



HOBART AND WILLIAM SMITH  
COLLEGES

**TITLE IX AND SEXUAL MISCONDUCT POLICY**

**August 14, 2020**

## Statement of Intent

Hobart and William Smith Colleges (the Colleges) are committed to fostering a welcoming, safe, non-discriminatory and harassment-free educational, living, and working environment for all members of the HWS community. The Colleges do not discriminate on the basis of sex in any of their education or employment programs or activities. This Policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 (“Title IX”), Title VII of the Civil Rights Act of 1964 (“Title VII”), New York’s Enough is Enough law, and the New York State Human Rights Law. This Policy complies with these laws as well as requirements under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013 (“VAWA”). The Colleges also comply with all federal and state civil rights laws banning discrimination in private institutions of higher education. The protections of this policy apply without regard to race, color, sex, pregnancy, religion, creed, national origin, familial status, disability, age, marital status, sexual orientation, gender identity, gender expression, veteran status, military status, predisposing genetic characteristics, domestic violence victim status, criminal conviction or any other protected category under applicable local, state, or federal law.

The Colleges require all community members to conduct themselves in a manner that does not infringe upon the rights of others. The Colleges will not tolerate Prohibited Conduct. The Colleges expect all members of our community to foster a safe, welcoming, and respectful environment on campus. The Colleges strongly encourage community members to take reasonable and prudent actions to prevent or stop an act of Prohibited Conduct to which an individual is a bystander.

### I. SCOPE OF POLICY

This Policy applies to all of the Colleges’ community members, including students; faculty; staff; and third parties, such as alumni, volunteers, independent contractors, visitors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, or having any official capacity at the Colleges (“Third Parties”). This Policy applies to acts of Prohibited Conduct committed by or against students, faculty, staff, or Third Parties. Alleged misconduct subject to this Policy (“Prohibited Conduct”) includes both **Title IX Prohibited Conduct** (which is defined by law) and **Community Standards Prohibited Conduct** (which includes allegations that do not meet the definitions under Title IX, but nonetheless violate the Colleges’ community standards, as defined in this Policy). Subject to the definitions of Title IX Prohibited Conduct (which have a limited scope of application), the Colleges will respond to Prohibited Conduct when the conduct:

- occurs on the Colleges’ campus or other property owned or controlled by the Colleges;
- occurs in the context of the Colleges’ employment or education program or activity, including the Colleges-sponsored global education, athletic activities, or internship programs;
- occurs off-campus or outside of the Colleges’ program or activity, but has continuing adverse effects on or creates a hostile environment for the Colleges’ community members while on the Colleges’ campus or other property owned or controlled by the Colleges or in an employment or education program or activity of the Colleges; or

- otherwise has a reasonable connection to the Colleges.

Alleged incidents of Prohibited Conduct occurring on or after the effective date of this policy (August 14, 2020), will follow the protocols and procedures outlined in this Policy. This Policy is not retroactive and alleged incidents of Prohibited Conduct occurring prior to the effective date, even if reported after the date of this Policy, will follow Policies and Protocols effective at the time of the specific incident(s)<sup>1</sup>.

## **II. STUDENT BILL OF RIGHTS<sup>2</sup>**

All Hobart and William Smith students have the right to:

- Make a report (or decline to report) to local law enforcement and/or state police;
- Have disclosures of Sexual Assault, Intimate Partner Violence, Stalking and all other forms of Prohibited Conduct treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the complaint resolution process and/or criminal justice process free from pressure by the institution;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the Colleges courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the Complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few representatives of the Colleges as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the Colleges, any student, the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the Colleges;
- Access to at least one level of appeal of a determination;
- Be accompanied by an Advisor of choice who may assist and advise a Complainant or a Respondent during any meetings and hearings under this Policy and procedures; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or complaint resolution process of the Colleges.

## **III. TITLE IX AND THE TITLE IX COORDINATOR**

Title IX is a federal civil rights law that prohibits colleges and universities that receive Federal financial assistance from discriminating on the basis of sex in education programs and activities. Sexual harassment, which includes acts of Sexual Assault, is a form of sex discrimination prohibited by Title IX. Title IX provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity

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<sup>1</sup> Prior Sexual Misconduct Policies will be provided upon request from the Title IX Coordinator.

<sup>2</sup> New York State law requires colleges and universities to adopt and make part of this Policy the Student Bill of Rights.

receiving Federal financial assistance. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681, et seq.

Sexual harassment and Discrimination based on sexual orientation and/or gender identity is also prohibited under Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and other applicable statutes.

The Colleges have designated a Title IX Coordinator to oversee compliance with Title IX. The Title IX Coordinator ensures training and education of the Colleges' community members, oversees all reports of Prohibited Conduct and coordinates the Colleges' response and/or resolution to all reports. The Title IX Coordinator is a neutral party and is available to meet with any community member as needed to discuss available resources, options and supports.

Any inquiries or concerns about the Colleges' application of Title IX may be addressed to the Title IX Coordinator. The Title IX Coordinator is available in person or by phone or email during regular business hours:

Dr. William Boerner  
Title IX Coordinator  
Hobart and William Smith Colleges  
Office of Title IX Compliance and Programs  
603 S. Main Street  
Seneca Room Annex (lake level)  
Geneva, NY 14456  
(315) 781-3922  
titleix@hws.edu

Any inquiries or concerns about the Colleges' application of Title IX may also be addressed to the U.S. Department of Education Office for Civil Rights:

U. S. Department of Education, Office for Civil Rights  
New York Office  
32 Old Slip, 26th Floor New York, New York 10005-2500  
Phone: 646.428.3800  
Fax: 646.428.3843  
OCR.NewYork@ed.gov

Inquiries involving employees may also be addressed to:

New York State Division of Human Rights  
One Monroe Square  
259 Monroe Avenue, Suite 308

New York State Division of Human Rights  
Office of Sexual Harassment  
55 Hanson Place, Suite 347

Rochester, New York 14607  
Phone: 585.238.8250  
InfoRochester@dhr.ny.gov

U.S. Equal Employment  
Opportunity Commission  
New York District Office  
33 Whitehall Street, 5th Floor  
New York, New York 10004  
Phone: 1.800.669.4000  
Fax: 212.336.3790  
TTY: 1.800.669.6820

