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## SECTION 1. Key Employment Policies & Conditions of Employment

Saint Mary's College of California

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## Section 1. Key Employment Policies & Conditions of Employment

### Authority

Assistant Vice President of Human Resources

### Summary

This section reviews all phases of key employment policies and conditions of employment processes. Below are the main headings:

- 1.1 Saint Mary's Right to Amend Its Policies and Revise Its Procedures and Practices
- 1.2 At-Will Employment
- 1.3 Coverage, Terms and Conditions of Employment
- 1.4 Equal Employment Opportunity
- 1.5 Institutional Policies

### 1.1 Saint Mary's Right to Amend Its Policies and Revise Its Procedures and Practices

This Handbook has been developed to provide staff with general guidelines about many Saint Mary's College policies, and procedures; however, it does not contain promises to any individual employed at or assigned to the College about how any particular circumstance will be addressed. None of the policies in this Handbook is intended to create contractual rights or obligations, nor to be construed as a guarantee of employment for any specific period of time or in any specific position. The College reserves the right, with or without notice (when not otherwise required by law), to amend, revise, revoke, modify, delete or add to any and all policies, procedures, work rules or benefits stated in this Handbook.

The Human Resources Department will provide reasonable notice to staff employees regarding significant changes to this Handbook via email that will direct employees to the Handbook on the HR website to review the most up-to-date policies and procedures. The Handbook supersedes all previously issued handbooks, procedures or policy statements (oral or written), including but not limited to those that may be inconsistent with the policies and procedures described in this Handbook, as amended from time to time, and no oral statements or representations can in any

way alter the provisions of this Handbook unless approved in advance and in writing by the President of the College in consultation with the Assistant Vice President of Human Resources or designee.

## **1.2 At-Will Employment**

Your employment with Saint Mary's is at-will. This means that employment at the College may be ended at any time by either the College or the employee, with or without cause and with or without notice. No implied contract concerning any employment-related decision or term or condition of employment can be established by any other statement, conduct, policy or practice. Absent independent contractual obligations or applicable law, nothing in this Handbook or any other document or statement limits Saint Mary's right to end employment at will, in its discretion. Only the President or the President's authorized designee has authority to enter into an agreement for employment for any specified period of time, or to make an agreement for employment other than at-will. Any such agreement must be in writing and signed by the President; any other purported agreements are of no binding effect on the College.

## **1.3 Coverage, Terms and Conditions of Employment**

The policies in this Handbook generally describe employment, appointment, retention, advancement and termination for all staff, full-time and part-time, regular and temporary, including executive, managerial, professional, athletic coaches and support staff, and faculty while holding a staff or administrative position or appointment. These policies do not apply to faculty appointed solely to teach (tenured, tenure-track or non-tenure track), who are covered by the Faculty Handbook.

Terms and conditions of employment are set forth in:

- Job offer confirmation letter – individual letter of employment or promotion, providing start date, position and specifying employment at-will (for an indeterminate period of time), issued only by the Assistant Vice President of Human Resources or designee; or,
- This Handbook, or
- An employment contract for a specific period of time signed by the President of the College

Some cabinet-level staff employees and athletic coaches have employment contracts for specific periods of time. Subject to the notice required by the specific terms of such contracts, the College has no obligation to offer another employment contract following the expiration of the specified term. All other staff receive individual letters of employment that specify that their employment is at-will and that they or the College may terminate the employment relationship at any time with or without cause or notice. Employees hired before offer letters expressly described employment as at-will are nonetheless employed at-will unless they have a current individual employment contract signed by the President of the College. There is no right to tenure associated with holding any staff position or performing any staff responsibilities at Saint Mary's.

#### **1.4 Equal Employment Opportunity**

Saint Mary's is an equal opportunity employer, and does not tolerate any type of unlawful discrimination. Saint Mary's makes employment decisions on the basis of merit and seeks the most appropriate person for every job, taking into account an applicant's qualifications for the position relative to other candidates, and an indication of willingness to support the traditions of the College, including its Catholic identity.

College policy prohibits discrimination based on race, color, religion, national origin, ancestry, age, sex/gender, sexual orientation, gender identity, marital status, medical condition, physical or mental disability, taking a protected leave (e.g. family medical or pregnancy leave), or on any other basis protected by applicable laws. It also prohibits unlawful discrimination based on the perception that anyone has any of these characteristics, or is associated with a person who has or is perceived as having any of these characteristics. All such discrimination can be unlawful when it is severe or pervasive enough to affect a reasonable employee's job.

Saint Mary's is committed to complying with all applicable laws providing equal employment opportunities and a workplace free from discrimination and retaliation.

