

**INTERIM<sup>1</sup> EQUAL OPPORTUNITY AND  
DISCRIMINATORY HARASSMENT POLICY**

**AND**

**INTERIM PROCESS FOR THE INVESTIGATION  
AND RESOLUTION OF COMPLAINTS**

**I. COMMITMENT TO NON-DISCRIMINATION**

The College of the Holy Cross rejects and condemns all forms of harassment, wrongful discrimination, retaliation and disrespect and is committed to sustaining a welcoming environment for everyone and especially those vulnerable to discrimination on the basis of a person's race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, gender identity or any other legally protected status, while reserving its right where permitted by law to take action designed to promote its Jesuit and Catholic mission.

It is the policy of the College to adhere to all applicable state and federal laws prohibiting discrimination and discriminatory harassment. The College does not discriminate unlawfully in admission to, access to, treatment in, or employment, in its programs and activities on the basis of a person's race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, gender identity or expression or any other legally protected status, while reserving its right where permitted by law to take action designed to promote its Jesuit and Catholic mission.

Unlawful discrimination, discriminatory harassment, and retaliation are prohibited and will not be tolerated at the College. Such behavior violates this policy and/or the Sexual Misconduct Policy and may result in disciplinary action, up to and including termination or dismissal from the College.

**II. HOW THE COLLEGE SEEKS TO ADDRESS DISCRIMINATION,  
DISCRIMINATORY HARASSMENT, SEXUAL MISCONDUCT,  
RELATIONSHIP VIOLENCE, AND STALKING**

The College prohibits discrimination or harassment on the basis of a person's race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, gender identity or expression or any other legally protected status. This prohibition includes sexual violence, relationship violence, stalking, or retaliation.

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<sup>1</sup> This Interim Equal Opportunity and Discriminatory Harassment Policy is effective as of August 20, 2021 and amends the Discrimination and Discriminatory Harassment Policy and Process for the Investigation and Resolution of Complaints. This policy and the procedures set forth in this policy generally will apply to complaints made on or after that date while the conduct standards that apply generally will be those in effect at the time of the conduct at issue, unless the Director of Equal Opportunity determines otherwise in his, her or their discretion. Prior versions of this policy are available upon request to the Director of Equal Opportunity. This policy will undergo further review during the 2021-2022 academic year as determined by the College.

The College follows through on that commitment, in part, through the implementation of two policies:

1. Sexual Misconduct Policy. The Sexual Misconduct Policy is designed to comply with Title IX of the Educational Amendments Act of 1972 and the regulations thereunder (as the same may be amended from time to time, “Title IX”). It defines prohibited conduct to be addressed under that policy, including, but not limited to, sexual harassment, sexual violence, sexual exploitation, relationship violence, and stalking, and the process by which the College will address such conduct in different circumstances. To review the Sexual Misconduct Policy, reporting resources, other College and community resources, including confidential resources, availability of support measures, and related investigation and resolution procedures, please see the following link: [Sexual Misconduct Policy](https://www.holycross.edu/sexual-respect-and-title-ix) (available at <https://www.holycross.edu/sexual-respect-and-title-ix>).
2. This Interim Equal Opportunity and Discriminatory Harassment Policy. This Interim Equal Opportunity and Discriminatory Harassment Policy defines prohibited conduct and a process by which the College will address such conduct, including, but not limited to:
  - Discrimination or harassment on the basis of race, religion, color, national origin, age, veteran status, disability, or genetic information.
  - Discrimination or harassment on the basis of sex, sexual orientation, gender identity or expression, pregnancy, marital or parental status, sexual harassment, sexual violence, other inappropriate sexual contact, relationship violence, stalking, and sexual exploitation are addressed under this policy to the extent that those concerns are not required to be addressed under Title IX and the Sexual Misconduct Policy. In these cases, The Director of Title IX and Equal Opportunity (“Director of Equal Opportunity”) will evaluate reported concerns and make a determination of which policy applies.
  - In addition, this policy covers the additional prohibited conduct described in Section VI.

Both policies also prohibit retaliation against any individual seeking to exercise a protected activity and/or effectively take part in either process.

This policy applies to all College community members, including, but not limited to, students, faculty, staff, contractors, volunteers, and other third parties visiting College owned or leased property or participating in any College event, program or activity, whether on or off campus. All such persons are responsible for being familiar with and abiding by this policy at all times. The term “student” includes all persons taking courses at the College, either full-time or part-time. Persons who withdraw or resign after allegedly violating this policy, who are not officially enrolled or engaged for a particular term but who have a continuing relationship with the College, are

considered community members for the purpose of this policy. A person's status as a community member or the applicability of this policy in a particular situation shall be determined by the Director of Equal Opportunity in his, her, or their sole discretion.

This policy is neither designed nor intended to limit the College's authority to discipline or take remedial action for conduct which is deemed unacceptable, regardless of whether that conduct satisfies the legal definition of unlawful discrimination, discriminatory harassment, or retaliation.

Any individual can experience or commit a violation, and discriminatory, harassing or retaliatory behaviors can occur between people of the same or different sex, sexual orientation, gender identity, gender expression, race, religion, color, national origin, age, ability status, or veteran status.

### **III. DIRECTOR OF TITLE IX AND EQUAL OPPORTUNITY**

The Director of Equal Opportunity (who also serves as the College's Title IX Coordinator and ADA/504 Coordinator) has been designated by the College to respond to inquiries regarding this policy and the Sexual Misconduct Policy:

Derek DeBobes  
Director of Title IX and Equal Opportunity  
College of the Holy Cross  
Hogan Campus Center- Suite 506  
Worcester, MA 01610  
508-793-3336  
ddebobes@holycross.edu

The Director of Equal Opportunity is also available to meet with any individual to provide information about the implementation of this policy and Sexual Misconduct Policy, including the availability of supportive measures, the investigation process, and the resolution/sanction process, as well as discussing other resources within the College community and beyond. The Director of Equal Opportunity and/or other qualified members of the College community will assist, as necessary, with these efforts.

### **IV. REPORTING OPTIONS; RETALIATION PROHIBITION; COLLEGE RESOURCES AND OTHER COMMUNITY RESOURCES**

It is the goal of this policy and these procedures to create a positive, supportive environment in which people who believe that they have experienced or have concerns about discrimination, discriminatory harassment, retaliation, sexual harassment, sexual violence, relationship violence, stalking or other conduct prohibited by this policy feel free to discuss those situations or concerns with someone in a position to address them, secure in the knowledge that they will be listened to and treated with respect.

#### **A. Reporting Options**

- Non-Confidential Report pursuant to this Policy. To report a violation, make a

complaint, or seek information about the process to resolve complaints or concerns under this policy, please contact<sup>2</sup>:

Derek DeBobes  
Director of Title IX and Equal Opportunity  
College of the Holy Cross  
Hogan Campus Center- Suite 506  
Worcester, MA 01610  
508-793-3336  
ddebobes@holycross.edu

In the event that the Director of Equal Opportunity is unavailable, inquiries may also be made to another official in the Office of Title IX and Equal Opportunity or to one of the following officials:

Marymichele Delaney  
Director of Human Resources  
College of the Holy Cross  
O’Kane Hall, Room B72  
Worcester, MA 01610  
508-793-3320  
[mdelaney@holycross.edu](mailto:mdelaney@holycross.edu)

Paul Irish  
Associate Dean of Students  
College of the Holy Cross  
Hogan Campus Center, Room 109  
Worcester, MA 01610  
508-793-2669  
pirish@holycross.edu

- Criminal Reporting Option. Individuals who believe that they may have been victims of a crime may file a criminal complaint with the Department of Public Safety (508-793-2222) and/or the local police department (911) where the incident occurred. An individual may make a criminal complaint and also file a complaint under the College’s Sexual Misconduct Policy or this policy. The College encourages individuals to report potentially criminal incidents to law enforcement so appropriate measures can be taken to help individuals and prevent future crimes. However, individuals are never required to report an incident to law enforcement. The contact information for the Department of Public Safety, as well as other local law enforcement resources, include:

- Holy Cross Department of Public Safety, One College Street, Worcester, MA 01610, 508-793-2222. If you wish to file a report on

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<sup>2</sup> In the event of an allegation of misconduct with respect to the Director of Equal Opportunity, individuals may contact the Director of Human Resources and, in such case, the Director of Human Resources will function in the role of the Director of Equal Opportunity with respect to any such claim.

campus, an officer in the Department of Public Safety is available to meet with you to receive your report.

- Worcester Police Department, 9-11 Lincoln Square (Exit 17 off I-290, turn left), 508-799-8606.
- West Boylston Police Department, 39 Worcester Street, 508-835-3233.
- District Attorney's Office, Child Abuse and Sexual Assault Unit, 255 Main Street, Worcester, MA, 508-792-0214.
- The Worcester County State Police, Detective Unit, 508-832-9124.

If you would like assistance in filing a report with the state or local police department, the Department of Public Safety will help. If you wish to file a report with off-campus authorities, you may choose to go directly to the state or local police department. The College will provide transportation for you to go to the police department to file a report with no questions asked unless your health or safety is at risk. You also may choose to have officers from the state or local police department come to campus. The College can arrange for a discreet and private place to meet for this purpose. These resources will provide information with respect to how to obtain a court-issued protective order. In the event that an individual obtains a protective order under state or federal law with respect to a College community member, the individual should notify the Director of the Department of Public Safety and provide a copy of the order and, following receipt and review thereof, the Director of Equal Opportunity will meet with the individual with respect to the enforcement of the protective order. In addition, or alternatively, you may seek a College issued no-contact order through the Director of Equal Opportunity as set forth in Section VII.1(e) below.