Brooklyn, New York 11217  
Phone: 718.722.2060 or 1.800.427.2773  
Fax: 718.722.4525

U.S. Equal Employment Opportunity  
Commission  
Buffalo Local Office  
300 Pearl Street, Suite 450  
Buffalo, New York 14202  
Phone: 1.800.669.4000  
Fax: 716.551.4387  
TTY: 1.800.669.6820

#### **IV. PROHIBITED CONDUCT**

This Policy prohibits specifically defined forms of behavior, generally referred to as “Title IX Prohibited Conduct” and/or “Community Standards Prohibited Conduct”. These two categories of Prohibited Conduct are detailed below with specific classifications. Title IX Prohibited Conduct and/or Community Standards Prohibited Conduct is determined inclusive of the sex, gender, sexual orientation and/or gender identity/expression of involved parties.

This section also includes definitions and a discussion of key terms, including Affirmative Consent and Incapacitation.

##### **A. Title IX Prohibited Conduct**

A potential violation of Title IX Prohibited Conduct must meet the following criteria:

- The conduct is alleged to have occurred in the United States;
- The conduct is alleged to have occurred in the Colleges’ education program or activity, which is defined as locations, events or circumstances over which the Colleges exercise substantial control over both the Respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by the Colleges;

If the above criteria are met, the below represent specific covered sexual harassment violations:

1. **Title IX Sexual Harassment** - conduct on the basis of sex that involves an employee of the Colleges conditioning the provision of an aid, benefit, or service of the Colleges on an individual’s participation in unwelcome sexual conduct; or an individual engaging in unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the Colleges’ education program or activity.

2. **Title IX Sexual Assault** - may include any of the following Prohibited Conduct:
  - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the alleged victim;
  - The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the alleged victim;
  - Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;
  - Non-forcible sexual intercourse with a person who is under the
  - statutory age of consent.
  
3. **Title IX Dating Violence** - Violence, including sexual or physical abuse or the threat of such abuse, committed by a person (a) who is or has been in a social relationship of a romantic or intimate nature with the alleged victim; and (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, (iii) the frequency of interaction between the persons involved in the relationship.
  
4. **Title IX Domestic Violence** - violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or has cohabitated with the alleged victim as a spouse or intimate partner, by a person similarly situated to a spouse of the alleged victim under New York State domestic or family violence laws or by any other person against an adult or youth alleged victim who is protected from that person's acts under the domestic or family violence laws of New York state.
  
5. **Title IX Stalking** - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. For purposes of this definition, (a) course of conduct means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (b) reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; and (c) substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## **B. Community Standards Prohibited Conduct**

Conduct that does not meet one or more of the definitions of Title IX Prohibited Conduct, may still be Prohibited Conduct if it falls within the scope of this Policy and meets one of the following definitions:

- 1. Non-Title IX Sexual Harassment** - Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature whether verbal, non-verbal, graphic, physical or other, when conditions (1) and/or (2), below, are present:
  - i.** submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing or participation in any program and/or activity of the Colleges or used as the basis for decisions affecting the individual (quid pro quo harassment);
  - ii.** such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, pervasive or persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the Colleges' education or employment programs and/or activities. The conduct must be deemed severe, pervasive or persistent under both a subjective and objective standard.
    - a. Hostile Environment** - the determination of whether an environment is "hostile" must be based on the totality of known circumstances, including:
      - the frequency, nature and severity of the conduct;
      - whether the conduct was physically threatening;
      - the effect of the conduct on the Complainant's mental and/or emotional state;
      - whether the conduct was directed at more than one person;
      - whether the conduct arose in the context of other discriminatory conduct;
      - whether the speech or conduct unreasonably interfered with the Complainant's educational or work opportunities or performance (including study abroad), Colleges controlled living environment, work opportunities, or performance.

A hostile environment can be created by persistent or pervasive conduct or, if sufficiently severe, by a single incident. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical. In considering whether a policy violation has occurred, the Colleges will evaluate any issues relating to academic freedom and freedom of speech.

2. **Gender-based harassment** - Gender-Based Harassment is any act of aggression, intimidation, or hostility, whether verbal, non-verbal, graphic, physical, or otherwise, even if the act does not involve conduct of a sexual nature, when the acts are based on the sex, gender, sexual orientation, gender identity or gender expression and conditions (1) and/or (2), below, are present:
- i. submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing or participation in any program and/or activity of the Colleges or used as the basis for decisions affecting the individual (quid pro quo harassment);
  - ii. such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, pervasive or persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the Colleges' education or employment programs and/or activities. The conduct must be deemed severe, pervasive or persistent under both a subjective and objective standard.

3. **Non-Title IX Sexual Assault** - Sexual Assault is having or attempting to have *sexual intercourse* or *sexual contact* with another individual without Affirmative Consent.

*Sexual intercourse* is any vaginal or anal penetration, however slight, with any object or by a penis, tongue, finger or other body part performed by an individual upon another individual. Sexual intercourse also includes any contact, however slight, between the mouth of one individual and the genitalia of another individual.

*Sexual contact* is any intentional sexual touching, however slight, of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, with any object or body part performed by an individual upon another individual. *Sexual contact* includes making an individual touch another individual with or on the breasts, buttocks, groin or genitals.

4. **Sexual Exploitation** - Sexual Exploitation is purposely, knowingly, or attempting to:
- i. Observe or allowing third parties to observe an individual's genitalia, groin, breasts or buttocks or private sexual activity without the knowledge and consent of the participants, including through a hidden location or through electronic means in a place where there is a reasonable expectation of privacy;
  - ii. Record or photograph an individual's genitalia, groin, breasts or buttocks or private sexual activity without consent;
  - iii. Disseminate recordings or photographs of an individual's genitalia, groin, breasts or buttocks or private sexual activity without consent;
  - iv. Expose genitals or inducing another to expose their own genitals without Affirmative Consent;



- v. Expose another individual to a sexually transmitted infection(s) without the other's knowledge;
- vi. Cause incapacitation of another individual through alcohol, drugs, or any other means, for the purpose of compromising that individual's ability to consent to sexual activity; or
- vii. Assist or otherwise facilitate any act of Community Standards Prohibited Conduct.

