

Sexual Respect and Title IX

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

Overview of the College of the Holy Cross Sexual Misconduct Policy¹

I. Statement of Values

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

II. Commitment to Non-Discrimination

The College rejects and condemns all forms of harassment, discrimination, retaliation and disrespect, and is committed to sustaining a welcoming environment for everyone and especially for those vulnerable to discrimination on the basis of race, religion, color, national origin, age, marital or parental status, veteran status, sex, disability, genetic information, sexual orientation or gender identity. It is the policy of the College to adhere to all applicable state and federal laws prohibiting discrimination. The College does not discriminate unlawfully in admission to, access to, treatment in or employment in its programs and activities on the basis of a person's race, religion, color, national origin, age, marital or parental status, veteran status, sex, disability, genetic information, sexual orientation, gender identity or any other legally protected status, while reserving its right where permitted by law to take action designed to promote its Jesuit and Catholic mission. The following person has been designated by the College to respond to general inquiries regarding the College's non-discrimination policies:

¹ This amended Sexual Misconduct Policy, including but not limited to the Process for Resolving Complaints of Sexual Misconduct, are effective as of September 24, 2016. Complaints made or claims reported prior to September 24, 2016 will generally be reviewed under the prior Sexual Misconduct Policy, unless otherwise determined by the Title IX Coordinator, in his/her sole discretion, with respect to continuing or ongoing violations or other pertinent circumstances.

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Worcester, MA 01610
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III. How the College Will Address Sexual Misconduct

The College’s commitment to non-discrimination includes an assurance that the College will not tolerate discrimination or harassment on the basis of sex, sexual orientation or gender identity, including, but not limited to sexual violence, dating or domestic violence, or stalking, or retaliation, in its community. The College follows through on that commitment, in part, through the implementation of a Sexual Misconduct Policy that defines prohibited conduct and the process by which the College will address such conduct in different circumstances. The College’s Sexual Misconduct Policy is composed of several components:

- [Definitions of Prohibited Conduct](#)
- [Process for Resolving Complaints of Sexual Misconduct](#)

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

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

IV. Role of the Title IX Coordinator and the Title IX Team

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

The College’s Title IX Coordinator is:

Elizabeth Canning
Hogan Campus Center, Room 505
508-793-3040
ecanning@holycross.edu

Where the Title IX Coordinator is listed as the designated point of contact for any role in the Sexual Misconduct Policy, he or she may designate a Deputy Title IX Coordinator or other qualified member of the College community to assume the role at issue, as necessary and appropriate. Each of these

individuals is available to receive a report from any member of the College community who believes the Sexual Misconduct Policy has been violated. The Deputy Title IX Coordinators can also assist others, including Responding Parties and witnesses in understanding the College's Sexual Misconduct Policy and procedures.

The College's Deputy Title IX Coordinators are:

Josep Alba-Salas
Stein Hall, Room 414
508-793-2539
jalba@holycross.edu

Rame Hanna
Hogan Campus Center, Room 122
508-793-3718
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Alan Hurley
Human Resources, O'Kane Room 72
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mrosa@holycross.edu

Rose Shea
Fieldhouse

V. College Resources and Other Community Resources

There are several departments within the College community that can be called upon to respond to incidents of behavior that could be subject to the Sexual Misconduct Policy and can serve as supports to individuals in many different ways. These resources are available to both Complaining Parties and Responding Parties.

- A. **Confidential On Campus Medical, Counseling and Pastoral Resources.** Some College resources are individuals designated as “confidential resources.” These College employees serve in professional roles in which communications are provided confidential status under the law (e.g., licensed mental health care providers, licensed medical providers, pastoral counselors and clergy) and may not report identifying information about behavior that may implicate the Sexual Misconduct Policy without the consent of the individual who supplied the information in question or otherwise in compliance with law.² However, these confidential resources are instructed to inform individuals of their right to file a complaint under the Sexual Misconduct Policy and/or with the police and may assist in that process.

The following chart is designed to assist members of the College community in understanding the different reporting obligations held by different community members. Any questions as to the reporting status of an individual should be directed to the Title IX Coordinator.

COMMUNITY MEMBER	STATUS	REPORTING OBLIGATIONS
Health Services Loyola Hall 508-793-2276 (M-F, 9:00-12:00; 1:00-5:00); Nights and Weekends: Contact the Physician On Call at 508-334-8830	Confidential Resource	None, unless they are being consulted outside the scope of their role within Health Services. ¹
Counseling Center Hogan 207 508-793-3363 (M-F, 9:00-12:00; 1:00-5:00); After hours, contact Public Safety (793- 2222) and request to be put in touch with the	Confidential Resource	None, unless they are being consulted outside the scope of their role within the Counseling Center. ¹

² 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

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.

COMMUNITY MEMBER	STATUS	REPORTING OBLIGATIONS
Psychologist On Call.		
Employee Assistance Program (for employees only) 800-828-6025	Confidential Resource	None, except as required by law.
Faculty Ombudspersons: ialvarez@holycross.edu, (508) 479 7246 mschmalz@holycross.edu; (508) 793-2557	Confidential Resource for faculty members	Confidentiality is maintained as a matter of policy except as required by law or when there appears to be an imminent risk of serious harm.
<i>Pastoral Resources</i>		None, unless they are being consulted outside the scope of their role within the Chaplain's Office
Chaplains' Office Campion House 508-793-2448 (M-F, 9:00-5:00) Nights and weekends, After hours, contact Public Safety (793-2222) and request to be put in touch with a Chaplain	Confidential Resources ¹	An employee who is associated with a religious order or denomination as someone who provides confidential counseling, is a confidential resource when functioning within the scope of that recognition as a pastoral counselor (such as celebrating mass or hearing confessions) but may not be a confidential resource when functioning in another capacity (e.g., acting as an administrator or teaching a course)
Jesuit employees and other employees associated with a religious order or denomination		

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

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

You may also make a report or discuss an allegation under this policy to other College employees. The College recognizes that individuals may feel most comfortable discussing incidents, situations and allegations with College employees whom the individual knows well. However, it is important to note that College employees, other than the confidential resources

described above, are obligated by law to disclose reports and information concerning unlawful discrimination on the basis of sex, sexual orientation, gender identity, or marital or parental status, sexual harassment (including, but not limited to, sexual violence, relationship violence, stalking and sexual misconduct), or retaliation toward any member of the College community that is shared with them to the Title IX Coordinator. These employees are known as “Responsible Employees”. With the exception of the confidential resources listed above, all full-time and part-time faculty and employees and Residence Advisors are considered Responsible Employees.

Once a Responsible Employee learns about an incident, allegation or receives a report, the College is on notice and then may be required to investigate. Whenever possible, Responsible Employees will disclose their duty to report incidents before someone reveals information about an incident. The College encourages individuals to speak with a Responsible Employee so that an incident can be investigated and properly resolved.

