

CHAPTER 14: NON-DISCRIMINATION, SEXUAL HARASSMENT AND HARASSMENT POLICY

14.1 Non-Discrimination and Equal Opportunity Statement

San Juan College is dedicated to providing equal employment and educational opportunities without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age, genetic, veteran's status, or on the basis of any other category protected under federal, state and local laws.

This dedication extends to recruitment, employment, compensation, benefits, transfers, layoffs, returns, institutionally sponsored education, training, tuition assistance, social and recreational programs, staff development opportunities and advancement. The College is committed to ongoing support that promotes equal opportunity, inclusion, and non-discrimination efforts for its faculty, staff, students, contractors, and visitors. The programs will require the personal dedication of every member of the college community to implement the commitments of the institution.

14.2 Definitions

- a. **Advisor:** a person chosen by a party or appointed by San Juan College to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- b. **Complainant:** an individual or organization who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- c. **Confidential Resource:** an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- d. **Day:** Unless otherwise specified, Business day(s) refers to a workday as defined by the San Juan College work calendar. For the avoidance of doubt, this term does not include Saturday, Sunday, legal holidays, or a day or period when the College is closed (i.e. winter break.)
- e. **Decision-maker:** A person having decision-making within the San Juan College's Formal Grievance process.
- f. **Directly Related Evidence:** evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- g. **Education program or activity:** locations, events, or circumstances where San Juan College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the San Juan College.
- h. **Final Determination:** A conclusion by the preponderance of evidence standard of proof that the alleged conduct did or did not violate policy.
- i. **Finding:** A conclusion by the preponderance of evidence standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").
- j. **Formal Complaint:** a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for

engaging in a protected activity against a Respondent and requesting that the San Juan College investigate the allegation.

- k. **Formal Grievance Process:** “Process A,” a method of formal resolution designated by the San Juan College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- l. **Grievance Process Pool or “Pool”** includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- m. **Hearing:** an initial formal gathering and educational opportunity for complainants and respondents to voice their version of involvement of reported incidents, hear and question the findings of the investigation, present witnesses, and be supported by advisors before a hearing body, which may consist of faculty, staff, and/or students. A hearing may be a student conduct hearing, a Title IX hearing, or an appeal hearing. Prior to hearings, complainant and respondent will receive notice of the date, time and location of hearings. Additionally, reporting party complainant and respondent are notified of the final outcomes of hearings.
- n. **Hearing Body:** any person or persons authorized by the Vice President for Student Services or appropriate Vice President to hear misconduct cases, consider the provided information, and recommend an appropriate outcome, which may include recommending or imposing sanctions. A hearing body may be referred to as a board or committee.
- o. **Investigator:** the person or persons charged by San Juan College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- p. **Mandated Reporter:** an employee of San Juan College who has the duty to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or their supervisor. Mandated Reporters include all employees with the exception of those with the designation of Confidential Resource (College Counselors).
- q. **Parties** include the Complainant(s) and Respondent(s), collectively.
- r. **Relevant Evidence** is evidence that tends to prove or disprove an issue in the complaint.
- s. **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the San Juan College’s educational program.
- t. **Resolution:** the result of an informal or Formal Grievance Process.
- u. **Respondent:** an individual or organization who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- v. **Sanction:** a consequence imposed by San Juan College on a Respondent who is found to have violated this policy.
- w. **Standard of Proof:** The standard by which it is determined whether or not a violation of this Policy occurred.
- x. **Student** includes any person admitted and/or enrolled at San Juan College, whether full-time, part-time, concurrent, on campus, abroad, online, or any other form of enrollment. Persons not officially enrolled for a particular semester, but who are eligible to enroll or who have a continuing relationship with San Juan College may be considered students.
- y. **Student organization or student group:** any number of students who have complied with the formal requirements for College recognition/registration.
- z. **Title IX Coordinator** is at least one official designated by San Juan College to ensure compliance with Title IX and San Juan College’s Title IX program. References to the

Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

14.3 Gender/Sex-Based Discrimination Notice and Policies

1. Title IX Notice:

San Juan College does not discriminate on the basis of sex in its programs and activities and provides equal educational access. Complaints or notice of alleged policy violations, or inquiries regarding this policy and procedures, are made to the following person:

The Assistant Director of Human Resources has been designated as the Equal Employment and Opportunity Officer, Title IX and Section 504/Title II Coordinator (“EEO/Title IX/Section 504 Coordinator”) for San Juan College. This position oversees disability compliance, the San Juan College’s policy on equal opportunity, harassment, and non-discrimination. The Title IX Coordinator has the primary responsibility for coordinating San Juan College’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy. The office is located on the Main Campus in the Educational Services Building, second floor, Room 4236. The EEO/Title IX/Section 504 Coordinator can be reached directly at the following telephone number: (505) 566-3515 or allens@sanjuancollege.edu.

All employees are designated as Responsible Employees who are mandated to report any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Denver Office
Office for Civil Rights
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Telephone: 303-844-5695
FAX: 303-844-4303; TDD: 800-877-8339
Email: OCR.Denver@ed.gov

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

2. Purpose for Policy:

San Juan College is committed to maintaining a positive learning and working environment, as well as other benefits, programs, and activities that are free from discrimination, harassment, and retaliation. To ensure compliance with Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities, Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment, and Section 304 of the Violence Against Women Reauthorization Act of 2013 (also known as the Campus Sexual Violence Elimination Act (SaVE Act)). San Juan College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of gender/sex-based discrimination or harassment, and for allegations of retaliation.

3. Jurisdiction:

San Juan College has jurisdiction over and will respond to conduct occurring on the College's premises, affiliated employment, education program and activities, and/or where the Complainant and/or Respondent is a student, faculty, staff, or agent of the San Juan College. San Juan College does not have jurisdiction over allegations between visitors or guests. San Juan College reserves the option to extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial San Juan College interest. A substantial College interest includes any criminal offenses as defined by law, respondent is determined to be posing an immediate threat to the physical health or safety of any student or other individual, any situation significantly impinges upon the rights, property, or achievement of oneself or others or significantly breaches the peace and/or causes social disorder and/or any situation that is detrimental to the educational interests or mission of the College.

When assessing Title IX applicability to on and off-campus behavior will require a two-prong test:

- a. Is the respondent a member of the San Juan College community (subject to our rules); and
- b. Does San Juan College have control over the context of the conduct (did the misconduct occur on our property, in our programs, on land we lease or control, or at events we sponsor or student organizations we officially recognize)?

When the Respondent is not a member of the San Juan College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers or to the policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other

environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

4. Applicable Scope:

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admissions or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this non-discrimination policy is reported, the allegations are subject to resolution using San Juan College's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

5. Notice/Complaints of Discrimination, Harassment, and/or Retaliation:

Notice or complaints of discrimination, harassment, and/or retaliation may be made at any time (including during non-business hours) by using the telephone number or mail address, or by mail to the office address, listed for the Title IX Coordinator below:

- 1) File a complaint with, or give verbal notice to, the Title IX Coordinator

Title IX Coordinator
Educational Services Center Building, 2nd Floor
Human Resources, Room 4243
505-566-3515;
allens@sanjuancollege.edu

- 2) **Report online, using the [Online Reporting Form](#)** . Anonymous reports are accepted but can give rise to a need to investigate. The College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.
- 3) **Supervisor (or faculty member in the academic setting):** If anyone in a supervisory, managerial, administrative or executive role or position, such as a supervisor, dean, department chair, or director of a unit, receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, the supervisor (or faculty in academic setting) must immediately contact the EEO/Title IX/Section 504 Coordinator.