5. **Non-Title IX Intimate Partner Violence** - Intimate Partner Violence includes both dating violence and domestic violence and includes any act of violence or threatened act of violence against a person who is, or has been involved in, a relationship of a sexual, dating, domestic, or other intimate nature with the Respondent. Intimate Partner Violence can encompass a broad range of behavior and may include Sexual or Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Physical Assault, Stalking, and Retaliation.

The Colleges will evaluate the existence of the relationship based upon the Complainant's statement and take into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship.

6. **Physical Assault** - Physical Assault is threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. The Colleges may address Physical Assault under this Policy when it occurs in the context of other forms of Community Standards Prohibited Conduct, such as Sexual Assault, Intimate Partner Violence or is based upon the sex, gender, sexual orientation and/or gender identity or expression of the Complainant.
7. **Non-Title IX Stalking** - Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for the person's safety or safety of others or to suffer substantial emotional distress.
- **Course of conduct** means two or more acts, including but not limited to, acts in which an individual directly, indirectly or through third parties, by any action, method, device or means follows, monitors, observes, surveils, threatens or communicates to or about another individual, or interferes with another individual's property.
  - **Substantial emotional distress** means significant mental suffering or anguish.
  - **Reasonable person** means a reasonable person under similar circumstances to the victim.

Stalking includes cyber-stalking, a particular form of stalking in which an individual uses electronic media such as the internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact.

8. **Retaliation** - Retaliation is any adverse action taken against an individual because they were involved in the reporting, investigation or resolution of a report of Prohibited Conduct. Retaliation includes threats, intimidation, harassment, coercion, violence or any other conduct that would discourage a reasonable person from engaging in activity protected under this Policy. Activity protected under this Policy may include an individual's right to make a report and/or file a complaint that Prohibited Conduct has taken place, an individual's ability to participate in the complaint resolution process, and/or if an individual's good faith effort to intervene as a bystander. The prohibition against retaliation applies to any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, any witness, or any other individuals who participate (or refuse to participate) in any manner in an investigation, proceeding, or hearing.

Retaliation may occur even where there is a finding of "not responsible" under this Policy. Good faith actions lawfully pursued in response to a report of Prohibited Conduct are not Retaliation. Retaliation should be promptly reported to the Title IX Coordinator and will be investigated and resolved under this Policy and Procedures.

9. **Discrimination** - Discrimination under this Policy is defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex, gender identity or expression, or sexual orientation.
10. **Right to Proceed on Conduct Prohibited by Separate Policy** - the Colleges reserve the right to adjudicate other Community Standards as defined by policies outside of the scope of the Title IX and Sexual Misconduct Policy in instances when the conduct is associated with an alleged issue of Prohibited Conduct.

## II. Key Terms & Definitions

### A. Affirmative Consent

Consent under this Policy requires Affirmative Consent (Consent). Affirmative Consent is a knowing, voluntary and mutual decision among participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of

itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, gender, sexual orientation, gender identity, or gender expression.

Affirmative Consent cannot be obtained through force, including physical force, threats, intimidation, or coercion which would compel a reasonable person to engage in unwanted sexual activity against their will. This may include pressure that would compel a reasonable individual to initiate or continue sexual activity against that individual's will. When a person makes clear a decision not to participate in a particular form of Sexual Contact or Sexual Intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion existed sufficient to take away the Complainant's free will, the Colleges will consider, among other things: (i) the nature of the pressure; (ii) the frequency of the application of the pressure, (iii) the intensity of the pressure, (iv) the degree of isolation of the person being pressured, and (v) the duration of the pressure.

Affirmative Consent cannot be obtained by taking advantage of the incapacitation of another individual where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated. Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity. An individual is incapacitated if the individual lacks conscious knowledge of the nature of the act or is physically helpless, asleep, unconscious, or otherwise unaware that sexual activity is occurring. An individual may be incapacitated as a result of the consumption of alcohol or other drugs or due to a temporary or permanent physical or mental health condition.

## 1. **Evaluating Affirmative Consent**

i. **Affirmative Consent and Incapacitation** - In evaluating Affirmative Consent in cases of alleged incapacitation, the Colleges ask two questions: (1) Did the person initiating sexual activity know that the other party was incapacitated? And if not, (2) should a sober, reasonable person in the same situation have known that the other party was incapacitated? If the Complainant was incapacitated and the answer to either of these questions is "yes," Affirmative Consent was absent. Consent is required to be obtained regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

An individual who is under the influence of alcohol and/or other drugs may be incapacitated, and therefore unable to consent. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. Incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or other drugs impacts an individual's:

- decision-making ability;

- awareness of consequences;
- ability to make informed judgments; and
- capacity to appreciate the nature and the quality of the act.

Common and obvious warning signs can show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, signs may include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: “Where are you?” “How did you get here?” “What is happening?” “Who are you with?”

In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person’s decision-making capacity, ability to communicate clearly, awareness of the consequences, and ability to make informed judgments. Individuals engaging in sexual activity should continually evaluate Consent throughout the encounter. An individual who does not initially appear to be incapacitated may become incapacitated as the effects of alcohol or other drugs increase. If there is any doubt as to the level or extent of the other individual’s intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity. **Being impaired by alcohol or other drugs is not a defense to a violation of this Policy.**

## 2. **Guidance on Affirmative Consent**

A person who wants to engage in a specific sexual activity is responsible for obtaining Affirmative Consent for that activity. Silence and/or passivity do not constitute Consent. Lack of resistance does not constitute Consent. Consent is active, not passive. The Colleges offer the following guidance on Affirmative Consent:

- All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
- Consent may be withdrawn by any party at any time. An individual who seeks to withdraw Affirmative Consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.
- Consent to one form of sexual activity does not, by itself, constitute Consent to another form of sexual activity. Consent to sexual activity on one occasion does not constitute consent to sexual activity on other occasions. Consent to sexual activity with one person does not constitute consent to sexual activity with any

other person. Each participant in a sexual encounter must consent to each form of sexual activity with each participant.

