include

denial of specified privileges, exclusion from extracurricular activities, no-contact orders, and/or other measures deemed appropriate.

- Suspension: Cessation of student status for a definite period of time and/or until specific criteria are met.
- Expulsion: Permanent termination of student status.
- Withholding Degree and/or Diploma: The College may withhold a student's degree and/or diploma for a specified period of time and/or deny a student participation in commencement activities.
- Other Actions: In addition to or in place of the above sanctions, the Hearing Officer may assign any other sanctions as deemed appropriate, including but not limited to the following:
  - Mandated counseling so the Respondent has the opportunity to gain more insight into his/her/their behavior.
  - A "no contact" directive (including but not limited to continuation of a no contact directive imposed as a supportive measure) prohibiting contact with one or more identified persons, in person or through telephonic, electronic, written or other means. A no contact directive may include additional restrictions and terms.
  - Requiring the Respondent to write a letter of apology.
  - Requiring unpaid service to the campus or local community stated in terms of type and hours of service.
  - Restitution for damage to or misappropriation of property, or for personal injury, and other related costs.
  - Loss, revocation or restriction of housing privileges (e.g., exclusion from specified locations).
  - Monetary fines.

#### **F. Notice of Outcome**

The Hearing Officer will issue a written determination including the following information:

- A description of the charges that were adjudicated;
- A description of the procedural steps taken from the submission of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;



- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College's educational programs or activities will be provided to the Complainant; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The Title IX Coordinator will provide the written determination to the parties simultaneously.

### XIII. **Appeals**

A respondent or complainant may appeal: (1) a determination regarding responsibility, and (2) the College's dismissal of a formal complaint or any allegations therein.

If a party wishes to appeal a determination regarding responsibility or the dismissal of a formal complaint, the party must submit written notice to the Title IX Coordinator of the party's intent to appeal within five (5) business days of receiving the written notification of the appealable decision.

A respondent or complainant may appeal on the following bases:

- Procedural irregularity that affected the determination regarding responsibility or dismissal of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the determination regarding responsibility or dismissal of the matter; and
- The Title IX Coordinator, investigator(s), or Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the determination regarding responsibility or dismissal of the matter. The professional experience of an individual need not disqualify the person from the ability to serve impartially. Furthermore, bias is not demonstrated by working in complainants' or respondents' rights organization.

In the case of a claimed procedural irregularity, bias or new information, the appeal must also include a statement of the likely impact of the claimed irregularity, bias, or newly discovered information on the proceedings. A preponderance of the evidence standard will be applied on appeal. In addition to the three bases for appeal, College reserves the right to add additional bases for appeal that will be available equally to both the

respondent and the complainant. Any additional bases of appeal that are added will not be applied retroactively to previous determinations and dismissals.

When a party submits a written notice of its intent to appeal to the Title IX Coordinator within 5 business days of the appealable decision, College will notify the other party in writing and implement appeal procedures equally for both parties. If no written notice of either party's intent to appeal is sent, then the written determination becomes final after the time period to file an appeal (5 days) has expired.

Each party will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Each party will have at least three (3) business days to submit its written appeal statement. If a party needs additional time, it can request such additional time from the decision-maker for the appeal. Such requests will be granted on a case-by-case basis. If the decision-maker for the appeal grants a request for additional time to submit a written appeal statement, all parties will be granted the additional time.

In cases involving a student respondent, the appeal will be decided by a three-member Appeal Panel appointed by the Title IX Coordinator. In cases where the respondent is an employee of the College, the Title IX Coordinator will assign an Appeal Officer. The decision-maker for the appeal will not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

The decision-maker(s) for the appeal will issue a written decision describing the result of the appeal and the rationale for the result. This decision will be provided to both parties simultaneously and in writing. Once the appeal decision has been sent to the parties, the appeal decision is final.

#### **XIV. Timeframe for Resolution**

The College seeks to resolve every report of sexual misconduct within 90 calendar days of the filing of the formal complaint, excluding any appeal. The time frames included in this policy may vary depending on the details of the complaint and, in some cases, extenuating circumstances that may require an extension of the time frames.

Extenuating circumstances may include the time of the academic year (e.g., during Institute breaks or final exams), the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation by local law enforcement, or other unforeseen circumstances. In the event that the investigation and resolution exceed this time frame, Villa Maria College will notify the Complainant and Respondent of the reason(s) for the delay and the expected adjustment in the time frame.

#### **XV. Notation on Student Transcripts for Crimes of Violence**

If a student is suspended or expelled as a result of being found responsible for a Crime of Violence, Villa Maria must make a notation on the student's transcript that the student

was “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” If a student withdraws from Villa Maria while such conduct charges related to crimes of violence are pending against the student, and declines to complete the disciplinary process, Villa Maria must make a notation on the student’s transcript that he or she “withdrew with conduct charges pending.”

