

Policies and Procedures Manual

Title:	Discrimination and Discriminatory Harassment Policy and Process for the Investigation and Resolution of Complaints
Policy Administrator:	Director of Human Resources
Effective Date:	November 1, 2019 ¹
Approved by:	General Counsel

Purpose:

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

Policy:

This policy applies to and prohibits discrimination and discriminatory harassment on the basis of race, religion, color, national origin, age, veteran status, disability, genetic information, or any other legally protected status not addressed by the Sexual Misconduct Policyⁱ and to any matter referred to this policy under the Sexual Misconduct Policy. This policy also prohibits retaliation.

It is the policy of the College to adhere to all applicable state and federal laws prohibiting discrimination and discriminatory harassment. The College does not discriminate unlawfully in admission to, access to, treatment in or employment in its programs and activities on the basis of a person's race, religion, color, national origin, age, marital

¹ This amended Discrimination and Discriminatory Harassment Policy and Process for Investigating and Resolving Complaint is effective as of November 1, 2019. Complaints made or claims reported prior to November 1, 2019 will generally be reviewed under the prior Discriminatory Harassment Policy (adopted effective as of August 1, 2018, as amended), unless otherwise determined by the Director of Human Resources, in his/her sole discretion, with respect to continuing or ongoing violations or other pertinent circumstances.

or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, gender identity or any other legally protected status, while reserving its right where permitted by law to take action designed to promote its Jesuit and Catholic mission.

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

The following persons have been designated by the College to respond to inquiries regarding this policy:

David Achenbach
Director of Human Resources
College of the Holy Cross
1 College Street
O'Kane Hall, Room B72
Worcester, MA 01610
508-793-3320
dachenba@holycross.edu

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

The College takes complaints seriously, will respond promptly and, where it is determined that improper conduct has occurred, will act to end the misconduct and take appropriate corrective action.

I. APPLICATION

This policy applies to and prohibits discrimination and discriminatory harassment on the basis of race, religion, color, national origin, age, veteran status, disability, genetic information, or any other legally protected status not addressed by the Sexual Misconduct Policy and to any matter referred to this policy under the Sexual Misconduct Policy. This policy also prohibits retaliation.

Sexual Misconduct Policy. The Sexual Misconduct Policy applies to and prohibits discrimination and discriminatory harassment on the basis of sex, gender, sexual orientation, gender identity, or marital or parental status (including pregnancy and pregnancy related conditions). To review the Sexual Misconduct Policy, reporting

resources, other College and community resources, including confidential resources, availability of interim measures, and related investigation and resolution procedures, please see the following link: [Sexual Misconduct Policy](https://www.holycross.edu/sexual-respect-and-title-ix) (available at <https://www.holycross.edu/sexual-respect-and-title-ix>).

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

This policy applies to all College community members, including, but not limited to students, faculty, staff, contractors and other third parties visiting College owned or leased property or participating in any College event, program or activity whether on or off campus. All such persons are responsible for being familiar with and abiding by this policy at all times.

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

II. DEFINITIONS

The following are the definitions of conduct that is prohibited under this policy, together with certain other definitions used in the policy. If you have any questions about a definition or application of any of these terms, the policy in general, or the resources available to you as a member of the College community, please contact the Director of Human Resources or the Associate Dean of Student Affairs.

- A. **Discrimination**. An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's race, religion, color, national origin, age, veteran status, disability, genetic information, or any other legally protected status (other than those addressed under the Sexual Misconduct Policy). Discrimination may be classified as either disparate impact (facially neutral practices that fall more harshly on one group than another and cannot be justified by business necessity) or disparate treatment (treatment of an individual that is less favorable than treatment of others based upon unlawful discriminatory reasons).

Examples:

- Refusing to hire or promote a person because of the person's age (any age over 40);
- Treating persons differently from others because of assumptions about, or stereotypes regarding, the aptitude, intellectual ability or interest of a group based upon race, religion, color, national origin, age, veteran status or disability;

- Unlawful disparity in the terms, conditions and privileges of employment based upon race, religion, color, national origin, age, veteran status, disability or genetic information;
- Difference in treatment in educational programs based upon race, religion, color, national origin, age, or disability.

B. Discriminatory Harassment. Unwelcome conduct that is based on or motivated by an individual's actual or perceived race, religion, color, national origin, age, veteran status, disability, genetic information, or any other legally protected status (other than those addressed under the Sexual Misconduct Policy) that is severe, persistent, or pervasive and creates an intimidating, hostile or offensive living, working or educational environment, or has the purpose or effect of unreasonably interfering with an individual's employment, academic performance, education, or participation in extracurricular programs or activities.

