

College of the Holy Cross Sexual Misconduct Policy¹

I. Statement of Values and Commitment to Non-Discrimination

The College of the Holy Cross is a community of trust based in the Jesuit tradition whose existence depends on strict adherence to standards of conduct set by its members. Among these are standards regarding human sexuality, any expression of which must affirm the integrity and dignity of oneself and others. Sexual misconduct, in all forms, violates the sanctity of the human body and spirit and will not be tolerated within the College community. The College is committed to providing an environment of well-being, learning, and accountability for its members by preventing the occurrence of sexual misconduct and addressing its effects.

II. Commitment to Non-Discrimination

The College rejects and condemns all forms of harassment, discrimination, retaliation and disrespect, and is committed to sustaining a welcoming environment for everyone and especially for those vulnerable to discrimination on the basis of race, religion, color, national origin, age, marital or parental status, veteran status, sex, disability, genetic information, sexual orientation or gender identity. It is the policy of the College to adhere to all applicable state and federal laws prohibiting discrimination. 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 or any pregnancy related conditions²), 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. The Director of Title IX and 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 general inquiries regarding the College's non-discrimination policies:

Derek DeBoges
Director of Title IX and Equal Opportunity
College of the Holy Cross
Hogan Campus Center- Suite 506

¹ This amended Sexual Misconduct Policy, is effective as of August 14, 2020. The procedures 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 Title IX Coordinator determines otherwise in his, her or their discretion. Prior versions of this Policy are available at <https://www.holycross.edu/sexual-respect-and-title-ix/overview>.

² 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) for further information.

III. How the College Seeks to Address Sexual Misconduct and Other Forms of Harassment

The College's commitment to non-discrimination includes an assurance that the College will not tolerate discrimination or harassment on the basis of sex, sexual orientation, gender identity, or other unlawful bases. The College follows through on this commitment against discrimination and harassment through the implementation of two policies:

1. **This Sexual Misconduct Policy**. This 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 this 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.
2. **The Equal Opportunity and Discriminatory Harassment Policy**. The Equal Opportunity and Discriminatory Harassment Policy (available on the policy page [here](#)) 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, sexual exploitation, and retaliation to the extent that those concerns are not required to be addressed under Title IX and the Sexual Misconduct Policy.

Both policies also prohibit retaliation against any individual seeking to exercise a protected activity and/or effectively take part in either process. The Title IX Coordinator will evaluate reported concerns and make a determination of which policy applies as further described below.

A. The Sexual Misconduct Policy

The College's Sexual Misconduct Policy is composed of several components:

- [Definitions of Prohibited Conduct \(https://www.holycross.edu/sexual-respect-and-title-ix/definitions\)](https://www.holycross.edu/sexual-respect-and-title-ix/definitions)
- [Process for Resolving Complaints of Sexual Misconduct \(https://www.holycross.edu/sexual-respect-and-title-ix/policy\)](https://www.holycross.edu/sexual-respect-and-title-ix/policy)

The Sexual Misconduct Policy applies to all College community members, and all members of the College community are responsible for being familiar with and abiding by the Sexual Misconduct Policy at all times.

The College will also provide additional relevant resources for the community on the Title IX website and as listed below. While separate from the Policy, these additional resources are part of the College's ongoing efforts to ensure an environment free of discrimination on the basis of sex.

B. Core Principles Relating to the Sexual Misconduct Policy

In developing and implementing its Sexual Misconduct Policy, the College is committed to the following core principles:

1. The College's policies, procedures, and practices are designed to reduce the incidence of sexual misconduct, stop misconduct when it is found to exist, prevent the misconduct from recurring, and address its effects.
2. If sexual misconduct has occurred, the College wants to know so that it can take effective action to stop it, prevent it from recurring, and address its effects. The College recognizes that in some cases the persons affected by sexual misconduct will wish to remain anonymous and/or not pursue formal action. The College strongly encourages every person who has been subjected to sexual misconduct or who knows or reasonably believes that someone else has been subjected to such misconduct to come forward to report the matter – and, in the case of its employees, it requires them to do so, unless the employee learned the information in a confidential professional role or is otherwise exempt from reporting as a matter of law or College policy. In addition, the College prohibits retaliation against any person who in good faith makes a report of sexual misconduct.
3. Actions called for in this Policy will be executed by individuals who are appropriately trained, unbiased, and committed to discharging their responsibilities in accordance with the Policy.
4. The College periodically will review its policies, procedures, and practices to ensure that they are consistent with these core principles.

IV. The Title IX Coordinator

The Title IX Coordinator is charged with coordinating the College's program to comply with Title IX. This includes leading the College's efforts to respond to reports of conduct that could trigger the Sexual Misconduct Policy. The Title IX Coordinator is also available to meet with any individual to provide information about the implementation of the Sexual Misconduct Policy (including the availability of supportive measures, the investigation, and the resolution/sanction process), as well as discussing other resources within the College community and beyond. The Title IX Coordinator, and/or other qualified members of the College community, will assist, as necessary, with these efforts.

The Title IX Coordinator at least annually will report to the College community relevant information relating to the Sexual Misconduct Policy, such as the number and types of matters investigated, the number and types of cases in which findings of responsibility were made, the number and types of sanctions imposed, and the time frames in which cases were resolved.

The College's Title IX Coordinator is:

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

Where the Title IX Coordinator is listed as the designated point of contact for any role in the Sexual Misconduct Policy, he, she or they may designate another appropriate member of the College community to assume the role at issue, as necessary. Each of these individuals is available to receive a report from any member of the College community who believes the Sexual Misconduct Policy has been violated. Further, as described below in Section VI.B, College employees, other than confidential resources, are required by College policy to disclose reports and information concerning conduct prohibited by this Policy, as well as other forms of discriminatory conduct that is not acceptable to the College.

V. College Resources and Other Community Resources

There are several departments within the College community that can be called upon to respond to incidents of inappropriate behavior and can serve as supports to individuals in many different ways. **As relevant to this Policy and the Equal Opportunity and Discriminatory Harassment Policy, these resources are available to both Complainants and Respondents.**

Confidential Resources for Complainants and Respondents, Including On Campus Medical, Counseling and Pastoral Resources. **Some College employees** are designated as “confidential resources.” 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 the Sexual Misconduct Policy or Equal Opportunity and Discriminatory Harassment Policy without the consent of the individual who supplied the information in question or otherwise in compliance with law.³ **However, these**

³ 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

confidential resources are instructed to inform individuals of their right to file a complaint under the Sexual Misconduct Policy, the Equal Opportunity and Discriminatory Harassment Policy and/or with the police and may assist in that process. Please note that such employees who receive reports when not functioning in their licensed or confidential capacity (e.g., when teaching a course) are not prohibited from making a report. Finally, confidential resources may, consistent with their legal obligations and ethical requirements, provide limited statistical information about incidents without revealing personally identifiable information regarding the identities of the individuals involved to the Title IX Coordinator and the Clery Act Compliance Coordinator.

Confidential resources are generally prohibited from serving as advisors for either party, insofar as their confidential designation may interfere or create confusion if they also serve in an advisor role, as defined under this Policy. Any individual requesting an exception to this prohibition must contact the Title IX Coordinator.

The following chart is designed to assist members of the College community in understanding available confidential resources and contact information. Any questions as to the reporting status of an individual should be directed to the Title IX Coordinator.

CONFIDENTIAL RESOURCE	REPORTING OBLIGATIONS
Health Services Loyola Hall 508-793-2276 (M-F, 9:00-12:00; 1:00-5:00); Nights and Weekends: Contact the Physician On Call at 508-334-8830	None, unless they are being consulted outside the scope of their role within Health Services or as required by law. ³
Counseling Center Hogan 207 508-793-3363 (M-F, 9:00-12:00; 1:00-5:00); After hours, contact Public Safety (508-793-2222) and request to be put in touch with the Psychologist On Call.	None, unless they are being consulted outside the scope of their role within the Counseling Center or as required by law. ³
Employee Assistance Program (for employees only) 800-648-9557, info@kgreer.com	None, except as required by law.
Pastoral Resources Chaplains' Office Campion House	None, unless they are being consulted outside the scope of their role within the Chaplains' Office.