- C. **Criminal Reporting Options.** Individuals who believe that they may have been victims of a crime may file a criminal complaint with the Department of Public Safety (508-793-2222) and/or the local police department (911) where the incident occurred. An individual may make both a criminal complaint and a complaint to the College under its Sexual Misconduct Policy.

The College encourages individuals to report incidents to the police so the police can take appropriate measures to help individuals and prevent future crimes. However, individuals are never required to report an incident to the Department of Public Safety or the local police.

- Holy Cross Department of Public Safety, O’Kane 5 in O’Kane Basement, 508-793-2222. If you wish to file a report on campus, a trained sexual assault officer in the Department of Public Safety is available to meet with you to receive your report.
- Worcester Police Department, Sexual Assault, 9-11 Lincoln Square (Exit 17 off I-290, turn left), 508-799-8661 (8am - midnight); 508-799-8600 (midnight - 8am)
- District Attorney’s Office, Child Abuse and Sexual Assault Unit, 255 Main Street, Worcester, MA, 508-792-0214

If anyone would like assistance in filing a report with local law enforcement, the Department of Public Safety will help. If you wish to file a report with off-campus authorities, you may choose to go directly to the local police department. The College will provide transportation for you to go to the police department to file a report. You also may choose to have the police come to campus. The College can arrange for a discreet and private place to meet for this purpose.

By filing a report, you are not committed to seeking criminal prosecution of the assailant. However, the College will evaluate its obligation to conduct an internal investigation as described in Section VI.A.1 below.

- D. **Governmental Reporting Options.** If one wishes to file a complaint of unlawful sex discrimination, sexual harassment, including, but not limited to, sexual misconduct, sexual

violence, relationship violence or stalking, or retaliation, outside of the College or in addition to a complaint filed under the College's Investigation and Resolution Procedures, contact the government agencies set forth below.

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

E. Additional Resources and Guidance for Reporting and/or Complaining Parties.

Individuals who have experienced sexual violence, other inappropriate sexual contact, relationship violence, and stalking experience a wide range of normal feelings and have many questions and concerns. No one deserves to be abused, assaulted or stalked. We want you to know that you are not alone. There are many resources at the College and other local and national resources to assist individuals.

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

1. **Consider Steps to Preserve Evidence.** Any person who has experienced sexual violence is encouraged to take steps to preserve evidence of the incident, as doing so may be necessary to the proof of the crime or to obtain a protective order. Your clothing and surroundings may contain valuable evidence. Try to refrain from going to the bathroom unless you save a urine specimen in a clean container. Try to refrain from drinking, showering, douching, brushing your teeth, combing your hair, changing your clothing, or straightening up anything. It is natural to want to do these things, yet it is important that a physician be able to examine you as you are from the incident. If you need to change your clothes, place each garment worn during the incident in a separate paper (not plastic) bag. If the incident involves any written or electronic communications (such as texts, pictures, videos, social media posts, phone calls), try to preserve copies and not delete the originals.
2. **Confidential Off-Campus Medical Attention after Sexual Assault or Other Violence.** Medical attention is strongly encouraged to treat any possible injuries, including internal injuries or infections, even if there is no visible injury. Please note that there are some medical actions that are more effective if taken within a few days after an offense, such as sexually transmitted infections, pregnancy testing, evidence collection and toxicology testing if there are signs that drugs or alcohol facilitated the offense. Prompt medical attention may be especially helpful to prevent the transmission certain of sexually transmitted infections, such as HIV, as long as medications are administered within the first 24-72 hours following an assault. Generally one may discuss the incident with licensed medical personnel on a confidential basis.

For these reasons, the College recommends that any person who has experienced sexual violence to obtain medical assistance at a hospital immediately after or within 72 hours of a sexual assault. These providers offer physical exams and provide sexual and reproductive health services (e.g., sexually transmitted infections and pregnancy testing). Sexual assault nurse examiners are available to collect evidence in the event the individual seeks to pursue criminal charges or a protective order.

- St. Vincent's Medical Center, Emergency Room, 508-363-6025
- University of Massachusetts-Memorial Hospital, Emergency Room, 508-363-6025
- University of Massachusetts-University Campus, Emergency Room, 508-334-3511
- University of Massachusetts-University Campus, Emergency Mental Health, 508-856-3562

Department of Public Safety officers will transport you to the hospital without the need to disclose the purpose of the visit. You may also secure a cab through Health Services or be transported by friends to the hospital.

A Sexual Assault Medical Examination is used to (a) collect evidence important in criminal prosecution or a civil case; and (b) treat possible injuries or illness sustained from the offense. Having the examination provides an opportunity to obtain any possible evidence necessary to support your case should you choose to handle the matter through the criminal justice or other legal process. This examination is a voluntary procedure and it does not commit you to any legal action. You are not required to make a police report. Any evidence collected during the examination is held up to six months in a confidential file which is

identified only by a number, not a name. It is an individual's right to ask for a sexual assault nurse examiner to perform the examination.

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

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

The Director of Health Services is available to assist individuals in determining what resources are available. A confidential meeting can be scheduled by calling Health Services at 508-793-2276. The staff can provide immediate care in a safe environment and review available options with you. Transportation to a local hospital with a support person of your choice can be arranged.

Students can also go to Health Services, which is located in Loyola, as described below.

F. Confidential Support On-Campus for Complaining and Responding Parties.

1. **Medical Services at Health Services.** Health Services is available to assist students with immediate needs and to review available medical options. Health Services can offer support, testing and treatment for sexually transmitted infections and follow up appointments for further testing if medically indicated. If medical care is sought weeks, months or years after an incident, Health Services can provide support and perform testing for sexually transmitted infections and treatment for students, if necessary.

The College recommends that any person who has experienced sexual violence obtain medical assistance at a hospital immediately after or within 72 hours of a sexual assault as described above. The Director of Health Services at the College is available to assist survivors of sexual assault and other violence in determining what resources are available. A confidential meeting can be scheduled by calling Health Services at 508-793-2276. Transportation to a local hospital with a support person of your choice can be arranged.

2. **Psychological Counseling at the Counseling Center.** Your visits to the Counseling Center are confidential and no information will be released without your permission

except as required by law.³ You and your therapist will review confidentiality so you are able to make an informed decision about what information you choose to share.

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

The length of time a person is in counseling depends on many factors: circumstances of the incident; other significant events in your life; how you choose to proceed; and social supports available to you.