Saint Mary's College, as a Catholic institution dedicated to social justice in its institutional practices, supports equal opportunity employment practices in all its employment policies covering academic and non-academic personnel. On its position announcements, the College states that it seeks faculty who espouse or respect the Catholic tradition. In February 1971, the

College first reaffirmed this general employment policy in a draft statement, which has been since revised from time to time and which now reads as follows:

### **Equal Employment Opportunity/Diversity Program**

All members of the College community should be aware of the College's firm commitment to promote equal employment opportunity for all job applicants. The College is committed to the general policy of non-discrimination on the basis of race, color, religion, national origin, ancestry, marital status, gender, sexual orientation, age (40 years or older), medical condition, or physical or mental disability and is committed to recruiting and retaining a diverse student and employee population. Accordingly, we wish to affirm the following:

- In recognition of the College's commitment to creating and retaining a diverse employee population, each Dean, director or head of an operating unit is directed to conduct an active search for and to give equal consideration to all applicants regardless of race, color, religion, national origin, ancestry, marital status, gender, sexual orientation, age, medical condition, or physical or mental disability as employment opportunities become available.
- All proposed personnel changes involving appointments, renewal, promotion or termination will be previewed by the Provost for all faculty personnel, or the Assistant Vice President of Human Resources or designee for all non-faculty personnel. The Assistant Vice President of Human Resources or designee will have the general responsibility for informing Deans, directors and department heads of the College non-discrimination policy and of enforcing that policy.
- All job vacancies will be listed with the Assistant Vice President of Human Resources or designee, who is responsible for announcing all vacancies in such a way that all applicants, including but not limited to minorities, women and the mentally or physically disabled have an equal opportunity to apply and to be considered for vacant positions.
- Since its inception, the College has followed the policy that a Christian Brother, if qualified, may be appointed to any position in the College without a position announcement. With that exception, and a limited list of other allowable exceptions available from the Assistant Vice President of Human Resources or designee, the general policy of the College is that all vacant positions shall be announced publicly.

## Section 1. Key Employment Policies and Conditions of Employment

- The College recruits applicants in accordance with all applicable federal and state laws. Adequate records will be maintained to document placement interviews and the results of those interviews.
- All personnel actions such as compensation and benefit decisions, transfers, layoffs and awarding tuition assistance, are administered by the College in a non-discriminatory manner.
- All public college facilities are maintained on a non-discriminatory basis. College students maintain a cultural center in which all members of the College community are invited to participate.
- The College pledges active support, when feasible and consistent with the mission of the College and applicable federal and state law, to local community and national action programs for equal opportunity in employment.
- Notice of this Equal Employment Opportunity policy shall be distributed to members of the College community and equal employment opportunity posters are to be displayed in appropriate areas of the campus.

### 1.5 Institutional Policies

#### 1.5.1 Nondiscrimination Disclosure

In compliance with applicable law and its own policy, Saint Mary's College of California is committed to recruiting and retaining a diverse student and employee population and does not discriminate in its admission of students, hiring of employees, or in the provision of its employment benefits to its employees and its educational programs, activities, benefits and services to its students, including but not limited to scholarship and loan programs, on the basis of race, color, religion, national origin, ancestry, age, gender, sexual orientation, gender identity, marital status, medical condition, physical or mental disability race, color, religion, national origin, ancestry, age, sex/gender, sexual orientation, gender identity, marital status, medical condition, physical or mental disability.

### **1.5.2 Policy Prohibiting Discrimination, Harassment (including Sexual) and Retaliation**

Saint Mary's College of California is committed to creating and maintaining a community in which all persons who participate in Saint Mary's programs and activities can work and learn together in an atmosphere free of all forms of discrimination, exploitation, intimidation, or harassment, including sexual, based on a legally protected characteristic or status. Every member of the Saint Mary's community should be aware that Saint Mary's will not tolerate harassment or discrimination based on race, color, religion, national origin, ancestry, age, sex/gender, sexual orientation, gender identity, marital status, medical condition, or physical or mental disability, taking a protected leave (e.g., family medical or pregnancy leave), or on any other basis protected by applicable laws. Such behavior is prohibited both by law and by Saint Mary's policy.

It is Saint Mary's intention to take whatever action may be needed to prevent, correct, and if necessary, discipline behavior which violates this Policy, which may include suspension, termination, expulsion, or another sanction appropriate to the circumstances and violation. All members of the Saint Mary's community, including faculty, staff, students, and volunteers are responsible for maintaining an environment that is free of sexual harassment and other forms of discrimination, harassment and retaliation as described in this Policy.

[Title IX](#) prohibits discrimination on the basis of sex in any federally funded education program or activity. The U.S. Department of Education Office For Civil Rights provides guidelines to ensure that schools take effective steps to respond to sexual harassment and sexual violence in accordance with the requirements of Title IX.