- 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; or
- 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 considered confidential resources.

<p>508-793-2448 (M-F, 9:00-5:00) Nights and weekends and after hours, contact Public Safety (508-793-2222) and request to be put in touch with a Chaplain</p> <p>Jesuit employees and other employees associated with a religious order or denomination</p>	<p>An employee who is associated with a religious order or denomination as someone who provides confidential counseling is a confidential resource when functioning within the scope of that recognition as a pastoral counselor but may not be a confidential resource when functioning in another capacity. For example, a priest acting in the capacity as an administrator or professor is not a confidential resource. In contrast, a priest hearing confession is a confidential resource. A priest engaging in a pastoral conversation may be a confidential resource if that role is clearly separated from other official duties.</p>
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1. **Medical Services at Health Services.** Health Services is available to assist all students with immediate needs and to review available additional medical options beyond immediate needs. Health Services can offer support, testing and treatment for sexually transmitted infections and follow up appointments for further testing if medically indicated.
2. **Psychological Counseling at the Counseling Center.** Your visits to the Counseling Center are confidential and no information will be released without your permission except as required by law. You and your therapist will review confidentiality considerations so you are able to make an informed decision about what information you choose to share.

All of the psychologists in the Counseling Center are experienced in counseling both Complainants and Respondents in sexual assault, dating violence and domestic violence matters. Psychological counseling is intended to help you process your emotions and thoughts related to the allegations, the incident and/or the investigation process. The course of treatment is determined by your needs, which may change over time. The goals of treatment may include establishing safety, regaining a sense of control, addressing depression and attending to any psychological symptoms that may result from this experience. The therapist can also make you aware of your options and support you in making important decisions.

3. **Pastoral Counseling.** Your visits to the Chaplains' Office are confidential and no information will be released without your permission except as required by law. College chaplains provide pastoral counseling for both Complainants and Respondents. They also work with those who have been sexually assaulted or subjected to dating or domestic violence, or accused of the same, previous to their attending the College. A chaplain can accompany individuals through their healing process by listening to their

experience of what happened, affirming the dignity of the individual, and the belief that healing is possible. Questions commonly brought to pastoral counseling include: Why did God let this happen to me? Where is God now? How can I help my family and friends understand what is going on with me? Will I ever feel better again? Is it OK that I am angry with God and others? How can I restore my sense of self-esteem? Will I ever be able to forgive or do I have to forgive?

4. **Employee Assistance Program.** KGA, Inc. is the College's designated Employee Assistance Program provider, and it is staffed by seasoned, licensed professionals who are committed to service delivery with personal attention. They offer up to five sessions of confidential counseling for faculty and staff to support emotional well-being. The Employee Assistance Program maintains confidentiality as permitted by law. Please note that the Employee Assistance Program will report any imminent threat to the safety of the College community.

A. Non-Confidential College Reporting Options and Resources for All Parties.

To report a violation, make a complaint, or seek information about the process under the Sexual Misconduct Policy or the Equal Opportunity and Discriminatory Harassment Policy, please contact the Title IX Coordinator. (See contact information in Section IV above).

You may also make a report to, or discuss an allegation under those policies with, other College employees. The College recognizes that individuals may feel most comfortable discussing incidents, situations and allegations with College employees whom the individual knows well. However, it is important to note that College employees, other than the confidential resources described above, are obligated by College policy to disclose reports and information concerning unlawful discrimination on the basis of sex, sexual orientation, gender identity, or marital or parental status (including pregnancy and pregnancy related conditions), sexual harassment (including, but not limited to, sexual violence, relationship violence, stalking and sexual misconduct), or retaliation toward any member of the College community that is shared with them to the Title IX Coordinator. These employees are known as "Responsible Employees." With the exception of the confidential resources listed above, all full-time and part-time faculty and other employees and Residence Assistants are considered Responsible Employees.

- B. Criminal Reporting Options.** 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 the Equal Opportunity and Discriminatory Harassment 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, 3 City View Street, Worcester, MA 01610, 508-793-2222. If you wish to file a report on 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.

If you would like assistance in filing a report with the 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 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 local police department come to campus. The College can arrange for a discreet and private place to meet for this purpose.

- C. Governmental Reporting Options.** Other state and federal agencies may also be available resources if an individual has been subjected to discriminatory conduct that violates state or federal law. These include:

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
New Bedford, MA 02740
508-990-2390

D. Additional Resources for Individuals Who Have Experienced Sexual Violence, Other Inappropriate Sexual Contact, Relationship Violence and/or Stalking.

Individuals who have experienced sexual violence, other inappropriate sexual contact, relationship violence, and stalking experience a wide range of normal feelings and have many questions and concerns. Similarly, when such abuse is perpetrated by someone with whom the impacted individual had a prior relationship of trust, this also can create challenging feelings of manipulation, betrayal, and/or exploitation. In some cases, particularly when such behavior⁴ is intentional and accompanies a form of sexual misconduct, it may be referred to as “grooming.”

Regardless of whether the conduct occurs as a result of coercion, manipulation, or any form of grooming, no one deserves to be abused, assaulted or stalked. We want you to know that you are not alone. There are many resources at the College and other local and national resources to assist individuals.

In an emergency, dial 911. Immediately get to a safe place and call someone you trust.

1. **Consider Steps to Preserve Evidence.** Any person who has experienced sexual violence is encouraged to take steps to preserve evidence of the incident, as doing so may be necessary to prove the crime or to obtain a protective order. Your clothing and surroundings may contain valuable evidence. Try to refrain from going to the bathroom unless you save a urine specimen in a clean container. Try to refrain from drinking, showering, douching,

⁴ Such as an intentional course of conduct designed to increase opportunities for sexual misconduct, minimize resistance or withdrawal, and/or to reduce disclosure or belief.

brushing your teeth, combing your hair, changing your clothing, or straightening up anything. It is natural to want to do these things, yet it is important that a physician be able to examine you as you are from the incident. If you need to change your clothes, place each garment worn during the incident in a separate paper (not plastic) bag. If the incident involves any written or electronic communications (such as texts, pictures, videos, social media posts, phone calls), try to preserve copies and not delete the originals. If they have been deleted, you may be able to recover them through your mobile carrier, particularly if they were deleted within the most current billing cycle.

2. **Confidential Off-Campus Medical Attention after Sexual Assault or Other Violence.** Medical attention is strongly encouraged to treat any possible injuries, including internal injuries or infections, even if there is no visible injury. Please note that there are some medical actions that are more effective if taken immediately after an incident, such as testing and prophylactic measures regarding sexually transmitted infections, pregnancy testing, and/or evidence collection and toxicology testing if there are signs that drugs or alcohol facilitated the offense. Testing for some drugs (such as the date rape drug, GHB) must be done within a short time frame (12 hours) while others are present for longer periods of time. Prompt medical attention may be especially helpful to prevent the transmission of certain sexually transmitted infections, as long as medications are administered within the first 24-72 hours following an assault. Generally, one may discuss the incident with licensed medical personnel on a confidential basis.

For these reasons, the College recommends that any person who has experienced sexual violence obtain medical assistance at a hospital immediately after or within 72 hours of a sexual assault. These providers offer physical exams and provide sexual and reproductive health services (e.g., sexually transmitted infections and pregnancy testing). Sexual assault nurse examiners are available through the following local agencies:

- St. Vincent's Medical Center, Emergency Room, 508-363-6025
- University of Massachusetts-Memorial Hospital, Emergency Room, 508-334-6481
- University of Massachusetts-University Campus, Emergency Room, 508-421-1750
- University of Massachusetts-University Campus, Emergency Mental Health, 508-856-3562

The College's Department of Public Safety officers will transport you to the hospital without the need to disclose the purpose of the visit. You may also secure a taxi or ride-share through Health Services during business hours or be transported by friends to the hospital.