3. **Pastoral Counseling.** Your visits to the Chaplains' Office are confidential and no information will be released without your permission or as required by law. Holy Cross chaplains³ provide pastoral counseling for both Complaining and Responding Parties. They also work with those who have been sexually assaulted or subjected to dating or domestic violence, or accused of the same, previous to their attending the College. A chaplain can accompany individuals through their healing process by listening to their experience of what happened, affirming the dignity of the individual, and the belief that healing is possible. Questions commonly brought to pastoral counseling include: Why did God let this happen to me? Where is God now? How can I help my family and friends understand what is going on for me? Will I ever feel better again? Is it OK that I am angry with God and others? How can I restore my sense of self-esteem? Will I ever be able to forgive or do I have to forgive?
4. **Faculty Ombudsperson.** The Faculty Ombudsperson office is resource for faculty members only. The Ombudsperson is available to assist any member of the faculty with any issues related to the College, including understanding available leave and other measures if they or their family members may be victim-survivors of domestic/dating violence, stalking, or sexual assault. The Ombudsperson maintains confidentiality as permitted by law. Please note that the Ombudsperson will report any imminent threat to the safety of the College community.

G. Consider Reporting and Complaint Options.

³ Confidential resources generally will not share identifiable information without the reporting individual's permission, unless:

- Sharing is required to address an imminent risk of harm to the safety of the community at large, the individual sharing the information, or another member of the community; or
- 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

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..

- Complaint under this Policy. To make a complaint under this policy, contact the Title IX Coordinator or a Deputy Title IX Coordinator as described in Section IV.
- Criminal Report. To make a criminal complaint, dial 911 in an emergency or contact the Department of Public Safety or the Worcester Police Department as described in Section IV.C above.
- Report to Governmental Agency. To make a complaint with a governmental agency, please see Section IV.D above.

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

Pathways for Change, 588 Main Street, Worcester, 800-870-5905 (24 hour); Office 508-852-7600; TTY 888-887-7130. Medical advocacy, peer support, police and court advocacy.

YWCA Daybreak/SAFEPLAN, One Salem Square, Worcester, MA Assault and Domestic Violence 1-508-755-9030 (24 hour). Court advocacy, counseling, emergency shelter, support groups.

For additional rape crisis programs in Massachusetts, please see:
<http://www.mass.gov/eohhs/docs/dph/com-health/violence/rape-crisis-center-list.pdf>.

MA Spanish Language Rape Crisis Center Hotline (Llamanos), (800) 223-5001.

New Hope, Attleboro, Domestic Violence and Sexual Assault Hotline, 1-800-323-HOPE (4673). Advocacy, emergency shelter, SAFEPLAN (24 hours).

Violence Recovery Program (GLBT) at Fenway Health, 1-617-927-6250. Provides counseling, support groups, advocacy, and referral services to lesbian, gay, bisexual and transgender victim-survivors of bias crime, domestic violence, sexual assault and police misconduct.

White House Initiative to Combat Sexual Assault on Campus <https://www.notalone.gov/> (searchable listing of local resources and hotlines).

National Sexual Assault Hotline, 1-800-656-HOPE (4673).

RAINN (Rape, Abuse, and Incest National Network), (800) 656-4673 (hotline); www.rainn.org (online chat).

National Domestic Violence Hotline, (800) 799-7233 (24 hour).

The National Stalking Resource Center, <http://www.victimsofcrime.org/our-programs/stalking-resource-center>.

National Suicide Prevention Lifeline (800) 273-8255 (hotline).

Resources for legal advice or representation or require immigration of visa assistance:

- Community Legal Aid, 405 Main Street, 4th Floor, Worcester, MA, 800-649-3718; www.communitylegal.org. Free, civil legal assistance, including immigration and domestic violence, to low-income residents of central and western Massachusetts.
- Worcester County Bar Association Office, 508-752-1311; 800-622-9700. For lawyer referral service, including a reduced fee program, for all types of legal representation.
- Mass Legal Help, www.masslegalservices.org/FindLegalAid. Free legal aid for qualified individuals: immigration, domestic violence, shelter, etc.
- Public Defender Agency of Massachusetts, 340 Main Street, Worcester, MA. **Criminal defense only**. Free for those who qualify based on income.

VI. Additional Considerations

A. Privacy and Confidentiality: Treatment of Reported Information.

1. **Requests for Confidentiality or No Investigation.** The College will act with discretion with regard to the privacy of individuals and the sensitivity of the situation when it receives a report of conduct that could trigger the Sexual Misconduct Policy. Absent special circumstances, Title IX Coordinator and Deputy Title IX Coordinators will share information with College personnel who assist in implementing the College's policies and procedures.

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

In the case of sexual misconduct allegations, the Title IX Coordinator will evaluate the request for confidentiality or that an investigation/discipline not occur by considering a range of factors including, but not limited to, whether:

- There have been similar complaints about the same individual
- There appears to be a pattern of perpetration
- The alleged responding party has a history of violence
- The alleged responding party threatened further or future violence
- The misconduct was alleged to have been committed by multiple perpetrators
- The alleged responding party holds a position of power over the alleged victim or others
- The alleged victim is a minor
- The College possesses no other means to obtain relevant evidence

The presence of one or more of these factors may lead the College to commence an investigation. If so, 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.

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

B. Duty to Report Sex Discrimination, Sexual Harassment, and Retaliation.

All members of the College community are encouraged to report incidents of unlawful discrimination or harassment on the basis of sex, including, but not limited to, on the basis of sex, sexual orientation, gender identity or marital or parental status, as well as sexual violence, relationship violence, and stalking, and retaliation to the Title IX Coordinator or a Deputy Title IX Coordinator.

Each College trustee, administrator, faculty member, or employee, other than the confidential resources described above, who learns 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 is 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). Any questions about the reporting or confidentiality status of an individual should be directed to 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 the Sexual Misconduct Policy without the consent of the individual who supplied the information in question or otherwise in compliance with law.⁴ However, these confidential resources are instructed to inform individuals of their right to file a complaint under the

⁴ Confidential resources will generally 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

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

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

Any questions as to the reporting or confidentiality status of an individual should be directed to the Title IX Coordinator.

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

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

D. Consensual Sexual Relationships Involving Employees.

- 1. Employee Relationships with Students.** The personal relationships that a student develops with employees may play a fundamental role in that student's education at the College. Given the inherent authority that employees may have over students, a sexual or romantic relationship between a student and an employee can easily raise concerns about sexual harassment. In light of these considerations and the fact that an employee might be called upon to teach, advise, evaluate or supervise any student, Holy Cross administrators, faculty, and staff should be aware that the College prohibits employees from engaging in sexual or romantic relations, even if consensual, with any College student. Any employee engaging in sexual or romantic relations with a student, even if consensual, may be found in violation of the College's Sexual Misconduct Policy. The College may make exceptions to this prohibition on a case-by-case basis and only in coordination with the Director of Human Resources and the Title IX Coordinator.
- 2. Relationships between Supervisory Employees and Others.** Amorous relationships that might be appropriate in other circumstances have inherent dangers when they occur between supervisors and individuals whom they supervise. Such relationships are fundamentally asymmetric and unprofessional, and they raise serious concerns about validity of consent, conflict of interest and fair treatment. In addition, such relationships are to be avoided because they may create an impression on the part of colleagues of inappropriate or

inequitable professional advantage or favoritism that is destructive of the working or learning environment and may raise doubts about the integrity of work performed. In addition to the prohibition of employee/student relationships described above, Holy Cross administrators, faculty, and staff should be aware that any romantic involvement with any individual, including faculty, staff, or person engaged as volunteer, intern, or independent contractor, over whom they have direct supervisory responsibility, even if consensual, is prohibited by this policy. Even when both parties have initially consented to such a relationship, it is the administrator, faculty member, or staff member who, by virtue of his/her special supervisory responsibility, will be held accountable for the unprofessional relationship or abuse of authority. The Title IX Coordinator, together with either the Vice President of Academic Affairs with respect to faculty members, or the Director of Human Resources with respect to other employees will make exceptions to this prohibition in appropriate circumstances (e.g., a dual career couple recruited to work in the same scholarly area), with implementation of any necessary measures to avoid conflicts or the appearance of conflicts of interest.