Discriminatory harassment may take many forms, including physical, verbal, and nonverbal acts and written statements. Discriminatory harassment does not have to include intent to harm or be directed at a specific target.

Examples of conduct contributing to discriminatory harassment include:

- Unwelcome conduct or material that denigrates or shows hostility or aversion to an individual because of his/her/their race, color, religion, age, national origin, veteran status or disability;
- Epithets, slurs, negative stereotyping that relate to race, color, religion, age, national origin, veteran status or disability;
- Threatening, intimidating, or hostile acts that relate to race, color, religion, age, national origin, veteran status or disability.

C. Retaliation. Intentionally engaging in conduct to:

- Adversely affect a person's educational, living, or work environment because of their good faith participation in the reporting, investigation, and/or resolution of a report of a violation of this policy; or
- Discourage a reasonable person from making a report or participating in an investigation under this policy, any other College policy, or any other local, state, or federal complaint process, e.g., filing a complaint with an entity like the U.S. Department of Education.

Retaliation includes, but is not limited to, acts or words that constitute intimidation, threats, or coercion intended to pressure any individual to participate, not participate, or provide false or misleading information during any proceeding under this policy. Retaliation may include abuse or violence, other forms of harassment, and/or making false statements about another person in any manner or media with intent to harm their reputation.

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

- D. **Other Violation.** Engaging in other conduct which is prohibited by this Policy (e.g., recording the proceedings) or failure to comply with a duty or obligation set forth in, or imposed pursuant to, this policy (e.g., duty of honesty, duty of cooperation or duty to report).
- E. **Prohibited Conduct under Sexual Misconduct Policy.** The definitions of conduct that is prohibited under the [Sexual Misconduct Policy](https://www.holycross.edu/sexual-respect-and-title-ix) (available at <https://www.holycross.edu/sexual-respect-and-title-ix>) shall apply to any matter referred for resolution under this policy.
- F. **Complaining Party.** The individual who experienced conduct that may have violated the policy.
- G. **Responding Party.** The individual who is alleged to have violated the policy.
- H. **Reporting Party.** A person, who has not experienced but is aware of the occurrence of prohibited conduct, who brings a complaint under this policy. In the event that there is a Reporting Party but not a Complaining Party, the College will determine which of the protections provided to the Complaining Party under this policy are also applicable to the Reporting Party.
- I. **Parties/Party.** The Complaining Party and the Responding Party collectively are referred to as the “Parties” and each individually as a “Party.”
- J. **Determination Officer.** The appropriate College official as designated pursuant to Section V.5. below.

III. REPORTING OPTIONS; RETALIATION PROHIBITION; RESOURCES

A. Reporting Options

1. **Non-Confidential Report pursuant to this Policy.** To report a violation, make a complaint, or seek information about the process to resolve complaints or concerns under this policy, please contact:

David Achenbach
Director of Human Resources
College of the Holy Cross
1 College Street

O'Kane Hall, Room B72
Worcester, MA 01610
508-793-3320
dachenba@holycross.edu

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

2. **Criminal Reporting Option.** Individuals who believe that they may have been victims of a crime may file a criminal complaint with the Department of Public Safety (508-793-2222) and/or the local police department (911) where the incident occurred. A criminal offense (such as violence or threat of against a person or theft, damage or vandalism of property) which is motivated in whole or in part by unlawful bias may be a hate crime (as defined by the applicable law).
 3. **Report to Governmental Agencies.** In addition to the above reporting options and the resolution process in this policy, if you believe you have been subjected to unlawful discrimination, discriminatory harassment, or retaliation you may file a complaint with the federal and state government agencies listed in Section VII below.
- B. PROHIBITION OF RETALIATION.** The College will not tolerate retaliation in any form against any persons for their participation or involvement in the reporting, investigation, and/or resolution of matters reported or subject to this policy. The College will take appropriate steps to prevent and/or address retaliatory conduct immediately. Retaliation constitutes a very serious violation of this policy and should be reported immediately to the Director of Human Resources or Associate Dean of Students. Retaliation against any individual for reporting discriminatory harassment, whether by the harasser or from another source, will not be tolerated and will be treated in the same manner as discriminatory harassment itself.
- C. Confidential Resources.** There are several departments within the College community can serve as supports and confidential resources to individuals to both Complaining Parties and Responding Parties. These College employees serve in professional roles in which communications are provided confidential status under the law (e.g., licensed mental health care providers, licensed medical providers, pastoral counselors and clergy) and may not report identifying information about behavior that may implicate this policy without the consent of the individual who supplied the information in question or

otherwise in compliance with law.ⁱⁱ Please see “[College Resources and Community Resources](#)” in the Sexual Misconduct Policy for a list of these resources.