A Sexual Assault Medical Examination is used to (a) collect evidence important in criminal prosecution or a civil case, and (b) treat possible injuries or illness sustained from the offense. This examination is a voluntary procedure and it does not commit you to any legal action. You are not required to make a police report. Any evidence collected during the examination is held up to six months in a confidential file which is identified only by a number, not a name. It is an individual's right to ask for a sexual assault nurse examiner to

perform the examination.

There is no charge for a sexual assault medical examination completed in a Massachusetts hospital within five days of a sexual assault occurring in the Commonwealth. The hospital where the examination occurred will work with the Massachusetts Victim Compensation & Assistance Division for the payment of any lab work, emergency room fees, physician fees during the hospital visit and/or medications prescribed. You may also be eligible for additional services associated with your aftercare deemed medically necessary as a result of the incident. This can include further medical treatment, medications, counseling, replacement bedding and clothing (taken during the administration of the kit), security measures, etc. To be eligible for these post-exam services, you will need to complete the Massachusetts Sexual Assault Forensic Kit Post Exam Application provided at the time of discharge.

If a victim-survivor did not obtain an examination, the Massachusetts Victim Compensation Fund may also cover the costs of the examination care as well as post-examination care (for example, follow up care for sexually transmitted infection prevention, medication, and testing, counseling, security measures, and lost wages, among others) but only if a standard Crime Victims Compensation application to the Fund is completed and submitted from the victim-survivor. Additionally, a report must be filed with law enforcement. More information can be obtained at www.mass.gov/ago/vcomp.

The Director of Health Services or Health Services staff are available to assist individuals in determining what resources are available. A meeting can be scheduled by calling Health Services at 508-793-2276. Health Services staff can maintain the information learned in these processes confidentially, as stated in the description of Confidential Resources in Section V.A above. The staff can provide immediate care in a safe environment and review available options with you. Transportation to a local hospital with a support person of your choice can be arranged.

E. Additional Off-Campus Support and Resources - Shelters, Hotlines, Advocacy, and Support. Many off-campus resources are available to support you. These service providers are not required to report any information to the College and will generally maintain an individual's confidentiality.

- Pathways for Change, 588 Main Street, Worcester, 800-870-5905 (24-hour hotline); Office 508-852-7600; TTY 888-887-7130. Medical advocacy, peer support, police and court advocacy.
- YWCA Daybreak/SAFEPLAN, One Salem Square, Worcester, MA Assault and Domestic Violence 508-755-9030 (24-hour hotline). Court advocacy, counseling, emergency shelter, support groups.
- For additional rape crisis programs in Massachusetts, please see: <http://www.mass.gov/eohhs/docs/dph/com-health/violence/rape-crisis-center->

list.pdf.

- Llamanos, Statewide Spanish Helpline, Rape Crisis Center of Central MA, 799 West Boylston Street, Worcester, MA, 800-223-5001.
- New Hope, Attleboro, MA Domestic Violence and Sexual Assault Hotline, 800-323-HOPE (4673). Advocacy, emergency shelter, SAFEPLAN (24-hour hotline).
- Violence Recovery Program (LGBT) at Fenway Health, 617-927-6250. Provides counseling, support groups, advocacy, and referral services to lesbian, gay, bisexual and transgender victim-survivors of bias crime, domestic violence, sexual assault and police misconduct.
- RAINN (Rape, Abuse, and Incest National Network) National Sexual Assault Hotline, 800-656-HOPE (4673) (24-hour hotline); www.rainn.org (online chat).
- Boston Area Rape Crisis Center. 24-hour hotline: 800-841-8371; <https://barcc.org/>
- National Domestic Violence Hotline, 800-799-7233 (24-hour hotline); <http://www.thehotline.org/> (online chat).
- The National Stalking Resource Center, <http://www.victimsofcrime.org/our-programs/stalking-resource-center>, Victim Connect Helpline, 855-484-2846; Office, 202-467- 8700.
- National Suicide Prevention Lifeline (800) 273-8255 (24-hour hotline) Lifeline Crisis Chat, <http://chat.suicidepreventionlifeline.org/GetHelp/LifelineChat.aspx>.

Resources for legal advice or representation or requiring immigration or visa assistance:

- Community Legal Aid, 405 Main Street, 4th Floor, Worcester, MA, 800-649-3718; www.communitylegal.org. Free, civil legal assistance, including immigration and domestic violence, to low-income residents of central and western Massachusetts.
- Worcester County Bar Association Office, 508-752-1311; 800-622-9700. For lawyer referral service, including a reduced fee program, for all types of legal representation.
- Mass Legal Help, www.masslegalservices.org/FindLegalAid. Free legal aid for qualified individuals: immigration, domestic violence, shelter, etc.
- Victim Rights Law Center. 617-399-6720 x19, <http://www.victimrights.org/resources-survivors>.
- Public Defender Agency of Massachusetts, 340 Main Street, Worcester, MA, 508-368-

1850. *Criminal defense only*. Free for those who qualify based on income.

VI. Additional Considerations

A. Privacy and Confidentiality: Treatment of Reported Information.

1. **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 the Sexual Misconduct Policy. Absent special circumstances, the Title IX Coordinator will share information with College personnel who assist in implementing and overseeing the College's policies and procedures.

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 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 Title IX Coordinator 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.
- 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 with the individuals responsible for handling the College's response and others involved in the investigation and the oversight thereof. In the event that a 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 independently.

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.

2. **Disclosure of Sexual Misconduct at Public Awareness Events.** Public awareness events such as “Take Back the Night”, candlelight vigils, “survivor speak outs” and other public forms in which individuals disclose incidents of sexual violence, dating or domestic violence or stalking are not considered notice to the College adequate to trigger an obligation to investigate. However, such events may inform the College’s prevention and education efforts.

B. Duty to Report Discrimination, Harassment, Retaliation and Other Misconduct.

Each College trustee, faculty member or other employee, other than the confidential resources described above in Section V.A., are considered “Responsible Employees.” This means that when they learn of an allegation of unlawful discrimination, discriminatory harassment, or sexual harassment (including, but not limited to, sexual misconduct, sexual violence, sexual exploitation, dating and domestic violence, and stalking), or retaliation toward any member of the College community, they are required to notify the Title IX Coordinator 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 an individual should be directed to the Title IX Coordinator.

Any Responsible Employee who fails to make a report to the Title IX Coordinator upon learning of an allegation of prohibited conduct under this Policy, the Equal Opportunity and Discriminatory Harassment Policy or the Policy on Protection of Children may be subject to disciplinary action under the Equal Opportunity and Discriminatory Harassment Policy.

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. Crime Log, Statistical Reporting, Emergency Notifications and Timely Warnings.

The Clery Act requires the College to maintain a daily log of certain reported crimes that occurred on campus, College-controlled property, and public property immediately adjacent to campus, to publish an Annual Campus Crime Report concerning those reported crimes, and to issue emergency notifications and/or timely warnings. The current Annual Campus Crime Report can be found on the webpage of the Department of Public Safety at <https://www.holycross.edu/campus-life/public-safety/annual-security-and-fire-safety-reports>. In connection with such reports involving sexual assault, dating or domestic violence or stalking, the Department of Public Safety will include the reported crime in its crime log and annual campus crime report statistics without identifying the alleged victim-survivor or other information prohibited by law. The Department of Public Safety

will also issue emergency notifications and/or timely warnings, as appropriate, without the name or other personally identifying information about the alleged victim-survivor.

D. Consensual Sexual Relationships Involving Employees.

1. **Employee Relationships with Students.** No faculty member 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 paragraph. The College may make exceptions to this prohibition on a case-by-case basis and only with the express prior written approval of the Director of Human Resources and the Title IX Coordinator. Violations of this prohibition are addressed through the Equal Opportunity and Discriminatory Harassment Policy.
2. **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. In addition to the prohibition of employee/student relationships described above, College administrators, faculty, and staff should be aware that any sexual, dating 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 the College through the Equal Opportunity and Discriminatory Harassment 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 Title IX Coordinator, 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. Violations of this prohibition are addressed through the Equal Opportunity and Discriminatory Harassment Policy.