VII. How the College Will Address Unlawful Discrimination and Harassment, including Sexual Misconduct and Retaliation

The College's commitment to non-discrimination includes an assurance that the College will not tolerate unlawful discrimination or harassment on the basis of person's sex, marital or parental status, sexual orientation, gender identity or any other unlawful basis or retaliation in its community.

The College follows through on that commitment, in part, through the implementation of its Sexual Misconduct Policy and Process for Investigating and Resolving Complaints. These policies and procedures apply to all College community members, and all members of the College community are responsible for being familiar with and abiding by them at all times.

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

The following are the definitions of conduct that is prohibited under the College's Sexual Misconduct Policy. If you have any questions about the definition or application of any of these terms, the Sexual Misconduct Policy in general, or the resources available to you as a member of the College community, please contact the Title IX Coordinator or a Deputy Title IX Coordinator. The contact information for these individuals, as well as other individuals at the College who can provide support is provided in Sections IV and V.

Sex Discrimination. An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's sex, marital or parental status, sexual orientation or gender identity. 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.)

Sexual Harassment

Sexual harassment consists of two basic types:

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

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

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

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

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

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

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

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

Other Inappropriate Sexual Contact. Having or attempting to have sexual contact of any kind other than that defined as "Sexual Violence" with another individual without consent. Other inappropriate sexual contact may include kissing, touching, or making other inappropriate contact with the breasts,

genitals, buttocks, mouth, or any other part of the body that is touched in a sexual manner and without permission.

Sexual Exploitation. Any act committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, personal benefit or advantage or any other illegitimate purpose. Sexual exploitation may involve individuals who are known to one another, have an intimate or sexual relationship, or may involve individuals not known to one another. Examples include, but are not limited to, observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved.

- **Inducing Incapacitation:** This includes the provision of alcohol or drugs to an individual, with or without that individual's knowledge, for the purpose of causing impairment or intoxication or taking advantage of that individual's impairment or intoxication.
- **Media-Based Misconduct:** Photographing or taping someone (via audio, video or otherwise) involved in sexual activity, or in a state of undress, without his or her knowledge or consent. Even if a person consented to sexual activity, photographing or taping someone without his or her knowledge and agreement goes beyond the boundaries of that consent. Dissemination of photographs or video/audio of someone involved in sexual activity, or in a state of undress, without his or her knowledge or consent constitutes a separate and additional act of sexual misconduct.
- **Miscellaneous:** The inappropriate behaviors listed above are not an exhaustive list. The College may consider any other conduct that has a sexual or gender-based connotation under the Sexual Misconduct Policy.

Stalking

More than one instance of unwanted attention, harassment, physical or verbal contact, or any other course of conduct directed at an individual that could be reasonably regarded as likely to alarm or place that individual in fear of harm or injury, including physical, emotional, or psychological harm. This includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, texts or other similar forms of contact are used to pursue, harass, or make unwelcome contact with another person. Stalking and cyber-stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

Relationship Violence (Domestic Violence and Dating Violence)

Relationship violence is any intentionally violent or controlling behavior of one individual by a person who is currently or was previously in a relationship with that individual. Relationship violence may include actual or threatened physical injury, sexual violence, psychological or emotional abuse, and/or progressive social isolation.

Consent and Coercion

Consent is the affirmative and willing agreement to engage in a specific form of sexual contact with another person who is capable of giving consent. Consent cannot be obtained through: (a) the use of coercion, or (b) by taking advantage of the incapacitation or impairment of another individual, including someone who is incapacitated or impaired by intoxication or drugs, is underage, is unconscious, or is asleep. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has chosen freely to engage in a sexual contact.

Coercion is defined for purposes of this section as the application of unreasonable pressure to take part in sexual activity or in any of the prohibited conduct listed in this document. Unreasonable pressure can be exerted through physical or emotional force, intimidation, misuse of authority, or outright threats. When someone makes it clear that he or she does not want to engage in sexual activity or does not want to go beyond a certain point of sexual interaction, continued pressure beyond that point may be considered coercive. Ignoring or dismissing the objections of another person may also be a form of coercion.

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

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

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

Retaliation

Engaging in conduct that may reasonably be perceived 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 the Sexual Misconduct Policy; or
- discourage a reasonable person from making a report or participating in an investigation under the Sexual Misconduct 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 the Sexual Misconduct Policy. Retaliation may include abuse or violence, other forms of harassment, and/or making false statements about another person in print or verbally with intent to harm their reputation.

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

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).

B. Process for Investigating and Resolving Complaints

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

1. Initial Steps; Interim Measures

After receiving a report of conduct that could fall under the Sexual Misconduct Policy, the Title IX Coordinator or his or her designee⁵ will take a number of initial steps. These initial steps are not an investigation. Rather, these initial steps will enable the College to assess the need to take any immediate action to address the safety and health needs of the Complaining Party⁶ and the College community, and to determine the next steps for investigating the reported conduct and the need for any interim measures.

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

- (a) The Title IX Coordinator will contact the Complaining Party and encourage him/her/them to meet to discuss the nature and circumstances of the reported conduct, review relevant documentation that is available and address the need for any interim measures. Examples of interim measures with respect to sexual misconduct may include no-contact orders, requests for academic adjustments, changes to living, dining, transportation, working and/or immigration situations, statutorily provided leave to employees pursuant to M.G.L. c. 49, §52D, and other actions to address the situations and the Complaining Party's immediate physical safety and emotional needs and concerns on an interim basis.
- (b) The Title IX Coordinator will assess the reported conduct to determine whether the circumstances pose a threat to the health or safety of the College community that warrants issuance of a timely warning, a stay-away order for any persons, or any other interim protections, including, but not limited to, suspension of a student, placing an employee on leave, or restricting any individual from other privileges prior to completing an investigation. During the interim action, the College reserves the right to prohibit the individual from entering upon the College's property or participating in any College activities absent written authorization from an appropriate College official. The failure of an individual to comply

⁵ Where the Title IX Coordinator is listed as the designated point of contact for any role in the Sexual Misconduct Policy, he or she may designate a Deputy Title IX Coordinator or another qualified member of the College community to assume the role at issue, as necessary and appropriate.

