

**Review of the College of the Holy  
Cross' Culture, Structures, and  
Procedures  
Summary  
July 2019**

**Holland & Knight**

[www.hklaw.com](http://www.hklaw.com)

## TABLE OF CONTENTS

INTRODUCTION AND SCOPE OF REVIEW.....	1
I. STRATEGIC POLICY REVIEW AND DEVELOPMENT PROCESS .....	2
II. REVIEW EMPLOYEE OVERSIGHT .....	4
III. ENCOURAGE REPORTING OF INAPPROPRIATE BEHAVIOR.....	5
IV. ENHANCING THE COLLEGE’S RESPONSE TO SEXUAL MISCONDUCT.....	7
A. REVIEW OF POLICY/PROCESS.....	8
B. RESPONSIVENESS AND TIME DELAYS .....	9
V. PHYSICAL SAFETY AND SECURITY MEASURES .....	13

## **INTRODUCTION AND SCOPE OF REVIEW**

In September of 2018, the College of the Holy Cross retained Holland & Knight, and specifically this author, Phil Catanzano, to conduct a review into certain aspects of the culture, structures, and procedures at the College and make recommendations to seek to prevent future misconduct. Over the course of this review, I was given broad autonomy to meet with any individuals willing to speak with me, and the College put no limitations on who I spoke with or what I could ask of individuals. The only limitation that I exercised was that I opted not to speak with an individual who was currently involved as a party or a witness in an ongoing matter under investigation at the College. This was primarily to avoid undermining investigations or causing confusion over different processes. In the few instances I exercised this limitation, I offered to speak with the individual about different topics not related to the investigation or to meet with them following the conclusion of the matter under investigation by the College.

I sought to be clear with all individuals that this review did not supplement or supplant the College's established policies and processes, and I was not charged with adjudicating claims that were more properly addressed under existing policies and grievance procedures. This included allegations of sexual misconduct involving current or recent students and current employees. If an individual shared information that could implicate an existing College policy, I provided that individual a copy of the relevant policy and/or sought to refer them to the appropriate office. I have since learned that there may exist some confusion within the community about this protocol but my reasons for it were expressed to anyone who raised the issue. For example, the College's Sexual Misconduct Policy sets forth many protections and processes for both the Complaining Party and the Responding Party, including that they both have an opportunity to be interviewed, they be allowed to share relevant information with the investigators, they have the option to have with them an advisor, and they have access to appropriate interim measures. My review was not created to provide that level of process.

During the course of this review, I interviewed approximately 68 individuals, including current and former employees of the College, as well as current and former students. The majority of individuals sought to meet with me following broad invitations made by Fr. Boroughs and others within the community; however, some individuals were chosen because of their specific roles on campus. I conducted the majority of the interviews in person, but a small number were conducted by phone. In each interview, I shared with each interviewee the scope of my work. I informed individuals that I would seek to maintain their information privately unless the information they shared created an imminent risk of harm to the College community; otherwise, I informed individuals that I would seek to protect their privacy and would share my conclusions with sufficient detail to justify the recommendations made to the College.<sup>1</sup> In at least two instances, individuals were referred to other offices within the College to address their concerns; there were other concerns about specific individuals or departments that were referred to the College, generally, to be addressed using its other policies and procedures applicable to the issues at hand. Also, if specific issues at the College or within a specific department were raised

---

<sup>1</sup> There were instances in which individuals asked me to abstain from or limit my note-taking while they shared sensitive experiences. In a handful of instances, individuals wished to speak with me anonymously. In all instances in which I was asked to limit my note-taking or not include an individual's identity or other details for privacy reasons I honored the request after it was clear there did not exist an imminent risk of harm to the College community.

that informed the broader culture with respect to sexual misconduct, I have included that in my general evaluation. I am thankful for all of the individuals who assisted me throughout this review.

The topics of this review that will be summarized below include:

- A general review of existing policies, including an examination of the potential need for new or enhanced policies, relating to the safety and wellness of the College community;
- A review of the College's organizational and reporting structure, as it relates to safety and wellness efforts on campus;
- A review of the College's Sexual Misconduct Policy, as well as additional issues arising from the execution of that Policy;
- A general review of the physical safety of the campus, with a focus on security within various buildings on campus; and
- A review the culture of the College, insofar as it related to preventing and reporting sexual misconduct. It was anticipated that my interviews would be sufficiently balanced such that I could view the College's sexual misconduct response and prevention efforts through the lens of students, staff, and faculty. While I was able to ascertain and incorporate an aspect of that culture as it related to faculty and staff perceptions of the College's broader sexual misconduct prevention and adjudication efforts, I was not able to provide specific feedback on the larger campus culture because too few current students chose to meet with me, despite several requests by Fr. Boroughs and other directed efforts on campus to ask for their participation over the course of the last ten months. Accordingly, the aspects of the campus culture that are reflected in this review are focused around the views of faculty and staff that spoke with me. I have also learned that the College conducted a separate campus climate survey of faculty, staff and students that is currently being reviewed by the College.