IV. RESOLUTION OPTIONS UNDER THIS POLICY

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

A. College Procedures for Investigation and Resolution of Complaints.

1. ***Investigation and Resolution of Complaints against Students.***

Complaints under this policy and/or complaints referred for resolution by the Title IX Coordinator pursuant to the Sexual Misconduct Policy against students and/or student teams, clubs or organizations will be addressed pursuant to the College’s Community Standards and Disciplinary Procedures for Students using the definitions of the violations set forth in this policy.

2. ***Investigation and Resolution of Complaints against a Faculty Member, Staff Member, or Third Party.***

Complaints against a faculty member, staff member or third party (such as a visitor (which includes, but is not limited to, alumni, applicants, families of employees and students, members of the public) or contractor) are addressed pursuant to Section V. Complaints referred for resolution by the Title IX Coordinator pursuant to the Sexual Misconduct Policy are also addressed pursuant to Section V.

B. Alternative Dispute Resolution. Alternative dispute resolution such as, but not limited to, mediation or facilitated conversations are available as an option and alternative in appropriate cases as determined and arranged in the discretion of the Director of Human Resources. In connection with alternative dispute resolution, the Director of Human Resources may also implement interim remedial measures of the same type, and for the same reasons, as those available in Section V(2), below.

C. Optional Self Help. While no individual is ever required to address discrimination or discriminatory harassment directly with another person, some individuals may prefer to respond to the offending party directly without making a complaint or report. Some ways to do this include telling or writing to the offending party to explain that the conduct is offensive, intimidating or embarrassing; explaining how the offensive behavior affects the person’s work or education; and asking that the conduct stop.

V. PROCEDURE FOR INVESTIGATION AND RESOLUTION OF COMPLAINTS AGAINST A FACULTY MEMBER, STAFF MEMBER OR THIRD PARTY AND COMPLAINTS REFERRED FOR RESOLUTION UNDER SEXUAL MISCONDUCT POLICY.

The following investigation and resolution procedures have been developed to address complaints and concerns about discrimination, discriminatory harassment and retaliation in a prompt, fair and impartial manner.

1. Appointment of Investigator(s). In the case of a complaintⁱⁱⁱ against a faculty member, a staff member, or a third party, which may include a referral of a complaint for resolution by the Title IX Coordinator under the Sexual Misconduct Policy, the Director of Human Resources will assign at least one investigator after consultation with the supervisory vice president, Provost, or President (or, in the event that a complaint relates to a vice president, Provost or the President, the Director of Human Resources shall consult with the General Counsel). At the College's discretion, the investigator may be an internal or an external investigator and more than one investigator may be assigned.
2. Interim Measures. At any point in the investigative process, including at the beginning or conclusion of an investigation and/or at the disciplinary stage, the College may implement interim remedial measures to address the Complainant's safety, health or well-being and to prevent interference with the Complainant's educational, employment, or other opportunities. Examples of interim measures may include, but are not limited to, no-contact orders, requests for academic adjustments, changes to living, working, dining, transportation, working and/or immigrant arrangements, statutorily provided leave to employees pursuant to Mass. G.L. c. 49, §52D, and other measures to address the situations on an interim basis. The Director of Human Resources will assess and implement interim measures in consultation with other College employees as appropriate.
3. Responding Party Acceptance of Responsibility. If at any point before or during the investigation, a Responding Party chooses to accept responsibility under this policy for the alleged policy violation(s) in writing, the investigator(s) may issue findings and recommendations and refer the matter to the Determination Officer for a sanction and/or take other action that is reasonably calculated to address the discrimination or discriminatory harassment and prevent its recurrence.
4. Investigation. The investigation will include separate interviews with the Complainant, the Responding Party, 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 as determined by the investigator(s).
 - a. Interviews.
 - i. The investigator(s) will meet with the Complainant and make a

record of her, his or their statement about the reported conduct and events which may include the following: a description of the incident(s), the name of the Responding Party, the time(s) and location(s) of the incident(s), specific words or actions used, and the name(s) of any witness(es). The Complaining Party will have the opportunity (and is expected to) provide the investigator(s) with any relevant documentation or other items or questions they would like considered or posed by the investigator(s) to any witness or the Responding Party.