- Each party must consent to each instance of sexual contact each time. Prior consensual sexual activity does not, by itself, constitute consent to future sexual activity. In cases of prior relationships between the parties, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of Affirmative Consent.
- In New York, an individual less than 17 years old is incapable of giving consent.
- Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this Policy. Participants are encouraged to talk with one another before engaging in sexual activity. If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

## **B. Education Program or Activity**

1. For the purposes of this policy, the Colleges’ “education program or activity” includes:
  - i. Locations, events, or circumstances over which the Colleges exercise substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurs.
  - ii. These obligations extend to incidents of Title IX Prohibited Conduct that occur off campus if any of three conditions are met:
    - a. The off-campus incident occurs as part of the Colleges’ operations;
    - b. The Colleges exercise substantial control over the Respondent and the context of alleged Title IX Prohibited Conduct that occurred off-campus; or
    - c. The incident of Title IX Prohibited Conduct occurs at an off-campus building owned or controlled by a student organization officially recognized by the Colleges.

## **C. Formal Complaint**

A document submitted by a Complainant and bearing the Complainant’s physical or digital signature, or otherwise indicating that the Complainant is the one filing the Formal Complaint, requesting that the Colleges investigate the allegations of Prohibited Conduct. The Title IX Coordinator also may sign a Formal Complaint, as discussed in Appendix A, section III, but does not become the Complainant by doing so. In order to file a Formal Complaint a Complainant must be participating in or attempting to participate in the Colleges’ education program or activity at the time a Formal Complaint is filed.

#### **D. Complainant**

For the purposes of this Policy, Complainant means any individual who has reported being or is alleged to be the victim of Prohibited Conduct.<sup>3</sup>

#### **E. Respondent**

For the purposes of this Policy, Respondent means any individual or group/organization who has been reported to be the perpetrator of conduct that could constitute covered violations as defined under this Policy. Groups and/or organizations may only be charged with forms of Community Standards Prohibited Conduct.

### **III. AMNESTY, OBLIGATION TO PROVIDE TRUTHFUL INFORMATION AND GROUP INFRACTIONS**

#### **A. Amnesty**

The health and safety of every student is of utmost importance. The Colleges recognize that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that Prohibited Conduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct or the conduct of others. The Colleges strongly encourage students to immediately report Prohibited Conduct to the Colleges or law enforcement. A bystander acting in good faith or a Complainant acting in good faith that discloses any incident of Prohibited Conduct to the Colleges or law enforcement will not be subject to disciplinary action under the Colleges' Community Standards for violations of alcohol and/or drug use policies based on ingestion occurring at or near the time of the reported Prohibited Conduct.

Other individuals present will also not be subject to disciplinary action under the Colleges' Community Standards for violations of alcohol and/or drug use policies based on ingestion occurring at or near the time of the reported Prohibited Conduct.

#### **B. Obligation to Provide Truthful Information**

All community members of the Colleges are expected to cooperate fully and provide truthful information in any report or proceeding under this Policy. Providing false or misleading information in bad faith, such as with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct, is prohibited and subject to disciplinary sanctions under the Colleges' Community Standards and disciplinary action under the appropriate employee disciplinary policy. Even if a report is later not substantiated, that does not necessarily mean that the information was provided in bad faith.

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<sup>3</sup> The Colleges recognize that individual Complainants may also choose to self-identify as a victim or survivor.

### **C. Group Infractions**

When members of a student group, organization, team, or individuals act collusively in violation of the Community Standards Prohibited Conduct, they may be charged as a group and/or as individuals, and a hearing may proceed against the group as joint respondents or against one or more involved individuals, or both, as appropriate, given available information and the circumstances.

## **IV. PRIVACY, CONFIDENTIALITY AND EMPLOYEE REPORTING RESPONSIBILITIES**

The Colleges are committed to protecting the privacy of all individuals involved in the resolution of a report of Prohibited Conduct. Throughout the reporting, investigation and resolution of a complaint, including the implementation of supportive measures, the Colleges will make reasonable efforts to protect the privacy interests of all involved individuals in accordance with federal and state law while also conducting a thorough review and response to eliminate, prevent, and address Prohibited Conduct.

Employees of the Colleges are designated as either an Actual Knowledge Employee or a Confidential Employee. Actual Knowledge Employees have reporting obligations under this Policy, but will, to the fullest extent possible, maintain the privacy of an individual's information. Confidential Employees do not have a reporting obligation under Title IX and will keep information confidential (except as required or permitted to by law). In understanding the difference between speaking to an Actual Knowledge Employee or Confidential Employee, it may be helpful to understand the difference between privacy and confidentiality, as they each have distinct meanings under this Policy.

### **A. Privacy**

Privacy means that information related to a report of Prohibited Conduct will only be shared with a limited circle of employees of the Colleges who "need to know" in order to assist in the active review, investigation and resolution of the complaint and implementation of remedial and protective measures.

### **B. Confidentiality**

Certain campus and community professionals, including mental health providers, ordained clergy, rape crisis counselors, and health care providers, are legally required to keep information shared by an individual confidential and cannot reveal information to a third party. On campus, Confidential Employees are generally prohibited from sharing information unless there is written consent, imminent threat of harm to self or others, or reasonable suspicion of abuse of a minor (someone under the age of 18).

### **C. Confidential Employees**

A Confidential Employee is a licensed medical, clinical or mental health professional, or ordained clergy or staff member in the offices of a licensed medical, clinical or mental health professional, or ordained clergy. A Confidential Employee will not make a report to the Colleges unless there is written consent to do so from the patient/client, there is the risk of imminent threat of harm to self or others, or there is reasonable suspicion of abuse of a minor (someone under the age of 18). The Colleges' Confidential Employees are:

- All employees in the Counseling Center
- All employees in the Office for Spiritual Engagement;
- All employees in Hubbs Health Center; and
- Any other professional with a legally recognized privilege.

Consistent with the Clery Act, any data collected from Confidential Employees about the disclosures of Prohibited Conduct will be done in an aggregate manner and in a way that does not reveal personally identifying information of the parties to include in annual crime statistics, address any systemic concerns, and inform training and education programs.