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the College investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the College) that contains the Complainant's physical or digital signature, or otherwise

indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

6. Supportive Measures:

San Juan College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

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

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they may file a formal complaint with the College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

San Juan College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. San Juan College will act to ensure as minimal an academic/occupational impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

At the conclusion of the grievance process, the College may make supportive measures ongoing as remedies unless formally rescinded. Remedies can be disciplinary or punitive and need not avoid burdening the Respondent.

7. Emergency Removal:

San Juan College can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator using the standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the meeting.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

The Title IX Coordinator will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, or student organizational leadership.

Where the Respondent is an employee, existing provisions for action under the San Juan Employee Handbook may be applicable.

8. Time Limits on Reporting/Promptness:

A. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

B. Promptness

All allegations are acted upon promptly by San Juan College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in San Juan College procedures will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

9. Privacy:

Every effort is made by the College to preserve the privacy of reports. San Juan College will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

San Juan College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

San Juan College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

10. Online Harassment and Misconduct:

The policies of San Juan College prohibit online manifestations of any of the behaviors listed below, when those behaviors occur in the College's education program and activities or use College networks, technology, or equipment.

San Juan College may not control websites, social media, and other venues in which harassing communications are made. If such communications are reported to the College, it will review the communication to determine whether the communication may be actionable under this policy. Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of San Juan College's control (e.g., not on San Juan College networks, websites, or between San Juan College email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

14.4 Non-Discrimination Policy

1. San Juan College is dedicated to providing a place of work and learning that is free from discrimination and harassment on the basis of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age, genetics, veteran's status, or on the basis of any other category protected under federal, state and local laws. Where a violation of policy is found to have occurred, San Juan College will act to stop the conduct, to prevent its recurrence, to remedy its effects, and to discipline those responsible in accordance with the San Juan College Employee Handbook and/or San Juan College Student Code of Conduct.
2. No employee or student at San Juan College should be subjected to discrimination in the workplace or in an academic setting, including being subjected to inappropriate conduct. Even one incident may constitute a violation of policy and can be the basis for asserting a complaint. It is expected that students, faculty and staff will treat one another and campus visitors with respect.
3. It is against San Juan College policy to discriminate in any aspect of employment or education, which includes, but is not limited to the following:
 - a. Recruitment for employment at San Juan College;
 - b. Employment and accommodation in the workplace;
 - c. Compensation;
 - d. Benefits and retirement benefits;
 - e. Transfers;
 - f. Layoffs and returns to work;
 - g. Institutionally sponsored education and training;
 - h. Tuition assistance;
 - i. Social and recreational programs;
 - j. Staff development and career advancement;
 - k. Admission and class registration;
 - l. Testing;
 - m. Grading;

- n. Facility and equipment use;
 - o. Housing;
 - p. Academic accommodations;
 - q. Financial aid/scholarships;
 - r. Any other terms and conditions of employment;
 - s. Any other academic programs, terms and conditions.
4. The determination of what constitutes discrimination under this policy will be done on a case-by-case basis and depending upon the specific facts and the context in which the conduct occurs. Some conduct may be offensive, inappropriate, unprofessional, and/or subject to disciplinary action, but would not constitute discrimination under the law. The specific action taken, if any, relating to a particular instance depends on the nature and the seriousness of the conduct that is reported.
 5. Discriminatory practices include, but are not limited to:
 - a. Discrimination or harassment on the basis of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age, genetic, veteran's status, or on the basis of any other category protected under federal, state, or local laws.
 - b. Retaliation against an individual for engaging in a protected activity such as filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
 - c. Use of electronic mail or computer dissemination of offensive material relating to protected categories;
 - d. Denying or interfering with an employee's or student's authorized reasonable accommodation based on disability or religion;
 - e. Employment or education decisions based on stereotypes or assumptions about the abilities, traits or performance of individuals based on a person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age, genetic, veteran's status or on the basis of any other category protected under federal, state or local laws; and
 - f. Conduct that has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.

14.5 Disability Discrimination and Accommodation

1. San Juan College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.
2. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.
3. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the College, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

4. The Assistant Director of Human Resources has been designated as the Equal Employment and Opportunity Officer, Title IX and Section 504/Title II Coordinator (“EEO/Title IX/Section 504 Coordinator”) is the San Juan College’s ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.
5. Grievances related to disability status and/or accommodations will be addressed using the procedures below. For details relating to disability accommodations in the San Juan College’s resolution process, contact the Title IX Coordinator at allens@sanjuancollege.edu or (505) 566-3515.

A. Students with Disabilities

1. All faculty, staff, and employees at San Juan College are required to comply with federal regulations regarding reasonable accommodations for students with disabilities, in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act as amended (ADAAA, 2008).
2. Faculty, staff, and employees must comply with requests for reasonable accommodations and requests. However, there is an exception to this obligation as Federal law does not require the College to make an accommodation that fundamentally alters an essential required element of a course or program. The burden of showing fundamental alteration or essential requirement is on the College.
3. All requests for accommodation will be reviewed and approved by the Accessibility Services Coordinator after meeting with the student and with consultation, when appropriate, with the faculty or program chairs, deans, and the Vice President of Learning. Faculty members can object to an accommodation issued by the Coordinator which will result in separate meetings with the faculty member and the student on possible alternative accommodations. Faculty objections should only be in exceptional circumstances. Faculty, staff, and employees with questions or concerns about the details of an accommodation should contact the Accessibility Services Coordinator.
4. Faculty, staff, and employees must treat information regarding a student’s disability and/or requests for accommodation as confidential. To ensure consistency in following federal guidelines, all requests for accommodations from students with documented disabilities must be reviewed and approved by the Accessibility Services Coordinator. Notices of accommodation will be sent out each semester to each affected faculty member.
5. Faculty should include the following statement on each course syllabus:

Students with documented disabilities who may need academic adjustments or auxiliary aids or services for this course are required to register with the Accessibility Services Coordinator. The Coordinator can be reached at (505) 566-3271 or by email at disabilityservices@sanjuancollege.edu.
6. Faculty are also required to comply with federal laws prohibiting discrimination on the basis of a student’s disability.
7. Questions or concerns regarding behaviors that may be considered discriminatory should be directed to the Coordinator of Accessibility Services Coordinator, the EEO/Title IX/Section 504 Coordinator or to the Vice President for Student Services who can be reached at (505) 566-

3318. All complaints regarding discrimination regarding reasonable accommodations including, but not limited to, those asserting the denials of an accommodation as disability discrimination as well as for harassment or retaliation against a student arising from the accommodation process for students with disabilities will be investigated subject to the provisions of Policy as set forth in the section titled “Complaints, Investigation, Determinations.”