- Anonymous Reporting Option. The College maintains an anonymous reporting form for those individuals who desire to report a complaint anonymously. Anonymous reports are permitted (except with respect to required Responsible employee reports) and will be reviewed and routed to the Office of Title IX and Equal Opportunity. Do not submit any personally identifiable information on the report form if you desire to remain anonymous. The anonymous reporting tool is available at [https://cm.maxient.com/reportingform.php?CollegeoftheHolyCross&layout\\_id=2](https://cm.maxient.com/reportingform.php?CollegeoftheHolyCross&layout_id=2) and from the College's Sexual Respect and Title IX website at <https://www.holycross.edu/sexual-respect-and-title-ix>. The College may be required in accordance with state and/or federal law to: (i) investigate or address the alleged misconduct, including when the alleged act was reported anonymously; (ii) assess whether a report triggers the need for a timely warning or emergency notification under state or federal regulations, the obligations of which may, in limited circumstances, result in the release of the reporting party's identity if provided; and

(iii) disclose the identity of a reporting party (if known) to another student, an employee or a third party. In addition, the extent of the College's response and/or available support may depend on the level of detail shared in the report. The IP address from the device or computer used to submit this form is retained.

- **Governmental Reporting Options.** In addition to the above reporting options and the resolution process in this policy, if you believe you have been subjected to unlawful discrimination, discriminatory harassment, or retaliation you may file a complaint with the federal and state government agencies listed below. Using a College's investigation and resolution process does not prohibit you from filing a complaint with these agencies. The U.S. Equal Opportunity Commission and the Massachusetts Commission Against Discrimination have a short time period for filing a claim (generally ranging between 180 to 300 days<sup>3</sup>).

**U.S. Department of Education, Office of Civil Rights**

5 Post Office Square, 8th Floor  
Boston, MA 02109  
617-289-0111

**U.S. Equal Employment Opportunity Commission**

John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203  
617-565-3200/800-669-4000

**Massachusetts Commission Against Discrimination**

Worcester Office  
484 Main Street  
Room 320  
Worcester, MA 01608  
508-453-9630

Boston Office  
One Ashburton Place  
Sixth Floor, Room 601  
Boston, MA 02108  
617-994-6000

Springfield Office  
436 Dwight Street  
Second Floor, Room 220  
Springfield, MA 01103  
413-739-2145

New Bedford Office  
800 Purchase Street  
Room 501

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<sup>3</sup> MCAD and EEOC reporting guidelines generally require a complaint made 300 days after the last incident occurred, although complainants may subsequently inform the appropriate investigator of extenuating circumstances that may have prevented them from filing within the 300-day time frame.

- B. **No Retaliation.** The College will not tolerate retaliation against any persons for their participation or involvement in the reporting, investigation, and/or resolution of matters reported or subject to this policy. The College will take appropriate steps to prevent and/or address retaliation. Retaliation constitutes a very serious violation of this policy and should be reported immediately to the Director of Equal Opportunity. Please see the definition of retaliation in Section VI below.
- C. **Support from Confidential Resources.** There are several departments within the College community that can serve as support and confidential resources to individuals, including both Complainants and Respondents. These College employees serve in professional roles in which communications are provided confidential status under the law (e.g., licensed mental health care providers, licensed medical providers, pastoral counselors and clergy) and may not report identifying information about behavior that may implicate this policy without the consent of the individual who supplied the information in question or otherwise in compliance with law.<sup>4</sup> For further information, please see “College Resources and Other Community Resources” in Section V of the [Sexual Misconduct Policy](https://www.holycross.edu/sexual-respect-and-title-ix) (available at <https://www.holycross.edu/sexual-respect-and-title-ix>).
- (i) On-campus confidential resources include:
- A “Primary Confidential Resource Provider”, described in Section V.A. of the Sexual Misconduct Policy; and
  - “Other Confidential Resources for Complainants and Responders, Including On Campus Medical, Counseling and Pastoral Resources”, described in Section V.B. of the Sexual Misconduct Policy.
- (ii) Additional off-campus community resources are set forth in: “Additional Resources for Individuals Who Have Experienced Sexual Violence, Other Inappropriate Sexual Contact, Relationship Violence and/or Stalking” in Section V.G. of the Sexual Misconduct Policy and “Additional Off-Campus

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<sup>4</sup> Confidential resources generally will not share identifiable information without the reporting individual’s permission, unless:

- Sharing is required to address an imminent risk of harm to the safety of the community at large, the individual sharing the information, or another member of the community; or
- The individual alleged to have been harmed is a minor (under 18), in which case the Massachusetts Department of Children and Families must be notified.
- Elder or disabled individual abuse has been alleged.

Please note that such employees who receive reports when not functioning in their licensed or pastoral capacity (e.g., when acting as an administrator or teaching a course) are not prohibited from making a report, and in some cases, may be required to report certain information.

Support and Resources - Shelters, Hotlines, Advocacy, and Support” in Section V.H. of the Sexual Misconduct Policy.

If you have any questions about the resources available to you as a member of the College community, please contact the Director of Equal Opportunity.

## V. ADDITIONAL CONSIDERATIONS

- A. Privacy; Requests for Confidentiality or No Investigation. The College will act with discretion with regard to the privacy of individuals and the sensitivity of the situation when it receives a report of conduct that could trigger this policy. The College will not share the identity of a Party except as necessary to carry out the College’s disciplinary policies and procedures or as permitted by federal or state law. In addition, this provision does not limit disclosure of findings of responsibility if permitted by applicable law.

There are certain instances in which the College has a broader obligation to the College community and may need to override an individual’s request for privacy or a request that the College not investigate a matter or not continue with an investigation in which a Complainant is unwilling to continue to participate. Because such requests could impact the College’s ability to appropriately address and resolve the behavior in question, the College will weigh these requests very carefully.

In the case of sexual misconduct allegations, the Director of Equal Opportunity will evaluate the request for confidentiality or that an investigation/discipline not occur (which requests must be in writing) by considering a range of factors, including, but not limited to, whether there appears to be a pattern or history of alleged perpetration or violence, there exists a threat alleged that the respondent threatened further or future violence, the misconduct was alleged to have been committed by multiple parties, the alleged respondent holds a position of power over the impacted individual(s) or others, the impacted individual is a minor, and the party does not want to go forward as a result of threats, coercion or other conduct that could be viewed as a form of intimidation. The presence of one or more of these factors may lead the College to commence an investigation independently or continue an investigation regardless of the cooperation of the Complainant. If so, the College will inform the Complainant prior to proceeding and will to the extent possible share information only with the individuals responsible for handling the College’s response and others involved in the investigation and oversight thereof. In the event that the Complainant requests that the College inform the Respondent that the Complainant asked the College not to investigate or seek discipline, the College will honor the request and inform the Respondent that the College made the decision to proceed.

If the College does not proceed, the College will consider broader remedial action, such as increased or targeted education or prevention measures, increased monitoring, security or supervision, conducting surveys and/or revisiting its policies and practices. If utilized, such action is not a form of sanction.

- B. Duty to Report Discrimination, Harassment, Retaliation and Other Misconduct. With the exception of the confidential resources described in Sections V.A and V. B. of the Sexual Misconduct Policy, all trustees, and all full-time and part-time faculty and other employees and, with respect to student employees, Residence Assistants and dining captains, are considered “Responsible Employees.” This means that when they learn of an allegation of unlawful discrimination, discriminatory harassment, sexual harassment (including, but not limited to, sexual misconduct, sexual violence, dating and domestic violence, and stalking), or retaliation or other conduct prohibited by this policy or the Sexual Misconduct Policy toward any member of the College community, they are required to notify the Director of Equal Opportunity promptly in writing or by telephone. In addition, College employees who are designated as campus security authorities (CSAs) for the purposes of the Clery Act must provide the Department of Public Safety with non-identifying statistical information regarding all reported incidents of Clery crimes (including, but not limited to, sexual assault, dating violence, domestic violence, stalking and hate crimes). Any questions about the reporting or confidentiality status of any employee should be directed to the Director of Equal Opportunity.

Any Responsible Employee who fails to make a report to the Director of Equal Opportunity upon learning of an allegation of prohibited conduct under this policy, the Sexual Misconduct Policy or the Policy on Protection of Children may be subject to disciplinary action under this policy.

College employees who serve in professional roles in which communications are provided confidential status under the law (e.g., licensed mental health care providers, licensed medical providers, pastoral counselors and clergy) are not obligated to report identifying information about behavior that may implicate this policy or the Sexual Misconduct Policy without the consent of the individual who supplied the information in question or otherwise in compliance with law.<sup>5</sup> Please

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<sup>5</sup> Confidential resources generally will not share identifiable information without the reporting individual’s permission, unless:

- Sharing is required to address an imminent risk of harm to the safety of the community at large, the individual sharing the information, or another member of the community; or
- The individual alleged to have been harmed is a minor (under 18), in which case the Massachusetts Department of Children and Families must be notified.
- Elder or disabled individual abuse has been alleged.

Please note that such employees who receive reports when not functioning in their licensed or pastoral capacity (e.g., when acting as an administrator or teaching a course) are not prohibited from making a report and in some cases, may be required to report certain information.

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For requirements regarding mandated reporting of child abuse and neglect, please see the Policy on Protection of Children at <https://www.holycross.edu/compliance-and-risk-management/policy-protection-children>.