### **D. Actual Knowledge Employees**

An Actual Knowledge Employee is an employee who upon receipt of allegations of sexual harassment is required to make an immediate report to the Title IX Coordinator or Deputy Title IX Coordinator. This report must include the Actual Knowledge Employee's name and contact information, and all known details about an incident, including dates, times, locations, names of involved individuals and the nature of the incident. Actual Knowledge Employees differ from Confidential Employees and all other employees of the Colleges due to their ability to institute corrective measures related to an incident of alleged Prohibited Conduct. Actual Knowledge Employees include, the Title IX Coordinator, Deputy Title IX Coordinator, Vice President for Campus Life, Dean of Student Engagement & Conduct, the Associate Vice President for Campus Safety, Residential Education Professional and Student Staff, the Hobart and William Smith Deans, Human Resources Professional Staff, and the Provost of the Colleges. The Colleges' obligation to respond under this Policy is only triggered upon notice to an Actual Knowledge Employee.

Unless designated as a Confidential Employee or Actual Knowledge Employee, all other employees of the Colleges are encouraged to make an immediate report to the Title IX Coordinator or Deputy Title IX Coordinator upon receiving information about an incident of Prohibited Conduct. The report should include the reporting employee's name and contact information so that the Title IX Coordinator can follow up. Student Employees, such as, Teaching Assistants, and all other student employees, are encouraged to report to the Title IX Coordinator or Deputy Title IX Coordinator when disclosures are made to any of them in their capacities as employees. Employees, other than Confidential Employees should keep information private, but cannot maintain confidentiality. Employees are encouraged to share all known



details about an incident with the Title IX Coordinator, including dates, times, locations, names of involved individuals and the nature of the incident. Offices and employees of the Colleges who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be used only as necessary for the Title IX Coordinator to investigate and/or seek resolution.

**E. Public Awareness Events**

No employees are required to report information shared during public awareness events. Public awareness events including public events or forums at which individuals disclose experiences of sexual violence or other forms of Prohibited Conduct are not considered notice to the school for the purpose of triggering an individual investigation unless initiated by the Complainant. The Colleges may use any information provided at such events to review policy, inform ongoing education and prevention efforts, and assess climate to learn more about the prevalence of Prohibited Conduct at the Colleges. Further, if the Colleges learn information at a public awareness event that raises safety concerns for the broader community, they may be required to take action to protect the community.

**F. Clery Act Reporting**

Under the Clery Act, the Colleges are required to issue timely warnings to the Colleges' community where certain reported crimes (including some forms of Prohibited Conduct) pose a serious or continuing threat to the Colleges' community. The Clery Act also requires the Colleges to maintain, make available to the public, and provide to the United States Department of Education statistics about certain reported crimes in a daily crime log and annual security report. Timely warnings and the Colleges' crime statistics do not include personally identifying information of Complainants.

**V. CAMPUS AND COMMUNITY RESOURCES**

The Colleges offer a wide range of resources to provide support and guidance from initial contact through report, investigation and resolution of Prohibited Conduct. The Colleges will offer reasonable and appropriate measures to Complainants and Respondents and facilitate the continued access to the Colleges' education or employment programs and activities.

**A. Emergency Resources**

***Confidential Medical Assistance:*** An individual who experiences Sexual Assault, Intimate Partner Violence, or any other form of violence is strongly encouraged to seek immediate medical attention at F.F. Thompson Hospital:

**F.F. Thompson Hospital**  
350 Parrish Street

Canandaigua, N.Y. 14424  
(585) 396-6000

F.F. Thompson Hospital is the closest hospital in the Geneva area where an individual can receive a forensic sexual assault examination by a Sexual Assault Nurse Examiner (also known as “SANE Nurse”). SANE Nurses can assess injuries related to physical trauma; evaluate for sexually-transmitted infections and possible pregnancy; provide medical care (including medications to prevent infections and pregnancy); and can, generally within the first 96 hours after a sexual assault, administer a “forensic exam.” During the forensic exam, the SANE Nurse documents and collects evidence of sexual contact and/or physical trauma (including injuries to the body and genitals), trace evidence, biological fluids, and identifiable DNA. When there is reason to believe that an assault may have been facilitated by the use of drugs or alcohol, the forensic exam may also include the collection of urine and blood samples for toxicology testing. *Individuals are not required to report an incident to law enforcement or the Colleges in order to receive medical attention or a forensic exam.* Individuals may have a support person of their choosing present throughout the forensic exam. In addition, advocates from Safe Harbors of the Finger Lakes, a local rape crisis center, are available to accompany and offer support to persons seeking a forensic exam. Transportation to F.F. Thompson can be arranged by contacting Campus Safety. It is not necessary to give your name or make a report in order to obtain transportation assistance.

Individuals are encouraged to seek follow-up care to address any ongoing medical concerns, including those related to sexually-transmitted infections and pregnancy, regardless of whether a forensic exam is obtained after a sexual assault. Follow-up care is available at F.F. Thompson Hospital, Hubbs Health Center, Geneva General Hospital or through any appropriate health care provider outside of the Colleges.

**Hubbs Health Center**

119 St. Clair Street  
Geneva, NY 14456  
(315) 781-4580

**Geneva General Hospital**

North Main and North Streets  
Geneva, NY 14456  
(315) 787-4500

***Law Enforcement:*** Law enforcement has unique legal authority to seek and execute search warrants, to collect forensic evidence that may have been left at the scene or at other relevant locations, to issue subpoenas to compel testimony or other evidence, and to make an arrest when supported by probable cause to believe a crime has been committed.

Local Law enforcement can be reached by contacting the Geneva Police Department (or one of contacts listed below). Call the Geneva Police Department or the New York State Police directly for an immediate response.

## **Emergency 911**

**Geneva Police Department<sup>4</sup>**  
**(315) 828-6771**

**New York State Police**  
(315) 539-3976 Troop E, Zone 2  
(844) 845-7269 (24-hour hotline)

***Campus Safety***: Campus Safety is available 24 hours a day, seven days a week, year-round, to escort any community member of the Colleges to a safe place, provide transportation to the hospital, assist in coordination with law enforcement, assist individuals in obtaining a civil order of protection, and provide information about the Colleges' resources and processes.