VII. How the College Will Address Unlawful Harassment on the Basis of Sex, including Sexual Misconduct and Retaliation

The College will not tolerate unlawful discrimination or harassment on the basis of person’s sex, marital or parental status (including pregnancy and pregnancy related conditions), sexual orientation, gender identity or any other unlawful basis or retaliation in its community. This Policy describes how the

College will respond to various forms of sexual misconduct, as described below. The College also prohibits other forms of sex and gender-based misconduct through the Equal Opportunity and Discriminatory Harassment Policy.

These policies and procedures apply to all College community members, and all members of the College community are responsible for being familiar with and abiding by them at all times. The following section defines the conduct prohibited under this Policy. If you have any questions about the definition or application of any of these terms, the applicability of this or other College policies, or the resources available to you as a member of the College community, please contact the Title IX Coordinator.

In certain circumstances, provided the parties are properly notified, the College also reserves the right to adjudicate alleged conduct under the Equal Opportunity and Discriminatory Harassment Policy if the Title IX Coordinator, in his, her or their sole discretion, based upon information known to him, her or them at that time, is satisfied that the behavior does not rise to the level of constituting sexual misconduct as defined in this Policy.

A. Definitions Under the College of the Holy Cross Sexual Misconduct Policy

Prohibited Conduct

The following are the definitions of conduct that is prohibited under the College's Sexual Misconduct Policy ("Prohibited Conduct").

Any individual, regardless of gender, sexual orientation or gender identity, can experience or commit a violation, and these behaviors can occur between people of the same or different genders or gender identities.

Sexual Harassment

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.

Hostile Environment Based on Sex. Any unwelcome conduct of a sexual nature that is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity⁵.

⁵ The federal government has recently required that behavior must be measured based on whether the unwelcome conduct is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity. In addition, conduct occurring outside the jurisdictional requirements of Title IX may be addressed pursuant to the Equal Opportunity and Discriminatory Harassment Policy.

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. 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. This includes, but is not limited to, 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.
- 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 to 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.

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. This conduct is often referred to as “sexual assault” under federal guidance.

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. This conduct may also be referred to as “sexual assault” in certain circumstances.

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. This form of misconduct may also be considered a form of sexual harassment or a form of sexual assault, depending upon the context. In certain circumstances, provided the parties are properly notified, the College also reserves the right to adjudicate Sexual Exploitation under the Equal Opportunity and Discriminatory Harassment Policy if the College, in its sole discretion, is satisfied that the behavior does not rise to the level of constituting sexual harassment or sexual assault as defined in this Policy.

- **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.
- **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.
- **Aiding or Assisting.** The aiding or assisting in the commission of an act(s) of sexual violence or sexual misconduct is prohibited.
- **Miscellaneous:** The inappropriate behaviors listed above are not an exhaustive list. The College may consider any other conduct that has a sexual or gender-based connotation under the Sexual Misconduct Policy.

Stalking. More than one instance of unwanted attention, harassment, physical or verbal contact, or any other course of conduct directed at an individual that could be reasonably regarded as likely to alarm or place that individual in fear of harm or injury, including physical, emotional, or psychological harm. This includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, texts or other similar forms of contact are used to pursue, harass, or

make unwelcome contact with another person. Stalking and cyber-stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another. To the extent that the stalking behavior is based on sex, gender, and/or a prior sexual or amorous relationship between the Parties, it may be addressed under this Policy. If the stalking behavior is not based on any of those factors, or otherwise falls outside the requirements of this Policy, the College reserves the right to address it through the Equal Opportunity and Discriminatory Harassment Policy.

Relationship Violence (Domestic Violence and Dating Violence). Relationship violence is any intentionally violent or controlling behavior of one individual by a person who is currently or was previously in a relationship with that individual. Relationship violence may include actual or threatened physical injury, sexual violence, psychological or emotional abuse, and/or progressive social isolation. To the extent that the relationship violence behavior is based upon a prior sexual or amorous relationship⁶ between the Parties, it may be addressed under this Policy. If the relationship violence is not based on any of those factors, or otherwise falls outside the requirements of this Policy, the College reserves the right to address it through the Equal Opportunity and Discriminatory Harassment Policy.

Retaliation.

Acts or attempts to retaliate, or seek retribution against a Party, a witness, or any individual or group of individuals involved in the investigation and/or resolution of an allegation under this Policy. This includes subjecting a person to an adverse action because they made a complaint under any portion of this Policy or responded to, assisted or participated in any manner in an investigation under this Policy. Retaliation may include continued abuse or violence and other forms of harassment.

Retaliation allegations may be consolidated with other forms of prohibited conduct defined in this section if the facts and circumstances significantly overlap. If the facts and circumstances do not significantly overlap, then the College retains discretion to adjudicate the allegation under the Equal Opportunity and Discriminatory Harassment Policy or other College policy or procedure. For example, if a Respondent retaliates against a Complainant with regard to the filing of a complaint, that behavior could be consolidated with the other prohibited conduct alleged, provided appropriate notice is afforded. On the other hand, if the retaliatory conduct is committed by one of the Parties' friend groups who are not otherwise subject to a grievance under this Policy, that behavior could be adjudicated under the Equal Opportunity and Discriminatory Harassment Policy or other College policy or procedure which prohibits such behavior.

The following are additional definitions used in this Policy:

Consent, Coercion and Incapacitation.

Sexual interactions must be consensual.

As used in the above definitions of prohibited conduct, consent, coercion and incapacitation have the

⁶ The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

following meanings under this Policy:

- **Consent** is the affirmative and willing agreement to engage in a specific form of sexual contact with another person who is capable of giving consent. Consent cannot be obtained: (a) through the use of coercion, or (b) by taking advantage of the incapacitation of another individual. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has chosen freely to engage in a sexual contact.
- **Coercion** is defined for purposes of this section as the application of unreasonable pressure to take part in sexual activity or in any of the prohibited conduct listed in the Sexual Misconduct Policy or the Equal Opportunity and Discriminatory Harassment Policy. Unreasonable pressure can be exerted through physical or emotional force, intimidation, misuse of authority, tricks, deception, or outright threats. When someone makes it clear that he, she or they do not want to engage in sexual activity or does not want to go beyond a certain point of sexual interaction, continued unreasonable pressure beyond that point may be considered coercive.
- **Incapacitation.** A person is considered to be incapacitated when a person is so impaired as to be incapable of requesting or inviting the conduct (and therefore conduct of a sexual nature is deemed unwelcome) provided that the Respondent knew or reasonably should have known of the person's impairment or incapacitation. The person may be impaired or incapacitated as a result of drugs or alcohol or for some other reason, such as sleep or unconsciousness. Some potential indicators of incapacitation are vomiting, slurred speech, disorientation, unsteady gait, loss of memory, extreme departure from typical behavior, significant decline in motor coordination, unfocused vision, lack of participation in the sexual activity, and intermittently appearing to fall asleep.

Silence, passivity, or the absence of resistance does not imply consent. Relying solely on non-verbal communication may result in confusion about whether there is effective consent. It is important not to make assumptions. If confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and verbally clarifies the other's willingness to continue.

Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must cease. Prior consent does not imply current or future consent; even in the context of an ongoing relationship, consent must be sought and freely given for each instance of sexual contact. An essential element of consent is that it be freely given.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances including, but not limited to, the extent to which an individual affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from intimidation, fear, or coercion; whether a reasonable person in the position of the individual alleged to have committed the conduct would have understood such person's words and acts as an expression of consent; whether the person alleged to have committed the conduct knew or reasonably should have known that the other person was incapacitated or otherwise incapable of providing effective consent; and whether there are any additional circumstances, known or reasonably apparent to the individual alleged to have committed

the conduct, demonstrating incapacitation, fear, or lack of consent.