- C. Duty of Cooperation. All Parties, advisors, and witnesses are obligated to cooperate with the persons charged with implementing this policy and the Sexual Misconduct Policy and the procedures under those policies. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under this policy or the Sexual Misconduct Policy may be subject to disciplinary action under this policy.
- D. Duty of Honesty. All Parties and witnesses are obligated to be completely honest during the course of the entire process set forth in this policy. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of the process under this policy or the Sexual Misconduct Policy may be subject to disciplinary action under this policy. A report made in good faith, however, is not considered false merely because the evidence does not ultimately support the allegation of violation of the policy. In accordance with Massachusetts law, a complainant, reporting party or a witness who causes an investigation of sexual misconduct shall not be subject to a disciplinary sanction related to the incident unless the College determines the report was not made in good faith or that the violation was egregious. An egregious violation shall include, but not be limited to, taking an action that places the health and safety of another person at risk.
- E. Recording the Proceedings. Parties, advisors, and witnesses are not permitted to make video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under the policy. The Director of Equal Opportunity may make exceptions to this prohibition in limited circumstances if such person concludes, in his/her/their sole discretion, that a recording is warranted, and upon written request of the Party seeking the recording that explains the need for the recording.
- F. Amnesty for Students Reporting Sexual Violence, Relationship Violence and Stalking. The College encourages reporting of sexual misconduct and seeks to remove barriers to reporting. Students may be hesitant to report sexual violence, relationship violence or stalking out of a concern that they, or witnesses, might be charged with a violation of the College’s drug and alcohol policies or Community Standards. While the College does not condone such behavior, the College places a priority on the need to address sexual violence, relationship violence and stalking. The College generally will not hold a student who in good faith reports or is a witness during an investigation of sexual violence, relationship violence and

stalking under the Sexual Misconduct Policy or this policy accountable for disciplinary violations of the College's Community Standards that do not place the health and safety of any other person at risk or create a danger to the College community. The College retains the right to require students to attend counseling or drug/alcohol related courses even in circumstances in which disciplinary conduct will not be pursued under this part.

## VI. DEFINITIONS OF PROHIBITED CONDUCT AND OTHER DEFINED TERMS

The following are the definitions of conduct that is prohibited under this policy, together with certain other definitions used in the policy. If you have any questions about a definition or application of any of these terms or the policy in general, please contact the Director of Equal Opportunity.

**\*IMPORTANT NOTE:** Alleged conduct that falls within any definition with an asterisk will be reviewed by the Director of Equal Opportunity for determination of whether such alleged conduct is required to be addressed pursuant to the Sexual Misconduct Policy in lieu of this policy. The decision regarding the applicability of this policy or the Sexual Misconduct Policy will be made in the sole discretion of the Director of Equal Opportunity.

- A. **Discrimination.** An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, gender identity or expression or any other legally protected status.

Discrimination may be classified as either disparate impact (facially neutral practices that fall more harshly on one group than another and cannot be justified by business necessity) or disparate treatment (treatment of an individual that is less favorable than treatment of others based upon discriminatory reasons unless based upon legitimate lawful exceptions (such as bona fide occupational qualifications or the ability to maintain separate sports teams)). In addition, discrimination is also prohibited against individuals who associate with members of a protected class and thereby experience discriminatory treatment based on that association, even if they are not members of a protected class themselves.

*Examples:*

- Refusing to hire or promote a person because of the person's age (any age over 40);
- Treating persons differently from others because of assumptions about, or stereotypes regarding, the aptitude, intellectual ability or interest of a group based upon race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, or gender identity or expression;

- Unlawful disparity in the terms, conditions and privileges of employment based upon race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, or gender identity or expression;
- Difference in treatment in educational programs based upon race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, or gender identity or expression; and
- Terminating an employee's employment on the basis of the employee's relationship or association with an individual with a disability or of a particular race.

**B. Discriminatory Harassment\*.**

Unwelcome conduct that is based on or motivated by an individual's actual or perceived race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, gender identity or expression or any other legally protected status that is severe, persistent, or pervasive and creates an intimidating, hostile or offensive living, working or educational environment, or has the purpose or effect of unreasonably interfering with an individual's employment, academic performance, education, or participation in extracurricular programs or activities.

Discriminatory harassment may take many forms, including physical, verbal, and nonverbal acts and written statements in any manner or media. Discriminatory harassment does not have to include intent to harm or be directed at a specific target. Isolated comments, unless extremely serious, will generally not rise to the level of discriminatory harassment under this policy. Determinations are made based upon the totality of the circumstances involved including, but not limited to, the relationship of the parties and the frequency of the conduct. Reasonable directives by supervisors, educators, or otherwise authorized College personnel regarding the methods employed to carry out employment or educational assignments are not considered harassing under this policy.

*Examples of conduct contributing to discriminatory harassment include:*

- Unwelcome conduct or material that denigrates or shows hostility or aversion to an individual because of his, her, or their race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, or gender identity or expression;
- Epithets, slurs, negative stereotyping that relate to race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation,

- or gender identity or expression;
- Threatening, intimidating, or hostile acts that relate to race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, or gender identity or expression; or
- Sexual Harassment (as further defined below).

C. **Sexual Harassment\***

For the purpose of this policy, sexual harassment consists of two basic types:

*Quid Pro Quo Harassment.* Any action in which submission to or rejection of unwelcome conduct of a sexual nature is made either explicitly or implicitly a term or condition of an individual's education, grades, recommendations, extracurricular programs or activities, or employment opportunities.

*Inappropriate Environment Based on Sex.* Any unwelcome conduct of a sexual nature that is severe, persistent, or pervasive, and creates an intimidating, hostile or offensive living, working or educational environment, or has the purpose or effect of unreasonably interfering with an individual's employment, academic performance, education, or participation in extracurricular programs or activities.

In either type of sexual harassment noted above, the effect will be evaluated from both a subjective perspective, as well as the objective perspective of a reasonable person in the position of the person who experienced the conduct.

**Forms of Sexual Harassment:** In some cases, sexual harassment is obvious and may involve an overt action, a threat, or reprisal. In other instances, sexual harassment is subtle and indirect, with a coercive aspect that is unstated or implied. Some examples include the following:

- Sexual harassment can occur between persons of equal power status (e.g., student to student, staff to staff) or between persons of unequal power status (e.g., faculty member to student, coach to student-athlete).
- Although sexual harassment often occurs in the context of the misuse of power by the individual with the greater power, a person who appears to have less or equal power in a relationship can also commit sexual harassment.
- Sexual harassment can be committed by or against an individual or by or against an organization or group.
- Sexual harassment can be committed by an acquaintance, a stranger, or people who shared a personal, intimate, or sexual relationship.
- Sexual harassment can occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.

Examples of behavior that might be considered sexual harassment include, but are not limited to:

- Unwanted sexual innuendo, propositions, sexual attention or suggestive comments and gestures; inappropriate humor about sex or gender-specific traits; sexual slurs or derogatory language directed at another person's sexuality, gender, gender identity, sexual orientation or gender expression; insults and threats based on sex, gender, gender identity, sexual orientation or gender expression; and other oral, written or electronic communications of a sexual nature that an individual communicates is unwanted and unwelcome.
- Written graffiti or the display or distribution of sexually explicit drawings, pictures, or written or electronic materials; sexually charged name-calling; or the circulation, display, or creation of e-mails, text or social media messages, or web sites of a sexual nature.
- Display or circulation of written or electronic materials or pictures degrading to an individual or gender group where such display is not directly related to academic freedom, or an educational/pedagogical, artistic, or work purpose.
- Unwelcome physical contact or suggestive body language, such as touching, patting, pinching, hugging, kissing, or brushing against an individual's body.
- Physical coercion or pressure of an individual to engage in sexual activity or punishment for a refusal to respond or comply with sexual advances.
- Use of a position of power or authority to: (1) threaten or punish, either directly or by implication, for refusing to tolerate harassment, for refusing to submit to sexual activity, or for reporting harassment, or (2) promise rewards in return for sexual favors.
- Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, sexual orientation, gender identity or expression, or sex-stereotyping.

#### D. **Sexual Violence\***

Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Physical sexual acts include, but are not limited to, vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact. This definition includes rape, sexual assault, sexual battery, and sexual coercion and includes assault with the specific intention to commit such an act. Sexual violence may involve individuals who are known to one another or have an intimate and/or sexual relationship (relationship violence), or may involve individuals not known to one another.

#### E. **Other Inappropriate Sexual Contact\***

Having or attempting to have sexual contact of any kind other than that defined as "Sexual Violence" with another individual without consent. Other inappropriate sexual contact may include kissing, touching, or making other inappropriate contact with the breasts, genitals, buttocks, mouth, or any other part of the body that is touched in a

sexual manner and without permission.

F. **Sexual Exploitation\***.

Any act committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, personal benefit or advantage or any other illegitimate purpose. Sexual exploitation may involve individuals who are known to one another, have an intimate or sexual relationship, or may involve individuals not known to one another. Examples include, but are not limited to, observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved, manipulating contraception or prophylaxis without the other party's knowledge, procuring/stealing an individual's undergarments without consent, and possession of illegal pornography, in addition to the following:

- **Media-Based Misconduct**. Photographing or taping someone (via audio, video or otherwise) involved in sexual activity, or in a state of undress, without his, her, or their knowledge or consent. Even if a person consented to sexual activity, photographing or taping someone without his, her or their knowledge and agreement goes beyond the boundaries of that consent. Dissemination of photographs or video/audio of someone involved in sexual activity, or in a state of undress, without his, her, or their knowledge or consent constitutes a separate and additional act of sexual misconduct.
- **Inducing Incapacitation**. This includes the provision of alcohol or drugs to an individual, with or without that individual's knowledge, for the purpose of causing impairment or intoxication to allow another person to take advantage of that individual's impairment or intoxication.
- **Aiding or Assisting**. The aiding or assisting in the commission of an act(s) of sexual violence or sexual misconduct is prohibited. An example of aiding in the commission of sexual violence include encouraging students to engage in sexual activity when one knows those students to be incapacitated by drugs or alcohol.

G. **Employee Relationships with Students**. No faculty or other employee (whether permanent, temporary, full- or part-time) may engage in any type of romantic or amorous relationship or sexual activity of any type, even if consensual, with a student at any time. Student-employees are not considered "employees" for the purpose of this definition. The College may make exceptions to this prohibition on a case-by-case basis and only in coordination with the Director of Human Resources and the Director of Equal Opportunity.