**Campus Safety**  
Campus Services Building  
Off Pulteney Street  
Medbery parking lot, NE corner  
Emergency phone (315) 781-3333  
Non-Emergency Phone  
(315) 781-3656  
(315) 781-3657

***Confidential Crisis Resources (Support and Counseling)***: Both Complainants and Respondents are strongly encouraged to seek emotional support after any incident of Prohibited Conduct. In addition to the resources above, there are a number of confidential sources and hotlines for crisis counseling available through the Colleges and off campus. The Colleges' counselors can offer students information about reporting options and provide trauma-informed support.

**Counseling Center** (for students)  
Hobart and William Smith Colleges  
91 St. Clair Street  
Geneva, NY 14456  
(315) 781-3388  
Monday – Friday 9 a.m. – 5 p.m.

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<sup>4</sup> The Geneva Police Department may notify the Colleges upon receipt of a report of Prohibited Conduct.

Any individual may speak with a counselor in the Counseling Center at any time. During the academic year, an on-call counselor is available 24 hours a day, 7 days a week. Students can also access the on-call counselor by contacting their Resident Assistant or a member of the Residential Education staff or by calling Campus Safety. During an after-hours mental health emergency, call Campus Safety at (315) 781-3333 to reach the counselor on call. Campus Safety will not require an individual to disclose their name to be connected to the counselor on call.

**Safe Harbors of the Finger Lakes, Inc.**

(800) 247-7273 (24-hour crisis hotline)  
(315) 781-1093 (support during business hours)

Safe Harbors, Inc., a local rape crisis and intimate partner violence support agency offers free, confidential crisis counseling as well as support groups and other services.

**NexGen Employee Assistance Program**

Employees may seek confidential counseling for themselves and their families via NexGen Employee Assistance Program. The hotline number is (800) 327-2255. For more information on NexGen services, visit [www.nexgeneap.com](http://www.nexgeneap.com), company ID: 8956.

**B. Confidential Resources**

***Campus Confidential Employees***

**Counseling Center**

(315) 781-3388  
(See additional contact information above)

**Hubbs Health Center**

(315) 781-4580  
(See additional contact information above)

**Office for Spiritual Engagement**

Chaplain  
St. John's Chapel  
630 S. Main Street  
Geneva, NY 14456  
(315) 781-3671  
Abbe Center  
315-679-6924

***Community Confidential Resources***

**Safe Harbors of the Finger Lakes, Inc.**

(800) 247-7273 (24-hour crisis hotline)  
(315) 781-1093 (support during business hours)

### **Family Counseling Service of the Finger Lakes, Inc.**

Employees may seek confidential counseling at Family Counseling Service of the Finger Lakes, Inc. through the Colleges' Employee Assistance Program. Family Counseling Service provides confidential counseling to eligible employees and their families. Family Counseling Service also maintains a 24-hour, 7 day a week domestic violence hotline with trained staff and volunteers for support and crisis counseling, and to assist in emergencies. The hotline number is (800) 695-0390.

671 South Exchange Street  
Geneva, NY 14456  
(800) 695-0390 (24-hour crisis hotline)  
(315) 789-2613  
(877) 789-2613

### **Legal Assistance of Western New York, Inc.**

Legal Assistance provides confidential services to individuals who meet their requirements for representation. The best way to determine if Legal Assistance can help is to contact their office and provide information about a specific concern.

361 South Main Street  
Geneva, New York 14456  
(315) 781-1465

### ***National Confidential Resources***

National Sexual Assault Hotline  
**(800) 656-4673**

**Rape and Incest National Network (RAINN)**  
**<https://ohl.rainn.org/online/>** (online hotline)

**National Domestic Violence Hotline**  
(800) 799 SAFE (7233)

## **C. Supportive Measures**

Supportive measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no Formal Complaint has

been filed. Such measures are designed to restore or preserve equal access to the Colleges' education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Colleges' educational environment, or to deter sexual harassment. The Title IX Coordinator can provide a wide range of supportive measures including, but not limited to, counseling, academic modifications and support, campus escort services, no-contact orders, housing modifications, work schedule modifications, and increased security and monitoring of certain areas of the campus. **Supportive measures are available regardless of whether a Complainant pursues criminal or disciplinary action through the Colleges.**

The Title IX Coordinator also will promptly inform the Complainant and/or Respondent of any action(s) that will directly impact the Complainant and/or Respondent. A Complainant or Respondent shall be afforded a prompt review, reasonable under the circumstances, of the need for, and terms of, any supportive measure that directly affects them, and may do so by contacting the Title IX Coordinator. The Title IX Coordinator on their own or at the request of either party retains the discretion to impose and/or modify any supportive measures based on all available information. Supportive measures will remain in effect, unless new circumstances arise which warrant reconsideration of the supportive measures.

The availability of supportive measures will be determined by the specific circumstances of each case. Each party shall have the right to submit evidence regarding the propriety of supportive measures. The Title IX Coordinator will consider a number of factors in determining which measures to take, including the needs and requests of the individuals seeking supportive measures; the severity or pervasiveness of the reported Prohibited Conduct; any continuing effects on the Complainant and/or Respondent; whether the Complainant and the Respondent share the same residence hall, dining hall, academic course(s), job location; and whether other judicial measures have been taken to protect the Complainant (e.g., Protective Orders).

In some cases, students may choose to seek a leave of absence or a reduced course load; these actions may, in turn, impact matters such as a student's immigration, visa and/or financial aid status. In such cases, the Title IX Coordinator assists the student in coordination with the Director of International Student Affairs, the Hobart or William Smith Deans or other appropriate resources.

The Title IX Coordinator will ensure individuals receive written notification of all their rights and options, regardless of whether the individual chooses to file a Formal Complaint under this Policy or make a report to law enforcement.

## **VI. REPORTING OPTIONS**

There are multiple channels for reporting Prohibited Conduct. Individuals may report Prohibited Conduct to law enforcement, to the Colleges, to both or to neither. These reporting options are not exclusive. Complainants may simultaneously pursue criminal and disciplinary action through the Colleges. The Colleges will support Complainants in understanding and assessing their reporting options.