Complainant. A person who, at the time they file a formal complaint, is currently participating in, or attempting to participate in, the College's domestic educational programs or activities and who alleges they experienced Prohibited Conduct under this Policy. If an individual is a student or employee at another institution and makes an allegation against an individual who is a student or employee at the College, the Title IX Coordinator may exercise discretion in signing a complaint for the aggrieved party. In such situations, the parties will be duly noticed in accord with the Policy and the College will not be considered a party to the matter, though it will maintain the burden of proving that any individual violated a College policy.

Respondent. A person alleged to have taken part in conduct that could violate a form of Prohibited Conduct under this Policy or any other form of conduct consolidated into the process set forth in this Policy.

When the Complainant and the Respondent are discussed collectively, they will be referred to as the "**Parties**" and may be referred to as a "**Party**."

B. Process for Investigating and Resolving Complaints

This process describes how the College will investigate a report that an individual or group of individuals has engaged in conduct that could violate the Sexual Misconduct Policy, and determine what, if any, safety measures and/or disciplinary sanctions are appropriate.

1. Initial Steps: Interim Measures

After receiving a report of conduct that could fall under the Sexual Misconduct Policy, the Title IX Coordinator or his, her or their designee, in consultation with other College personnel as 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 the need to take any immediate action to address the safety and health needs of the Complainant or others within the College community, and to determine the next steps for investigating the reported conduct and the need for any interim supportive measures. These initial steps may include, but are not limited to, the following:

- (a) Initial Meeting.** The Title IX Coordinator will contact the Complainant and encourage him, her or them to meet to discuss the nature and circumstances of the reported conduct, and review relevant documentation that is available.
- (b) Supportive Measures.** At any time in this process, the College will consider and make available to both Parties appropriate interim supportive measures. Supportive measures are non-disciplinary, non-punitive individualized services, offered as appropriate, as reasonably available, and without fee or charge to either the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the College's educational programs or activities, and they will be designed so as not to unreasonably

burden the other Party. Supportive measures may include but are not limited to: counseling; academic accommodations, such as extensions of deadlines or other course-related adjustments; course changes or drops; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the campus; and no trespass notices, among others.

- (c) **Presumption of Non-Responsibility.** Individuals who are reported to have engaged in Prohibited Conduct under this Policy are presumed to be not responsible for violating College policy and will not be issued any disciplinary sanction unless they are found, though the processes set forth in this Policy, by a preponderance of the evidence to have violated this Policy.
- (d) **Emergency or Interim Removal.** If the Title IX Coordinator conducts an individualized safety and risk analysis and, in consultation as appropriate with College employees, deems a member of the College community to pose an immediate threat to the physical health or safety of any other member of the College community and arising from or closely related to the reported conduct at issue, that community member's access to College property or activities may be restricted on an interim basis, pending final resolution of the grievance process under this Policy. Any such interim safety measures taken by the College will not be considered or documented by the College as a disciplinary sanction, and any community member whose rights to access College programs or activities are restricted as an emergency safety measure shall be promptly advised in writing of their right to appeal the interim restriction decision.
- (e) **Availability of Reporting Options.** The Title IX Coordinator will notify the Complainant about: (a) the availability of the Sexual Misconduct Policy (and the Equal Opportunity and Discriminatory Harassment Policy, to the extent applicable); and (b) 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 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).
- (f) **Policy Implicated.** If the Title IX Coordinator determines the reported conduct could trigger the Sexual Misconduct Policy, he, she or they will contact the Complainant to discuss that determination. In connection with allegations of sexual misconduct, if, at this time, 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. Except in limited circumstances in which a Complainant's request not to proceed to investigation is granted, the Title IX Coordinator will proceed as described in Section

VII.B.3. For further information, please see Section VI.A.1. If an investigation or alternative resolution will be commenced (and at any other time the Title IX Coordinator determines is appropriate), the Title IX Coordinator will notify the Parties of available resources for seeking medical treatment, counseling, spiritual guidance, interim supportive measures, and other resources.

- (g) **Policy Not Implicated; Potential Referral or Dismissal.** If the Title IX Coordinator determines that the reported conduct would not trigger the Sexual Misconduct Policy, or if the Complainant does not have standing to bring a claim under this 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, including, but not limited to, the Equal Opportunity and Discriminatory Harassment Policy. (If new information is subsequently provided, the decision whether or not to investigate the reported conduct may be reevaluated.)

2. **Optional Alternative Resolution Procedure.**

The following Alternative Resolution Procedure may not be used in an effort to resolve allegations made by students concerning behavior prohibited by this Policy by any employee.

At any time prior to convening a Determination Panel, a Party may request an alternative resolution of a complaint rather than an investigation by contacting the Title IX Coordinator in writing; provided, however, that the alternative resolution process may not be used with respect to allegations by students against employees. If both Parties then agree in writing to take part in an alternative resolution procedure, such resolutions may take several forms. For example, the Title IX Coordinator 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 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 Title IX Coordinator. The alternative resolution process will be conducted in accordance with procedures specified by the Title IX Coordinator, as determined in his, her or their sole discretion and will be disclosed in advance to the Parties. All Parties and the Title IX Coordinator must agree to use the alternative resolution process and to the resolution process in writing prior to the option being used. In addition, the Title IX Coordinator will assess the request for alternative resolution against the severity of the alleged violation and the potential risks to College community members. If the Title IX Coordinator determines that alternative resolution is appropriate, the Title IX Coordinator will notify the Parties. All resolutions must be approved by the Title IX Coordinator in consultation with other appropriate College administrators. A Party may withdraw from the alternative resolution process at any time.

3. **The Investigation Phase.**

- (a) **Notice of an Investigation.** If it is determined that the reported conduct could trigger the Sexual Misconduct Policy and an investigation is required, the Title IX Coordinator will prepare a written notice to the Complainant and Respondent that will include a description of the allegations (including, if known, the date and location of the alleged misconduct, and the name of the Complainant), the specific portions of this Policy that are alleged to have been violated, 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.** Each Party may have a single advisor of such Party's choice present during any College disciplinary proceeding, including any related meeting, interview, or hearing, held pursuant to the Sexual Misconduct Policy. Once an advisor has been selected by a Party, the Party must provide the name of the advisor to the Title IX Coordinator. Except to the extent expressly permitted in the hearing process outlined below, the advisor may advise their respective Party privately, but cannot act as a speaking advocate at a meeting. Individuals managing the proceeding in question (e.g., investigators, Title IX staff) may delay or terminate meetings, remove or dismiss advisors, and/or proceed with the investigation if an advisor 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 advisors if they unduly delay 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 Title IX Coordinator, at his, her or their 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. 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.
- (c) **Designation of Investigator.** The Title IX Coordinator will designate at least one investigator to conduct a prompt, fair, and impartial investigation of the reported conduct and prepare a report of investigative findings (the "Investigative Report"). 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 the Sexual Misconduct Policy. The Title IX Coordinator will provide the Parties with the name of the person(s) assigned to investigate the reported conduct (the "Investigator(s)"). As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Investigator(s), the Parties should inform the Title IX Coordinator in writing of any conflicts of interest with regard to the selected Investigator(s). The Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The Title IX Coordinator's decision regarding any conflicts is final. The Title IX Coordinator may consult with other College personnel to discuss any conflicts of interest.
- (d) **Nature of the Investigation.** The investigation will include separate interviews 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 invited or required.