H. **Relationships between Supervisory Employees and Others**.

Romantic or amorous relationships that might be appropriate in other circumstances

have inherent dangers when they occur between supervisors and individuals whom they supervise. Such relationships are fundamentally asymmetric and unprofessional, and they raise serious concerns about validity of consent, conflict of interest and fair treatment. In addition, such relationships are to be avoided because they may create an impression on the part of colleagues of inappropriate or inequitable professional advantage or favoritism that is destructive to the working or learning environment and may raise doubts about the integrity of work performed. Any sexual, amorous or romantic involvement with any individual, including faculty, staff, or person engaged as volunteer, intern, or independent contractor, over whom they have direct supervisory responsibility, even if consensual, is prohibited by this policy. Even when both parties have initially consented to such a relationship, it is the administrator, faculty member, or staff member who, by virtue of his, her or their special supervisory responsibility, will be held accountable for the unprofessional relationship or abuse of authority. The Director of Equal Opportunity, together with either the Provost/Dean of the College with respect to faculty members, or the Director of Human Resources with respect to other employees will make exceptions to this prohibition in appropriate circumstances (e.g., a dual career couple recruited to work in the same scholarly area), with implementation of any necessary measures to avoid conflicts of interest or the appearance of conflicts of interest.

- I. **Other Inappropriate Sexual Behavior**. Unwelcome conduct of a sexual nature that does not rise to the level of severe, persistent, or pervasive but is unreasonable in a living, working or educational environment. If Other Inappropriate Sexual Behavior is the only alleged violation of this policy with respect to a Respondent, the Director of Equal Opportunity may determine, in his, her or their sole discretion, whether to conduct an inquiry in order to determine whether preventative or remedial measures should be taken, such as warning, monitoring, training (individual or part of a group) or counseling.
- J. **Retaliation\***. Intentionally engaging in conduct to:
  - Adversely affect a person’s educational, living, or work environment because of their good faith participation in the reporting, investigation, and/or resolution of a report of a violation of this policy. “Adversely affect” for this purpose means any action that is reasonably likely to deter a person from such participation and does not include petty slights or trivial annoyances.
  - Discourage a reasonable person from making a report or participating (in any capacity) in an investigation under this policy, the Sexual Misconduct Policy or any other College policy, or any other local, state, or federal complaint process, e.g., filing a complaint with an entity like the U.S. Department of Education.

Retaliation includes, but is not limited to, acts or words that constitute intimidation, threats, or coercion intended to pressure any individual to participate, not participate,

or provide false or misleading information during any proceeding under this policy. Retaliation may include abuse or violence, other forms of harassment, and/or making false statements about another person in any manner or media with intent to harm their reputation.

Retaliation can be committed by any individual or group of individuals, not just by a Respondent or a Complainant. Retaliation may constitute a violation of this policy even when the underlying report made did not result in a finding of responsibility. Retaliation, even in the absence of provable discrimination or discriminatory harassment, constitutes a serious violation of this policy.

Retaliation may also be reviewed under the Sexual Misconduct Policy as it is defined in that policy.

- K. **Other Violation**<sup>6</sup>. Engaging in other conduct which is prohibited by this policy (e.g., recording the proceedings) or failure to comply with a duty or obligation set forth in, or imposed pursuant to, this policy (e.g., duty of honesty, duty of cooperation or duty to report). These duties are owed to the College and no individual shall have the ability to act as a Complainant or otherwise have rights with respect to any such duty.
- L. **Miscellaneous**. The inappropriate behaviors listed above are not an exhaustive list. The College may consider any other conduct that has a legally-protected class connotation under this policy.
- M. **Additional Definitions**.
  - **Consent, Coercion, Incapacitation**. The definitions of these terms are the same as the definitions set forth in Section VII.A of the Sexual Misconduct Policy.

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<sup>6</sup> There shall be no Complainant rights under this policy with respect to any alleged “Other Violation” which matters will be brought directly by the College.

- **Complainant**. The individual who experienced conduct that may have violated the policy.<sup>7</sup> The College may bring a complaint with respect to a Respondent without a Complainant.
- **Respondent**. The individual who is alleged to have violated the policy.
- **Parties/Party**. The Complainant and the Respondent collectively are referred to as the “Parties” and each individually as a “Party.”
- **Teaching Faculty Member**. An employee who is designated as a teaching faculty member pursuant to the *Statutes of the Faculty*.

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<sup>7</sup> There may be instances where another person, who has not experienced but is aware of the occurrence of prohibited conduct, may report such matter pursuant to this policy. In those limited circumstances, the Director of Equal Opportunity will determine which of the protections provided to the Complainant under the policy are also applicable to the reporting party. However, reporting individuals are not Complainants for the purpose of the policy.

## VII. PROCEDURE FOR INVESTIGATION AND RESOLUTION OF COMPLAINTS.

This Procedure for Investigation and Resolution of Complaints (the “Procedure”) describes how the College will investigate a report that an individual or group of individuals has engaged in conduct that could violate this policy, and determine what, if any, safety measures and/or disciplinary sanctions are appropriate.

### 1. Initial Steps; Supportive Measures

After receiving a report of conduct that could fall under this policy, the Director of Equal Opportunity<sup>8</sup>, in consultation with other College personnel as the Director of Equal Opportunity determines is appropriate, will take a number of initial steps. These initial steps are not an investigation. Rather, these initial steps will enable the College to assess which College policy applies and the need to take any immediate action to address the safety and health needs of any member of the College community, and to determine the next steps for investigating the reported conduct.

These initial steps may include, but are not limited to, the following:

- (a) The Director of Equal Opportunity will contact the Complainant and encourage him, her or them to meet to discuss the nature and circumstances of the reported conduct and review any relevant documentation that is available.
- (b) The Director of Equal Opportunity will also discuss or notify the Complainant about:
  - (1) Available supportive measures that may be necessary to provide for the Complainant’s safety, health or well-being. Such supportive measures can include, for example, adjustments to academic schedules, changes to living, dining, transportation, working and/or immigration arrangements (if available), and statutorily provided leave to employees pursuant to Mass. G.L. c. 49, §52D. Supportive measures for incidents of conduct prohibited under this policy will be considered regardless of where the conduct is alleged to have occurred, either geographically or in connection with the College’s programs or activities and regardless of whether a complaint is filed;
  - (2) The availability of this policy (and, if applicable, the Sexual Misconduct Policy); and
  - (3) The right to report and the right to decline to report the matter to the Department of Public Safety and/or to local law enforcement if the conduct is potentially criminal in nature (and that such a report will not change the College’s obligation potentially to investigate the matter but it may briefly delay the timing of the

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<sup>8</sup> Where the Director of Equal Opportunity is listed as the designated point of contact for any role in this policy, he, she or they may designate one or more other qualified member(s) of the College community to assume the role at issue, as necessary and appropriate. Where another College official or group of officials or employee(s) is listed as the designated point of contact for any role in the policy, he, she or they may designate other College official(s) or employee(s) to assume the role at issue, as necessary and appropriate.

investigation if a law enforcement agency requests that the College delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct).

- (c) The Director of Equal Opportunity will assess whether the conduct that is alleged may be required to be addressed pursuant to the Sexual Misconduct Policy, and if so, will discuss the Sexual Misconduct Policy with the Complainant. If the conduct that is alleged is not required to be addressed pursuant to the Sexual Misconduct Policy and also constitutes prohibited conduct under this policy, the matter may be addressed pursuant to this policy. The Director of Equal Opportunity will determine which policy is applicable and may revisit such determination, as determined to be necessary in his, her or their sole discretion at any time.
- (d) The Director of Equal Opportunity will assess and implement supportive measures in consultation with other College employees as appropriate and others who are needed in order to implement any such measures.
- (e) The Director of Equal Opportunity, in consultation with other relevant College employees as determined by the Director of Equal Opportunity, will assess the reported conduct to determine whether the circumstances pose a threat to the health or safety of the College community, or one or more members of the community, that warrants issuance of a timely warning, a stay-away order for any persons, or any other interim protections, including, but not limited to, no contact orders, the interim suspension of a student or other community member, placing an employee on paid or unpaid leave, temporarily removing an individual from a leadership, advising, or other position, or temporarily suspending or restricting one or more aspects of an individual's activities or privileges prior to completing an investigation. During the interim action, the College reserves the right to prohibit the individual from entering upon the College's property or participating in any College activities absent written authorization from an appropriate College official. The failure of an individual to comply with an interim restriction is a violation of this policy and may lead to additional disciplinary action. The decision to impose interim restrictions will be communicated by the Director of Equal Opportunity in writing and will be effective immediately.
- (f) In connection with allegations of misconduct which may be addressed pursuant to this policy, if the Complainant requests that the process not move forward, the College will weigh that request against the College's obligation to address any risk of harm to the Complainant or other individuals in the community and the nature of the incident or conduct at issue. Complaints alleging sexual misconduct concerning an individual in a supervisory position with respect to a Complainant generally will proceed to investigation. In the circumstances in which a Complainant's request not to proceed to investigation is granted, the Director of Equal Opportunity will proceed with other remedial measures.

- (g) If the Director of Equal Opportunity determines that the reported conduct would not, in any way, trigger this policy or must be addressed pursuant to the Sexual Misconduct Policy, he, she, or they will advise the Complainant of such in writing and refer the reported conduct to the appropriate administrator for handling consistent with any other appropriate College policy. (If new information is subsequently provided, the decision whether or not to investigate the reported conduct may be reevaluated.)
- (h) **Disability Accommodations.** If any person requires an accommodation because of a disability to access any part of this process, he, she, or they may make that request to the Office of Accessibility Services by telephone at 508-793-3693 (students) or the Office of Human Resources (employees and others). Any accommodations will be provided in consultation with the Director of Equal Opportunity.