## **I. STRATEGIC POLICY REVIEW AND DEVELOPMENT PROCESS**

During the course of my review, it became apparent that there were certain student, faculty, and staff activities where appropriate policy was lacking or underdeveloped. Examples included certain forms of off-campus interactions with students, off-campus trips (including certain athletic, club, academic, religious, or other special interest travel), certain on-campus programming (e.g., Montserrat, Chapel related activities), directed study activities (also referred to as tutorials), and similar activities. Individuals shared concerns that, in the past, faculty and staff have used alcohol with students and may have taken part in other activities that could erode appropriate boundaries between faculty/staff and students. Many of these activities were alleged to have occurred many years ago, and in most cases the individuals describing the conduct could

not isolate a distinct event or could not (or would not) provide the identity of the individuals involved.

In sum, many of the individuals shared their belief that there existed a history of unclear boundaries between faculty/staff and students, even if they could not provide any specific examples when asked. These beliefs should not be dismissed out of hand, however, because such beliefs (whether true or not) may lower professional expectations or create the misperception that such conduct is appropriate. The members of the current leadership team with whom I spoke took a different position, namely that professional boundaries must be reinforced so that individuals understand the inherent imbalance of power that typically accompany such relationships. This is especially true at the College, where many individuals also expressed the strong desire to continue to maintain the close, supportive, and mentoring environment that currently exists for its students and faculty and staff. Such an environment can co-exist with healthy boundary expectations and more oversight opportunities.

### Recommendations

1. Policy Development: The College should develop policies and review existing policies to establish clear expectations for interactions between faculty, staff, and students, both on- and off-campus. The College should also create specific policies for special programs and activities. There also should be clear guidelines or policies for the selection process for Organ Scholars, Brooks Music Scholars, and other similarly situated individuals. These guidelines or policies should set forth the expectations upon both the candidate and the College staff member assessing the candidates, including what is expected of them and what should not be expected of them.
2. Enhance Training and Educational Opportunities: The College should require and enhance training and education on sexual misconduct prevention and reporting, appropriate boundaries (including identifying grooming behaviors), bystander intervention, the impact of trauma on individuals, and other similar areas of concern. While many of these training and education opportunities already exist at the College, these activities should be enhanced and tailored to the unique experiences of the members of the College community. For example, athletes often can benefit from more tailored training around sexual misconduct and other challenges that may present while traveling for their sport; study abroad activities often require training tailored to the destination (*e.g.*, relevant local laws and customs) and the anticipated activities at that destination; and other groups have other needs – either because of the activity or their role/interests on campus – that could benefit from focused training or education.
3. Consider Feedback for Further Improvements: In order to enhance training and educational opportunities, the College should understand the concerns and practical challenges surrounding campus activities, performance activities, athletic activities, and classroom activities, among others. An important aspect of that is understanding the vantage points of the individuals participating in those activities, and as mentioned above, too few students spoke with me to allow me to provide more refined recommendations. Several individuals also expressed reservations with sharing such concerns for fear of

being singled out (and potentially mistreated or retaliated against) by professors, coaches, or other administrators. To address this challenge, the College should create a strategic approach to collect and maintain this information outside of those relationships to encourage honest and candid responses and perspectives from the members of the College community. The College is planning to purchase EthicsPoint or a similar tool that allows for anonymous reporting and feedback, and could alleviate this concern. In tandem with that effort, the College should develop an affirmative plan to continue to educate the community on the value of reporting concerns and remind the community about the College's prohibition on retaliation.