⁶ The individual who experienced conduct that may have violated the Sexual Misconduct Policy will be referred to as the "Complaining Party." The individual who is alleged to have violated the Sexual Misconduct Policy will be referred to as the "Responding Party." When the Complaining Party and the Responding Party are discussed collectively, they will be referred to as the "Parties" and may be referred to as a "Party." 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 those 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.

with an interim restriction is a violation of this Policy and may lead to additional disciplinary action. The decision to impose interim restrictions will be communicated by the Title IX Coordinator in writing and will be effective immediately.

- (c) The Title IX Coordinator will notify the Complaining Party about: (a) the availability of the Sexual Misconduct Policy; and (b) the right to report and the right to decline to report the matter to Department of Public Safety and/or to local law enforcement if the conduct is potentially criminal in nature (and that such a report will not change the College's obligation to potentially investigate the matter but it may briefly delay the timing of the investigation if a law enforcement agency requests that the College delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct).
- (d) The Title IX Coordinator will notify the Complaining Party of the available resources for seeking medical treatment, counseling, spiritual guidance, or other interim measures. See Sections IV and V.
- (e) If the Title IX Coordinator determines the reported conduct could, in any way, trigger the Sexual Misconduct Policy, he or she will contact the Complaining Party to discuss that determination. In connection with allegations of sexual misconduct, if, at this time, the Complaining Party requests that the process not move forward, the College will weigh that request against the College's obligation to address any risk of harm to the Complaining Party or other individuals in the community and the nature of the incident or conduct at issue. Except in limited circumstances in which a Complaining Party's request not to proceed to investigation is granted, the Title Coordinator will proceed to Section VII.B.3. For further information, please see Section VI.A.1.
- (f) If the Title IX Coordinator determines that the reported conduct would not, in any way, trigger the Sexual Misconduct Policy, he or she will advise the Complaining Party of such in writing and refer the reported conduct to the appropriate administrator for handling consistent with any other appropriate College policy. (If new information is subsequently provided, the decision whether or not to investigate the reported conduct may be reevaluated.)

2. Optional Informal Resolution Procedure.

The following Informal Resolution Procedure may not be used in an effort to resolve allegations of Sexual Violence, Other Inappropriate Sexual Contact, Inducing Incapacitation, Stalking or Relationship Violence, as each of those terms is defined in the Sexual Misconduct Policy.

At any time prior to convening a Determination Panel, a Party may request an informal resolution of a complaint rather than an investigation by contacting the Title IX Coordinator. All Parties and the Title IX Coordinator must agree to informal resolution for this option to be used. The Title IX Coordinator will assess the request for informal resolution against the severity of the alleged violation and the potential risks to campus community members. If the Title IX Coordinator determines that informal resolution is appropriate, the Title IX Coordinator will notify the Parties. The Title IX Coordinator will designate a College representative to facilitate a dialogue with the Parties in an attempt to reach a resolution. The allegation will be deemed resolved when the Parties expressly agree to an outcome that is acceptable to them which is approved by the Title IX Coordinator in consultation with other

appropriate College administrators. A Party may withdraw from the informal resolution process at any time.

The Title IX Coordinator may initiate an investigation at any time that deems it appropriate in his or her sole discretion.

3. The Investigation Phase

- (a) **Notice of an Investigation.** If it is determined that the reported conduct could trigger the Sexual Misconduct Policy and an investigation is required, the Title IX Coordinator will prepare a written notice to the Complaining Party and Responding Party that will include a brief description of the allegations, the portions of the this Policy that are alleged to have been violated, and any interim measures in place about which either Party must be made aware. This written notice does not constitute a finding or a determination of responsibility.
- (b) **Information about Advisors in Connection with Allegations of Sexual Violence, Other Inappropriate Sexual Contact, Relationship Violence and Stalking.** In connection with an allegation of sexual misconduct involving sexual violence, other inappropriate sexual contact, relationship violence or stalking⁷, each Party, including any Reporting Party, may have a single advisor of such Party's choice present during any College disciplinary proceeding, including any related meeting, interview, or hearing, held pursuant to the Sexual Misconduct Policy. Advisors may not participate actively while present at any disciplinary proceeding and may not speak or otherwise communicate on the part of the Party that the advisor is advising. However, the advisor may ask to suspend any meetings, interviews, or hearings briefly to provide private consultation related to the disciplinary proceeding in progress. An advisor is subject to the same confidentiality expectations applicable to others in attendance. Accommodations, including scheduling of interviews or reviews, generally will not be made for any advisers if they unduly delay the process. The advisor is not permitted to attend a meeting or proceeding without the Party without the prior approval of the Title IX Coordinator, as determined in his/her sole discretion. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the Title IX Coordinator. A union-represented employee who is a Responding Party may choose as an advisor a person who is not a union representative, if the Responding Party does not desire to have the union representative participate in the proceeding.
- (c) **Support Services and Resources.** The Parties should review Sections IV and V regarding the available support services and resources at the College and in the community. At the request of either Party or witness, the Title IX Coordinator can discuss further the support services, resources, and options available.
- (d) **Designation of Investigator.** The Title IX Coordinator will designate at least one investigator to conduct a prompt, fair, and impartial investigation of the reported conduct and prepare a report of investigative findings (the "Investigative Report"). At the College's

⁷ Advisors are not permitted in connection with investigations of any other allegations of violations of the Sexual Misconduct Policy. Nothing in the College's Sexual Misconduct Policy is intended to undermine or alter any rights afforded to a union-represented employee, as provided by applicable law or any collective bargaining agreement, including, but not limited to, a union-represented employee's *Weingarten* rights.

discretion, the investigator may be an internal or an external investigator and more than one investigator may be assigned. All investigators – internal or external – will be selected from a group of qualified and trained individuals employed by the College or engaged by the College for the purpose of conducting investigations under the Sexual Misconduct Policy. The Title IX Coordinator will provide the Parties with the name of the person(s) assigned to investigate the reported conduct (the “Investigator(s)”). As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Investigator(s), the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest with regard to the selected Investigator(s). The Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The Title IX Coordinator’s decision regarding any conflicts is final. The Title IX Coordinator may consult with other College personnel (e.g., the chair of the Committee on Faculty Affairs in the case of teaching faculty) to discuss any conflicts of interest.