8. San Juan College’s policies and procedures do not limit or supplant statutory protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory claims remain unchanged, including the time frames for filing such claims.

B. Employees with Disabilities

1. The College complies with federal and state requirements that extend civil-rights protection to persons with disabilities and prohibit employment discrimination on the basis of disability. This policy is located in Chapter 4 of the Employee Handbook.
2. San Juan College will endeavor to make reasonable accommodations for qualified individuals with known or considered disabilities unless doing so would result in an undue hardship. An employee with a disability is responsible for submitting a request for an accommodation to the ADA/504 Coordinator and providing necessary documentation. The ADA/504 Coordinator will work with the employee’s supervisor to identify which essential functions of the position are affected by the employee’s disability and what reasonable accommodations could enable the employee to perform those duties in accordance with San Juan College’s applicable policies.

14.6 Discriminatory Harassment Policy

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Discriminatory Harassment is unwelcome statements or conduct that occurred because of or in relation to the recipient’s protected class, that is sufficiently severe and pervasive as to create an uncomfortable situation affecting the recipient’s educational program or work environment. Discrimination harassment is neither legally protected expression nor the proper exercise of academic freedom; it compromises the integrity of this institution, the tradition of intellectual freedom and the trust placed in the institution by its members.

14.7 Definition of Sexual Harassment

The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of New Mexico regard Sexual Harassment as an unlawful discriminatory practice.

San Juan College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

1) Quid Pro Quo:

- a) An employee of the College, conditions¹ the provision of an aid, benefit, or service of the College, on an individual's participation in unwelcome sexual conduct.

2) Sexual Harassment:

- a) Unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and, objectively offensive, that it effectively denies a person equal access to the College's education program or activity.²

3) Sexual assault, defined as:

- a) Sex Offenses, Forcible: Any attempted or actual sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.
 - 1) 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. Include the crime as Rape, regardless of the age of the victim, if the victim did not consent or if the victim was incapable of giving consent. If the victim consented, the offender did not force or threaten the victim, and the victim was under the statutory age of consent, define as Statutory Rape.
 - 2) Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because under the age of eighteen (18) or because of temporary or permanent mental or physical incapacity.
 - 3) Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - 4) Fondling: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

¹ Implicitly or explicitly.

² Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- b) Sex Offenses, Non-forcible:
 - 1) Incest: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by New Mexico law.
 - 2) Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 18 in the state of New Mexico.
- 4) **Dating Violence**, defined as:
 - a) Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - b) For the purposes of this definition—
 - i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - ii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) **Domestic Violence**, defined as:
 - a) Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Mexico, by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of New Mexico.

*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6) **Stalking**, defined as:
 - a) Engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.
 - b) For the purposes of this definition:
 - i. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

7) **Consent**

As used in the offenses above, the following definitions and understandings apply:

Consent is knowing, and voluntary, and clear permission by word or action to engage in sexual activity. Consent requires a clear affirmative act or statement by each participant to each sexual act in a sexual interaction. Consent demonstrates that the conduct in question is welcome or wanted. Relying solely on non-verbal communication can lead to miscommunication about one's intent. Confusion or ambiguity may arise at any time during a sexual interaction. Therefore, it is essential that each participant makes clear their willingness to continue at each progression of the sexual interaction.

Consent cannot be obtained by any of the following means:

- a) **Coercion**, which is unreasonable pressure for sexual activity including, but not limited to, ignoring the verbal or physical objections of another person (e.g., a person repeatedly saying "no" or "stop" or pushing the other person away);
 - b) **Force**, which is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, or intimidation (i.e., implied threats) and/or coercion that overcome resistance or produce consent;
 - c) Causing another's incapacitation through the use of drugs or alcohol or other means resulting in mental or physical incapacitation; or
 - d) Taking advantage of another person's incapacitation, state of intimidation, helplessness, or other inability to consent.
- a. Sexual activity will be considered "without consent" if no clear act or statement is given. Consent may not be inferred from silence, passivity, or lack of active response alone. A person who is asleep, unconscious, or otherwise unaware of what is happening is unable to give consent. Furthermore, a current or past dating or sexual relationship is not sufficient to constitute consent in every instance, and consent to one form of sexual activity does not imply consent to other forms of sexual activity and can be revoked at any time. Moreover, consent to sex does not mean consent to filming or taking pictures. Additionally, consent to sending a person pictures does not consent to share them with others. It is the responsibility of the person initiating the sexual activity to obtain consent from their partner.

8) **Incapacitation**

Incapacitation is any condition in which someone cannot make rational, reasonable decisions and therefore lacks the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual activity). A person may be unable to consent when they are mentally or physically incapacitated due to the influence of alcohol, drugs, or medication, and/or when they are asleep or involuntarily physically restrained.

A person is incapacitated and cannot consent to sexual activity if:

- a) The person is unconscious or otherwise unable to resist;
- b) The person is unaware that sexual activity is occurring; or
- c) The person does not have the legal capacity to consent. Persons under the age of eighteen (18) are not legally able to consent to engage in any form of sexual activity in New Mexico and are considered to be minors.

Intoxication alone, however, does not mean a person is incapable of consenting to sexual activity. The EEO/Title IX/Section 504 Coordinator's investigation will examine the record for other behavior including, but limited to, stumbling or otherwise exhibiting loss of equilibrium; slurred speech or word

confusion; bloodshot, glassy or unfocused eyes; vomiting, especially repeatedly; being disoriented, or confused as to time, place, etc.; and/or loss of consciousness.

Should the preponderance of the evidence in the record demonstrate that one or more such behaviors were objectively apparent at the time the alleged unconsented-to- or unwelcomed sexual activity occurred, then the evidence may demonstrate that the responding party respondent knew or should have known that the reporting party complainant was incapable of giving meaningful consent to sexual activity due to intoxication.

Sexual Harassment may also include any definition of the above terms that is set forth in the statutes or regulations of the State of New Mexico.

14.8 Anti-Retaliation Policy

1. Retaliation against an individual who in good faith complains of alleged discrimination or sexual harassment or provides information in an investigation about behavior that may violate this policy is prohibited and may be grounds for discipline. Retaliation in violation of this policy may result in discipline up to and including termination and/or expulsion. Any employee or student bringing a discrimination or sexual harassment complaint in good faith or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment and/or academic standing, nor discriminated against, terminated, or expelled because of the complaint.
2. "Retaliation" may include, but is not limited to, such conduct or adverse actions as:
 - a. Adverse direct or indirect action taken to keep someone from opposing a discriminatory practice, or from prosecuting or participating in a discrimination proceeding;
 - b. Threats, unjustified negative evaluations, unjustified negative references, or increased surveillance;
 - c. Action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights;
 - d. An unfair or unjustified grade; or
 - e. Using a third person to engage in the improper retaliatory conduct.
3. Isolated negative comments in an otherwise positive or neutral evaluation or negative comments regarding an employee's or student's poor work/academic performance or history is not considered adverse direct action under this policy if such comments are factually justified and are otherwise not made for the purpose of retaliating against the employee or student for having made a complaint or having provided information regarding a potential violation of San Juan College policy.
4. Filing a complaint within Process B could be considered retaliatory if those charges could be applicable under Process A, when the Process B charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, San Juan College vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.
5. The exercise of rights protected under the First Amendment does not constitute retaliation.
6. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

14.9 Mandated Reporting

All College employees (faculty, staff, & administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

While San Juan College has a Department of Public Safety, crimes that occur on campus are referred to the Farmington Police Department or the law enforcement agency where the College activity occurs. San Juan College will investigate and respond to claims under College policy, but the College does not have authority to enforce criminal statutes.