- (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 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 exercise discretion in their determination of 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 convening of a Determination Panel, a Respondent may agree in writing to the alleged violation(s) of the Sexual Misconduct Policy and, in the cases of sexual harassment not involving sexual violence, other inappropriate sexual contact, sexual exploitation, stalking or relationship violence, a sanction proposed by the Vice President of Student Affairs (students), Provost/Dean of the College (faculty) or the Director of Human Resources (staff or third party), as applicable. In cases of sexual violence, other inappropriate sexual contact, sexual exploitation, stalking or relationship violence, the individuals responsible for imposing sanctions will determine and impose sanction(s) pursuant to Section VII.B.6 below based upon the agreed violation. In addition, the Parties may opt into the Alternative Resolution Process at any point prior to the Investigative Report being completed.

4. Investigative Report and Review

- (a) **Content of the Investigative Report.** At the conclusion of the Investigation Phase, the Investigator(s) will prepare a Draft Investigative Report, which should include a summary of the factual information presented during the Investigation Phase and a separate section where 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 Sexual Misconduct Policy or what sanctions may be appropriate. These determinations will be made by the Determination Panel, 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. In no instance will the decision-maker review a draft Investigative Report until it is finalized.

(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 Investigative Report to the Investigator(s) within ten (10) calendar days of the date they are notified that the Investigative Report is available for review. This review will take place at a secure location and in a secure manner determined by the College. The time to submit written comments can be extended for a brief period if the Title IX Coordinator concludes, in his, her or their sole discretion, that the additional time is warranted. Likewise, the secure location and manner of reviewing the Investigative Report can be modified if the Title IX Coordinator deems it necessary and appropriate. 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 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 Title IX Coordinator. 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. The Investigative Report will then be submitted to the Title IX Coordinator. 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.

If, at any point in this review process or the prior investigation, it becomes apparent that a witness will not take part and subject themselves to examination in the Adjudication Process described below, the Investigator may revise the Investigative Report to remove that information so as not to impact the hearing. If this decision is made prior to the Parties' review, it will be noted in a cover memo to the Investigative Report. If the decision is made following the Parties' review, it will be communicated to the Parties and they will be informed in writing of any information that will be removed prior to the hearing.

5. Adjudication by Determination Panel

(a) Convening the Determination Panel. The Title IX Coordinator will convene a three-

member Determination Panel (the “Determination Panel”) from a previously established pool of College community members trained to decide cases pursuant to this Policy and sexual misconduct cases. In no instance shall the Panel include students. In the event that a Respondent is a teaching faculty member⁷, at least one of the members of the Determination Panel shall be a tenured faculty member. The Title IX Coordinator will provide the Parties with the names of the persons assigned as the Determination Panel members for their case. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Determination Panel members, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest in regard to the selected members proposed to be assigned to the Determination Panel. If a conflict of interest is raised regarding any of the individuals assigned to the Determination Panel, the Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned to the Determination Panel. The Title IX Coordinator may consult with other College personnel (and shall consult with the chair of the Committee on Faculty Affairs in the case of any conflict of interest with respect to a proposed Determination Panel member who is a teaching faculty member) to assess any conflicts of interest. The Title IX Coordinator’s decision regarding any conflicts is final. The Title IX Coordinator will then submit the Investigative Report to the Determination Panel members and set a subsequent date for the Determination Panel to meet to determine responsibility.

- (b) Determination Panel Role and Authority.** The Determination Panel will make a determination at a Determination Panel hearing as to whether or not the Respondent is responsible for violating the Sexual Misconduct Policy by having engaged in some or all of the reported conduct. The Determination Panel 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 Panel, in its discretion, may invite the Investigator(s) to attend a Determination Panel hearing if the Panel believes it would be helpful to have an opportunity to ask the Investigator(s) any questions arising from the Investigative Report. The Determination Panel also has the authority, in their discretion, to speak directly with any persons identified in the Investigative Report. The Determination Panel, as the ultimate decision-maker in the matter, is provided broad discretion. In appropriate circumstances, the Title IX Coordinator may give special instructions to the Determination Panel.
- (c) Role of Advisors at the Hearing.** Each Party may have an advisor of their choice present at a hearing for the limited purpose of conducting witness examinations on behalf of that Party. Advisors may be, but are not required to be, attorneys. If a Party does not have an advisor of their choice present at a hearing, the College will, without fee or charge to the Party, provide an advisor of the College’s choice for the limited purpose of conducting witness examinations on behalf of that Party. No later than ten (10) calendar days before the hearing, Parties should inform the Title IX Coordinator of the identity of any advisor of choice who will accompany them to the hearing, so that the College will know whether or not it needs to arrange for the presence of a College-provided advisor.

⁷ For purposes of this Policy, the “teaching faculty” is defined by reference to Chapter I, Section A of the Faculty Statutes.

- (d) Hearing Process: Advisor Examinations.** At a time and manner deemed appropriate by the Determination Panel, the advisor for each Party will be permitted to ask the other Party and any witnesses all relevant examination questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the Party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. Scheduling accommodations generally will not be made for advisors if they unduly delay the process. 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. If an advisor is excluded from the hearing the College will delay the proceeding until a new advisor is named or appointed.
- (e) Hearing Process: Evidentiary Decisions.** The College will appoint a procedural coordinator who will make recommendations to the Determination Panel regarding the relevance or propriety of questions asked by advisors. The Determination Panel, as the decision-makers, will affirm or reject these recommendations before the question is answered. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- (f) Hearing Process: General Restrictions.** Questions and evidence concerning a Party's sexual predisposition or prior sexual behavior are generally not relevant, unless such questions and evidence about the prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior that are offered solely to prove consent.
- (g) Hearing Process: Privileged Information.** Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), are not admissible unless the person holding the privilege has waived the privilege.
- (h) Hearing Process: Virtual Option.** At the request of either Party, the College will provide for the hearing to occur with the parties located in separate rooms with technology enabling the Determination Panel and Parties to simultaneously see and hear the Party or the witness answering questions. Live hearings may be conducted with all Parties physically present in the same geographic location or, at the College's discretion, any or all Parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- (i) Hearing Process: Examination Requirement.** In accord with federal regulations, if a Party or witness does not submit to cross-examination at the live hearing, the Determination

Panel may not rely on any statement of that Party or witness in reaching a determination regarding responsibility. The Determination Panel will not draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

- (j) **Record of Hearings.** The College will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review. It will not be provided for distribution and the College will provide the same protective measures as used in Section VII.B.4(b) regarding Draft Investigative Reports.
- (k) **Notification of Decision.** Upon reaching a determination of responsibility, the Determination Panel will provide a written notification of its decision to the Title IX Coordinator along with its rationale. If sanctions are necessary, they will be assigned in accord with Section VII.B.6 below. The notification will consist of a brief statement of the allegations and the determinations made by the Determination Panel. While the notification may, at the discretion of the Determination Panel, 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.
- (l) **Standard of Proof.** All findings and determinations of responsibility for a violation of the Sexual Misconduct 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 the Sexual Misconduct 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 the Sexual Misconduct 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 the College's Sexual Misconduct Policy was not violated. The two procedures are significantly different and utilize different standards for determining violations.
- (m) **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, hold a single hearing, and otherwise modify the Policy to ensure all Parties are afforded equal protections in compliance with Title IX. 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.

(n) **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 Panel separately determines that:

- members of the group, organization or team acted in concert with respect to misconduct;
- 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;
- 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;
- 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;
- or
- 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., president, officer(s), or team captain(s)) shall represent the student group, organization or team throughout the process.

6. Determining Sanctions

(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 Panel's notification of decision, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest in regard to the Sanctioning Official. The Title IX Coordinator, in consultation with other College officials as appropriate, will determine whether a disqualifying conflict of interest exists, in which case the Title IX Coordinator will appoint a different Sanctioning Official. The Title IX Coordinator's decision regarding any conflicts is final. The Title IX Coordinator will provide the Sanctioning Official with a copy of the Determination Panel's written notification of its determination of responsibility as well as the Investigative Report, the Parties' responses to that Report (if any), and information provided by Human Resources, Community Standards or other appropriate department concerning any prior College discipline of the Respondent. Following determination of sanction(s), the Sanctioning Official shall notify the Title IX Coordinator of the sanction(s).