- (e) **Nature of the Investigation.** The investigation will include separate interviews with the Complainant Party, 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. The Investigator(s) will provide the Parties with written notice of meetings at which their presence is required.
- (f) **The Parties’ Identification of Potential Witness and Documentation.** The Parties have the opportunity (and are expected) to provide the Investigator(s) with the identification of potential witnesses who have specific information about the reported conduct and with whom they would like the Investigator(s) to speak. The Parties also have the opportunity (and are expected) to provide the Investigator(s) any documentation or other items or questions they would like to be considered. All information described in this section must be presented to the Investigator(s) in writing and include a brief description as to how the persons, documents, and/or items are relevant to the reported conduct. This information must be provided to the Investigator(s) during the Investigation Phase and without delay upon becoming aware of it. The Investigator(s) will exercise discretion in their determination of what information to consider and which potential witnesses identified by the Parties can provide relevant information to the investigation.
- (g) **Investigation Prohibitions.** Neither Party will be permitted to question or cross-examine the other Party directly during the investigation or disciplinary proceedings. Moreover, the Investigator(s) generally will not gather or consider information related to either Party’s sexual history outside of the conduct in question.
- (h) **Responding Party Voluntary Agreement to Policy Violation.** At any point prior to convening a Determination Panel, a Responding Party may agree in writing to the alleged violation(s) of the Sexual Misconduct Policy and, in the cases of sexual harassment not involving sexual violence, other inappropriate sexual contact, sexual exploitation, stalking or relationship violence, a proposed sanction. In cases of sexual violence, other inappropriate sexual contact, sexual exploitation, stalking or relationship violence, the individuals responsible for imposing sanctions will determine and impose sanction(s) pursuant to Section VII.B.5(a) below.

4. Investigative Report and Determination of Responsibility by Determination Panel

- (a) Content of the Investigative Report.** At the conclusion of the Investigation Phase, the Investigator(s) will prepare an Investigative Report, which should include a summary of the factual information presented during the Investigation Phase, a separate section where the Investigator(s) point out relevant consistencies or inconsistencies (if any) between different sources of information, and a separate section describing the Investigator(s)' perception of the demeanor of the individuals interviewed. The Investigative Report will not include a determination by the Investigator(s) as to whether a Party has violated the Sexual Misconduct Policy or what sanctions may be appropriate. These determinations will be made by the Determination Panel, as described below.
- (b) Review by the Parties.** The Parties will have an opportunity to review the Investigative Report and may submit written comments about the content of the Investigative Report to the Investigator(s) within five (5) calendar days of the date they are notified that the Investigative Report is available for review. This review will take place at a secure location and in a secure manner determined by the College. The time to submit written comments can be extended for a brief period if the Title IX Coordinator concludes, in his/her sole discretion, that the additional time is warranted. Likewise, the secure location and manner of reviewing the Investigative Report can be modified if the Title IX Coordinator deems it necessary and appropriate. Each Party may have such Party's advisor review the Investigative Report with them. Photographs or any other copies of the Investigative Report are not allowed by either Party or advisor. The comments submitted by the Parties may not exceed ten (10) double spaced pages unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Title IX Coordinator. After reviewing the submissions, if any, from the Parties, the Investigator(s) may determine that either additional investigation is required or no further investigation is needed. If further investigation is conducted, the Investigator(s) will include any additional relevant information in the Investigative Report. The Investigative Report will then be submitted to the Title IX Coordinator. Any submissions made by either Party pursuant to this section, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the Investigative Report.
- (c) Convening the Determination Panel.** The Title IX Coordinator will convene a three member determination Panel (the "Determination Panel") from a previously established pool of College community members trained to decide cases pursuant to this Policy and sexual misconduct cases. In no instance shall the Panel include students. In the event that a Responding Party is a teaching faculty member⁸, at least one of the members of the Determination Panel shall be a tenured faculty member. The Title IX Coordinator will provide the Parties with the names of the persons assigned as the Determination Panel members for their case. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Determination Panel members, the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest in regard to the selected members assigned to the Determination Panel. If a conflict of interest is raised regarding any of the individuals assigned to the Determination Panel, the Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned to the Determination Panel. The Title IX Coordinator may consult with other College personnel (and shall consult with the chair of the Committee on Faculty Affairs in the case of any conflict of interest with respect to a proposed Determination Panel member

⁸ For purposes of this Policy, the "teaching faculty" is defined by reference to Chapter I, Section A of the Faculty Statutes.

who is a teaching faculty member) to assess any conflicts of interest. The Title IX Coordinator's decision regarding any conflicts is final. The Title IX Coordinator will then submit the Investigative Report to the Determination Panel members and set a subsequent date for the Determination Panel to meet to determine responsibility.

- (d) Review and Determination by the Determination Panel.** The Determination Panel will make a determination as to whether or not the Responding Party is responsible for violating the Sexual Misconduct Policy by having engaged in some or all of the reported conduct. The Determination Panel has the authority to accept the Investigative Report without seeking additional investigation, or to ask the Investigator(s) to conduct additional investigation on specific points. The Determination Panel, in its discretion, may invite the Investigator(s) to attend a Determination Panel meeting if the Panel believes it would be helpful to have an opportunity to ask the Investigator(s) any questions arising from the Investigative Report. The Determination Panel also has the authority, in their discretion, to speak directly with any persons identified in the Investigative Report. The Determination Panel, as the ultimate decision-maker in the matter, is provided broad discretion.
- (e) Notification of Decision.** Upon reaching a determination of responsibility, the Determination Panel will provide a written notification of its decision to the Title IX Coordinator. If sanctions are necessary, they will be assigned in accord with Section VII.B.5, below. The notification will consist of a brief statement of the allegations and the determinations made by the Determination Panel and with respect to a Responding Party who is a student, any sanctions that are imposed pursuant to Section VII.B.4. While the notification may, at the discretion of the Determination Panel, include a brief description of the determination process, it will not include any recommendations for sanctions with respect to Responding Parties who are employees or faculty members.
- (f) Standard of Proof.** All findings and determinations of responsibility under the Sexual Misconduct Policy will be made using a preponderance of the evidence standard. This standard requires the determination of whether it is more likely than not that a fact exists or a violation of the Sexual Misconduct Policy occurred.

Please note that the preponderance of the evidence standard is not the standard used for criminal culpability in most jurisdictions and a determination of responsibility under the Sexual Misconduct Policy does not equate with a finding of a violation of criminal laws. Conversely, lack of a prosecution or conviction in a criminal proceeding does not necessarily imply that the College's Sexual Misconduct Policy was not violated. The two procedures are significantly different and utilize different standards for determining violations.

- (g) Student Groups, Organizations and Teams.** A student group, organization or team may be held collectively responsible for a violation of this Policy when one or more members of the group or other individuals associated with the group, organization or team are found responsible for a violation of this Policy and the Determination Panel separately determines that:
- members of the group, organization or team acted in concert with respect to misconduct;
 - the individual found responsible for committing the misconduct was either acting on behalf of the group, organization or team or engaged in an activity sponsored, financed or endorsed by the group, organization or team or its leaders;

- the misconduct grows out of, occurs during, or is related to any activity or event sponsored, financed or endorsed by the group, organization or team;
- any leader, officer, or team captain of group, organization or team had knowledge of the misconduct or incident before or while it occurred and failed to take corrective action; and/or
- a pattern of individual misconduct by members of the group, organization or team is found to exist.