## 2. Optional Alternative Resolution Procedures.

*The following Alternative Resolution Procedures may not be used in an effort to resolve allegations made by students concerning sexual harassment or misconduct of sexual nature by any employee.*

At any time prior to convening the decision of the Determination Official(s), a Party may request an alternative resolution of a complaint rather than an investigation by contacting the Director of Equal Opportunity in writing; provided, however, that the alternative resolution process may not be used with respect to allegations by students concerning sexual harassment or misconduct of a sexual nature by any employee. Alternative resolutions may take several forms. For example, the Director of Equal Opportunity might designate a College representative to facilitate a dialogue with the Parties in an attempt to reach a resolution. Other forms of alternative resolution may include department or group-wide facilitated discussions, training or education (for individuals or a group, if appropriate), a remedies-based resolution, restorative justice practices, community awareness events, changes to reporting workplace structures or communications practices, ongoing monitoring, or any other measures deemed appropriate by the Director of Equal Opportunity. The alternative resolution process will be conducted in accordance with procedures specified by the Director of Equal Opportunity, as determined in his, her or their sole discretion and will be disclosed in advance to the Parties. All Parties and the Director of Equal Opportunity must agree to use the alternative resolution process and to the resolution process in writing prior to the option being used. In addition, the Director of Equal Opportunity will assess the request for alternative resolution against the severity of the alleged violation and the potential risks to College community members. If the Director of Equal Opportunity determines that alternative resolution is appropriate, the Director of Equal Opportunity will notify the Parties. All resolutions must be approved by the Director of Equal Opportunity in consultation with other appropriate College administrators. A Party may withdraw from the alternative resolution process at any time. In addition, the Director of Equal Opportunity may initiate an investigation at any time that he, she or they deem appropriate in his, her or their sole discretion.

### 3. The Investigation Phase.

(a) **Notice of an Investigation.** If it is determined that the reported conduct could trigger this policy and an investigation is required, the Director of Equal Opportunity will prepare a written notice to the Complainant and Respondent that will include a brief summary description of the allegations (including, if and to the extent known, the date, time and location of the alleged misconduct, and the name of the Complainant) and the specific portions of this policy that are alleged to have been violated and by what alleged actions, and any interim supportive measures in place about which either Party must be made aware. This written notice does not constitute a finding or a determination of responsibility.

(b) **Information about Advisors and Supportive Personnel.**

(i) **Advisor.** Each Party may have a single advisor of such Party's choice (including, but not limited to, an advocate, counsel or a Primary Confidential Resource Provider (as defined in the Sexual Misconduct Policy), if applicable) present during disciplinary proceedings pursuant to this policy, including any related meeting, interview, or hearing, held pursuant to this policy. Once an advisor has been selected by a Party, the Party must provide the name of the advisor to the Director of Equal Opportunity. Changes to the advisor selected by a Party may be made for good cause with the prior approval of the Director of Equal Opportunity, as determined in his, her or their sole discretion. Advisors may not participate actively while present at any disciplinary proceeding and may not speak, write, or otherwise communicate on the part of the Party that the advisor is advising. However, the advisor may ask to suspend any meetings, interviews, or hearings briefly to provide private consultation related to the disciplinary proceeding in progress. An advisor is subject to the same expectations regarding non-retaliation applicable to others in attendance. Accommodations, including scheduling of interviews or reviews or changes to location, generally will not be made for any advisors if they significantly delay or impact the process. The advisor is not permitted to attend a meeting or proceeding without the Party they are advising being present without the prior approval of the Director of Equal Opportunity, as determined in his, her or their sole discretion. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation or communication as determined in the sole discretion of the Director of Equal Opportunity. A union-represented employee who is a Respondent may choose as an advisor a person who is not a union representative, if the Respondent does not desire to have the union representative participate in the proceeding.

(ii) **Supportive Personnel.** Each Party may have a single support person of such Party's choice (including, but not limited to, a Primary Confidential Resource Provider (as defined in the Sexual Misconduct Policy), if applicable) present during any College disciplinary proceeding, including any related meeting, interview,

hearing, or disciplinary proceeding held pursuant to this policy to provide emotional support to such Party. Once the support person has been selected by a Party, the Party must provide the name of the support person to the Director of Equal Opportunity. The support person may consult with their respective Party privately, but cannot act as an advisor or speaking advocate at a meeting. Individuals managing the proceeding in question (e.g., investigators, Title IX and Equal Opportunity staff) may delay or terminate meetings, remove or dismiss advisors, and/or proceed with the investigation if a support person is disruptive, disrespectful or otherwise refuses to comply with the requirements of this policy. Accommodations, including scheduling of interviews or reviews, generally will not be made for any support person if they significantly delay the process. The support person is not permitted to attend a meeting or proceeding without the Party they are supporting being present. The College reserves the right to take appropriate action regarding any support person who disrupts the process, or who does not abide by the restrictions on their participation.

**(c) Designation of Investigator(s) and Determination Official(s).** The Director of Equal Opportunity will designate at least one investigator<sup>9</sup> (the “Investigator(s)”) to conduct a prompt, fair, and impartial investigation of the reported conduct and prepare a report of investigative findings (the “Investigative Report”). The Director of Equal Opportunity will provide the Parties with the names of the person(s) to act as the Investigator(s) and a list of potential persons who may act as the Determination Official(s) (as defined below) from a pool of employees trained to decide cases with respect to this policy. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Investigator(s) and potential Determination Official(s), the Parties should inform the Director of Equal Opportunity in writing of any conflicts of interest with regard to the named individuals. The Director of Equal Opportunity will consider the nature of the conflict and determine if different individuals should be assigned. The Director of Equal Opportunity may consult with other College personnel to discuss any conflicts of interest<sup>10</sup>. The Director of Equal Opportunity’s decision regarding any conflicts is final. Following the conflict review and completion of the Investigation Report, the Director of Equal Opportunity will appoint one or more Determination Officials (the “Determination Official(s)”) to make the determination with respect to alleged violation(s) pursuant to this policy, as determined in his, her or their sole discretion. In the event of a claim against a Teaching Faculty Member, the Determination Official(s) will include at least one employee who is a Teaching Faculty Member.

**(d) Nature of the Investigation.** The investigation will include separate interviews by the

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<sup>9</sup> At the College’s discretion, the investigator may be an internal or an external investigator and more than one investigator may be assigned. All investigators – internal or external – will be selected from a group of qualified and trained individuals employed by the College or engaged by the College for the purpose of conducting investigations under this policy.

<sup>10</sup> The Director of Equal Opportunity will consult with the chair of the Committee of Faculty Affairs with respect to any conflict of interest raised by a Teaching Faculty Member.

Investigator(s) with the Complainant, the Respondent, and any witnesses whom the Investigator(s) believe will provide necessary and relevant information. The investigation may include the review of documentation or other items relevant to the reported conduct. The Investigator(s) will provide the Parties with written notice of meetings at which their presence is required. It is the responsibility of the Investigator(s), not the Parties, to gather the evidence relevant to the alleged violation, to the extent reasonably possible.

- (e) **The Parties' Identification of Potential Witnesses and Documentation.** The Parties have the opportunity (and are expected) to provide the Investigator(s) with the identification of potential witnesses who have specific information about the reported conduct and with whom they would like the Investigator(s) to speak. The Parties also have the opportunity (and are expected) to provide the Investigator(s) any evidence, documentation or other items or questions they would like to be considered or posed to any witness or the other Party. All information and questions described in this section must be presented to the Investigator(s) in writing and include a brief description as to how the persons, documents, and/or items are relevant to the reported conduct. This information must be provided to the Investigator(s) during the Investigation Phase and without delay upon becoming aware of it. The Investigator(s) will determine, in their sole discretion, what information and questions to consider and which potential witnesses identified by the Parties can provide relevant information to the investigation.
- (f) **Investigation Prohibitions.** Neither Party will be permitted to question or cross-examine directly the other Party directly during the investigation or disciplinary proceedings; questions for the other Party may be submitted to the Investigator(s) as described above. Moreover, the Investigator(s) generally will not gather or consider information related to either Party's sexual history outside of the conduct in question except as relevant to the alleged policy violation, as determined in the sole discretion of the Investigator(s).
- (g) **Respondent Voluntary Agreement to Policy Violation.** At any point prior to the Determination Official(s)'s determination of responsibility, a Respondent may agree in writing to the alleged violation(s) of the policy. Sanctions will be determined pursuant to Section VII.5(a) below.

#### 4. Investigative Report; Report Review.

- (a) **Content of the Investigative Report.** At the conclusion of the Investigation Phase, the Investigator(s) will prepare a Draft Investigative Report, which will include (i) a list of witnesses and documentation gathered, (ii) a summary the factual information presented during the Investigation Phase, and (iii) a separate section in which the Investigator(s) point out relevant consistencies or inconsistencies (if any) between different sources of information. The Investigative Report will not include a determination by the Investigator(s) as to whether a Party has violated the policy or

what sanctions may be appropriate. These determinations will be made by the Determination Officials, as described below. The draft format of this Investigative Report is important and it reflects that the Investigator(s) may supplement or conduct additional information that may be incorporated. This policy shall be provided as an exhibit to the Investigative Report, which includes information regarding the submission and consideration of evidence during a disciplinary proceeding.

- (b) Review by the Parties.** The Parties will have an opportunity to review the Draft Investigative Report and all evidence collected by the Investigator(s) and may submit written comments about the content of the Draft Investigative Report to the Investigator(s) within five (5) calendar days of the date they are notified that the Investigative Report is available for review. This review will take place at a location and in a manner determined by the Director of Equal Opportunity. The time to submit written comments can be extended for a brief period if the Director of Equal Opportunity concludes, in his, her or their sole discretion, that the additional time is warranted. Each Party may have such Party's advisor review the Investigative Report with them. Neither the Complainant nor the Respondent (or their advisors, including but not limited to family members and/or legal counsel) may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the Draft Report or any of the information provided. A Party or an advisor who fails to abide by this policy may be subject to discipline and/or may be excluded from further participation in the process. The comments submitted by the Parties may not exceed ten (10) double spaced pages (12-point font and one inch margins) unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Director of Equal Opportunity. After reviewing the submissions, if any, from the Parties, the Investigator(s) may determine that either additional investigation is required or no further investigation is needed. If further investigation is conducted, the Investigator(s) will include any additional relevant information in the Investigative Report. Any submissions made by either Party pursuant to this section, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the Investigative Report. The Director of Equal Opportunity will then submit the Investigative Report and attachments to the Determination Official(s) for review.