(i) **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. The determination of the Associate Dean of Students or his, her or their designee will be shared with the Parties as set forth in Section VII.B.7.

(ii) **Teaching Faculty.** Sanctions regarding teaching faculty will be determined by the

Provost/Dean of the College (or his, her or their designee⁸) in consultation with other College officials as appropriate. The Sanctioning Official will determine an appropriate sanction(s). If the Sanctioning Official determines that a sanction of dismissal for is recommended, the sanction will be reviewed under Section VII.B.7(b).

(iii) **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.

(iv) **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.

(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, but are not limited to, suspension, revocation or denial of registration or recognition, probation, reprimand, warning, restitution, education, or restriction, among other possible sanctions.

⁸ Consistent with Section VII.B.9(f), the Dean of the College, in consultation with the Title IX Coordinator, may designate an administrator who holds a leadership position in Academic Affairs to serve in this role.

(iv) **Considerations.** In determining an appropriate sanction, the College 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. 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 and 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, domestic/dating 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 in Section VII.B.6(b)(i) or (ii) above.

- (v) **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 supportive 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 Title IX Coordinator 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, in the Title IX Coordinator may refer any matter raised, but not addressed hereunder, that may potentially violate any other College policy, rule, or procedure, including, but not limited to the Equal Opportunity and Discriminatory Harassment Policy, to the appropriate College officials to address such matters, irrespective of the finding under this Policy.

7. Notification of Investigation Outcome

Upon completion of Sections VII.B.5 or 6, as necessary, the Title IX Coordinator 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 Title IX Coordinator will also inform other College officials with a legitimate educational or employment interest about the outcome of the disciplinary proceeding. As a general matter, those other College officials will include, but are not limited to, the following:

- If a student has been found responsible – the student’s class dean and other appropriate College officials.
- If a faculty member has been found responsible – the individual’s department chair, the director of any appropriate academic program and, if applicable, one or more class deans.
- If an exempt employee other than faculty member has been found responsible – the individual’s direct supervisor.
- If a non-exempt employee has been found responsible – the individual’s direct supervisor.

Notice to these other individuals will be accompanied by a statement that the information may not be further disclosed to anyone else without the specific approval of the Title IX Coordinator, except as necessary to protect the safety of one or more individuals.

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 Title IX Coordinator.

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.B.8(b) below.

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

1. **Procedural error.** The Investigator(s), Procedural Coordinator, Determination Panel, the Title IX Coordinator, and/or Sanctioning Official failed to follow the Process in a manner that materially prejudiced the Party requesting review. An appeal under this ground must set forth the section of the Process that the Investigator(s), Procedural Coordinator, Determination Panel, the Title IX Coordinator, and/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 Panel, or the Sanctioning Official, and which likely would have changed the finding of responsibility or the sanction imposed had it been available; or
3. **Bias or a conflict of interest** with regard to the Title IX Coordinator, Investigator(s), Determination Panel or Sanctioning Official that materially impacted the outcome or the sanction.

The Party submitting the appeal must set forth in detail the grounds for review and 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 one or more of 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 sanction(s) is not sufficient grounds for appeal.

(ii) **Opportunity of the Other Party to Review the Appeal.** The Title IX Coordinator will provide an opportunity to review the appeal submitted by one Party to the other Party. This review will take place at a secure location and in a secure manner determined by the College. The other Party may submit materials that he, she, or they wishes 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 Title IX Coordinator.

- (iv) **Appointment of Appellate Officers.** The Appellate Officer(s): In the instance of an appeal under this Section VII.B.8(a), the Title IX Coordinator will appoint one or more Appellate Officers (the “Appellate Officer(s)”) from a previously established pool of College employees who have received training on sexual misconduct cases 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 Title IX Coordinator in consultation with the chair of the Committee on Faculty Affairs). The Title IX Coordinator 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 Title IX Coordinator in writing of any conflicts of interest in regard to the assigned Appellate Officer(s). The Title IX Coordinator will consider the nature of the conflict and determine if different individual(s) should be assigned as the Appellate Officer(s). The Title IX Coordinator may consult with other College personnel to discuss any conflicts of interest. The Title IX Coordinator’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 Panel, 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 Title IX Coordinator may give special instructions to the Appellate Officer(s).
 - (2) 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, at the sole discretion of the College while an appeal is pending.
 - (3) 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 Investigator(s), original

or a new Determination Panel⁹, and/or the Sanctioning Official for further consideration. If the matter is referred back to the Investigator(s), the Determination Panel, and/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 Title IX Coordinator will be consulted and further proceedings may be commenced, as appropriate under the circumstances and consistent with this Policy.

(4) The decision of the Appellate Officer(s) regarding the appeal will be in writing and is final.

(5) The Title IX Coordinator will inform the Parties simultaneously and in writing of the outcome of the appeal.

(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 of the Teaching Faculty Member 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 notification of the outcome, either Party may appeal by submitting to the Title IX Coordinator a letter stating an appeal solely on the basis of one or more of the following grounds:

(1) **Procedural Error.** The Investigator(s), Procedural Coordinator, Determination Panel, Title IX Coordinator and/or Sanctioning Official failed to follow the Process in a manner that materially prejudiced the Party requesting review. An appeal under this ground must set forth the section of the Process that the Investigator(s), Procedural Coordinator, Determination Panel, Title IX Coordinator and/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 Panel, or the Sanctioning Official, and which likely would have changed the finding of responsibility or the sanction imposed had it been available;

(3) **Bias or a conflict of interest** existed with regard to the Title IX

⁹ In the case of a finding of an appeal granted for a procedural error by the Determination Panel, a new Determination Panel will be used.

Coordinator, Investigator(s), Determination Panel or Sanctioning Official that materially impacted the outcome or the sanction; or

- (4) **Sanction of Dismissal 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 set forth in detail the grounds for review and must attach all materials that he, she or they wishes to have considered in the appeal process. Appeals are only permitted on one or more of the four grounds described above, and appeals that do not meet those criteria or made on any other basis are not required to be considered. Mere disagreement with the determination(s) or responsibility or 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 faculty member) can be imposed, in full or in part, at the sole discretion of the College while an appeal is pending.

- (ii) **Opportunity of the Other Party to Review the Appeal.** The Title IX Coordinator 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 wishes 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 Title IX Coordinator.
- (iv) **Appointment of Appeal Panel.** In the instance a Party appeals, the Chair of the Committee on Faculty Affairs in consultation with the Title IX Coordinator 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 sexual misconduct cases and appeals. The Title IX Coordinator 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 Title IX Coordinator (in writing) of any conflicts of interest in regard to the

individuals proposed to be assigned to the Appeal Panel. The Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned to the Appeal Panel. The Title IX Coordinator shall consult with the chair of the Committee on Faculty Affairs to assess any conflicts of interest. The Title IX Coordinator'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 Panel, 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 Investigator(s), the original or a new Determination Panel¹⁰, and/or the Sanctioning Official (regarding determination of the sanction) for further consideration. In the event of a referral for further consideration, the Appeal Panel will provide specific instructions with the referral, the Title IX Coordinator 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.B.8(b)(i)(1) (procedural error) or (2) (newly discovered information) is final. Any Appeal Panel decision regarding an appeal under Section VII.B.8(b)(i)(3) (bias or conflict of interest) or (4) (recommended dismissal) and/or any recommended sanction of dismissal under Section VII.B.6 will be referred to the President for review under the 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 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

¹⁰ In the case of a finding of an appeal granted for a procedural error by the Determination Panel, a new Determination Panel will be used.

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 Title IX Coordinator to the Complainant and Respondent. The President or the Title IX Coordinator will provide the Executive Committee with the Investigative Report, any response of the Complainant and/or Respondent to the Investigative Report, the Determination Panel written findings, the recommendation of the Sanctioning Official 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.B.8(b)(v), and the Sanctioning Official's recommended sanction following such appeal. The Executive Committee may grant both the Respondent and the Complainant the right to address the Executive Committee, 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 Title IX Coordinator will inform the Parties simultaneously and in writing of the outcome of the appeal.
- (vii) **Training of the President and Executive Committee of the Board.** Each of the President and the Executive Committee of the Board of Trustees shall receive training on sexual misconduct cases and appeals prior to reviewing any matter under Section VII.B.8(b)(vi).