#### **Saint Mary's College Title IX Coordinator:**

Eduardo Salaz, Assistant Vice President of Human Resources

[els3@stmarys-ca.edu](mailto:els3@stmarys-ca.edu)

925-631-4212

#### **Title IX Officer Deputy Coordinator:**

Evette Castillo Clark, Dean of Students

[ecc4@stmarys-ca.edu](mailto:ecc4@stmarys-ca.edu)

925-631-4238

***Definitions:***

**Discrimination**

Unlawful discrimination may occur when an individual is treated less favorably with respect to the terms and conditions of employment or education, or with respect to the individual's receipt of employment or educational benefits, because of his or her membership in a protected class. Accordingly, all employment-related decisions, including but not limited to decisions relating to recruitment, hiring, promotion, transfers, benefits and any other terms and conditions of employment, will be made without regard to the employee's or applicant's race, color, religion, national origin, sex/gender, sexual orientation, gender identity, gender expression, marital status, pregnancy, age, physical disability, mental disability, medical condition, covered veteran status, genetic information, or other characteristic protected by federal or state law.

**Sexual Harassment**

Sexual harassment is a form of sex discrimination that is illegal under both federal and state laws. It can be verbal, non-verbal, visual, or physical. Although what constitutes sexual harassment will vary with the particular circumstances, it is defined as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in a College activity; or
- Submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting that individual; or
- Such conduct has the effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or abusive working or learning environment.

Sexual harassment does not include verbal expression or written material that is relevant and appropriately related to course subject matter or curriculum, and nothing in this policy is intended to interfere with Saint Mary's educational mission or academic freedom, e.g., the ability of a teacher or student to examine examples of harassment appropriate to a particular subject.



A determination of whether particular conduct creates an intimidating, hostile or abusive work or learning environment is assessed from the point of view of a reasonable person in the complainant's position. Such a determination also takes into account the totality of the circumstances, including, but not limited to, the following:

- the frequency of the offensive conduct;
- its seriousness;
- whether it is physically threatening or humiliating;
- the location of the conduct and the context in which it occurred;
- the degree to which the conduct affected the education or employment environment;
- and
- the relationship between the parties and their positions at Saint Mary's

### **Examples of Conduct That May Be Sexual Harassment**

Examples of verbal, physical or visual conduct which may be sexual harassment include, but are not limited to:

- direct propositions of a sexual nature;
- sexual innuendoes and other seductive behavior, including subtle pressure for sexual activity such as repeated, unwanted requests for dates, and repeated inappropriate personal comments, staring, or touching;
- direct or implied threats that submission to sexual advances will be a condition of employment, promotion, grades, etc;
- conduct (not legitimately related to the subject matter of a course or curriculum, if one is involved) that has the effect of discomforting, humiliating or both, and that includes one or more of the following:
- comments of a sexual nature, including sexually explicit statements, questions, jokes, anecdotes, or graphic material (e.g., visuals, such as screen savers, which are sexually explicit);
- unnecessary or unwanted touching, patting, massaging, hugging or brushing against a person's body or other conduct of a physical nature;

## Section 1. Key Employment Policies and Conditions of Employment

- remarks of a sexual nature about a person's clothing or body;
- insulting sounds or gestures, whistles, or catcalls;
- invading someone's personal space or blocking her/his path;
- unwelcome and inappropriate letters, telephone calls, electronic mail, instant or text messaging, or other communications;
- displaying sexually suggestive objects, pictures, cartoons or posters (e.g. screen savers).
- a consensual romantic or sexual relationship which:
  - causes adverse treatment of third parties; or
  - creates a hostile or intimidating working or learning environment for third parties;
  - stalking (which is also criminal behavior);
  - sexual assault (which is also criminal behavior).

Some conduct that may appear to be consensual may also be unacceptable.

Sex/gender-based discrimination, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or gender-based characteristics, but not involving conduct of a sexual nature (e.g., the repeated sabotaging of female students' laboratory experiments by male students in the class), may be a form of sex discrimination prohibited by law. While sex/gender-based discrimination may be distinguished from sexual harassment, acts of sex/gender-based discrimination may contribute to the creation of a hostile work or academic environment. Thus, a determination of whether a hostile environment due to sexual harassment exists may take into account acts of sex/gender-based discrimination.

Not all sexual harassment occurs between persons of differing power. Sexual harassment may also occur between peers. In addition, while the majority of reported cases of sexual harassment involve a male harassing a female, sexual harassment may also involve a female harassing a male, or an individual harassing a person of the same gender.

Employees who engage in conduct in violation of this policy are acting outside the scope of their employment responsibilities and, in addition to discipline including termination of their employment, may be subject to individual legal liability and damages for their actions.