4. Create a Proactive Policy Review and Development Approach: While actual events often necessitate immediate policy creation, a proactive policy review and development approach is preferred, insofar as it provides the opportunity to plan the implementation of a policy, seek appropriate guidance on a proposed response or any potential legal or compliance concerns that may arise, appropriately communicate the changes to the community, develop and provide training on the policy or issue in question, and then ensure appropriate resources to execute the policy on campus. Some campuses have achieved this result by adopting and implementing an enterprise risk management system, however, that is not universally a good fit for every institution. Instead, I recommend the College devise a tailored approach to determining what policies are needed, and then creating a realistic, hierarchical schedule of creating such policies over the short-term, mid-term, and long-term.<sup>2</sup> I was happy to learn in the course of my review that the College had already begun this exercise of implementing a systematic approach to reviewing and developing its policies.

## **II. REVIEW EMPLOYEE OVERSIGHT**

A concern raised by some in the community was that there were certain individuals who were appointed or hired by previous administrators and who claimed that they did not fall within any internal organizational or oversight structure because of their unique role on campus or a special appointment process.<sup>3</sup> In these circumstances, individuals appeared unclear about who was responsible for overseeing these individuals, with some mistakenly believing that various offices or even the President had oversight authority. With regard to the specific individuals I learned about, I confirmed that the President did not have any reporting relationship and all fell within an appropriate reporting structure. However, the fact that other community members believed these individuals were outside of the College's organization structure and not subject to oversight was concerning.

I also learned in the course of my review, that in the past and on some recent occasions, the process of appointing departmental leaders or administrative leaders was unclear to various

---

<sup>2</sup> The reference to a hierarchical schedule reflects that certain policy improvements may be more pressing than others. It is critical that the College recognize this hierarchy of needs and prioritize its efforts accordingly.

<sup>3</sup> One of the individuals referenced is James David Christie. It is my understanding that on at least two occasions the Title IX Office invited individuals who raised concerns about Mr. Christie to speak with me. I was contacted by one of those individuals and it remains my hope to conduct that interview and share what I learn with the College.

groups on campus, including members of the specific departments in question. Individuals shared their belief with me that these appointments were based around personal relationships or other unknown factors. Individuals also shared with me that, in certain circumstances, these departmental or leadership appointments had a detrimental impact on the department or working environment in question. Finally, individuals shared that such appointments made without consultation – or even adequate notice – often served to harm morale for other employees.

### Recommendation

1. Systematic Organizational Review: The College should continue to systematically review its organizational structure. While I do not suggest or ascribe to a particular hierarchical management model, I recommend that all employees should fall within some institutional oversight model to avoid real or perceived situations in which certain employees are viewed as “untouchable” or “above the rules” of an institution. I further recommend that the College conduct a department-by-department review of all employees to strive to have a fuller view of the relevant reporting structures and so that the College can exercise appropriate oversight at both a departmental and an institutional level. It is my understanding that the Office of Human Resources has begun this task.
2. Clarify Appointment Protocols: The College should create clear protocols or policies around departmental and administrative appointments, as appropriate. While private institutions have discretion within their operating rules as to appropriate departmental needs and how to fill those positions, the College could benefit from more transparency in this area. This transparency could be created with a clear policy. (To that end, this is also a policy that could be created in furtherance of certain recommendations in Section I, above.)

### **III. ENCOURAGE REPORTING OF INAPPROPRIATE BEHAVIOR**

Several individuals expressed concerns that they would be targeted or retaliated against by the College if they reported information about inappropriate behavior on campus or that reporting inappropriate behavior would be a futile exercise. Most examples provided by individuals were hypothetical, *i.e.*, several individuals shared a sentiment along the lines of *if I were to report, this is what would likely occur or not occur*. Certain faculty and staff shared that they had not reported certain behavior because they assumed many others knew about the behavior or it was someone else’s responsibility. In answering why individuals felt these ways, many stated a distrust of the Title IX Office or the Office of Human Resources. A smaller group of individuals expressed a distrust of specific members of leadership over the years and, in some cases, decades. Certain individuals discussed concerns about allegations that they had raised previously and I referred them to the Title IX Office.