- ii. The investigator(s) will next meet with the Responding Party. The Responding Party will be informed of the allegations and will have the opportunity to respond to them, including submitting a written statement if he, she, or they so desire. The Responding Party may submit the name(s) of any witness(es). The Responding Party will have the opportunity (and is expected to) provide the investigator(s) with any relevant documentation or other items or questions they would like considered or posed by the investigator(s) to any witness or the Complaining Party. A Responding Party who is a member of staff subject to a collective bargaining agreement is permitted to attend investigative interviews with a union representative. If the Responding Party refuses to participate in the investigation, the College will base its decision on the other information gathered during the investigation and the inferences drawn from that evidence.
 - iii. Each Party will have an opportunity to respond to the other Party's statement of events.
 - iv. The investigator(s) will exercise discretion in their determination of what information, material, and questions to consider and which potential witnesses identified by the Parties can provide relevant information to the investigation. Any witnesses that the investigator(s) decides should be contacted will be interviewed. Neither Complaining Party nor the Responding Party will be present at witness interviews.
- b. Findings and Recommendations of Investigator(s). The investigator(s) will make his/her/their findings by a preponderance of the evidence presented. The investigator(s) will make recommendations to the Determination Officer as the investigator(s) determine are appropriate. The Director of Human Resources may supplement the recommendations of the Investigator to address and remedy other unprofessional or inappropriate conduct outside of the policy.
5. Report of Findings and Recommendations to Determination Officer. Upon completion of the investigation, the investigator(s) will report his/her/their findings and recommendations to the following College officer (the "Determination Officer"):
- a. In the case of a complaint against a staff member, the supervising vice

- president (except that in the case of an employee in the Athletics Department or staff member who reports to the President, the President or President's designee).
- b. In the case of a faculty member, the Provost and Dean of the College.
 - c. In case of a complaint against a third party, the Vice President of Administration and Finance.
 - d. In case of the President, as identified by the General Counsel.
6. Determination Officer Review and Determination. The Determination Officer will review the investigator(s)'s finding and recommendations. The Determination Officer may also be provided with a summary of the investigator's report drafted by the Director of Human Resources as a method to frame the matter in controversy for review and determination. The Determination Officer may, in whole or in part (a) accept the findings of the investigator(s), (b) refer the matter back to the investigator(s) or one or more alternate investigator(s) for further investigation and/or fact-finding and/or (c) reject or modify the investigator(s)'s findings and recommendations if the Determination Officer believes that the investigator(s)'s findings and/or recommendations are arbitrary, capricious and/or not supported by a preponderance of the evidence after consultation with the College's General Counsel. The decision of the Determination Officer is final and non-appealable.
7. Sanctions and Other Measures. Upon completion of the investigation and following consideration of the investigator(s)'s recommendations, the Determination Officer shall take appropriate action if the findings reveal that the Responding Party engaged in actions or conduct that violate this policy, including disciplinary action appropriate to the seriousness of the violation. Appropriate disciplinary actions against a Responding Party found to have violated this policy may include, but are not limited to, one or more of the following:
- Warning
 - Reprimand
 - Mandatory counseling and/or training
 - No contact order
 - Removal from or ineligibility for appointment to specific College duties, responsibilities, rights or privileges
 - Reduction in compensation
 - Probation
 - Temporary suspension (with or without pay)
 - Dismissal or termination
 - Non-renewal of a contract
 - Restriction of rights or access to College property and/or resources
 - With respect to matters with respect to any Responding Party referred for resolution by the Title IX Coordinator under the

Sexual Misconduct Policy, any additional sanctions set forth in the Sexual Misconduct Policy.

In cases in which tenured faculty members are found to have violated this policy and in which termination is the action recommended after the procedures outlined in this policy have been followed, the process outlined in the *Statutes of the Faculty* for actions against such tenured faculty members will then be followed.

The Determination Officer may also identify additional remedies to address the effects of the conduct on the impacted Party and broader remedial action for the campus community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. In addition, additional measures may be considered as described in Section VIII.J below.