NOTE: Nothing in Saint Mary's policy prohibiting sexual harassment should be construed to prevent employees from rigorously challenging fundamental beliefs held by students and society. However, employees may not interject into the academic setting sexual material that is unrelated to any legitimate educational objective or allow the educational setting to be so sexually charged that Saint Mary's students are prevented from effectively participating in the academic environment.

### **1.5.2.1 Retaliation and/or Violation of Interim Protections**

Threats or other forms of intimidation and/or retaliation against a student or employee for bringing a complaint of alleged discrimination, harassment (including sexual or sexual assault) or of any other violations of College policies, including but not limited to the Student Code of Conduct, are prohibited. This prohibition includes threats or other forms of intimidation and/or retaliation against the family or friends of a student or employee who brings a complaint under this policy, or those who assist a student or employee in bringing a complaint, or those who participate in an investigation and/or student discipline process for an alleged violation of the Student Code or other College policy.

Retaliation is a violation of College policy and may also be a violation of the law. An allegation of retaliation constitutes an independent basis for investigation and imposition of sanctions on the retaliating student or employee if determined to have occurred. All conduct that is believed to constitute retaliation should be reported immediately to Evette Castillo Clark, Dean of Students (Title IX Deputy Coordinator)—when the individual alleged to have engaged in retaliation is a student or student visitor—or to Eduardo Salaz, Assistant Vice President of Human Resources (Title IX Coordinator), [els3@stmarys-ca.edu](mailto:els3@stmarys-ca.edu), at 925-631-4212 or his/her designee—when the individual alleged to have engaged in retaliation is an employee (faculty and staff) or visitor to the College (e.g., contractors, vendors, or non-student guests).

The reporting procedures described below also apply to allegations of retaliation. Interim protections mean steps the College takes to reasonably protect employees and students during an investigation and/or student discipline process.

### 1.5.3 Title IX – Sexual Assault Reporting Process

#### 1.5.3.1 Complaint and Reporting Procedures and Resources for Addressing Incidents of Discrimination, Harassment, Including Sexual, and Retaliation

Saint Mary's has in place internal procedures to investigate and address complaints of discrimination, harassment (including sexual) and retaliation as described in this Policy. These procedures are intended to assure fairness and to maintain confidentiality in the process of responding to complaints.

**Complaints** of discrimination, harassment, including sexual harassment or sexual assault, and/or retaliation involving students or student visitors **should be reported promptly to:**

1. Title IX Officer Deputy Coordinator:  
Evette Castillo Clark, Dean of Students  
[ecc4@stmarys-ca.edu](mailto:ecc4@stmarys-ca.edu) 925-631-4238
2. Emergency – Public Safety Department: 925-631-4282  
If you dial 9-1-1 for an emergency, *only use a landline* for a response locally.  
General Information/Administration: 925-631-4052

**Complaints** of discrimination, harassment, including sexual harassment or sexual assault, and/or retaliation that involve employees (faculty and staff) or visitors to the College (e.g., contractors, vendors, volunteers or non-student guests) **should be reported promptly to:**

1. Saint Mary's College Title IX Coordinator or designee:  
Eduardo Salaz, Assistant Vice President of Human Resources  
[els3@stmarys-ca.edu](mailto:els3@stmarys-ca.edu) 925-631-4212
2. Emergency – Public Safety Department: 925-631-4282  
If you dial 9-1-1 for an emergency, *only use a landline* for a response locally.  
General Information/Administration: 925-631-4052
3. Vice Provosts, Deans, Managers, Supervisors

The Assistant Vice President of Human Resources is responsible for overseeing Saint Mary's compliance with this Policy and will determine the appropriate next step for investigation and resolution. All members of the Saint Mary's community must cooperate fully with the Title IX Coordinator and Title IX Deputy in the fulfillment of her/his responsibilities.

Reports shall be brought as soon as possible after the alleged conduct occurs, optimally within one year. Prompt reporting will enable the College to investigate the facts, determine the issues, and provide an appropriate remedy or disciplinary action. The College shall respond to reports of sexual harassment brought after one year to the greatest extent possible, taking into account the amount of time that has passed since the alleged conduct occurred. Once reported, the Assistant Vice President of Human Resources as Title IX Coordinator and/or his/her designees will provide prompt and equitable resolution.

In addition, individuals who believe they have experienced discrimination, harassment, including sexual harassment or sexual assault, based on the protected characteristics listed above and/or retaliation are also free to contact the Equal Employment Opportunity Commission and/or the California Department of Fair Employment and Housing to pursue external legal remedies.

### **Investigation and Corrective Action**

The College will investigate every reported complaint of unlawful discrimination or harassment. The investigation will be conducted in a thorough, prompt and professional manner.