These transcript notations can be appealed by contacting the Vice President for Enrollment Management, Brian Emerson at bemerson@villa.edu. Transcript notations for violence-related suspensions shall not be removed prior to one year after conclusion of the suspension. Transcript notations for violence-related expulsions shall never be removed from a student’s transcript. A notation for an expulsion may not be removed via an appeal to Villa Maria. If a finding of responsibility is vacated for any reason, however, the transcript notation must be removed. Further, if a court vacates a finding of responsibility for a violation of College policy, the transcript notation memorializing that finding will also be vacated.

#### XVI. **Application to Faculty and Staff**

One or more of the College’s personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. This policy applies to any situation where a student is the complainant or respondent. In all other situations, the College reserves the right to apply this policy or another applicable College policy or process. The College will apply this policy to any situation where the College determines that Title IX requires the application of this policy.

#### XVII. **Academic Freedom**

The College is an academic institution at which academic freedom possessed by those who are teaching/conducting research and their students is necessary and valued. The College will not construe this policy to prevent or penalize a statement, opinion, theory, or idea offered within the bounds of legitimate, relevant, and responsible teaching, learning, working, or discussion.

#### XVIII. **Clery Act Compliance**

The College is required to include for statistical reporting purposes the occurrence of certain incidents in its Annual Security Report (ASR). Neither the names of individuals involved in incidents nor the specific details of the incidents are reported or disclosed in ASRs. In the case of an emergency or ongoing dangerous situation, the College will issue a timely warning to the campus, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the victim/Complainant will not be disclosed.

## **XIX. Education & Training**

Because Villa Maria College recognizes that prevention of Sexual Misconduct as an important issue, the College offers educational programming to a variety of groups such as: campus personnel (Campus Safety, faculty, and staff); incoming students participating in orientation; and, members of student organizations, among others.

Awareness and prevention of Sexual Misconduct educational programming offered to all first-year and transfer students, during the course of their onboarding, address topics (using a method and manner determined by Villa Maria), including but not limited to: relevant definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent; assurance that policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression; the role of the Title IX Coordinator, campus security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response; awareness of sexual violence, its impact on victims and survivors and their friends and family, and its long-term impact; bystander intervention and the importance of taking action to prevent violence when one can safely do so; and consequences and sanctions for individuals who violated this policy.

Villa Maria requires student leaders and officers of student organizations, as well as student-athletes, to complete training on domestic violence, dating violence, stalking, or sexual assault prevention prior to the start of such activities and/or participating in intercollegiate athletic competition.

Awareness and prevention of Sexual Offenses educational programming offered to all new employees at time of hire, as well as periodically through other employee training venues.

## **XX. Climate Surveys**

Villa Maria will conduct a biannual or annual anonymous survey of students and employees to examine (1) the prevalence and incidence of Sexual Offense, (2) the perceptions of the campus climate, (3) the general awareness and knowledge of students and employees about the provisions of the New York Enough is Enough law, and (4) student experience with and knowledge of reporting and college adjudicatory processes. Participation in such climate survey shall be voluntary but is encouraged. Villa Maria will take steps to ensure that answers to climate assessments remain anonymous and that no individual is identified. The College will publish an executive summary of the climate assessment survey results on Villa Maria website, provided that no personally identifiable information or information which can reasonably lead a reader to identify an individual is shared.

## XXI. Coordination with Other Policies

A particular situation may potentially invoke one or more College policies or processes. The College reserves the right to determine the most applicable policy or process and to utilize that policy or process.

## XXII. Designation of Authority

Any College administrator or official empowered by this policy, may delegate their authority to any other appropriate College official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a College official named in this policy from fulfilling their designated role.

## XXIII. Policy Enforcement

The person responsible for the implementation of this policy internally is:

DJ Schier, Title IX Coordinator, Dean of Students  
716.961.1878, dschier@villa.edu  
Main Building, Ground Floor across from Room 14240 Pine  
Ridge Road Buffalo, NY 14225

Inquiries and complaints may be made externally to: Office for Civil Rights

(OCR)

U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: 800-421-3481  
Facsimile: 202-453-6012 TDD#: 877-521-2172  
E-mail: OCR@ed.gov  
Web: <http://www.ed.gov/ocr>

This policy shall be effective August 14, 2020.

## **Student Bill of Rights**

All students have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;

- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and./or criminal justice process free from pressure from Maria Villa College;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from Maria Villa College courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
- Be free from retaliation by the College, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the College;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.