8. Notification. The Complaining Party and the Responding Party will be notified in writing whether a violation of the policy was found. The Director of Human Resources may also inform other College officials with a legitimate educational or employment interest about the outcome or the finding(s).
9. Record Retention. The College will retain documentation of all investigations, including allegations, any findings, and any disciplinary action until, at a minimum, the last person involved has separated from the College. The notes of each investigator will be for the investigator's own use during the investigation and will not be made available to the Parties or any witnesses.
10. Timetable for Investigation. The College recognizes that the interests of all persons are best served by the prompt investigation and resolution of harassment complaints. However, difficulty in scheduling meetings and conducting an investigation may make strict adherence to timetables difficult. Therefore, the following schedule is suggested, but not required:
 1. Appointment of one or more investigator(s) within ten business days after a complaint is made.
 2. The initial meeting between the Complaining Party and the investigator(s) should take place within ten business days of the date of appointment of the investigator(s).
 3. The initial findings and recommendations of the investigator(s) should be reported to the Determination Officer within ten business days of completion of the investigation.
 4. The Determination Officer should render a decision within ten business days of receiving the findings and recommendations of the investigator(s) (which decision may include a determination that further investigation is required).
 5. Final action should be taken on the recommendations of the investigator within ten business days after approval by the Determination Officer.

VI. ACADEMIC FREEDOM

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

VII. STATE AND FEDERAL REMEDIES

In addition to the resolution process in this policy, if you believe you have been subjected to unlawful discrimination, discriminatory harassment, or retaliation you may file a complaint with the government agencies set forth below. Using the College's investigation and resolution process does not prohibit you from filing a complaint with these agencies. Each of the agencies has a short time period for filing a claim (generally ranging between 180 to 300 days^{iv}).

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

VIII. ADDITIONAL MATTERS.

- A. Duty to Report. All members of the College community are encouraged to report incidents of unlawful discrimination, discriminatory harassment and retaliation to the Director of Human Resources or the Title IX Coordinator.

Each College trustee, administrator, faculty member, or employee, other than the confidential resources described below, who learns of an allegation of unlawful discrimination, discriminatory harassment, or retaliation toward any member of the College community is required to notify the Director of Human Resources or the Title IX Coordinator promptly. Any questions about the reporting or confidentiality status of an individual should be directed to the Director of Human Resources or the Title IX Coordinator.

College employees who serve in professional roles in which communications are provided confidential status under the law (e.g., licensed mental health care providers, licensed medical providers, pastoral counselors and clergy) are not obligated to report identifying information about behavior that may implicate this policy or the Sexual Misconduct Policy without the consent of the individual who supplied the information in question or otherwise in compliance with law.ⁱ However, these confidential resources are instructed to inform individuals of their right to file a complaint under those policies. 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.

- B. Duty of Cooperation. All Parties and witnesses are obligated to cooperate with the persons charged with implementing this policy and these procedures. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under this 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 this policy. The College will act with discretion with regard to the privacy of individuals and the sensitivity of the situation when it receives a report of conduct that could trigger this policy. Absent special circumstances, investigating personnel will share information with College personnel who assist in implementing the College's policies and procedures.

- D. Requests for Confidentiality or No Investigation. 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 confidentiality or a request that the College not investigate a matter or a request to not continue with an investigation where a Complaining Party is unwilling to participate in further investigation. 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, including, without limitation, the seriousness of the alleged behavior, whether there have been other complaints or reports about the Responding Party, and the rights of the Responding Party to receive information about the Reporting Party or Complaining Party and the allegations if an investigation with the potential to lead to sanctions may result. If the College determines to proceed, the College will inform the Complaining/Reporting Party prior to proceeding and will to the extent possible share information only with the individuals responsible for handling the College's response and others involved in the investigation. In the event that a Complaining/Reporting Party requests that the College inform the Responding Party that the Complaining/Reporting Party asked the College not to investigate or seek discipline, the College will honor the request and inform the Responding Party that the College made the decision to proceed. If the College does not proceed, the College will consider broader remedial action, such as increased or targeted education or prevention measures, increased monitoring, security or supervision, conducting surveys and/or revisiting its policies and practices.
- E. 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.
- F. Recording the Proceedings. The parties are not permitted to make video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under the policy. The Director of Human Resources may make exceptions to this prohibition in limited circumstances if such person concludes, in his/her/their sole discretion, that a recording is warranted, and upon written request of the Party seeking the recording that explains the need for the recording.
- G. Special Circumstances. The Director of Human Resources retains the right to determine, in his/her/their sole discretion, if the College will address a report of conduct under this 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 it is otherwise in the best interest of the College and/or the

community to do so. In addition, when an investigation in an employee or third party matter indicates that there may be possible violations of other College policies, rules, procedures or agreements, in addition to the violation hereunder, the Director of Human Resources will consult with relevant College personnel and may use the investigation and resolution procedure set forth in this policy to determine whether such violation took place.