If the conclusion of the investigation is that unlawful discrimination or harassment occurred, the College will initiate corrective action, as appropriate under the circumstances. For employees, the corrective action may range from verbal warnings up to and including termination from employment. For students, the corrective action will be imposed in a manner consistent with the College's Student Code or other applicable procedures. If the individual found to have engaged in the unlawful discrimination or harassment is not an employee or student of the College, corrective action within the reasonable control of the College, and as appropriate under the circumstances, will be initiated.

If termination of a faculty member is contemplated, the applicable rules governing dismissal for unfitness will be followed.

The employee or student who raised the complaint will be advised of the results of the investigation, unless doing so is prohibited by FERPA or other applicable law. Similarly, an employee or student who is accused of the unlawful discrimination or harassment will be advised of the results of the investigation.

### **Intentionally False Reporting**

Discriminatory activity and harassment, and particularly sexual harassment or assault, often is not witnessed by others, and reports of such activity cannot always be substantiated by additional evidence. Lack of any such additional evidence should not discourage an individual from reporting any incident in violation of this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously, without regard for truth, may be subject to disciplinary proceedings.

### **Confidentiality**

Where sexual harassment or assault has been reported, the College will make every effort to preserve the victim's privacy and protect the confidentiality of his or her information. The degree to which confidentiality can be protected, however, will often depend upon the professional role of the person being consulted:

Clergy or sexual assault victim counselors may keep the confidentiality of statements made to them in their role as clergy or counselors.

Physicians and psychotherapists may keep the confidentiality of statements made to them in their role as medical professionals, but are required by law to report (1) treatment of an injury sustained during a sexual assault, and (2) suspicion of a sexual assault committed against a person under 18 years of age.

Information shared with other individuals is not legally protected from disclosure. For example, the Dean of Students may need to inform other individuals to protect their safety or rights, in fairness to the persons involved, or in response to legal requirements. In addition, the College is required by law to report to the police certain information about incidents occurring on campus. Such reports are for statistical purposes only and do not include individual identities.

#### **1.5.3.2 Confidential Resources**

Confidential resources provide members of the College community with a safe place to discuss their concerns and learn about the procedures and potential outcomes involved. Confidential resources include Student Health Services, Employee Assistance, and the Sexual Assault Prevention Coordinator. Reports to these resources do not serve as notice to the College to initiate an investigation to address the alleged sexual harassment.

## Section 1. Key Employment Policies and Conditions of Employment

### Campus Resources

SMC Sexual Assault Crisis Response Team.....	925-878-9207
Campus Assault Resources & Empowerment (CARE).....	925-631-4193
Advocacy, support, information, and resource referral (Mitty Hall, Ground Floor)	
Dean of Students (Title IX Deputy).....	925-631-4238
Information about the discipline process & list of advisors (Ferroggiaro Hall 200)	
Public Safety Department:	
Emergency.....	9-1-1 OR 925-631-4282
General Information/Administration.....	925-631-4052
Counseling Center.....	925-631-4364
Confidential Counseling services, support and information (Augustine Hall, Ground Floor)	
Health and Wellness Center.....	925-631-4254
Medical and information resource (Augustine Hall, Ground Floor)	
Title IX Coordinator.....	925-631-4212
Coordinator of Community Life.....	925-631-4238

### Community Resources

Contra Costa County Crisis & Suicide Intervention.....	800-833-2900
24 hour Hotline	
Community Violence Solutions.....	800-670-7273
(Contra Costa Rape Crisis 24-Hour Hotline)	
Employee Assistance Program:	
Mental Health Network (MHN).....	800-977-7585
<a href="http://members.mhn.com">members.mhn.com</a> (company code: smceap)	
National Sexual Assault Hotline.....	800-656-HOPE (4673)
Rape, Abuse & Incest National Network.....	<a href="http://www.RAINN.org">www.RAINN.org</a>
STAND! Against Domestic Violence.....	1-888-215-5555
24-hour crisis counseling and emergency resource	
Moraga Police Department (24-hour number).....	925-284-5010

### **1.5.3.3 Sexual Harassment Prevention/Non-Discrimination Seminars**

Saint Mary's offers training during each academic year covering sexual and other forms of illegal harassment and discrimination. Throughout each academic year, students have the opportunity to attend programs regarding discrimination and sexual harassment, including sexual assault. All employees must complete on-line harassment prevention training at least once every two academic years. (An academic year is defined as July 1 to June 30.) Employees who are on an approved and/or legally mandated leave during the academic year are not required to fulfill this requirement while on that leave, but will be expected to do so in the next academic year following their return from such leave.

Except for those faculty and staff described above, failure of a tenure-track or tenured faculty or staff member to attend an on-site College-sponsored sexual harassment seminar during each academic year, when offered, as evidenced by the absence of a record of attendance at such seminar, may result in the Board of Trustees declining to indemnify (i.e., pay any judgment against or settlement on behalf of the individual), to the extent permitted by law, the faculty or staff member should a claim for discrimination, including but not limited to sexual harassment, or retaliation be brought against that faculty or staff member.