## **5. Determination of Responsibility.**

- (a) Review and Determination by Determination Official(s).** The Determination Official(s) will review the Investigative Report and attachments and will make a determination as to whether or not the Respondent is responsible for violating the policy by having engaged in some or all of the reported conduct. The Determination Official(s) has the authority to accept the Investigative Report without seeking additional investigation, or to ask the Investigator(s) to conduct additional investigation on specific points. The Determination Official(s) has discretion to speak with or solicit input directly from both Parties, the Investigators, or any persons identified in the Investigative Report if he, she, or they have questions. The

Determination Official(s), as the ultimate decision-maker in the matter, is provided broad discretion. In appropriate circumstances, the Director of Equal Opportunity may give special instructions to the Determination Official(s).

- (b) **Standard of Proof.** All findings and determinations of responsibility for a violation under this policy will be made using a preponderance of the evidence standard. This standard requires the determination of whether it is more likely than not that a fact exists or a violation of this policy occurred. Please note that the preponderance of the evidence standard is not the standard used for criminal culpability in most jurisdictions and a determination of responsibility under this policy does not equate with a finding of a violation of criminal laws. Conversely, lack of a prosecution or conviction in a criminal proceeding does not necessarily imply that this policy was not violated. The two procedures are significantly different and utilize different standards for determining violations, and different definitions.
- (c) **Notification of Decision to Director of Equal Opportunity.** Upon reaching a determination of responsibility, the Determination Official(s) will provide a written notification of his, her, or their decision to the Director of Equal Opportunity along with its rationale. The notification will consist of a brief statement of the allegations and the determinations made by the Determination Official(s). While the notification may, at the discretion of the Determination Official(s), include a brief description of the determination process, it will not include any recommendations for sanctions with respect to Respondents who are employees or faculty members. If sanctions are necessary, the sanctions will be assigned in accordance with Section VII.6 below.
- (d) **Consolidation.** The College reserves the right to consolidate cases in which there are one or more Complainants and/or one or more Respondents, as defined under this Policy. The College will consolidate cases where the allegations of Prohibited Conduct arise out of the same facts or circumstances. For example, if in the course of a single College-sponsored event a Respondent is alleged to have committed any form of prohibited conduct against more than one Complainant, the College may consolidate those complaints for investigation and adjudication under this Policy. If a case is consolidated, the College will consider individualized supportive measures, as appropriate, and will provide individual notice to each Party. All Parties are entitled to all forms of process set forth in this policy and the College reserves the right to issue a single Investigative Report, and otherwise modify the policy as needed or appropriate to effect consolidation of cases. The College may also consider prior relevant findings of responsibility against a Respondent in providing an appropriate sanction after the Respondent is separately found responsible for the behavior in question.
- (e) **Student Groups, Organizations and Teams.** A student group, organization or team may be held collectively responsible for a violation of this policy when one or more members of the group or other individuals associated with the group, organization or team are found responsible for a violation of this policy and the Determination

Official(s) separately determines that:

- (1) members of the group, organization or team acted in concert with respect to misconduct;
- (2) the individual found responsible for committing the misconduct was either acting on behalf of the group, organization or team or engaged in an activity sponsored, financed or endorsed by the group, organization or team or its leaders;
- (3) the misconduct grows out of, occurs during, or is related to any activity or event sponsored, financed or endorsed by the group, organization or team;
- (4) any leader, officer, or team captain of group, organization or team had knowledge of the misconduct or incident before or while it occurred and failed to take corrective action; and/or
- (5) a pattern of individual misconduct by members of the group, organization or team is found to exist.

The designated student leader or leaders (e.g., student president, officer(s), or team captain(s)) shall represent the student group, organization or team throughout the process. There shall be no right of individual appeal of any member of the student group, organization or team to a group sanction.

## **6. Determination of Sanction(s).**

(a) **Sanctioning Decision.** The College employees responsible for determining sanctions are below and will be referred to as the Sanctioning Official. As soon as possible, but no later than three (3) calendar days after delivery of the Determination Official(s)' notification of decision, the Parties should inform the Director of Equal Opportunity (in writing) of any conflicts of interest in regard to the Sanctioning Official. The Director of Equal Opportunity, in consultation with other College officials as appropriate, will determine whether a disqualifying conflict of interest exists, in which case the Director of Equal Opportunity will appoint a different Sanctioning Official. The Director of Equal Opportunity's decision regarding any conflicts is final. The Director of Equal Opportunity will provide the Sanctioning Official with a copy of the Determination Official(s)' written notification of determination of responsibility as well as the Investigative Report, the Parties' responses to that Report (if any), and information concerning any prior College discipline of the Respondent.

(1) **Students.** Sanctions regarding students and student groups, organizations and teams will be determined by the Associate Dean of Students (or his, her or their designee), who may do so in consultation with other College officials and after considering any prior College discipline of the Respondent.

(2) **Teaching Faculty.** Sanctions regarding teaching faculty will be determined by the Provost/Dean of the College (or his, her or their designee) in consultation with other College officials as appropriate. If the Sanctioning Official determines that a sanction of dismissal of a Teaching Faculty Member is recommended, the sanction will be reviewed under Section VII.8(b).

- (3) **Exempt Employees, Other Than Teaching Faculty.** Sanctions regarding exempt employees, as defined by the College, will be determined by the Employee's Vice President (or his, her, or their designee) or in the case of an employee in the Athletics Department or who reports to the President, the President's designee. The Director of Human Resources (or his, her or their designee) will be consulted, and any other College officials may be consulted, on any sanction.
- (4) **Non-Exempt Employees and Third Parties.** Sanctions regarding non-exempt employees, as defined by the College, vendors, independent contractors and other third parties will be determined by the Director of Human Resources (or his, her or their designee), who may consult with other College officials.
- (b) **Types of Sanctions.** Types of sanctions for employees, faculty members and students include the following:
- (i) **Employees, including Faculty Members.** Sanctions imposed with respect to Respondents who are faculty members or other employees may include, but are not limited to, one or more of the following: dismissal from employment, non-renewal of an employment contract, suspension (without pay), probation, reprimand, warning, restitution, training and/or counseling, no-contact order, removal from an administrative appointment, removal of one or more job responsibilities with a corresponding salary reduction, removal from a committee, removal from a leadership position, reassignment of advisees, prohibition against new advisees, limitation or loss of rights or privileges, loss of awards and/or honors, and/or community service, among others.
  - (ii) **Students.** Sanctions may include, but are not limited to, one or more of the following: expulsion, suspension, probation, reprimand, warning, restitution, education/counseling, no-contact order, restriction from extracurricular programs or activities, loss of leadership opportunity or positions in activities, housing restriction/relocation, and/or loss or restriction from College employment, limitation or loss of rights or privileges, loss of awards and/or honors, and/or community service.
  - (iii) **Student Groups, Organizations and Teams.** Sanctions for groups, organizations and teams may include suspension, revocation or denial of registration or recognition, probation, reprimand, warning, restitution, education, and restriction, among other possible sanctions.
- (c) **Considerations.** In determining an appropriate sanction(s), the Sanctioning Official may take into account the nature and degree of sanction that may be necessary to stop the misconduct, prevent it from recurring, and address its effects and also may take into account any other factors that may lead to a fair and appropriate outcome under

the circumstances and may consult with other College officials. Such factors may include, for example, but are not limited to:

- The nature and circumstances of the misconduct, including whether it involved violence, the threat of violence, or coercion; how severe or pervasive it was; whether it occurred once, more than once, or repeatedly; and whether or to what extent the Party found responsible intended or reasonably should have expected that the conduct would harm the Complainant or others.
- The impact of the misconduct on the Complainant, including whether or to what extent the misconduct has interfered or may interfere with the Complainant's education, employment, or other opportunities at the College, and whether or to what extent the misconduct has resulted or may result in physical, emotional, or other harm.
- The impact of the misconduct on the College community, including whether or to what extent the misconduct has interfered or may interfere with an educational, employment, or other aspect of the College environment.
- The disciplinary history of the Party deemed responsible.
- Any other mitigating or aggravating circumstances, such as whether the Party found responsible has a history of other misconduct and/or discipline at the College and whether the Party found responsible accepted responsibility and/or remorse for his, her or their conduct and its effects. For example, misconduct of an employee with any type of past or present supervisory responsibility for a Complainant shall be considered a significant aggravating factor.
- The range of sanctions imposed in cases involving similar or analogous circumstances.

**Possible sanctions for those found responsible for sexual violence, other inappropriate sexual contact, relationship violence, stalking and hate crimes:**

Community service  
Reflection paper  
Educational training  
Probation  
Suspension

Expulsion/termination of enrollment or employment  
Limitation of other rights, privileges or duties

*Except for expulsion/termination of enrollment or employment, all sanctions may be combined with one or more other sanctions listed above.*

**(d) Additional Remedies.** The Sanctioning Official may also identify additional

remedies to address the effects of the conduct on the impacted Party. Remedies may include extending or making permanent any interim or safety measures. If a Complainant or Respondent declined or did not take advantage of a specific service or resource previously offered, the College may re-offer the service as applicable or necessary. The Director of Equal Opportunity also may consider broader remedial action for the College community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. In addition, the Director of Equal Opportunity may refer any matter raised, but not addressed hereunder, that may potentially violate any other College policy, rule, or procedure to the appropriate College officials to address such matters, irrespective of the finding under this policy.

## **7. Notification of the Parties.**

Within seven (7) business days (which period may be extended for good cause and such extension communicated to the Parties) of the completion of the review and determination by the Determination Official(s), and if applicable, the Sanctioning Official, the Director of Equal Opportunity will inform the Parties simultaneously and in writing of (i) the outcome of the disciplinary proceeding; and (ii) the procedures for either Party to appeal the result of the disciplinary proceeding.

The Director of Equal Opportunity will also inform other College officials with a legitimate educational interest<sup>11</sup> or employment oversight about the sanction(s). Sanctions of all types (including, but not limited to, any form of suspension, dismissal, or separation from the College) can be imposed, in full or in part, while an appeal is pending at the sole discretion of the College.