- H. Designees. Where a College official or employee is listed as the designated point of contact for any role in the policy, he/she/they (or their supervisor) may designate another College official or employee to assume the role at issue, as necessary and appropriate.
- I. Reasonable Accommodations. The College of the Holy Cross is committed to making its facilities, programs, and services accessible to all individuals in compliance with applicable law. Consistent with federal and state law, reasonable accommodations will be provided to individuals with disabilities.
1. Employees. Employees, applicants for employment, and third parties with disabilities who wish to request reasonable accommodations should contact Human Resources to discuss the availability of reasonable accommodations or to obtain documentation guidelines. This includes the right to reasonable accommodations in connection with pregnancy or a condition related to pregnancy including, but not limited to, lactation, or the need to express breast milk for a nursing child. Please see the [Reasonable Accommodation Procedures for Employees, Applicants for Employment and Third Parties](https://www.holycross.edu/sites/default/files/files/policyprocedure/adminfinance/forms/final_procedures_for_applicant_and_employees_11-27-2018.pdf) (available https://www.holycross.edu/sites/default/files/files/policyprocedure/adminfinance/forms/final_procedures_for_applicant_and_employees_11-27-2018.pdf)
 2. Students. Students who desire to request reasonable accommodations should contact the Office of Disability Services to discuss the availability of reasonable accommodations or to obtain documentation guidelines. Please see <https://www.holycross.edu/health-wellness-and-access/office-disability-services> for further information.

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

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

1. Hate Crimes - Reporting, Investigation and Resolution. Hate crimes include crimes that are motivated by a consideration (real or perceived) of race, religion, color, national origin, age, marital or parental status (including pregnancy and pregnancy related conditions), veteran status, sex, disability, genetic information, sexual orientation, gender identity or

other unlawful basis, as those crimes are defined under applicable law. Individuals who believe that they may have been victims of a crime may file a criminal complaint with the Department of Public Safety (508-793-2222) and/or the local police department (911) where the incident occurred. An individual may make both a criminal complaint and a complaint to the College under this policy (or a report pursuant to the Sexual Misconduct Policy for violations of that policy).

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

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

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

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

Additional responses to manifestations of hate and bias in our community can include restorative measures or dialogue on campus. Where hate crimes and discrimination and discriminatory harassment incidents are being investigated pursuant to College policies and procedures, additional responses to such incidents must give due regard to the privacy of individuals and sensitivity of the situation subject to investigation including the rights and obligations of parties as set forth in those policies. The College will also comply with the Family Educational Rights and Privacy Act. Generally, there will not be any discussion of the facts and circumstances outside of the investigation process. These important considerations may impact the types of additional responses and/or the timing of additional responses.

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

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

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

The need for dialogue can also arise because of local, national or world events that impinge on our community. When members of Holy Cross community anticipate a need for campus dialogue due to local, national or world event(s), they should bring this to the attention of the Title IX Coordinator, the Director of Human Resources, the Vice President of Student Affairs/Dean of Students, the Chief Diversity Officer, and/or the Associate Dean of Students for Diversity and Inclusion.

Related Information:

Title: MCAD http://www.mass.gov/mcad/

Title: EEOC	http://www.eeoc.gov/
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ⁱ Please see the Sexual Misconduct Policy for College prohibitions regarding discrimination and discriminatory harassment on the basis of sex, marital or parental status (including pregnancy and pregnancy related conditions), sexual orientation, gender identity, sexual violence, other inappropriate sexual contact, sexual exploitation, dating and domestic violence, stalking and retaliation.

ⁱⁱ Confidential resources generally will not share identifiable information without the reporting individual's permission, unless:

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

Please note that such employees who receive reports when not functioning in their licensed or pastoral capacity (e.g., when acting as an administrator or teaching a course) are not prohibited from making a report.

ⁱⁱⁱ If the Vice President for Student Affairs and Dean of Students, the Provost and Dean of the College, or the Director of Human Resources has reason to believe (other than as a result of complaint made under this policy) that discrimination, discriminatory harassment, or retaliation has occurred, they may elect to proceed with an investigation without a complaint.

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