Except for those faculty and staff as described above, failure of a non-ranked faculty member (e.g., adjunct, lecturer) to attend an on-site College-sponsored sexual harassment seminar during each academic year, when offered, as evidenced by the absence of a record of attendance at such seminar, may result in the Board of Trustees declining to indemnify (i.e., pay any judgment entered against or settlement on behalf of the individual), to the extent permitted by law, the faculty member should a claim for discrimination, including but not limited to sexual harassment, or retaliation be brought against that faculty member, as well as precluding that non-ranked faculty member from being considered for or offered another faculty appointment at the College.

### **1.5.3.4 Sanctions**

Employees who engage in conduct in violation of this policy are acting outside the scope of their employment responsibilities and, in addition to discipline up to and including termination of their employment, may be subject to individual legal liability and damages for their action.



### 1.5.4 Amorous Relationships Policy

#### Definition of Amorous Relationships

Amorous relationships are those romantic or sexual relationships to which both parties appear to have freely consented. When such a relationship involves a power differential between two members of the College community, it is of concern to the College, and such relationships should be avoided due to:

- The potential conflict of interest that arises when an individual supervises, evaluates, coordinates, directs, advises, hires, terminates, instructs, promotes, or grants pay raises or other benefits to another person, or provides professional services (e.g., counseling) to another individual with whom that person has an amorous relationship.
- The potential for unintended consequences that results because these types of relationships may develop or exist solely as a result of the power differential, which may or may not involve sexual harassment as proscribed by the College's policy prohibiting sexual harassment (section 2.9.2.1 of the Faculty Handbook).

#### 1.5.4.1 Policy

The College discourages amorous relationships where there is a power differential between the parties or where the potential exists for such a power differential in the foreseeable future. Three examples of relationships involving power differentials are:

1. That between teacher and student (including, e.g., those involved in formal instruction, advising and tutoring);
2. That between employee and supervisor;
3. That between the provider and recipient of educationally-related College or College-related services (including those involved in counseling, student services such as registration and financial aid, and athletic coaching).

This list is not all-inclusive.

Of special concern to the College are amorous relationships initiated between a faculty member and a student while the former is instructing, advising or mentoring the latter. Such circumstances pose extraordinary risks of compromising or appearing to compromise the

College's central mission and of breaching the faculty's commitment to the welfare of its students. Hence, the College expects faculty members to refrain from initiating or participating in such a relationship.

#### **1.5.4.1.1 Procedures**

If an amorous relationship exists or develops between individuals having a power differential within the College, the person with greater power shall report it to an appropriate supervisor or to the Assistant Vice President of Human Resources or designee. The supervisor or the Director shall make suitable arrangements:

- To ensure the objective evaluation of that person's performance and
- To protect affected individuals and the integrity of the College's functioning.

Confidentiality is to be maintained in this process.

#### **1.5.4.1.2 Other Considerations**

- Employees engaged in conduct of the type described in this policy may also violate the College's policy prohibiting sexual harassment.
- In addition, all teachers, supervisors, and other employees should understand that there are substantial risks even in consenting amorous relationships where a power differential exists. Even if the conflict of interest issues are resolved, charges of sexual harassment may develop. A teacher's or supervisor's protection under applicable law and representation by counsel retained by the College at the College's expense may not apply because such relationships may be outside the scope of one's employment. Furthermore, in administrative actions or lawsuits resulting from allegations of sexual harassment, consent may be very difficult to establish where a power differential exists. Even relationships in which there is not direct power differential may cause difficulties because faculty or staff engaged in such a relationship may, in the future, be placed in a position of responsibility for the student's or employee's instruction or evaluation.

### **1.5.4.2 Sanctions**

The procedures for investigating alleged violations of the College's Amorous Relationship Policy and the sanctions for violations of this policy are the same as the procedures and sanctions for violations of the College's Non-Discrimination (Sexual Harassment) and Retaliation Policies.

### **1.5.5 Qualified Individuals with Disabilities and Reasonable Accommodation**

To comply with laws providing equal employment opportunities to qualified individuals with disabilities, the College will make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an employee, unless undue hardship on the College would result. If you need an accommodation in order to perform the essential functions of your position, contact the Assistant Vice President of Human Resources or designee to trigger the evaluation process. With your assistance, the College will identify the challenges that might make it difficult for you to have an equal opportunity to perform the essential functions of your job and will identify possible reasonable accommodations, if any, that will help address the limitation. If the accommodation is reasonable and will not impose an undue hardship on the College, Saint Mary's will make the accommodation.

#### **1.5.5.1 Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act prohibits discrimination against the disabled in all phases of employment (including recruitment and hiring) and in their access to the facilities, goods and services of most public places, including all colleges, universities and other educational institutions.