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

5. Determining Sanctions

(a) **Sanctioning Decision.** The College employees responsible for determining sanctions are as follows:

- (i) **Students.** Sanctions regarding students and student groups, organizations and teams will be determined by the Determination Panel. The Determination Panel, in its discretion, may ask a Student Affairs representative to appear before and address the Determination Panel regarding sanctions. The Determination Panel's determination will be shared with the Parties as set forth in Section VII.B.6. Sanctions may be determined during the same meeting in which responsibility is determined, as set forth in Sections VII.B.4(c) and (d).
- (ii) **Teaching Faculty.** The Title IX Coordinator will provide the Vice President for Academic Affairs and Dean of the College ("Dean of the College") with a copy of the Determination Panel's written notification of its determination of responsibility as well as the Investigative Report. The Dean of the College will determine an appropriate sanction(s). If the Dean determines that a sanction of dismissal for is recommended, the sanction will be reviewed pursuant to the *Statutes of the Faculty* (or after such time as the *Statutes of the Faculty* are amended to remove sanctions of dismissal under the Sexual Misconduct Policy from review under *Statutes of the Faculty*, Section VII.B.7(b)). The Dean will then provide written notification to the Title IX Coordinator of the action taken with regard to the faculty member.
- (iii) **Exempt Employees, Other Than Teaching Faculty.** Sanctions regarding exempt employees, as defined by the College, will be determined by the Employee's Vice President (or his/her designee). The Director of Human Resources (or his/her designee) will be consulted on any sanction. The Title IX Coordinator will provide such vice president and director with a copy of the Determination Panel's written notification of its determination of responsibility as well as the Investigative Report.
- (iv) **Non-Exempt Employees.** Sanctions regarding non-exempt employees, as defined by the College, vendors, independent contractors and other third parties will be determined by the Director of Human Resources (or his/her designee). The Title IX Coordinator will provide the Director of Human Resources with a copy of the Determination Panel's written notification of its determination of responsibility as well as the Investigative Report.

(b) Types of Sanctions.

- (i) **Employees, including Faculty Members.** Sanctions imposed with respect to Responding Parties who are employees or faculty members may include, but are not limited to, one or more of the following: dismissal from employment, non-renewal of an employment contract, suspension, probation, reprimand, warning, training and/or counseling, no-contact order, among others.
- (ii) **Students.** Sanctions may include, but are not limited to, one or more of the following: expulsion, suspension, probation, reprimand, warning, restitution, education/counseling, no-contact order, restriction from extracurricular programs or activities, loss of leadership opportunity or positions in activities, housing restriction/relocation, and/or loss or restriction from College employment.
- (iii) **Student Groups, Organizations and Teams.** Sanctions for groups, organizations and teams may include suspension, revocation or denial of registration or recognition, probation, reprimand, warning, restitution, education, restriction, among other possible sanctions
- (iv) **Considerations.** In determining an appropriate sanction, the College may take into account the following:
- The nature and circumstances of the misconduct.
 - The impact of the misconduct on the Complaining Party.
 - The impact of the misconduct on the College community.
 - The disciplinary history of the Party deemed responsible.
 - Any other mitigating or aggravating circumstances in order to reach a fair and appropriate resolution in each case.
 - Range of sanctions typically imposed for similar violations.

Possible sanctions for those found responsible for sexual violence, other nonconsensual sexual contact, domestic/dating violence, stalking and hate crimes:

10 hours community service
15 hours community services
20 hours community service
25 hours community service
Reflection paper
1 hour educational training
2 hours educational training
3 hours educational training
4 hours educational training
5 hours educational training
Probation 1 semester
Probation 2 semesters
Probation 3 semesters
Probation 4 semesters
Probation 5 semesters
Probation 6 semesters
Probation 7 semesters

Probation 8 semesters
Suspension 1 semester
Suspension 2 semesters
Suspension 3 semesters
Suspension 4 semesters
Suspension 5 semesters
Suspension 6 semesters
Suspension 7 semesters
Suspension 8 semesters
Suspension 9 semesters
Suspension 10 semesters
Expulsion/termination of employment

Except for expulsion/termination of employment, all sanctions may be combined with one or more other sanctions listed in Section VII.B.5(b)(i) or (ii) above

- (v) **Additional Remedies.** The sanctioning authority described in Section VII.B.5(a) may also identify additional remedies to address the effects of the conduct on the impacted Party. Remedies may include extending or making permanent any interim or safety measures. If a Complaining Party declined or did not take advantage of a specific service or resource previously offered, the College may re-offer the service as applicable or necessary. The Title IX Coordinator also may consider broader remedial action for the campus community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. In addition, in the Title IX Coordinator may refer any matter raised, but not addressed hereunder, that may potentially violate any other College policy, rule, or procedure to the appropriate College officials to address such matters, irrespective of the finding under this Policy.

6. Notification of Investigation Outcome

Upon completion of Sections VII.B.4 or 5, as necessary, the Title IX Coordinator will inform the Parties simultaneously and in writing of (i) the outcome of the disciplinary proceeding; and (ii) the procedures for either Party to appeal the result of the disciplinary proceeding. The Title IX Coordinator will also inform other College officials with a legitimate educational interest about the outcome of the finding. Notice to these other individuals will be accompanied with a request that the information should remain confidential except in situations in which disclosure is necessary to protect the safety of the community.

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

7. Appeals

(a) All Appeals (Other Than Appeals Involving a Responding Party Who Is a Teaching Faculty Member with a Recommended Sanction of Dismissal).

The following appeal process applies to all appeals other than any appeal involving a determination in which a Responding Party is a Teaching Faculty Member with a recommended sanction of dismissal which are addressed under Section VII.B.7(b) below.

Within seven (7) calendar days of the delivery of the notice of the decision of responsibility and/or sanction, either Party may appeal the decision by submitting to the Title IX Coordinator a letter stating why the Party requesting the appeal believes the determination of responsibility and/or the sanctions were inappropriate. A Party appealing under this section may only appeal on the following grounds:

- **Procedural error** by the Investigator(s) or Determination Panel that materially prejudiced the Party requesting review; and/or
- **Newly discovered material information** that was not known to the Party requesting review and not available to the Investigator(s), the Determination Panel, or the individual determining the sanction, and which likely would have changed the finding of responsibility or the sanction imposed had it been available.

The Party submitting the appeal must set forth in detail the grounds for review and must attach all materials that he or she wishes to have considered in the appeal process. The Title IX Coordinator will provide a copy of the appeal submitted by one Party to the other Party.