When asked about these issues, College leadership and the Title IX Office expressed that campus and individual safety is the primary concern of the College and emphasized their desire to encourage reporting and further educate community members that retaliation is prohibited and the availability of different reporting options. The College’s Sexual Misconduct Policy supports the College’s position insofar as it provides protections for reporting parties against retaliation,

provides a certain amount of privacy for reporting parties, and provides updates to reporting parties, as well as the opportunity to provide other protections as appropriate.<sup>4</sup>

Finally, certain individuals stated that they had not reported certain issues in the past because they felt that they – largely faculty – best understood the student body and, thus, it was the faculty and staff who could best protect the student’s interests. More specifically, certain faculty viewed it as their role to be supportive of individual students who sought their mentoring. These individuals frequently stated that such support would be difficult, if not impossible, to provide if they had to put parameters around what information could be kept in confidence and what must be reported at the outset of a conversation. The common example discussed was that of a student who may wish to meet with a faculty member to discuss academic struggles. If the individual student conveyed that their poor academic performance was the result of the after effects of some form of sexual misconduct, the faculty felt they were in a difficult situation: they would either have to report to the Title IX Office the sensitive information shared (regardless of the student’s desire to do so or not) or, in the alternative, they would need to preface any conversation with the equivalent of *you can tell me anything you want, but know that if you tell me about your sexual assault, I cannot keep that in confidence*. The individuals I spoke with indicated that either result could chill their ability to support their students.

#### Recommendations

1. Encourage and Facilitate Additional Reporting: Timely reporting of inappropriate behavior is critical for the College. Not only does it allow the College to execute its policies, protect individuals who may have been harmed, and adjudicate individuals found responsible for inappropriate behavior, but it also provides other positive elements to a functioning campus community. For example, in the sexual misconduct context, a fundamental role of the Title IX Coordinator is to assess reported conduct to determine if there are patterns of behavior that could create a sexually hostile environment or other high risk situations. From a campus safety perspective, appropriate reporting can inform the College about different parts of campus that may be physically dangerous or create a specific threat, and it allows appropriate departments, like the Department of Public Safety, to take affirmative action in that area, which could include enhanced security measures, additional patrols, etc. While many of the College’s policies do provide an avenue to report, I recommend that the College highlight to the community those avenues and continue addressing any specific challenges that would cause an individual not to report inappropriate behavior.
2. Provide Enhanced Training Around the Role of Responsible Employees: The College has defined the term “responsible employee” to extend to most faculty and staff on

---

<sup>4</sup> The College’s Sexual Misconduct Policy states that there “may be instances where another person, who has not experienced but is aware of the occurrence of prohibited conduct, may bring a complaint under the Sexual Misconduct Policy, and that person is referred to as the ‘Reporting Party.’ In ... limited circumstances, the College will determine *which of the protections provided to the Complaining Party under the Sexual Misconduct Policy are also applicable to the Reporting Party.*” (Emphasis added.)

campus in the sexual misconduct context.<sup>5</sup> A “responsible employee,” in this regard, is defined as an individual who is charged with reporting inappropriate behavior in certain contexts.<sup>6</sup> Several individuals I spoke with did not have an understanding or appreciation of the definition of a “responsible employee” or their own reporting roles within that structure. Others stated that they did not trust that their report would go anywhere or that they, the reporter, would get in trouble for not reporting historical behavior more promptly. I recommend that the College enhance its training around this issue so that College employees can better understand the critical and necessary role of reporting conduct of concern and that any stated challenges could be addressed.

3. Create a Limited Period to Accept Historic Reports: Several individuals expressed concern about their own past failures to report inappropriate behavior. I recommend that the College devise an appropriate system that would allow individuals to report historic impropriety without negative consequence for the reporter. I also recommend more focused dialogue occur between different groups of people on campus (administration, faculty, staff, and students) to better understand this specific challenge so that the reporting of inappropriate behavior is a community expectation and not an aberration or an empty exhortation from College leadership.

#### **IV. ENHANCING THE COLLEGE’S RESPONSE TO SEXUAL MISCONDUCT**

Many individuals shared with me a range of concerns about the College’s Title IX Office, as well as the College’s Sexual Misconduct Policy and the accompanying process. As part of this review, I also spoke with several individuals who had direct experience with the Title IX Office, as well as the current and former Title IX Coordinators, Deputy Coordinators, and others involved in the College’s efforts to prevent and respond to sexual misconduct on campus.

To provide context to this section of this review, it is important to note that this area of the law has undergone substantial change in the past decade and that change continues. In sum, the relevant federal guidance includes the implementing regulations for Title IX, found at 34

---

<sup>5</sup> The College’s Sexual Misconduct Policy states that “[e]ach College trustee, administrator, faculty member, or employee, other than the confidential resources described above, are considered ‘responsible employees.’ This means that when they learn of an allegation of unlawful sex discrimination or sexual harassment (including, but not limited to, sexual misconduct, sexual violence, 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 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).”