A key issue under the ADA is determining the essential functions of the job. Essential functions are defined as "primary job duties that are intrinsic to the employment position." The law requires accommodations or other changes in the work environment, as well as in the way things are done, so that a qualified individual with a properly documented disability as defined by law will be given an equal opportunity to perform the essential functions of the job and to receive the benefits and privileges normally associated with the job, unless such accommodations cause an undue hardship on the College, which has the right and responsibility to determine the type of accommodation that is appropriate under the circumstances presented and under the law.

Broader and more detailed than Section 504 of the Rehabilitation Act of 1973, the ADA is enforced by five federal agencies with coordination and monitoring by the Department of Justice.

Employee inquiries concerning the law and compliance may be addressed to the Assistant Vice President of Human Resources or designee. The Coordinator for Compliance with Section 504 for students is located in the Office of Academic Support and Achievement Programs.

### **1.5.6 Whistleblower Policy – Fraudulent or Dishonest Conduct**

Saint Mary's College of California, reflecting its Lasallian and Catholic values, expects that its faculty, staff and students will act in a manner that is consistent with those values in their use of College resources and property.

To protect the integrity of Saint Mary's learning community and to ensure the highest standards of conduct by and among members of that community, the College will investigate any possible fraudulent or dishonest use or misuse of College resources or property by faculty, staff, or students. Anyone found to have engaged in fraudulent or dishonest conduct is subject to disciplinary action by the College up to and including dismissal or expulsion, and civil or criminal prosecution when warranted.

All members of the College community are encouraged to report possible fraudulent or dishonest conduct. An employee should report his or her concerns to a supervisor, department chair or program director. If for any reason an employee finds it difficult to report his or her concern to a supervisor or department or program chair, the employee can report it directly to the area Vice President, Vice Provost or Dean of the employee's school.

Students should report any concerns to the Director of Student Conduct. Those receiving reports of suspected fraudulent or dishonest conduct involving employees are required to report such conduct to the Assistant Vice President of Human Resources; in the case of students, those receiving such reports (e.g., the Associate Dean of Student Life) are required to report such conduct to the Vice Provost for Student Life.

#### ***Definitions***

*Whistleblower* – An employee or student who informs one or more of the individuals identified in the policy statement above about an activity that the employee or student believes to be fraudulent or dishonest.

*Baseless Allegations* – allegations made with reckless disregard for their truth or falsity. Individuals making such allegations may be subject to the appropriate College disciplinary action and/or legal claims by the individuals accused of such conduct.

*Fraudulent or Dishonest Conduct* – a deliberate act or failure to act with the intention of obtaining an unauthorized benefit. Examples of such conduct include, but are not limited to:

- Forgery or alteration of documents
- Unauthorized alteration or manipulation of computer files
- Fraudulent financial reporting
- Pursuit of a benefit or advantage that would create a conflict of interest with one’s responsibilities or obligations as a member of the College community
- Misappropriation or misuse of College resources, such as funds, supplies, or other assets or property.
- Authorizing or receiving compensation for goods not received or services not performed.
- Authorizing or receiving compensation for hours not worked.

#### **1.5.6.1 Whistleblower Protections**

The College will use best efforts to protect whistleblowers against retaliation, as described below. The College cannot guarantee absolute confidentiality, however, and there is no such thing as an “unofficial,” “informal,” or “off the record” report. The party to whom such conduct is reported, will keep the whistleblower’s identity confidential, unless:

- the whistleblower(s) agrees to be identified;
- identification is necessary to allow the College or law enforcement officials to investigate or respond effectively to the report;
- identification is required by law; or,
- the individual accused of violations of this policy is entitled to the information as a matter of procedural and/or legal right in disciplinary actions.

College employees and students may not retaliate against a whistleblower with the intent or effect of adversely affecting the terms or conditions of employment or enrollment (including, but

not limited to, threats of physical harm, loss of job, punitive work assignments, or impact on salary or wages, or the access to educational benefits).

Whistleblowers who believe they have been retaliated against may file a written complaint with the Assistant Vice President of Human Resources if an employee is involved, or with the Dean of Student Life if a student is involved. This protection from retaliation is not intended to prohibit the individuals identified above (for receiving such reports of improper conduct) from taking action, including disciplinary action, in the usual scope of their duties and responsibilities that are based on valid employment- or student-related factors.

Whistleblowers must be cautious to avoid baseless allegations (as described earlier in this policy).

#### **1.5.6.2 Whistleblower Procedures**

The Assistant Vice President of Human Resources, or her/his designee, shall conduct or direct the investigations of all suspected fraudulent or dishonest conduct with such College officials as may be necessary or appropriate at the discretion of the Vice President for Finance.