If the alleged victim is deceased as a result of a crime involving sexual assault, other nonconsensual sexual contact, stalking, domestic/dating violence or hate crime, the next of kin of such alleged victim will be provided the notice of outcome upon written request to the Director of Equal Opportunity.

## **8. Appeals**

### **(a) All Appeals (Other Than Appeals Involving a Respondent Who Is a Teaching Faculty Member with a Recommended Sanction of Dismissal).**

The following appeal process applies to all appeals other than any appeal involving a determination in which a Respondent is a Teaching Faculty Member with a recommended sanction of dismissal which are addressed under Section VII.8(b) below.

#### **(i) Submission of Appeal by A Party.** Within seven (7) calendar days of the

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<sup>11</sup> As defined by the Family Educational Rights and Privacy Act.

delivery of the notice of the decision of responsibility and/or sanction, either Party may appeal by submitting to the Director of Equal Opportunity a letter stating an appeal solely on the basis of one or both of the following grounds:

- (1) **Procedural Error.** The Investigator(s), Determination Official(s), the Director of Equal Opportunity, or the Sanctioning Official failed to follow the Procedure in a manner that materially prejudiced the Party requesting review. An appeal under this ground must set forth the section of the Procedure that the Investigator(s), the Determination Official(s), the Director of Equal Opportunity or the Sanctioning Official failed to follow and an explanation of the material prejudice resulting from such error(s); or
- (2) **Newly discovered material information** that was not known to the Party requesting review and not available to the Investigator(s), the Determination Official(s), and/or the Sanctioning Official and which likely would have changed the finding of responsibility or the sanction imposed had it been available.

The Party submitting the appeal must attach all materials that he, she or they wish to have considered in the appeal process which support the appeal ground(s) set forth above. Appeals are only permitted on the two grounds described above, and appeals that do not meet those criteria or made on any other basis are not required to be considered by the Appellate Officer(s). Mere disagreement with the determination(s) of responsibility or sanction(s) is not sufficient grounds for appeal.

- (ii) **Opportunity of the Other Party to Review the Appeal.** The Director of Equal Opportunity will provide an opportunity to review the appeal submitted by one Party to the other Party. This review will take place at a location and in a manner determined by the College. The other Party may submit materials that he, she, or they wish to have considered in the appeal process within seven (7) calendar days of receipt of the appeal, but is not required to do so. A Party's decision not to respond to an appeal shall not be considered evidence of agreement with the filed appeal.
- (iii) **Page Limit.** The appeal and appeal materials submitted by a Party may not exceed ten (10) double spaced pages (12-point font with one inch margins) unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Director of Equal Opportunity.
- (iv) **Appointment of Appellate Officer(s).** In the instance of an appeal under this Section VII.8(a), the Director of Equal Opportunity will appoint one or more Appellate Officer(s) (the "Appellate Officer(s)") from a previously established pool of College employees who have received training on cases under this policy and appeals. In any case involving a Teaching Faculty Member, there

will be a three-member Appellate Officer panel, including at least one tenured faculty member (selected by the Director of Equal Opportunity in consultation with the chair of the Committee on Faculty Affairs). The Director of Equal Opportunity will provide the Parties with the names of the assigned Appellate Officer(s) for their case. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Appellate Officer(s), the Parties should inform the Director of Equal Opportunity in writing of any conflicts of interest in regard to the assigned Appellate Officer(s). The Director of Equal Opportunity will consider the nature of the conflict and determine if different individual(s) should be assigned as the Appellate Officer(s). The Director of Equal Opportunity may consult with other College personnel to discuss any conflicts of interest. The Director of Equal Opportunity's decision regarding any conflicts is final.

(v) **Determination of Appellate Officer(s).**

- (1) The Appellate Officer(s) will decide the merits of the appeal and, in so doing, may consult with the Investigator(s), the Determination Official(s), the Sanctioning Official or any other individual that the Appellate Officer(s) deems appropriate (and shall consult with any such individual who is alleged to have caused a procedural error). In appropriate circumstances, the Director of Equal Opportunity may give special instructions to the Appellate Officer(s).
- (2) The Appellate Officer(s) may deny the appeal and affirm all or part of the determination of responsibility or the determination of sanction, or the Appellate Officer(s) may refer the matter back to the original or new Investigator(s) or Determination Official(s)<sup>12</sup> or the Sanctioning Official for further consideration. If the matter is referred back to the Investigator(s), the Determination Official(s) or the Sanctioning Official for further consideration, the Appellate Officer(s) will provide specific instructions with the referral. In the event of a referral for further consideration, the Director of Equal Opportunity will be consulted and further proceedings may be commenced, as appropriate under the circumstances and consistent with this policy.
- (3) The decision of the Appellate Officer(s) regarding the appeal will be in writing and is final.
- (4) The Director of Equal Opportunity will inform the Parties simultaneously and in writing of the outcome of the appeal.

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<sup>12</sup> In the case of a finding of an appeal granted for a procedural error by the Determination Official(s), one or more new Determination Official(s) will be used.

**(b) Appeals with respect to a Respondent who is a Teaching Faculty Member Involving a Recommended Sanction of Dismissal.**

The following appeal process applies to appeals involving a determination in which a Respondent is a Teaching Faculty Member with a recommended sanction of dismissal and is the sole method of appeal. The appeal will be reviewed the following procedure:

(i) **Submission of Appeal by A Party.** Within seven (7) calendar days of the delivery of the notice of outcome, either Party may appeal by submitting to the Director of Equal Opportunity a letter stating an appeal solely on the basis of one or more of the following grounds:

(1) **Procedural Error.** The Investigator(s), Determination Official(s) the Director of Equal Opportunity or Sanctioning Official failed to follow the Procedure in a manner that materially prejudiced the Party requesting review. An appeal under this ground must set forth the section of the Procedure that the Investigator(s), the Determination Official(s), the Director of Equal Opportunity, or Sanctioning Official failed to follow and an explanation of the material prejudice resulting from such error(s);

(2) **Newly discovered material information** that was not known to the Party requesting review and not available to the Investigator(s), the Determination Official(s), or Sanctioning Official, and which likely would have changed the finding of responsibility or the sanction imposed had it been available;  
or

(3) **Sanction of dismissal was inappropriate.** That the sanction of dismissal was inappropriate based on a consideration of the nature and circumstances of the misconduct, including the severity, frequency and duration, the impact of the misconduct on the Complainant and/or the College community, the disciplinary history of the Respondent found responsible, and any other mitigating or aggravating circumstances and the need to take effective corrective action to prevent the recurrence of the violation(s) and remedy its effects.

The Party submitting the appeal must attach all materials that he, she or they wish to have considered in the appeal process which support the appeal ground(s) set forth above. Appeals are only permitted on the three grounds described above, and appeals that do not meet those criteria or made on any other basis are not required to be considered by the Appellate Officer(s). Mere disagreement with the determination(s) of responsibility or any sanction(s) other than dismissal is not sufficient grounds for appeal. Sanctions of all types (including, but not limited to, any form of suspension or separation from the College but excluding dismissal of a Teaching Faculty Member) can be

imposed, in full or in part, while an appeal is pending at the sole discretion of the College.

(ii) **Opportunity of the Other Party to Review the Appeal.** The Director of Equal Opportunity will provide a copy of the appeal submitted by one Party to the other Party, and the other Party may submit materials that he, she or they wish to have considered in the appeal process within seven (7) calendar days of receipt of the appeal.

(iii) **Page Limit.** The appeal and appeal materials submitted by a Party may not exceed ten (10) double spaced pages (12-point font with one inch margins) unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Director of Equal Opportunity.

(iv) **Appointment of Appeal Panel.** In the instance a Party appeals under this Section VII.8(b), the chair of the Committee on Faculty Affairs in consultation with the Director of Equal Opportunity will convene a three-member Appeal Panel (the “Appeal Panel”) consisting of tenured members of the Committee on Faculty Affairs (or other tenured faculty members from a previously established pool in the event there are not enough members of the Committee on Faculty Affairs to so serve) who have received training on cases under this policy and appeals. The Director of Equal Opportunity will provide the Parties with the names of the persons assigned to the Appeal Panel for their case. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Appeal Panel members, the Parties should inform the Director of Equal Opportunity (in writing) of any conflicts of interest in regard to the individuals proposed to be assigned to the Appeal Panel. The Director of Equal Opportunity will consider the nature of the conflict and determine if different individuals should be assigned to the Appeal Panel. The Director of Equal Opportunity shall consult with the chair of the Committee on Faculty Affairs to assess any conflicts of interest. The Director of Equal Opportunity’s decision regarding any conflicts is final.

(v) **Determination of Appeal Panel.**

(1) The Appeal Panel will decide the merits of the appeal and, in so doing, may consult with the Investigator(s), the Determination Official(s), the Director of Equal Opportunity, the Sanctioning Official or any other individual that the Appeal Panel deems appropriate.

(2) The Appeal Panel may deny the appeal and affirm all or part of the determination of responsibility or the determination of sanction, or may refer the matter back to the original or new Investigator(s) or Determination

Official(s)<sup>13</sup> and/or the Sanctioning Official for further consideration. In the event of a referral for further consideration, the Appeal Panel will provide specific instructions with the referral, the Director of Equal Opportunity will be consulted, and further proceedings may be commenced, as appropriate under the circumstances and consistent with this policy.

- (3) Any Appeal Panel decision regarding the appeal under Section VII.8(b)(i)(1) (procedural error) or (2) (newly discovered information) is final. Any Appeal Panel decision regarding an appeal under Section VII.8(b)(i)(3) (recommended dismissal) will be referred to the President for review under immediately following section.