If the College determines that it cannot maintain a victim's confidentiality, the College will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the College's response. The College will remain mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or College employees, will not be tolerated.

The following sections describe the reporting options at Recipient for a Complainant or third-party (including parents/guardians when appropriate):

A. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- 1) On-campus (if available)
 - Licensed professional counselors and staff
 - On-campus health service providers and staff
 - On-campus Victim Advocates
- 2) Off-campus (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Employees who are confidential and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

B. Anonymous Notice to Responsible Employee (Mandated Reporters)

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by the College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the College's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

C. Mandated Reporters and Formal Notice/Complaints

All employees of the College (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment. Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at public events such as marches or speak-outs do not provide notice that must be

reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the Recipient.

D. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. Note that the College's ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community. In limited circumstances, Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by College, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

E. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

San Juan College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

F. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under College policy.

G. Amnesty for Complainants and Witnesses

The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, San Juan College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant. However, the College can determine that the violation was egregious, including an action that places the health or safety of any other person at risk. Students and Employees should also understand that any violation of state or federal criminal law involving the use and/or possession of alcohol or illegal drugs may result in prosecution, and San Juan College cannot grant amnesty from proceedings in the criminal justice system. Decisions about prosecutions are made by the San Juan County Attorney's Office in the state criminal justice system and by the U.S. Attorney's Office in the federal criminal justice system.

H. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA-based crimes,³ which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with campus Department of Public Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, [campus public safety], local police, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

³ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

- 1) **Inquiries concerning the application of the Campus SaVE Act may contact any of the following:** The San Juan College EEO/Title IX/Section 504 Coordinator or the Vice-President of Human Resources at San Juan College; ; the San Juan College Director of Public Safety, Room 1100, Phone (505) 566-3050, hibnerk@sanjuancollege.edu; Dean of Students, Room 4120, Phone (505) 566-3170 - benallyy@sanjuancollege.edu. Inquiries may also be made to the Office for Civil Rights, [United States Department of Education Website](http://www.ed.gov).

14.10 Resolution Process- Sexual Harassment

San Juan College will act on any formal or informal notice/complaint of Sexual Harassment that is received by the Title IX Coordinator or any other Official with Authority by applying the following procedures, known as “Process A.”

If a dismissal occurs under “Process A”, the complaint may be referred to Process “B” below.

Process “A”

(1) Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the Recipient needs to take.

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

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

San Juan College uses the Formal Grievance Process to determine whether or not the Policy has been violated.

(2) Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five business days. If circumstances require, the Executive President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties. The steps in an initial assessment can include:

- i. If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.

- a) If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
- b) If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
- c) If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - (i) If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate concern, based on the nature of the complaint.
 - (ii) If it does not, the Title IX Coordinator determines that Title IX does not apply, the Title IX Coordinator will “dismiss” that aspect of the complaint and refers the matter for resolution under Process B.
- i. The Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted as part of the initial assessment.
- ii. Dismissal. Pursuant to 34 CFR §106.45, San Juan College must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:
 - The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
 - The conduct did not occur in an educational program or activity controlled by the Recipient (including buildings or property controlled by recognized student organizations), and/or the College does not have control of the Respondent; and/or
 - The conduct did not occur against a person in the United States; and/or
 - At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the College.

San Juan College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- The Respondent is no longer enrolled in or employed by College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, San Juan College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the procedures for appeal below.

(3) Counterclaims

The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

(4) Right to an Advisor

Upon filing of a Notice/Complaint an advisor of their choice will be appointed or selected by each of the parties. The parties may each have an Advisor present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

San Juan College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney. Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses. A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, the College will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

San Juan College expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

San Juan College also provides a consent form that authorizes the College to share such information directly with their Advisor. Advisors are expected to maintain the privacy of the records shared with them.

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

(5) Informal Resolution Process

Informal Resolution of a Notice or Complaint may be appropriate when the Title IX Coordinator can resolve the matter informally by (1) providing supportive measures to remedy the situation, (2) when the parties agree to resolve the matter through an alternate resolution mechanism; or (3) when the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation). To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above.

A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College. San Juan College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism including mediation by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism, including but not limited to, negotiation. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable. Negotiated Resolutions are not appealable.

Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

(6) Formal Grievance Process

a. Notice of Investigation and Allegations

To begin the formal grievance process, the Title IX Coordinator will serve written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A summary of allegations,
- The identity of the involved parties (if known),
- The misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the College’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the College’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the College’s VAWA Brochure,

- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, an investigator is assigned within two (2) business days, if not assigned upon the issuance of the NOIA, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

The NOIA may be mailed to the local or permanent address(es) of the parties as indicated in official College records or emailed to the parties' College-issued email or other designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

b. Resolution Timeline

San Juan College will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

c. Appointment of Investigators

Upon issuance of a NOIA, the Title IX Coordinator assigns an investigator within two (2) business days. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another investigator will be assigned and the impact of the bias or conflict, if any, will be remedied.

San Juan College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

d. Investigation Timeline

The Investigations will be completed, if possible, within thirty (30) business days. San Juan College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. San Juan College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

San Juan College will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The College will

promptly resume its investigation and resolution process as soon as feasible. During such a delay, San Juan College will implement supportive measures as deemed appropriate.

San Juan College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

e. **Investigation Process**

The Investigator(s) typically take(s) the following steps:

- Interview the Complainant to secure their statement;
- Interview the Respondent to secure their statement;
- Interview available witnesses, if any, to secure their statement;
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings;
- Conduct follow-up interviews as necessary;
- Provide regular status updates to the parties throughout the investigation;
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding;
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included;
- Investigator's role is to gather, assess and synthesize evidence, no conclusion, no policy changes, and no recommendations as part of the report.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the Recipient does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if

the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

f. Referral for Hearing

Once the final investigation report is issued, the Title IX Coordinator will refer the matter for a hearing. The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers from the Pool of administrators trained to serve in the appropriate capacity. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. Depending on whether the Respondent is an employee or a student. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason. The Title IX Coordinator may not serve as a Decision-maker. The hearing will convene at a time determined by the Decision-maker or their designee.

g. Pre-Hearing Procedure

- 1) Notice. No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice will contain:
 - The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
 - Any technology that will be used to facilitate the hearing.
 - Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
 - A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
 - Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
 - Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the Recipient will appoint one. Each party must have an Advisor present. There are no exceptions.
 - A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.

- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
 - Whether parties can/cannot bring mobile phones/devices into the hearing.
- 2) Pre-Hearing Meetings. The Decision-maker may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that Decision-maker can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. Decision-maker must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting. At each pre-hearing meeting with a party and their Advisor, Decision-maker will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. Decision-maker may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. Decision-maker may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

h. Hearing Procedure

- (1) At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.
- (2) The Decision-maker will call the hearing to order and require all Participants to introduce themselves for the purposes of the record. Participants at the hearing will include, but are not limited to, the Decision-maker(s), the investigator who conducted the investigation, the parties, the Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services. The Decision-maker will answer all questions of procedure as requested by the Parties.
- (3) The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties through their Advisors. Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-maker will direct that it be disregarded.
- (4) Next, the Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision-maker. The parties and witnesses will submit to questioning by the Decision-maker(s) and then by the parties

through their Advisors. Anyone appearing at the hearing to provide information will respond to questions on their own behalf. Non-Party witnesses may be excused after they testify, with the exception of the investigator who will generally be present through the entire hearing.

(5) All questions are subject to a relevance determination by Decision-maker. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing, the proceeding will pause to allow the Decision-maker to consider whether the question will be permitted, disallowed, or rephrased. Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The following evidence will not be considered: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. To determine relevance, the Decision-maker may invite explanations or persuasive statements regarding relevance with the Advisors, if the Decision-maker so chooses. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

(6) At the close of testimony, the Decision-maker will close the Hearing.

i. Recording Hearings

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The Decision-maker(s), the parties, their Advisors, and appropriate administrators of San Juan College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

j. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence (more likely than not) standard of proof is used. The Decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.

k. Notice of Outcome. Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome. The Title IX Coordinator will then share the Notice of Outcome with the parties and their Advisors. The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or

permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the College's educational or employment program or activity, to the extent the College is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent). The Notice of Outcome will also include information on when the results are considered by San Juan College to be final, any changes that occur prior to finalization, and the relevant procedures and basis for any available appeal options.

I. **Sanctions**

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

1. **Student Sanctions**

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

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Recipient policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at San Juan College.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend College-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, [subject to any applicable expungement policies.]
- *Withholding Diploma*: San Juan College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the

student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.

- *Revocation of Degree:* San Juan College reserves the right to revoke a degree previously awarded from the College for fraud, misrepresentation, and/or other violation of San Juan College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including College registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

2. Employee Sanctions/Responsive Actions

Responsive actions for an employee who has engaged in harassment and/or retaliation will be determined by the employee's supervisor in coordination with San Juan College Human Resources and the Title IX Coordinator. Sanctions will be in accordance with the San Juan College's Employee Handbook, Chapter 9 - Progressive Discipline Policy.

m. Appeals

Any party may file a request for appeal with the Title IX Coordinator within 3 business days of the delivery of the Notice of Outcome. Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter; or
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.

The appealing party must include in their request a detailed statement as to what procedural irregularity or new evidence they contend necessitates a new hearing. Upon receipt, the non-appealing party will be given a copy of the request for appeal and an opportunity to provide a response to the request for appeal within 3 business days.

A panel chosen from the Pool will be designated by the Title IX Coordinator to review the request for appeal.

Appeals are not intended to provide for a full re-hearing of the allegation(s). An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Panel and the parties and their Advisors will be notified in writing of the denial and the rationale.

If the appeal is granted the matter will be remanded for further hearing. A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal and will remand the matter for an additional hearing. Appeals granted based on new evidence should normally be remanded to the original

Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.

n. Modifications

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party. The Title IX Coordinator may also vary procedures materially with notice to the parties 5 business days in advance of the enactment of the modification.

o. Acknowledgement

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14.11 Resolution Process

For alleged violations of the policy on Equal Opportunity, Harassment, and Non-Discrimination.

San Juan College will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, faculty members, or third parties. Unionized or other categorized employees may be subject to the terms of their respective collective bargaining agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

A. General Information:

- 1. Employees:** An employee who believes that they have been subjected to discrimination or harassment is encouraged, but it is not required, particularly if it may be confrontational, to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. An employee is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the employee. If the employee feels uncomfortable about discussing the incident with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint directly with the EEO/Title IX/Section 504 Coordinator.

2. **Students:** A student who believes that they have been subjected to discrimination or harassment by anyone is encouraged, but it is not required particularly if it may be confrontational, to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. A student is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the student. If the student feels uncomfortable about discussing the incident with the faculty member, department head, dean, Dean of Students or Vice President of Student Services, the student should feel free to bypass the person and file a complaint directly with the EEO/Title IX/Section 504 Coordinator.

When discriminatory conduct involves a crime of violence or a non-forcible sex offense, FERPA permits San Juan College to disclose to the alleged victim the name of the alleged perpetrator, any violation found to have been committed and any sanction imposed.

In the event a student is found to have engaged in sexual harassment of another student, San Juan College will disclose to the student who was harassed, information about the sanction imposed on the student when the sanction directly relates to the harassed student.

All internal San Juan College departments or schools will promptly contact and consult with the EEO/Title IX/Section 504 Coordinator when knowledge is obtained relating to potential discrimination or sexual harassment.

3. **Supervisors:** If anyone in a supervisory, managerial, administrative or executive role or position, such as a supervisor, dean, department chair, or director of a unit, receives a complaint of alleged discrimination or harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, that person must immediately contact the EEO/Title IX/Section 504 Coordinator.
4. **Non-employees and non-students:** Individuals who are neither San Juan College employees nor San Juan College students and who believe they have been subjected to discrimination or sexual harassment by a San Juan College employee during the employee's work hours or by a San Juan College student on campus or at San Juan College sponsored event may utilize the complaint process set forth above.

Process "B" - Administrative Resolution Procedures that apply to Discrimination, Harassment and Retaliation, including Sexual Harassment when it does not fall under Process "A".

B. Complaints, Investigation, Determinations:

A. Procedure for Employees:

1. All employees, regardless of job status, may file complaints regarding any act of discrimination including, but not limited to, disability discrimination, sexual harassment, sexual assault, dating and domestic violence, and stalking and alleging discrimination on the basis of sex (includes pregnancy), sexual orientation, and gender identity.
2. Employees may begin the grievance procedure when they feel their rights have been violated by any act of discrimination including, but not limited to disability discrimination, sexual harassment or unfair treatment because of sex (includes

pregnancy), sexual orientation or gender identity by meeting with the EEO/Title IX/Section 504 Coordinator to describe the reasons for the complaint, the related circumstances, and the desired resolution. To assist in timely resolutions, employees should begin these procedures soon after the incidents. Employees will be asked to sign a form documenting these conversations.