9. Timeframe for Completion of Investigation and Disciplinary 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 U.S. Department of Education has made clear that 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 temporarily halt its investigation for a brief period of time. Accordingly, all timeframes set forth in this Policy may be altered by the Title IX Coordinator for good cause. The College's overarching goal is that all complaints be investigated in a prompt, fair, and impartial manner.

10. Additional Matters

- (a) **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 may be subject to separate College disciplinary action. 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.

- (b) **Duty of Cooperation.** All Parties and witnesses are obligated to cooperate with the Title IX Coordinator and any persons charged with implementing the Sexual Misconduct Policy and these procedures. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Sexual Misconduct Policy may be subject to separate and/or additional College disciplinary action.
- (c) **Respect for Privacy.** The College values the privacy of individuals involved in the reporting, investigation, and/or resolution of matters subject to the Sexual Misconduct Policy. The U.S. Department of Education has provided guidance indicating that there are situations in which it may be necessary for an institution to override a request for privacy or confidentiality in order to meet its obligations under the law. In the event circumstances result in the College overriding a request for privacy or confidentiality to meet its obligations, the College will do so with the utmost sensitivity and respect for the circumstances and the individuals involved. See Section VI.A.1.
- (d) **Recording the Proceedings.** As set forth above, the College will record the proceedings but the Parties are not permitted to make video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under the Sexual Misconduct Policy or these procedures or the Investigative Report. The Title IX Coordinator may make exceptions to this prohibition in limited circumstances if he, she or they concludes, in his, her or 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.
- (e) **Disability Accommodations.** The College is committed to ensuring that all community members, and applicants, have an equal opportunity to participate in all of its programs and activities. If any person requires an accommodation, because of disability, to access any part of this process, students may make that request to the Office of Accessibility Services by telephone at 508-793-3693 and employees or others to the Office of Human Resources at 508-793-3391. Any accommodations will be provided in consultation with the Title IX Coordinator to ensure they do not impact the rights or protections of any Party or witness.
- (f) **Delegation.** Where the Title IX Coordinator is listed as the designated point of contact for any role in the Sexual Misconduct Policy, he, she or they may designate another qualified member of the College community to assume the role at issue, as necessary and appropriate. Where another College official or employee is listed as the designated point of contact for any role in the Sexual Misconduct Policy, he, she or they may, in consultation with the Title IX Coordinator, designate another College official or employee to assume

the role at issue, as necessary and appropriate.

(g) Amnesty for Students Reporting Sexual Violence, Relationship Violence and Stalking.

The College encourages reporting under the Sexual Misconduct Policy 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 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.

(h) Special Situations.

The College retains the right to determine, in its sole discretion, if it will address a report of conduct under the Sexual Misconduct Policy administratively and outside of the process described herein 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 Title IX Coordinator, in consultation with appropriate administrators, determines, in his, her or their sole discretion, that it is in the best interest of the College and/or the community to do so. Without limiting the foregoing:

- (i) When an investigation in a matter indicates that there may be one or more possible violations of any other policy, rule or requirement of the College in addition to an alleged violation of the Sexual Misconduct Policy, the Title IX Coordinator will review such material and consult with the Director of Student Conduct and Community Standards, Director of Human Resources or other appropriate College officials, as appropriate, to determine if there are any alleged violations of any other policy, rule, procedure or requirement. In these situations, the investigation and resolution procedure may follow the Sexual Misconduct Policy to determine whether such other alleged violation(s) took place in addition to the alleged violation of the Sexual Misconduct Policy or may be addressed separately as determined by the Title IX Coordinator.
- (ii) If, following the receipt of an alleged violation of the Sexual Misconduct Policy, the Complainant declines to participate in the investigation or resolution process, the Title IX Coordinator may decide to administratively close the investigation at any point in the investigation or resolution process after consideration of the factors set forth in Section VI.A.1 in the Title IX Coordinator's sole discretion.

State Law Definitions

The following are excerpts compiled from the Massachusetts General Laws that describe how certain relevant behavior is defined in Massachusetts. These definitions are not identical to the definitions of conduct prohibited in the College's Sexual Misconduct Policy, but the College considered these definitions in developing its Policy.

Sexual Harassment

(compiled from M.G.L. Ch. 151B)

“Sexual harassment” means sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or enrollment or is used as a basis for employment or educational decisions, placement services or evaluation of academic achievement; or
- Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work or educational performance by creating an intimidating, hostile, humiliating or sexually offensive work or educational environment.

Sexual Assault (Rape, Indecent Assault & Battery)

(compiled from M.G.L. Ch. 265, § 13 & 22)

Sexual assault is defined under Massachusetts law as rape or indecent assault and battery.

Rape is defined as occurring when a person has “sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his, her or their will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise...”

Indecent assault and battery occurs when one person touches another person in an “indecent” way. Examples of indecent assault and battery include touching a person's buttocks, breasts, or genitals without consent. The Commonwealth must prove that the defendant touched the alleged victim without justification or excuse; and that the touching was “indecent;” and that the alleged victim did not consent.

An indecent act is one that is fundamentally offensive to contemporary standards of decency.

Stalking

(compiled from M.G.L. Ch. 265, § 43)

The act of “willfully and maliciously engaging in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress and makes a threat with the intent to place the person in imminent fear of death or bodily injury.” Stalking includes, but is not limited to, acts or threats conducted by mail or by use of a telephonic or electronic communication device. Communications include, but are not limited to, electronic mail, internet communications, instant messages or facsimile communications.

Domestic and Dating Violence

(compiled from M.G.L. Ch. 209A)

“Abuse” is defined as “the occurrence of one or more of the following acts between family or household members:

- attempting to cause or causing physical harm;
- placing another in fear of imminent serious physical harm;
- causing another to engage involuntarily in sexual relations by force, threat, or duress.”

Family or household members are defined as “persons who:

- are or were married to one another;
- are or were residing together in the same household;
- are or were related by blood or marriage;
- having a child in common regardless of whether they have ever married or lived together; or
- are or have been in a substantive relationship, which shall be adjudged in consideration of the following factors: (1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.”

Consent *(not defined by M.G.L. in this context)*

In Massachusetts, it is illegal to have sex under any circumstances with someone who is incapable of giving consent due to incapacity or impairment; incapacity or impairment may be caused by intoxication or drugs, or because a victim is underage, mentally impaired, unconscious, or asleep. For purposes of this policy, consent is an explicitly communicated, reversible, mutual agreement to which all parties are capable of making a decision.

Massachusetts has several laws that define the age of consent and the additional penalties that attach if a person is under the age of 16 or 14. *E.g.*, statutory rape laws, indecent and assault and battery on a person under the age of 14.

Retaliation

(referenced by M.G.L. in various contexts, e.g., Chap. 151B.)

Retaliation is frequently addressed by the U.S. Department of Education’s Office for Civil Rights (OCR). OCR’s legal standard for addressing retaliation claims is as follows:

A claim for retaliation must establish several elements. First, the facts must indicate that the complainant engaged in a protected activity, *i.e.*, exercised a right or took some action that is protected under the laws OCR enforces, including Title IX. Second, the institution must be on notice of the protected activity. Third, the institution must take an adverse action against the complainant. And fourth, there must be a causal connection between the protected activity and the adverse action. If any of these four elements cannot be established, then a claim of retaliation cannot be substantiated. If, on the other hand, all four elements are established, then OCR next analyzes whether there is a legitimate non-discriminatory reason for the retaliatory action in question. If no legitimate non-discriminatory reason is put forward, or if the reason is found to be a mere pretext for retaliation, then OCR may find that there was retaliation.