<sup>6</sup> The U.S. Department of Education’s Office for Civil Rights’ 2001 *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, p. 13, states that a “responsible employee” is “any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.” The Guidance makes clear that these employees need to be trained so they know their obligation under the Sexual Misconduct Policy, how to identify harassment or other forms of sexual misconduct, and so they know how and to whom to report such conduct.

C.F.R. Section 106, the U.S. Department of Education's Office for Civil Rights' 2001 *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, the 2011 *Dear Colleague Letter: Sexual Violence* ("2011 DCL"), the 2014 *Questions and Answers on Title IX and Sexual Violence* ("2014 Q&A"), the 2015 *Dear Colleague Letter: Title IX Coordinators*, the final regulations regarding the Violence Against Women Act Amendments, and additional guidance focused on the Clery Act, like the U.S. Department of Education's 2016 *Handbook for Campus Safety and Security Reporting*. The U.S. Department of Education formally withdrew both the 2011 DCL and the 2014 Q&A in September 2017, while also issuing additional guidance for institutions at that time. Given that each of these documents was in place at various points over the past three years, all were considered, as appropriate, in assessing the College's Sexual Misconduct Policy and implementation efforts. For example, if an individual shared information about a matter that was alleged to have occurred in 2015, I considered that against the standard that was in place at the time, which would have included the 2011 DCL and the 2014 Q&A. Similarly, as I discussed in the introduction, my review was generally focused on trends and I did not seek to determine if any individual was responsible for specific alleged behavior, as that is the appropriate charge of the individuals named in the various policies at issue.

Finally, it is worthwhile to point out that the U.S. Department of Education is currently revising the implementing regulations for Title IX and, once finalized, these updated regulations will likely change this landscape once again. The College should adapt to those changes, as appropriate under the law and within the College community.

#### **A. Review of Policy/Process**

In terms of the Sexual Misconduct Policy and the accompanying process, it contains provisions that are clearly designed to comply with the previously referenced legal requirements. I noted that each year, the College's Title IX Office and General Counsel sought to update the Policy both to better accommodate the community, but also to ensure that it complied with relevant legal requirements. For example, when the Violence Against Women Act Amendments were made effective prior to the 2015-16 academic year, the Policy reflected that individuals could choose an advisor that they selected and that such advisors could be attorneys. That remains a legal requirement, but it also created the quasi-judicial feel of the Policy, about which many individuals subsequently complained. Similarly, in September 2017, when the U.S. Department of Education eased its prohibition against mediation, while also expanding its expectations around notice, I noted that the College appropriately revised its Policy to encourage mediation in certain limited circumstances while also expanding the notice it provided in letters. Again, each change seemingly expanded the process, but it appeared to have been implemented with the mutual goals of providing an appropriate process to keep individuals safe while also following the relevant laws and guidance.

Still, individuals shared their individual perspective that the Policy was too long, too hard to understand, not-student friendly, or other similar issues. Other individuals appreciated the detail of the College's Sexual Misconduct Policy and understood that it was a complicated area to navigate for many reasons, legal and otherwise. A review of other sexual misconduct policies at other institutions makes clear that there are many ways for such policies to be written and implemented on different campuses. However, any review or revision of the College's Sexual Misconduct Policy

must still protect all individuals involved in such processes as well as satisfying the relevant laws and best practices.<sup>7</sup>

Some individuals also expressed concern that the Title IX Coordinator did not share information in helpful or timely ways. With regard to this concern, the Title IX Coordinator stated that she sought to be careful so as not to be seen as an additional advisor to either party and wanted to avoid providing any an advantage to any party in the process, as her role required she maintain neutrality in the process. For their part, some of employees who were involved in the process as advisors indicated that they were not looking for any advantage or assistance from the Title IX Office, and were instead just posing questions that were designed to help them advise the individuals they were asked to advise. Both the Title IX Coordinator and the other individuals who spoke with me provided examples that credibly supported their positions, but it was not possible to establish a pattern of inappropriate behavior on either side. There were many instances in which the communication could have been more clear. In other instances, the Title IX Coordinator was limited in the information that she could share to protect the integrity of the larger process. Moving forward, the College may choose to be more illustrative in responding to questions, but they must continue to be vigilant that they do not create system of unfairness or bias for either involved party.