In the case of suspected student conduct reported under this policy, the Dean of Student Life or his/her designee either investigates the suspected conduct or may refer the investigation of such suspected conduct to the College's Disciplinary Hearing Board ("DHB"), consistent with policies and procedures in place to investigate allegations of violations of student conduct policies.

Cases involving possible violation of criminal law will be investigated in cooperation with the Director of Public Safety or his/her designee.

If the facts reported could be a violation of this policy, the Assistant Vice President of Human Resources or her/his designee or, in the case of students, the Dean of Student Life, will provide the individual making the accusation with a copy of this policy and review its terms.

If the Assistant Vice President of Human Resources or her/his designee or, in the case of students, the Dean of Student Life or the DHB, determines that fraudulent or dishonest conduct occurred, the appropriate College disciplinary steps will be invoked consistent with applicable College policies.

If it is determined that a violation of this policy has not occurred, the Assistant Vice President of Human Resources or the Dean of Student Life will explain to the person who has reported the concern or conduct the reason for the determination and advise the person of other available reporting channels, (administrative (to appropriate government agencies) or criminal (to appropriate law enforcement agencies)). Consistent with the requirements of California law, the College posts in Filippi Hall near the Human Resources Department, a toll free number for reporting violations of a state or federal statute or regulation to a government or law enforcement agency, or retaliation by the College for making such disclosures.

### **1.5.7 The Clery Act and Campus Sex Crimes Prevention Act Notices**

#### **Notification With Regard to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998, and the Campus Sex Crimes Prevention Act**

As provided by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1998, Saint Mary's College of California through its Department of Public Safety, annually provides notice and makes available copies of the Annual Security Report, to the campus community, prospective students, employees and the public. Each Security Report includes statistics for the past three years concerning crimes and incidents (whether they occurred on campus, in off-campus building and property owned or controlled by the College, or on public property adjacent to campus) reported to campus security authorities. Each Security Report also provides campus policies and practices concerning security – how to report sexual assaults and other crimes, crime prevention efforts, policies/laws governing alcohol and drugs, victims' assistance programs, student discipline, college resources, and other matters. The Security Report is publicly available electronically or hard copy in the following ways:

- electronically: [www.stmarys-ca.edu/public-safety/annual-security-and-fire-safety-report-0](http://www.stmarys-ca.edu/public-safety/annual-security-and-fire-safety-report-0)
- in person: Department of Public Safety, Administrative Office, Assumption Hall;
- or by Mail or Telephone Request:  
Department of Public Safety, P.O. Box 3111, Moraga, CA 94575-3111,  
(925) 631-4052.

In addition, as provided by the Campus Sex Crimes Prevention Act, the Contra Costa County Sheriff's Office maintains a Megan's Law database of sex crime offenders, which information

may be obtained from the Sheriff's office located at 500 Court Street, Martinez, Monday-Friday, 9am to 4pm.

### **1.5.8 Family Education Rights and Privacy Act of 1974 (FERPA)**

The Family Education Rights and Privacy Act of 1974 (FERPA) grants all students enrolled in institutions of higher education (even if younger than 18 years old) significant rights of access to their educational records. FERPA also protects the privacy of these records and requires the College to inform all students of their FERPA rights, which usually occurs through the Office of the Registrar. Students who wish access to any written records directly concerning them shall submit their request to the Office or Department holding the records they wish to access. That Office or Department will review each request and approve requests that are proper.

Employees do not have the authority to release grades or other educational records to anyone other than appropriate College officials who have a legitimate educational interest in the information (e.g., an advisor, Dean, etc.); they may not release grades or other educational records (e.g., most student disciplinary records) to parents or guardians without the student's prior written consent. Although parents or guardians of a student who is claimed by them as a dependent for federal tax purposes hold the right of access to the student's records, they must have on file with the College proof (e.g. a copy of their most recent federal tax return). A determination of tax dependency by an employee usually cannot be made without consultation with other College personnel, (e.g. Business Office and/or Registrar's Office).

Educational records include not only hard copy information or data about a student, but also information contained in such records about that student, including information taken from the record (oral or written) that reasonably identifies the student to others.

Any consent to disclose educational records, either oral or written, must be signed, dated, specify the purpose of the information to be disclosed, to whom and the effective period of such disclosure (e.g., from 9/1/05 to 12/31/06). In addition, the College has a duty to make sure that any person who receives information (e.g., any appropriate College official who has a legitimate educational interest) regarding a student's educational records is advised that the information may be used only for the purpose for which the disclosure was made and that the information cannot be re-disclosed without the further written consent of the student.



## Section 1. Key Employment Policies and Conditions of Employment

Any specific questions or concerns regarding the applicability of FERPA in a particular circumstance should be directed to either the Registrar, Assistant Vice President of Human Resources or designee, Vice Provost for Student Life, or Office of General Counsel.