3. The EEO/Title IX/Section 504 Coordinator is under obligation by law to investigate any charges of discrimination or unfair treatment. Upon receipt of the complaint, the EEO/Title IX/Section 504 Coordinator will conduct a thorough and impartial investigation.
4. After thorough investigation, the EEO/Title IX/Section 504 Coordinator will attempt to facilitate informal conferences and negotiations, toward a mutually satisfactory resolution.
5. If a complaint cannot be resolved informally, an employee may request, at any time, in writing, a formal hearing within ten (10) College work days from the conclusion of Step 1 of the appeal process.
6. Within fifteen (15) College work days of receipt of a written request for a hearing, the EEO/Title IX/Section 504 Coordinator appoints three or five member panel - consisting of College employees who can evaluate the complaints objectively. Only evidence that is relevant to the specific issues will be heard.
7. San Juan College will use a preponderance of the evidence standard in all proceedings involving discrimination but not limited to sexual violence or sexual misconduct. This means that the standard of proof is whether the evidence presented makes it “more likely than not” that the alleged misconduct occurred.
8. The hearing will be closed and an audio recording of the official proceeding will be made and maintained on file for one year in the Human Resources Office. The hearing will consist of the hearing panel, the grievant, and the respondent. Witnesses may be called as necessary. Any participant in a hearing may have an advisor to consult and support them. Advisors may not speak at the hearing, may not address the panel, or question witnesses. Advisors who are disruptive or fail to follow these rules will be removed.
9. The decision of the hearing panel will be submitted to the EEO/Title IX/Section 504 Coordinator for dissemination. If the respondent is found in violation of the policies, the EEO/Title IX/Section 504 Coordinator will forward the hearing results to the appropriate Vice President for disciplinary action. The complainant and respondent will simultaneously be sent a copy of the panel decision.
10. The prescribed time limits may be extended whenever necessary in order for these provisions to be implemented.
11. All employees are notified that they also have a right to file complaints with the appropriate state, federal, regional or national agency, if they choose, including filing complaint with local law enforcement for sexual violence complaints.

12. Penalties: For employees who are found to have violated *the San Juan College Employee Handbook* will be referred to San Juan College Human Resources. Responsive actions for an employee who has violated this policy will be determined by the employee's supervisor in coordination with San Juan College Human Resources.

B. *Appeal Process for Employee:*

Employees do not have a direct right to appeal the decision of the hearing panel. Employees may appeal certain types of disciplinary actions that result from the decision of the hearing panel if the right to appeal is otherwise provided for in the San Juan College Employee Handbook.

C. *Procedure for Students:*

1. All students may file complaints regarding any act of discrimination including, but not limited to, sexual harassment, sexual assault, dating and domestic violence, stalking, discrimination on the basis of sex (includes pregnancy), sexual orientation, gender identity, and/or disability.
2. Students may begin the complaint process when they feel their rights have been violated by any act of discrimination including, but not limited to disability, sexual harassment or unfair treatment because of sex (includes pregnancy), sexual orientation or gender identity by contacting the Title IX Coordinator or the Dean of Students in person or by phone. Contact information is listed in Section H.(d)(1) Campus SaVE Act above.
3. Students also have the option to submit an anonymous report. An anonymous report is an unofficial means to inform the College administration and/or SJC Department of Public Safety Department that a sexual assault has occurred on-campus, near campus, or against a College member. This method has been developed to encourage reporting of sexual assaults without the risk of identity exposure and the pressures of filing a report with the Title IX Coordinator, Dean of Students and/or filing criminal charges with a local law enforcement agency. The anonymous report will provide valuable information to the College administration and SJC Department of Public Safety, which will allow for improved prevention programming and resources in the future for the SJC campus community.

Student victims of sexual assault may file an anonymous report with the Title IX Coordinator or Dean of Students, whether or not the victim of a sexual assault decides to file criminal charges against the offender at a later date. To keep information anonymous, do not include names of victims or perpetrators. If names are included, this is no longer considered an anonymous report and an investigation may be conducted by SJC Department of Public Safety.

Anonymous reports will remain confidential to the public, but may be shared with SJC Department of Police Safety, and the Title IX Committee for statistical, programmatic, and/or referral purposes. Since the anonymous reporting method is unofficial, the Dean of Students or appropriate decision makers may not be able to take disciplinary action in response to such a report.

4. The student will then meet with the EEO/Title IX/Section 504 Coordinator to describe and discuss the reasons for the complaint, the related circumstances, and the desired resolution. To assist in timely resolutions, students should begin these procedures as soon as possible after the incident. Students will be asked to sign a form documenting these conversations.
5. The EEO/Title IX/Section 504 Coordinator is under obligation by law to investigate any charges of discrimination or unfair treatment. Upon receipt of the complaint, the EEO/Title IX/Section 504 Coordinator or designee will conduct a thorough and impartial investigation after obtaining a written consent to the investigation from the complaining student (or the parent if under the age of 18). A thorough and impartial investigation includes, but is not limited to, interviewing and obtaining statements from involved parties, witnesses and other persons with knowledge, obtaining relevant documentation or other evidence, seeking guidance from Federal guidebooks and manuals and seeking advice, if appropriate, from College counsel. It also includes advising involved parties of the right to present witnesses and evidence at an appeal hearing.
6. After thorough investigation, the EEO/Title IX/Section 504 Coordinator or the Dean of Students will attempt to facilitate informal conferences and negotiations, toward a mutually satisfactory resolution.
7. If a complaint cannot be resolved informally, the EEO/Title IX/Section 504 Coordinator or the Dean of Students will make a determination within thirty (30) College business days from the date the complaint was received.
8. San Juan College will use a preponderance of the evidence (more likely than not) standard in all determination proceedings involving discrimination including, but not limited to sexual violence or sexual misconduct, including sexual harassment. This means that the standard of proof is whether the evidence presented makes it “more likely than not” that the alleged misconduct occurred.
9. The decision of the EEO/Title IX/Section 504 Coordinator will be made in writing and given to both the Complainant and Respondent, as well as the Dean of Students. The Complainant will only be notified of any sanctions imposed on the Respondent if the sanctions directly relate to the Complainant.
10. If it is determined that there was a hostile environment or an environment that allowed sexual violence to take place, the EEO/Title IX/Section 504 Coordinator and the Dean of Students will take immediate action to eliminate the hostile environment to prevent its reoccurrence and address its effects.

D. Appeal Process for Students:

- a. Any student has the right to file an appeal of the decision of the EEO/Title IX/Section 504 Coordinator within three (3) working days of notification of the final outcome. A written notice of appeal must be filed by the aggrieved party with the Dean of Students.
- b. A request for an appeal shall be limited to a review of the investigation, findings of the initial investigation, related hearing, and supporting documents or one (1) or more of the following purposes:
 - (i) **New Information:** To consider new documentation, unavailable during the original hearing or investigation, that could substantially impact the original finding or

sanction(s). A summary of this new documentation and its potential impact must be included.