Individuals spoke about Title IX staff seeking to protect the College or being unfair, however, many that raised this concern did not have direct experience with the Office or were referring to individuals who were involved in the College's Title IX response well before the modern policy was drafted in approximately 2015-16. Moreover, I reviewed several Title IX files and found that the reports were thorough and there was no indication that any Title IX staff member sought to shortcut, undermine, or impugn the integrity of the process. While some alleged that the College was interested primarily in avoiding such claims for myriad reasons, it is my experience that there is little value in seeking to avoid a claim or "sweep it under the rug," as many described, and there is a clear risk in ignoring such behavior. Rather, the best manner of adjudicating a claim is with a full and fair investigative and adjudication process, and I found no evidence or information that the current administration had advised or sought to stray from that under the current version of the Policy.

## **B. Responsiveness and Time Delays**

Many individuals shared a concern that the Title IX Office was not responsive and there were extensive time delays with regard to specific individual matters. With regard to the entirety of the process, the U.S. Department of Education previously had set a goal for institutions to investigate and adjudicate Title IX matters in 60 days. That guidance has been effectively withdrawn and is not in place anymore; however, many institutions struggled to complete case investigations under that time standard for several reasons. One example is that the more process is provided to both parties, the more time is required for an investigation. For example, the College provides that both parties will be interviewed at least once and then also have a chance to review the final report to suggest changes or additional areas of inquiry. If necessary after this review,

---

<sup>7</sup> During the course of this review, the College established a dedicated Sexual Misconduct Policy Review Committee to conduct a separate review of the Sexual Misconduct Policy. It is my understanding that Daryl Lapp of the law firm Locke Lord will assist the Committee in this task and make specific recommendations to Fr. Boroughs.

investigators may need to question additional witnesses or conduct other appropriate follow up activities, which also often presented challenges when conflicts arose with the academic calendar. In the files I reviewed, many investigations had extensive witnesses to interview, which took time to do appropriately. I did not note any areas of blatant excess or clearly inappropriate judgment in this process. Instead, investigators – and other role players in the process – sought to be thorough and careful in that process, with the byproduct being extensive time to complete the process. The College also typically utilized external investigators to investigate complicated or sensitive cases and such outside investigations take extensive time. The majority of the investigative reports that I reviewed were lengthy, dense documents.

In an effort to provide appropriate process to all parties, the College has also been liberal in granting extensions. One example of this arises frequently in the Investigative Report review process. The College's Sexual Misconduct Policy requires that physical or electronic copies of reports with individuals are not shared out of concern that either party may inappropriately use the sensitive materials contained in those reports to harm the other party. Instead, parties and their advisors are asked to review the Investigative Reports in a secure location and with certain other limitations stated in the Sexual Misconduct Policy. This is a prudent approach to maximize the protection of the information contained in the report, while also giving the parties and their advisors the opportunity to review the Investigative Report and all associated evidence that is relied upon so that the parties can effectively share their experience with the Determination Panel who ultimately adjudicates the allegations in question. However, this in-person, often facilitated review, takes extensive effort and is often met by requests for additional time to review and respond to the lengthy documents. In the instance in which a party has been removed from campus or traveled on their own to a different location (*e.g.*, study abroad, post-graduation employment), the College has gone to some lengths to ensure a proper forum for the individual(s) to review the report. When the College has granted extensions on these – or other issues – the extensions were uniformly provided to all parties to ensure parity of process, but they also added time onto the larger adjudication process. Individuals viewing the process may not always understand the reasons for these time extensions, and the Title IX Office often could not share such details. The Title IX Office needs to continue to evaluate requests to ensure that investigations are thorough and fair while seeking ways to reduce delays and streamline the process.

Several individuals stated a desire for more transparency in the sexual misconduct adjudication process. This concern went beyond transparency into how the process works, given that the Sexual Misconduct Policy and other resources on the College's website describe that process. *See, e.g.*, <https://www.holycross.edu/sexual-respect-and-title-ix/policy>. Rather, individuals sought to receive specific information about allegations made against certain categories of individuals, as well as the outcome of any adjudication into allegations against those same individuals.<sup>8</sup> This is challenging, in my view, for a number of reasons. First, the College is a small