**(vi) President and Executive Committee Review of Recommended Sanction of Dismissal.**

- (1) If the Sanctioning Official recommended a sanction of dismissal and no appeal was requested, the President will refer the sanction recommendation to the Executive Committee of the Board for review and consideration.
- (2) If the Sanctioning Official recommended a sanction of dismissal and the Appeal Panel recommended a sanction less than dismissal, the President will determine whether to accept the Appeal Panel's sanction recommendation (which shall then become the final sanction); impose a different sanction that is less than dismissal (which shall then become the final sanction) or recommend a sanction of dismissal for review and consideration by the Executive Committee of the Board.
- (3) If the Sanctioning Official and the Appeal Panel recommended dismissal, the President will refer the sanction recommendation(s) to the Executive Committee of the Board for review and consideration.
- (4) If the President refers a recommended sanction of dismissal to the Executive Committee of the Board, the referral will be communicated in writing by the President or the Director of Equal Opportunity to the Complainant and Respondent. The President or the Director of Equal Opportunity will provide the Executive Committee with the Investigative Report, any response of the Complainant and/or Respondent to the Investigative Report, the Determination Officer(s)' determination of responsibility and the Sanctioning Official's recommended sanction of dismissal, and if applicable, the written appeal materials submitted by the Complainant and/or the Respondent to the Appeal Panel, the Appeal Panel's written decision pursuant to Section VII.8(b)(v), and the recommended sanction

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<sup>13</sup> In the case of a finding of an appeal granted for a procedural error by the Determination Official(s), one or more new Determination Official(s) will be used.

following such appeal. The Executive Committee may grant both the Respondent and the Complainant the right to address the Executive Committee in writing, if the Executive Committee deems it appropriate. The Executive Committee of the Board of Trustees will make the final determination of the sanction.

- (5) The Director of Equal Opportunity will inform the Parties simultaneously and in writing of the outcome of the appeal.

Each of the President and the Executive Committee of the Board of Trustees shall receive training on cases and appeals hereunder prior to reviewing any matter under this Section VII.B.8(b)(vi).

### **9. Timeframe for Completion of Investigation and Resolution Process**

The College cannot promise the definitive timeframe of this process, but will endeavor to complete its investigation and disciplinary process in a prompt manner. The length of investigations may vary with the complexity and unique factors in each case. Examples of such factors include, without limitation, circumstances in which critical witnesses are unavailable or if law enforcement requests the College to temporarily halt its investigation for a brief period of time. Accordingly, all timeframes set forth in this policy may be altered by the Director of Equal Opportunity for good cause. The College's overarching goal is that all complaints be investigated in a prompt, fair, and impartial manner.

### **10. Special Situations.**

The College retains the right to determine, in its sole discretion, if it will address a report of conduct under this policy administratively and outside of the Procedure when the safety of the College community is at risk, if the material facts are undisputed, if there are extenuating circumstances involving either of the Parties, or if the Director of Equal Opportunity, in consultation with appropriate administrators, determines, in his, her or their sole discretion, that it is otherwise in the best interest of the College and/or the community to do so. In addition, when an investigation in any matter indicates that there may be one or more possible violations of any other College policy, rule, procedure or requirement, in addition to the violation hereunder, the Director of Equal Opportunity will consult with relevant College personnel (as determined in his, her or their sole discretion). In these situations, the investigation and resolution may follow this Procedure to determine whether such other alleged violation(s) took place or may be addressed separately, as determined by the Director of Equal Opportunity, in his, her or their sole discretion. Finally, if, following the receipt of an alleged violation of the policy, the Complainant declines to participate in the investigation or resolution process, the Director of Equal Opportunity may decide to administratively close the investigation at any point in the Procedure after consideration of the factors set forth in Section V.A in his, her or their sole discretion.

### **11. Training; Designees.**

(i) **Training.** Actions called for in this policy will be executed by individuals who are appropriately trained annually on issues relating to harassment, discrimination, sexual misconduct, and other misconduct addressed by this policy, investigatory procedures, and other disciplinary procedures (as applicable to the role) to protect the safety and right of members of the College community and promote accountability. Such individuals will also be unbiased and committed to discharging their responsibilities in accordance with the policy.

(ii) **Designees.** Where a College official or employee is listed as the designated point of contact for any role in the policy, the Director of Equal Opportunity or such official or employee may designate another College official or employee to assume the role at issue, as necessary and appropriate.

## VIII. ACADEMIC FREEDOM

Nothing in this policy should be construed to infringe on the academic freedom of members of the College community and their right to use the academic forum provided by the College either to discuss controversial subjects or to express ideas with which some or most members of the College community might strongly disagree.

## IX. ADDITIONAL MATTERS.

- A. Reasonable Accommodations. The College is committed to making its facilities, programs, and services accessible to all individuals in compliance with applicable law. Consistent with federal and state law, reasonable accommodations will be provided to individuals with disabilities.
- Employees. Employees, applicants for employment, and third parties with disabilities who wish to request reasonable accommodations should contact Human Resources to discuss the availability of reasonable accommodations or to obtain documentation guidelines. This includes the right to reasonable accommodations in connection with pregnancy or a condition related to pregnancy including, but not limited to, lactation, or the need to express breast milk for a nursing child. Please see the [Reasonable Accommodation Procedures for Employees, Applicants for Employment and Third Parties](https://www.holycross.edu/sites/default/files/files/policyprocedure/adminfinance/final_procedures_for_applicant_and_employees_9-21-2018.pdf) (available at [https://www.holycross.edu/sites/default/files/files/policyprocedure/adminfinance/final\\_procedures\\_for\\_applicant\\_and\\_employees\\_9-21-2018.pdf](https://www.holycross.edu/sites/default/files/files/policyprocedure/adminfinance/final_procedures_for_applicant_and_employees_9-21-2018.pdf)) for further information.
  - Students. Students and applicants for admission to the College who desire to request reasonable accommodations should contact the Office of Accessibility Services to discuss the availability of reasonable accommodations or to obtain documentation guidelines. Please see <https://www.holycross.edu/health-wellness-and-access/office-accessibility-services> for further information.

All requests for accommodations are evaluated on an individualized basis considering information about the individual's disability and the areas where they experience difficulties and need support.

B. Hate Crimes and Bias Incidents – Reporting, Investigation and Resolution.

- Hate Crimes - Reporting, Investigation and Resolution. Hate crimes include crimes that are motivated by a consideration (real or perceived) of race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, gender identity or other unlawful basis, as those crimes are defined under applicable law. Individuals who believe that they may have been victims of a crime may file a criminal complaint with the Department of Public Safety (508-793-2222) and/or the local police department (911) where the incident occurred. An individual may make both a criminal complaint and a complaint to the College under this policy (or pursuant to the Sexual Misconduct Policy for any violation of that policy).

The Clery Act requires the College to maintain statistics regarding certain hate crimes occurring on campus, on College-controlled property, and on public property immediately adjacent to campus. Those statistics may be found in the College's Annual Campus Crime Report available on the Department of Public Safety webpage at <http://www.holycross.edu/campus-life/public-safety/safety-security-fire-report>.

- Bias Incidents - Reporting, Investigation and Resolution. Discriminatory or harassing acts motivated by bias or a consideration (real or perceived) of a person's race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, gender identity or other unlawful basis may constitute violations of the College's discrimination and harassment policies. Individuals who believe that they have been subject to discrimination, discriminatory harassment or retaliation (as defined above in this policy) may make a complaint pursuant to this policy, or a report pursuant to the Sexual Misconduct Policy for violations of that policy.

C. Hate and Bias: Affirming a Campus Culture of Mutual Respect and Civility.

The College seeks to be a community marked by mutual respect and civility. Incidents of hate and bias damage our community by intimidating or isolating individuals and other community members and can have a profound psychological impact on individuals and historically marginalized groups.

Additional responses to manifestations of hate and bias in our community can include restorative measures or dialogue on campus. When hate crimes, discrimination and discriminatory harassment incidents are being investigated pursuant to College policies

and procedures, additional responses to such incidents must give due regard to the privacy of individuals and sensitivity of the situation subject to investigation including the rights and obligations of parties as set forth in those policies. The College will also comply with the Family Educational Rights and Privacy Act. These important considerations may impact the types of additional responses and/or the timing of additional responses.

When the Director of Equal Opportunity, the Vice President of Student Affairs/Dean of Students, or Director of Human Resources anticipates the need for restorative measures or dialogue on campus in addition to the investigation and remediation under applicable policy(ies), such College official will call a meeting with some or all of the Vice President of Student Affairs/Dean of Students, Chief Diversity Officer, Director of Human Resources, the Associate Dean of Students for Diversity and Inclusion, the Public Information Officer, the Director of Public Safety, Director of the Office of the College Chaplains and other relevant administrators to review the nature of the incident, examine any pertinent materials, discuss strategies for addressing the need and develop a plan of response.

Measures to be considered will be tailored to the nature of the incident and may include, but not limited to:

- (a) The issuance of a campus-wide statement;
- (b) One or more meetings with students, employees and other community members to promote dialogue about the issues involved;
- (c) Opportunities to educate students, employees and other community members further about the issues involved, including programs and topical forums;
- (d) The posting of a “HATE HAPPENED HERE” poster/sign where the act was committed. Signs will remain posted until instructed to be removed by the Vice President of Student Affairs, the Associate Dean for Diversity and Inclusion or the Chief Diversity Officer;
- (e) Removal, cleaning and/or painting over of the offensive materials after photos and other evidence has been collected; and/or
- (f) Other steps as determined to encourage dialogue about words and actions, to address issues of intolerance, and promote respect towards differences on a regular basis.

The need for dialogue can also arise because of local, national or world events that impinge on our community. When members of the College community anticipate or desire a need for campus dialogue due to local, national or world event(s), they should bring this to the attention of the Director of Equal Opportunity, the Director of Human

Resources, the Vice President of Student Affairs/Dean of Students, the Chief Diversity Officer, and/or the Associate Dean of Students for Diversity and Inclusion.

D. Policy Review. This policy shall be subject to regular review by the College pursuant to procedures established by the College, including, but not limited to, review of best practices and current professional standards. This policy shall be made available in writing to any applicant, student or employee of the College upon request.

Date of Last Review      August 20, 2021