- (ii) **Procedural Error:** To determine that a procedural or substantive error occurred that significantly impacted the outcome of the hearing (e.g. unjustified and significant deviation from published procedures, etc.).
- c. The appeal should include the basis for appeal and all evidence/information to be considered by the appeal panel.
- d. The appeal is a written appeal only and will not constitute a new hearing.
- e. The Dean of Students has ten (10) working days from receipt of the signed notice of appeal to schedule in a timely manner an appeals panel to review the matter.
- f. Upon receipt of the written notice of appeal, the Dean of Students or their designee will appoint an appeal panel. Appeals involving cases resulting in suspension, expulsion, degree revocation or rescission of credit will be heard by a committee composed of two (2) persons and a chairperson. The membership of the Committee will include:
 - (i) One (1) Chairperson will be a San Juan college employee (outside the department of the alleged discrimination occurrence);
 - (ii) One (1) student and
 - (iii) One (1) additional San Juan College employee (outside the department of the alleged discrimination occurrence);
 - (iv) Employee may represent faculty or professional staff.
- g. The appeal panel will determine the outcome of the appeal based on all information submitted in writing and will use the preponderance of evidence standard. The outcome of the appeal will be determined by majority vote of the panel.
- h. The appeal panel will determine the outcome of the appeal based on all information presented at the appeal hearing and will use the preponderance of evidence standard. The outcome of the appeal will be determined by majority vote of the participating appeal panel participants.
- i. The written decision of the appeal panel will be given to the individuals involved, the EEO/Title IX/Section 504 Coordinator and the Vice President for Student Services, within five (5) working days following the completion of the appeal hearing. The Complainant will only be notified of any sanctions imposed on the Respondent if the sanction directly relates to the complaining student.
- j. Records of the appeal panel decision will be kept in the Office of Student Services and the EEO/Title IX/Section 504 Coordinator.
- k. All students are notified that they also have a right to file complaints with the appropriate state, federal, regional or national agency, if they choose, including filing complaint with local law enforcement for sexual violence complaints.
- l. Penalties: Cases for students who are found to have violated the *San Juan College Student Code of Conduct* will be referred to the Dean of Students.

San Juan College recognizes that the reporting of sexual violence and sexual misconduct is a sensitive issue, but encourages all members of the College community to report incidents of sexual misconduct. Not every person will choose to make a formal report to the College or with law enforcement about being a victim/survivor of sexual misconduct.

A. Reporting. The purpose of this section is to outline confidentiality and reporting options and obligations for students and employees alike. Dependent on who a person contacts may determine the level of confidentiality they can expect.

1. Reports to Law Enforcement: Persons making reports of being the victim/survivor of sexual violence or sexual misconduct should not expect any privacy protections with such a report. While police officers and detectives are sensitive to privacy concerns, the legal setting requires a transparent and legally sufficient investigative process.
2. Reports to Persons Who Hold Legal Privileges to Maintain Confidentiality: Medical doctors, psychologists, licensed counselors, and priests and pastors who provide medical and counseling services to members of the San Juan College community are not required to report the incident on to law enforcement or to the College against the wishes of the person (except in cases involving sexual abuse of a minor). You must give permission to these persons to inform law enforcement or the College EEO/Title IX/Section 504 Coordinator of the incident involving sexual violence or sexual misconduct.
3. Reporting to “Responsible Employees”: Certain employees at San Juan College are designated as “responsible employees” under Title IX who have an affirmative legal duty to inform the EEO/Title IX/Section 504 Coordinator so that a formal investigation can commence. Faculty members, department heads, Deans, the Dean of Students, and Public Safety Department officers are all designated as “responsible employees”. To the extent possible, information reported to a responsible employee will only be shared with persons in the EEO/Title IX/Section 504 Coordinator’s office who are responsible to investigate and respond to the report. These individuals will not automatically report the incident on to law enforcement (except in the case of sexual abuse of a minor) without permission, unless there is an ongoing threat to the College community that requires police action. If a person requests confidentiality, the College will try to maintain, but cannot guarantee confidentiality.
4. Non-Professional Counselors and Advocates: Individuals who work or volunteer in Student Services, the Advising Center, Counseling Center, any student organization, including front desk staff and students, can generally talk to a person without revealing any personally identifying information about an incident to the College. A person can seek assistance and support from these individuals without triggering a formal College investigation that could reveal the victim’s identity. While maintaining a person’s confidentiality, these individuals or their office will report the nature, date, time, and general location of an incident to the EEO/Title IX/Section 504 Coordinator. This limited report – which includes no information that would directly or indirectly identify the person – helps keep the EEO/Title IX/Section 504 Coordinator informed of the general extent and nature of sexual violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the EEO/Title IX/Section 504 Coordinator, these individuals will consult with the person to ensure that no personally identifying details are shared with the EEO/Title IX/Section 504 Coordinator. A person who speaks to a non-professional counselor or advocate must understand that, if the person wants to maintain confidentiality, the College will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the accused. Even so, these individuals can still assist the person in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to working or course schedules. Any individual who at first requests confidentiality may change their mind and file a complaint with the school or

report the incident to local law enforcement, and thus have the incident fully investigated. These counselors and advocates will provide the individual with assistance if the individual wishes to do so.

B. The Effects of Requesting Confidentiality.

If a person discloses an incident to a responsible employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the College must weigh that request against the College's obligation to provide a safe, non-discriminatory environment for all students, including the victim/survivor. If the College honors the request for confidentiality, the College's ability to meaningfully investigate the incident and pursue disciplinary action against the accused may be limited. There are times, however, when the College may not be able to honor a person's request in order to provide a safe, non-discriminatory environment for all employees and students. The College has designated the following individual(s) to evaluate requests for confidentiality once a responsible employee is on notice of alleged sexual violence: EEO/Title IX/Section 504 Coordinator, Dean of Students, and Director of Public Safety Department.

Regardless of an individual's decision on confidentiality, the College will continue to support and assist the person as outlined in this policy.

C. The Importance of Reporting Sexual Violence and Misconduct to Law Enforcement and Preserving Evidence

- a. Persons who are in danger of or undergoing an event of sexual violence or sexual misconduct should immediately call 911.
- b. Persons who have just experienced an incident of sexual violence or sexual misconduct are encouraged to report the incident as soon as possible to the Farmington Police Department by calling 911 or 334-6622.
- c. Persons who have experienced sexual violence or sexual misconduct in the past are still encouraged to report the incident to law enforcement, regardless of when it occurred.
- d. The ability to obtain and preserve critical evidence in sex related crimes diminishes over time. The earlier a person reports an incident of sexual violence or misconduct, the greater the opportunity to collect helpful evidence (particularly medical evidence), provide clear and detailed information about what happened, and identify and get statements from eyewitnesses.
- e. Early reporting helps preserve evidence. San Juan College encourages timely reporting. Individuals can decide later whether they wish to continue pursuing criminal charges.

2. Bystanders' Obligation to Assist and Report Acts of Sexual Violence as Sexual Misconduct:

San Juan College expects all members of the campus community to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. San Juan College will help educate and engage bystanders to be an effective tool to help prevent acts of sexual misconduct. Bystanders can help in several different ways, including direct intervention, seeking assistance from an authority figure, notifying the Public Safety Department, or call the Farmington Police Department. Remaining silent or thinking it is someone else's problem is not an ethical or reasonable position.

1. Observation of an act of sexual misconduct: It is important to understand that no individual has the right to be violent, regardless of whether people are in a relationship. Recognizing when acts of sexual misconduct are occurring is the first step to intervention. San Juan College's sponsored education and training programs will give information on recognizing when sexual misconduct is taking place. Bystanders should only attempt to personally intervene if it can be done safely – violence does not stop violence, and, if they cannot stop the act with their words, they should call the Public Safety Department or Farmington Police Department. Bystanders are encouraged to ask other students and College employees for help.
2. Assisting Victims/Survivors to Confide and Disclose Sexual Misconduct: When persons confide and disclose being victims/survivors of sexual misconduct, members of the College community who receive that information should let the person tell their story and should listen respectfully and help them explain and identify what happened to them. They should help individuals identify appropriate avenues for assistance. Individuals should be helped to feel safe and encouraged to seek medical attention and counseling. They should be encouraged to report the incident to the EEO/Title IX/Section 504 Coordinator and the Farmington Police Department. Being kind, understanding and non-judgmental can be a positive force for helping them make formal report and recover from such events.