---

<sup>8</sup> The Title IX Office has, in the past, shared general, aggregated statistics with different groups on campus, and it began to publish an Annual Report in 2019, which shares the ways that people report to the Title IX Office in the previous academic year, the number of investigations, the general result of those cases (*i.e.*, responsible or not responsible), and the range of sanctions effectuated. *See* <https://www.holycross.edu/sites/default/files/files/sexualrespecttitleix/titleixannualreportfy18.pdf>. Similarly, the

campus and it was apparent to me that there were a significant number of people who knew (or felt that they knew) an extensive amount about certain individual matters. While the community may have the need to know certain information about a responding party, for example, it must be considered that sharing information about a certain responding party may also inadvertently disclose information about a complaining party. In most instances, absent an ongoing threat of physical harm, complaining parties should be provided appropriate discretion and autonomy about what aspects of their experience they wish to share with a larger community. If potential complaining parties believe that their experiences would be shared broadly or even within a certain department on campus without their consent or knowledge, it may make them hesitate to seek resources or accommodations or make a report. Similarly, individuals accused of misconduct should be allowed a level of privacy if they are found not responsible. Finally, in small communities, the liberal sharing of such information can create investigative challenges, insofar as individuals involved in the process may substitute public sentiment for their own experiences and may not be able to perform their appropriate neutral role.

Several individuals expressed reservations and concerns about the Title IX Office. When pressed, many community members reflected that the frustration was with the College's general response to sexual misconduct and that the Title IX Office bore the brunt of decades of institutional frustration. While some expressed legitimate concerns, others accused the Office of significant transgressions without presenting evidence or first-hand knowledge. The most recent Title IX Coordinator was also subjected to several personal attacks, including having intimidating signs posted on her office door, being publicly ridiculed in a video circulated on campus, having individuals confronting her at public College events that she attended with her family, and having event organizers fail to invite her to Title IX themed-events and then demanding her immediate presence in front of an audience. Regardless of personal feelings about any individual or topic, this behavior was also inappropriate.

### Recommendations

1. Increase Resources for the Title IX Office: The Title IX Office is, generally speaking, understaffed given the critical role it plays on campus. I recommend that the College review this situation to identify ways to increase staffing appropriately. For example, the College may consider an additional Deputy Title IX officer and/or an internal investigator, or enhanced technology to streamline case processing and tracking. (I referenced the potential purchase of EthicsPoint or a similar incident reporting/tracking tool above, and that would also satisfy concerns in this area, as well.) In conducting this review, I did note that the College has sought to hire additional staff to fill these challenging roles in the past, but its

---

College publishes an Annual Security and Fire Safety Report pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (more commonly referred to as the "Clery Act"), which describes policies and tracks the number of reports of a broad range of inappropriate behavior. *See* [https://www.holycross.edu/sites/default/files/files/publicsafety/holy\\_cross\\_2018\\_annual\\_security\\_and\\_fire\\_safety\\_reports\\_1.pdf](https://www.holycross.edu/sites/default/files/files/publicsafety/holy_cross_2018_annual_security_and_fire_safety_reports_1.pdf). Finally, the College provides timely warnings when certain crimes are reported to any campus security authority or the local police, when the College determines that the incident represents an on-going threat to the campus community, or, in some circumstances, when there is a pattern of crimes that could create a safety concern for the campus.

results have been mixed, in many cases for reasons outside of its control, *e.g.*, a lack of qualified candidates.

2. Incorporate Appropriate Tools to Make the Process More Accessible: The Sexual Misconduct Policy is complex because of the many legal requirements set forth above. Similarly, the investigative reports I reviewed are lengthy and dense because of the efforts taken by the investigators to include all relevant information in an investigation. I do not have a simple solution to remedy either concern. However, the College should continue to create user-friendly training and tools to help guide the community through these challenging processes. Many institutions, for example, utilize Frequently Asked Questions-type documents, or create other content to assist individuals in accessing the relevant policies.<sup>9</sup> Other institutions ask investigators to write in more user-friendly manners or to include user-friendly summaries at the beginning of the documents to assist readers in navigating the complicated information. The College should consider these or any other avenue that is appropriate to help its community understand these critical materials.
3. Expand Sexual Misconduct Prevention and Education Related Efforts: The Title IX Office is also charged with conducting and assessing climate surveys, recognizing and responding to concerning trends on campus, and otherwise providing sexual misconduct-related education around common concepts that include consent, alcohol and drug use, bystander intervention, the impacts of trauma and relationship violence, the way that sexual misconduct may impact underrepresented groups on campus, and other related-endeavors. The College has begun these efforts, but they are not robust. I recommend the College create a strategic plan to continue and expand these efforts with the Title IX Office and other groups on campus, *e.g.*, the Counseling Center.
4. Streamline Educational Programming: Many groups within the College community expressed a desire to be involved in certain prevention/education activities surrounding sexual misconduct. For example, individuals historically associated with Sexual Assault Facts, Education, and Response (“SAFER”) and certain additional faculty expressed continued interest in being part of the sexual misconduct prevention efforts and the efforts to improve the campus environment with regard to this issue. Other individuals recounted instances when these groups had an unclear institutional mandate or were operating redundantly or in opposition to other groups on campus. As part of the strategic plan recommended above, I also recommend making clear which groups will be entrusted with each activity. The Title IX Office certainly has a large role in this effort, as it is the office that is charged with overseeing the College’s Sexual Misconduct Policy. However, other groups can provide important input, particularly insofar as sexual misconduct can impact anyone in the community and different offices or individuals may be more effective in communicating to different groups on campus, whether LGBTQIA+, racial, ethnic, or religious minorities, athletes, staff, etc. Currently, different groups – like the Office of Diversity and Inclusion, the Chaplain’s Office, or the Athletic