The Appellate Officer(s): In the instance of an appeal under this Section VII.B.7(a), the Title IX Coordinator will appoint one or more Appellate Officer or Officers (the “Appellate Officer(s)”) from a previously established pool of College employees who have received training on sexual misconduct cases and appeals; in any case involving a teaching faculty member, there will be a three Appellate Officer panel, including at least one tenured faculty member (selected by the Title IX Coordinator in consultation with the chair of the Committee on Faculty Affairs). The Vice President of Student Affairs (or his/her trained designee) generally will be the Appellate Officer for matters in which a Responding Party is a student. The Title IX Coordinator will provide the Parties with the names of the assigned Appellate Officer(s) for their case. As soon as possible, but no later than three (3) calendar days after delivery of the identity of the assigned Appellate Officer(s), the Parties should inform the Title IX Coordinator in writing of any conflicts of interest in regard to the assigned Appellate Officer(s). The Title IX Coordinator will consider the nature of the conflict and determine if different individual(s) should be assigned as the Appellate Officer(s). The Title IX Coordinator may consult with other College personnel to discuss any conflicts of interest (and shall consult with the chair of the Committee on Faculty Affairs in the case of any conflict of interest with respect to a teaching faculty member assigned as an Appellate Officer). The Title IX Coordinator’s decision regarding any conflicts is final.

The Appellate Officer(s) will decide the merits of the appeal and, in so doing, may consult with the Investigator(s), the Determination Panel, the individual(s) issuing the sanction, or any other individual that the Appellate Officer(s) deems appropriate.

Sanctions of all types (including, but not limited to, any form of suspension, dismissal, or separation from the College) can be imposed, in full or in part, while an appeal is pending at the sole discretion of the College.

The Appellate Officer(s) may deny the appeal and affirm all or part of the determination of responsibility or the determination of sanction, or the Appellate Officer(s) may refer the matter back to the Investigator(s), the Determination Panel, and/or the individual determining the sanction for further consideration. If the matter is referred back to the Investigator(s), the Determination Panel, and/or the individual determining the sanction for further consideration, the Appellate Officer(s) will provide specific instructions with the referral. In the event of a referral for further consideration, the Title IX Coordinator will be consulted and further proceedings may be commenced, as appropriate under the circumstances and consistent with this Policy.

The decision of the Appellate Officer(s) regarding the appeal will be in writing and is final. The Title IX Coordinator will inform the Parties simultaneously and in writing of the outcome of the appeal.

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

Any appeal involving a determination in which a Responding Party is a Teaching Faculty Member with a recommended sanction of dismissal of the Teaching Faculty Member will be reviewed under the *Statutes of the Faculty* only.

8. Timeframe for Completion of Investigation and Disciplinary Process

The College cannot promise the definitive timeframe of this process, but ordinarily will complete its investigation and disciplinary process, if any, within sixty (60) days of the delivery of the written notice of the investigation to the Parties. This time period does not include the time for any appeal. The U.S. Department of Education has made clear that the length of investigations may vary with the complexity and unique factors in each case. Examples of such factors include, without limitation, circumstances in which critical witnesses are unavailable or if law enforcement requests the College temporarily halt its investigation for a brief period of time. Accordingly, all timeframes set forth in this Policy may be altered by the Title IX Coordinator for good cause. The College's overarching goal is that all complaints be investigated in a prompt, fair, and impartial manner.

9. Additional Matters

- (a) Duty of Honesty.** All Parties and witnesses are obligated to be completely honest during the course of the entire process set forth in this Policy. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of the process may be subject to separate College disciplinary action. A report made in good faith, however, is not considered false merely because the evidence does not ultimately support the allegation of violation of the policy.
- (b) Duty of Cooperation.** All Parties and witnesses are obligated to cooperate with the Title IX Coordinator and any persons charged with implementing the Sexual Misconduct Policy and these procedures. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Sexual Misconduct Policy may be subject to separate and/or additional College disciplinary action.
- (c) Respect for Privacy.** The College values the privacy of individuals involved in the reporting, investigation, and/or resolution of matters subject to the Sexual Misconduct Policy. The U.S. Department of Education has provided guidance indicating that there are situations in which it may be necessary for an institution to override a request for privacy or confidentiality in order to meet its obligations under the law. In the event circumstances result in the College overriding a request for privacy or confidentiality to meet its obligations, the College will do so with the utmost sensitivity and respect for the circumstances and the individuals involved. See Section VI.A.1.
- (d) Recording the Proceedings.** The Parties are not permitted to make video, audio, or other electronic, photographic, or digital recordings of any meetings or proceedings held under the Sexual Misconduct Policy or these procedures or the Investigative Report. The Title IX Coordinator may make exceptions to this prohibition in limited circumstances if he or she concludes, in his or her sole discretion, that a recording is warranted, and upon written request of the Party seeking the recording that explains the need for the recording.

- (e) **Follow-up with Reporting Party.** Where the Title IX Coordinator deems appropriate, he or she may contact the Reporting Party to provide an update on the process, the timing and extent of which will be determined by the Title IX Coordinator and depend upon the nature of the allegations and the situation.
- (f) **Prohibition against 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 the Sexual Misconduct Policy. The College will take appropriate steps to prevent and/or address retaliatory conduct immediately. The College includes retaliation in its definition of prohibited conduct under this Policy. See Section VII.A.
- (g) **Amnesty for Students Reporting Sexual Violence, Relationship Violence and Stalking.** The College encourages reporting under the Sexual Misconduct Policy and seeks to remove barriers to reporting. Students may be hesitant to report sexual violence, relationship violence or stalking out of a concern that they, or witnesses, might be charged with a violation of the College's drug and alcohol policies or Community Standards. While the College does not condone such behavior, the College places a priority on the need to address sexual violence, relationship violence and stalking. The College generally will not hold a student who in good faith reports or is a witness during an investigation of sexual violence, relationship violence and stalking under the Sexual Misconduct Policy accountable for disciplinary violations of the College's Community Standards that do not place the health and safety of any other person at risk or create a danger to the College community. The College retains the right to require students to attend counseling or drug/alcohol related courses even in circumstances in which disciplinary conduct will not be pursued under this part.
- (h) **Special Situations.** The College retains the right to determine, in its sole discretion, if it will address a report of conduct under the Sexual Misconduct Policy administratively and outside of the process described herein when the safety of the College community is at risk, if the material facts are undisputed, if there are extenuating circumstances involving either of the Parties, or if the Title IX Coordinator, in consultation with appropriate administrators, determines it is in the best interest of the College and/or the community to do so. Without limiting the foregoing, when an investigative report in a student matter indicates that there may be possible Student Code of Conduct violations in addition to an alleged violation of the Sexual Misconduct Policy, the Title IX Coordinator will consult with the Director of Student Conduct and Community Standards or designee, to determine appropriate Community Standards violations. In these situations the investigation and resolution procedure may follow the Sexual Misconduct Policy to determine whether violations of the Code of Conduct and Community Standards took place in addition to the alleged violation of the Sexual Misconduct Policy as determined by the Title IX Coordinator.

C. State Law Definitions

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

Sexual Harassment

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

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

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

Sexual Assault (Rape, Indecent Assault & Battery)

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

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

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

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

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

Stalking

(compiled from M.G.L. Ch. 265, § 43)

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

Domestic and Dating Violence

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

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

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

Family or household members are defined as “persons who:

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

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

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

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

Retaliation

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

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

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