3. Supervisor Responsibilities

Every supervisor (including faculty members in the academic setting) has responsibility to take reasonable steps to prevent acts of discrimination or sexual harassment, which include, but are not limited to:

1. Monitoring the work and school environment for signs that discrimination or harassment may be occurring;
2. Refraining from participation in, or encouragement of, actions that could be perceived as discrimination or harassment (verbal or otherwise);
3. Stopping any observed acts that may be considered discrimination or harassment, and taking appropriate steps to intervene, whether or not the involved individuals are within their line of supervision; and
4. Taking immediate action to minimize or eliminate the work and/or school contact among individuals where there has been a complaint of sexual harassment, pending the completion of the investigation.

If a supervisor (or faculty member in the academic setting) receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, the supervisor (or faculty in academic setting) must immediately contact the EEO/Title IX/Section 504 Coordinator.

Failure to take the above action to prevent the occurrence of or stop known discrimination or harassment may be grounds for disciplinary action in accordance with provisions of the San Juan College Employee Handbook.

4. Reducing Risks and Recognizing Warning Signs for Sexual Violence and Sexual Misconduct

The following are steps that can help reduce the risk of sexual assault. When considering these actions, it is important to remember that two-thirds of victims/survivors of sexual assault already know the perpetrator:

- a. Be aware of your surroundings, know where you are, who is around, and options for leaving.
 - b. Use well-lit and traveled routes and never put headphones or ear buds in, if alone.
 - c. Avoid isolated areas.
 - d. Avoid becoming isolated with someone you do not know or trust.
 - e. Always walk with a purpose.
 - f. Avoid carrying lots of packages or bags.
 - g. Trust your instincts. If a situation makes you uncomfortable, get out.
 - h. Go to and leave parties with friends.
 - i. Practice safe drinking precautions – watch your drink, get your own drinks, do not leave drinks unattended, and avoid punch bowls and large communal containers.
 - j. Always practice the buddy system.
 - k. Be true to yourself. Do not feel obligated to do to or do anything you do not want to.
 - l. Have a ‘code’ word to alert friends you are uncomfortable or in trouble.
 - m. Always think about an escape route.
 - n. Make no commitments or decisions while under the influence of drugs or alcohol.
 - o. It is better to make an excuse and leave than to stay and be a victim.
 - p. Never give out personal information to strangers about where you live or your living arrangements in person or on line.
 - q. Only agree to meet new people you have met on line in public settings and always take a friend with you.
 - r. Always keep your gas tank more than half full, keep your car doors locked, and tell others of your planned travel route.
 - s. Always have your cell phone in your car and a charger in the car.
5. The following are warning signs of potentially abusive behavior in a close personal relationship. Acting on the appearance of warning signs is the key to avoid being the victim of date violence, spousal violence, and stalking.
- a. Does the person abuse alcohol or drugs?
 - b. Does the person have a history of legal trouble, fighting, or destroying property?
 - c. The other person will not work or go to school.
 - d. Do they blame you for everything bad that happens or blame you for how they treat you?
 - e. Do they abuse other family members?
 - f. Do they call you and others names and put you and them down?
 - g. Are they always angry at something or someone?
 - h. Do they try to control where you go or who you see?
 - i. Do they try to isolate you from family and friends?
 - j. Do they demand sex or try to force you to be sexual, even when you do not want to be?
 - k. Are they physically rough with you (push, shove, pull hair, restrain, etc.)?
 - l. Do they take your money or belongings without asking?
 - m. Do they accuse you of being unfaithful, cheating on them, or “coming on” to others?
 - n. Do they reject your thoughts, feelings or opinions and refuse to listen to you?
 - o. Do they put you down or insult you in front of others or call you dumb, fat, stupid, or say that no one else would want you?
 - p. Threaten to kill themselves or you if you break up with them?
 - q. Do they experience extreme mood swings?
 - r. Do they constantly compare you to their former partners?

- s. Are you afraid to break up with them?
- t. Do you feel they control every aspect of your life?
- u. Do you avoid certain subjects or activities that make them mad?
- v. Do you tell yourself that if you try harder or love them more, things will get better?
- w. Are you crying more often, feeling increasingly depressed and unhappy?
- x. Do you obsess over how to keep your partner “happy”?
- y. Do things with your partner only seem to be getting worse and worse?

6. Education and Training Programs to Implement and Support Policy on Discrimination, Harassment, and Sexual Misconduct on Campus

San Juan College will implement and support this policy with the training and educational events and activities outlined below:

1. Provide training on sexual misconduct for all new and existing students and new and existing employees via online training.
2. Sponsor and conduct annual prevention workshop/seminars/activities addressing domestic violence, dating violence sexual assault, harassment, stalking.
3. Provide links to online training materials in the web-based versions of the Annual Course Catalog and Student Handbook.
4. Provide trauma-informed training for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence and harassment and stalking cases.
5. Provide web-based training on the Department of Public Safety website for risk avoidance and warning signs of potential abusive relationships.
6. Periodically conduct specialized bystander training events and static displays on campus.
7. Make annual and periodic presentations to faculty, staff, and professional staff associates regarding this policy and component parts of this policy.
8. Provide students the link to College policy on sexual misconduct and include as part of incoming student’s orientation/onboarding.
9. Utilize Student Services and student organizations to support sexual misconduct training opportunities on campus.

7. San Juan College and Community Resources Available to Victims/Accused of Sexual Violence or Sexual Misconduct

1. San Juan College Advising and Counseling Center
Educational Services Building, First Floor, Room 4106
Phone: (505) 566-3403
advisingcenter@sanjuancollege.edu
2. Farmington Police Department
900 Municipal Drive
Farmington, New Mexico 87401
Phone: 911 or (505) 334-6622
3. Sexual Assault Services of Northwest New Mexico
622 Maple Street
Farmington, New Mexico 87401
Phone: (866) 908-4700; (505) 326-4700; (505) 325-2805
[Sexual Assault Services of NW NM Website](#)
4. Desert View Counseling

905 Apache
Farmington, New Mexico 87401
Phone: (505) 326-7878

[Desert View Website](#)

5. Family Crisis Center*

208 Apache

Farmington, New Mexico 87401

Phone: (505) 325-3549; Hotline (505) 564-9192; (888) 440-9192

[Family Crisis Center Website](#)

6. Navajo Nation Strengthening Families Program

Teaching Responsibilities, Empowering and Equality (T.R.E.E) House

Phone: (505) 368-1156

7. DNA Legal Services, Inc.

709 Butler Ave.

Farmington, New Mexico 87401

(505) 325-8886

8. New Mexico Children, Youth & Families Department

Phone: (505) 795-1645

cyfd.org/domestic-violence

*Provides services for the offender.