---

<sup>9</sup> I noted positively that the College has already created some of these tools to assist individuals in understanding aspects of the Title IX process. See <https://www.holycross.edu/campus-climate/title-ix-qa> and <https://www.holycross.edu/campus-life/public-safety/timely-warning-and-emergency-notification-information>.

Department – appear well-positioned to reach certain of these groups, and I recommend that the College develop an organized approach to leverage these and other resources to address the issue of sexual misconduct on campus.

## V. **PHYSICAL SAFETY AND SECURITY MEASURES**

The College’s campus is comprised of a mix of historical buildings and more modern facilities. Some of these facilities present potential safety and security issues. For example, some older facilities have isolated office spaces, small practice rooms with no windows or observation points, performance areas with only a single entry point, and insufficient key control for locking doors, among other issues. Newer buildings were typically much improved in this regard, but still create potential safety and security challenges because of their specific usage. Understanding the usage of the facility, *i.e.*, who typically utilized the space and at what times, was important to this review insofar as I was not assessing the architectural integrity of a facility, but rather, was assessing the challenges that may be created through their practical usage. The following recommendations were made to the College.

### Recommendations

1. Continue Investment in Physical Security: During the course of my review, I shared my specific concerns and, as detailed in Fr. Boroughs’ communications, many safety enhancements have been made or are currently being put in place. This includes the installation of security cameras strategically located across campus, as well as the redesign or alteration of certain physical spaces to include greater safety features. The College also recently hired Deputy Chief Shawn Bavieri, who has experience and expertise utilizing technology to enhance campus safety, to assist the Director of Public Safety in improving campus technology to address safety considerations. I recommend that the College continue reviewing the Community’s safety needs and, as appropriate, strategically investing in physical security enhancements.
2. Balance Safety Enhancements with Personal Privacy: With regard to these changes to the physical safety of campus and the enhanced technology, the College should remain thoughtful to maintain a balance between physical safety and the privacy concerns of individuals. For example, the College should not seek to install security tools that could deprive an individual of privacy in locker rooms, bathrooms, changing rooms, training rooms, or other places where individuals have an expectation or need for privacy. Balancing safety needs and privacy concerns is often dependent on individual circumstances, and the College should strive to maintain that balance moving forward in any safety enhancements considered for the campus and/or applied to individual situations.
3. Continue Monitoring Safety Challenges as Facility Usage or Risk Evolves: During this review, several people raised concerns about the location of certain academic departments or the usage of certain performance areas, for example. Generally speaking, the physical spaces, alone, did not create a risk of harm, but they would be one factor in a larger analysis regarding the behavior in question, the usage of the facility at the time, the

actors in question, and other relevant details. A primary aspect of campus security is constant vigilance and flexibility of approach as new challenges arise. The College should continue to consider the usage of its facilities and the risks that may evolve from current usage or changing usage of those facilities. Similarly, its Title IX Coordinator should continue monitoring reports of sexual misconduct – adjudicated or not – to determine if there are any trends that should be addressed by the College. When concerns are identified, they should be considered seriously and appropriate improvements made promptly.

\*\*\*

As stated in the introduction, this review sought to capture at a high level the information learned in the course of my work and the related recommendations made to the College in these areas. During the course of my review, I tried to protect the privacy of individuals who spoke with me, while also providing the autonomy for individuals to share that which they were comfortable sharing. I would like to conclude by again extending my thanks to the many people who shared information with me. The College's culture, structures, and procedures will be enhanced in no small part because of their courage and their contributions.