### **A. Preservation of Evidence**

The Colleges recognize that making the decision to report Prohibited Conduct often takes time. Nevertheless, pending the decision to report, individuals are strongly encouraged to take immediate steps to preserve all evidence that might support a future report of Prohibited Conduct, an Order of Protection, or an investigation by law enforcement, by the Colleges, or both. Such evidence may include:

- A forensic sexual assault examination conducted by a SANE nurse (as soon as possible to ensure preservation of evidence);
- Photographs of injuries, property damage, or the location of the incident;
- Any clothing, sheets or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags, not plastic bags);
- Electronic exchanges (e.g., text messages, emails, and Facebook, Instagram, Snapchat or other social media posts, to the extent that they can be captured or preserved);
- Photographs (including photographs stored on smartphones and other devices); and
- Voice-mail messages and other physical, documentary and/or electronic data that might be helpful or relevant in an investigation.

Evidence may be lost by the changing of clothes, bathing, brushing teeth, eating and drinking. If possible avoid these actions prior to the forensic sexual assault examination. Electronic and photographic evidence may be lost through the upgrade or replacement of equipment (including smartphones), software and/or accounts or due to the passage of time.

### **B. Reporting to Law Enforcement**

Individuals have the right to notify law enforcement or decline to notify law enforcement. Individuals may contact law enforcement directly (resources above). In keeping with its commitment to taking all appropriate steps to eliminate, prevent, and remedy all Prohibited Conduct, the Colleges encourage Complainants to report Prohibited Conduct immediately to local law enforcement. Individuals may seek assistance in notifying law enforcement from the Title IX Coordinator or Campus Safety. The Title IX Coordinator can assist in setting up an

initial meeting with law enforcement and can accompany individuals to that meeting. In instances that involve an immediate threat to health or safety, the Colleges may independently notify law enforcement.

### **C. Reporting to the Colleges**

The Colleges encourage individuals who have experienced, have knowledge of, or have witnessed Prohibited Conduct to make a report to the Colleges. The Colleges will seek to honor the Complainant's request(s) for anonymity, that an investigation not be pursued and/or that no disciplinary action be taken if it is possible to do so while also protecting the safety and well-being of the Complainant and the Colleges' community **See below D.**

Making a Report to the Colleges does not require participation in any subsequent proceedings by the Colleges, nor is a Formal Complaint required in order for an individual to receive supportive measures.

Although there is no time limit for reporting Prohibited Conduct to the Colleges, the Colleges' ability to respond may diminish over time, as evidence may erode, memories may fade, and Respondents may no longer be affiliated with the Colleges. If the Respondent is no longer a member of the Colleges' community, the Colleges will not take disciplinary action, but will provide appropriate supportive measures, assist the Complainant in identifying external reporting options, and take other reasonable steps to respond under Title IX.

Individuals are encouraged to make a direct report of Prohibited Conduct by contacting the Title IX Coordinator:

**Dr. William Boerner**  
**Title IX Coordinator**  
**Hobart and William Smith Colleges**  
**Office of Title IX Compliance and Programs**  
**603 S. Main Street**  
**Seneca Room Annex (lake level)**  
**Geneva, NY 14456**  
**(315) 781-3922**  
**titleix@hws.edu**

### **D. Anonymous Reporting**

Any individual may make an anonymous report concerning an act of Prohibited Conduct, including through the Colleges' online [Sexual Misconduct Online Reporting Form](#). Any individual may report with or without disclosing a name, identifying involved persons, or



requesting any action. Anonymous reports will go to the Title IX Coordinator and Campus Safety for review and appropriate response and action. The Title IX Coordinator is available to answer questions about reporting and procedural options at any time. Individuals who would like to make an anonymous report are encouraged to call the Title IX Coordinator to discuss options and may do so without identifying themselves or reporting any details about an incident, such as dates, times, locations, names of involved individuals and the nature of the incident. Depending on the information provided, the Colleges' ability to take action in response to an anonymous report may be limited.

## **VII. COLLEGES' INITIAL RESPONSE TO ALL REPORTS OF PROHIBITED CONDUCT**

### **A. Receiving a Report**

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator or their designee will promptly contact the Complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. The Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate safety or well-being concerns raised by the report. In this intake assessment, the Title IX Coordinator will conduct a preliminary assessment and:

- Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
- Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- Inform the Complainant about campus and community resources, including no-contact orders;
- Inform the Complainant of the right to file a Formal Complaint and the right to seek Informal Resolution after filing a Formal Complaint; ascertain the Complainant's expressed preference for manner of resolution (Informal Resolution, Formal Resolution, or neither); and discuss with the Complainant any concerns or barriers to participating in any investigation and resolution by the Colleges;
- Explain the Colleges' prohibition against Retaliation and that the Colleges will take prompt action in response to any act of Retaliation;
- Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
- Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), as required by law, contact the appropriate child protective service agency;

- Coordinate with appropriate officials of the Colleges to determine whether the report triggers any Clery Act reporting requirements, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations; and
- Ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet to discuss those resources and options.
- Assess, based on the totality of the known circumstances, any threat to the safety or well-being of the Complainant or the Colleges' community. This determination will be guided by the following safety factors:
  - Whether the Respondent has prior history, is the subject of prior reports and/or complaints related to any form of Prohibited Conduct, or has any history of violent behavior;
  - Whether the Respondent has a history of failing to comply with any no-contact orders issued by the Colleges, other supportive measures by the Colleges, and/or any judicial protective order;
  - Whether the report is an escalation in Prohibited Conduct by the Respondent;
  - Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
  - Whether the Prohibited Conduct involved multiple Respondents;
  - Whether the Prohibited Conduct involved physical violence or use of a weapon;
  - Whether the report or other available information reveals a pattern of Prohibited Conduct;
  - Whether the Prohibited Conduct was facilitated through the use of drugs or intoxicants;
  - Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring;
  - Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18); and/or
  - Whether any other aggravating circumstances or signs of predatory behavior are present.

Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Title IX Coordinator will seek to honor the preferences of the Complainant wherever possible taking into consideration the safety factors listed above and its legal obligations. The Title IX Coordinator will determine whether the Title IX Coordinator will sign a Formal Complaint even if the Complainant declines to do so. In such a case, neither the Title IX Coordinator, nor the Colleges will become the Complainant or the party to the disciplinary matter. Where the Title IX Coordinator has determined that the Colleges must proceed with a Formal Complaint despite a Complainant's request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, the Colleges' investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the Colleges intend to proceed with a Formal Complaint, but that the

Complainant is not required to participate in the investigation or in any other actions undertaken by the Colleges.

In all cases, the initial report, Intake Assessment, and the determinations of the Title IX Coordinator will be documented and retained by the Colleges in accordance with applicable law.

**B. Emergency Removal**

The Colleges retain the authority to remove a Respondent from the College's program or activity on an emergency basis. If at any point following the receipt of a report of Prohibited Conduct, the Colleges determine that the Respondent poses an immediate threat to the physical health or safety of the Complainant or any other person(s), including the Respondent, the Colleges may temporarily remove the Respondent from any or all of its programs or activities. The imposition of an Emergency Removal does not suggest a finding of responsibility for any Prohibited Conduct.

Before imposing an Emergency Removal, the Vice President of Campus Life will undertake an individualized safety and risk analysis concerning the Respondent at the request of the Title IX Coordinator. An Emergency Removal will be imposed only if the Vice President of Campus Life concludes that the threat to physical health or safety arises from the allegations of Prohibited Conduct and warrants the removal.

An Emergency Removal may involve the denial of access to some or all of the Colleges' campus facilities, academic program, or other programs or activities. While the Colleges may provide alternative academic or employment opportunities during an Emergency Removal, it is not required to do so. Non-punitive actions taken as Supportive Measures (e.g., changes in housing) do not constitute Emergency Removals.

The Title IX Coordinator will notify the Respondent of the terms imposed in connection with an Emergency Removal. The Respondent has the opportunity to challenge the Emergency Removal upon receipt of that notice. In order to challenge the Emergency Removal, the Respondent shall submit a written statement via email to the Title IX Coordinator, within three (3) calendar days from the date of the notice of Emergency Removal, explaining why Emergency Removal is not appropriate. The Title IX Coordinator will designate an individual to review the challenge to the Emergency Removal, who may seek additional information from the Respondent or any other involved party to reach their decision. The Emergency Removal will remain in place while the review of the challenge is pending. A decision will be issued as soon as possible under the circumstances. The decision is final and not subject to further appeal.

Separate from the Emergency Removal process, the Title IX Coordinator may request that the Vice President of Human Resources place an employee-Respondent on an administrative leave, with or without pay.

**C. Withdrawal pending outcome/Withholding diploma**

If a student Respondent voluntarily withdraws and/or the Colleges withdraw the Respondent during the pendency of an investigation of Prohibited Conduct, any Formal Resolution process will cease and the Respondent will not be permitted to re-enroll at the Colleges. The Title IX Coordinator will direct the Colleges' Registrar to make a notation on the academic transcript of any student who withdraws from the Colleges while under investigation for Prohibited Conduct. The transcript will indicate "withdrew with conduct charges pending" where a Respondent chooses to withdraw from the Colleges prior to the conclusion of a Formal Resolution.

The Colleges may withhold a student's degree and/or diploma and/or deny a student participation in commencement or related activities, if the student is the subject of a pending report, complaint, investigation, or adjudication under this Policy and Procedures. If a Respondent graduates and is found to be responsible under this Policy after the date of graduation, the Colleges may revoke the Respondent's degree and/or diploma. The Respondent will be required to return the diploma to the Colleges.

If a non-student employee Respondent voluntarily terminates their employment with the Colleges during the pendency of an investigation of Prohibited Conduct, any Formal Resolution process will cease and the non-student employee Respondent will be ineligible for future employment by the Colleges.

**D. Considerations and Rights Associated with Reports of Prohibited Conduct**

**1. Advisors**

Each party has the right to choose and consult with an Advisor of their choice. The Advisor may be any person, including an attorney. The parties may be accompanied by their respective Advisors at any meeting or proceeding under this Policy and Procedures. While the Advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not (except when conducting cross-examination as explained below) speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. The Title IX Coordinator will have the authority to remove from any meeting, process, or hearing an Advisor who does not comply with the expectations of this Policy.

In the event that an investigation proceeds with a hearing and a party does not have an Advisor present at the live hearing, the Colleges must provide an Advisor, without fee or

charge to that party, who may be, but is not required to be, an attorney solely to conduct cross-examination on behalf of that party. At the hearing, the Adjudicator must permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally. Advisors provided by the Colleges will be adults with an understanding of the purpose of cross-examination, but will not be attorneys or have training commensurate to attorneys with respect to conducting cross-examination.

## **2. Coordination with Law Enforcement**

The Title IX Coordinator will contact any law enforcement agency that is conducting its own investigation to inform that agency that the Colleges' investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the Colleges in its investigation. At the request of law enforcement, the Title IX Coordinator may delay the Colleges' investigation temporarily, not to exceed ten (10) calendar days unless law enforcement specifically requests and justifies a longer delay. The Investigator will promptly resume the Colleges investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation and/or that the Colleges may proceed.

## **VIII. TRAINING, EDUCATION, AND PREVENTION PROGRAMS**

The Colleges provide training to students and employees to ensure they understand this Policy, rights and responsibilities, and the topics and issues related to maintaining an education and employment environment free from Prohibited Conduct.

The Colleges seek to prevent Prohibited Conduct through ongoing education, awareness programs, and training. Training topics include but are not limited to: the prohibition of Prohibited Conduct including all relevant definitions, resources available to impacted parties, the role of the Title IX Coordinator, the importance of bystander intervention, risk assessment and reduction strategies, awareness of violence and its long-term impacts, and sanctions for individuals who violate the Colleges' Policy as well as any training requirements as outlined by relevant state and federal law.

The Colleges' Title IX Coordinator oversees the education and prevention initiatives calendar, tailoring programming to campus needs and climate. Incoming first-year students, transfer students and new employees will receive primary prevention and awareness programming. Returning students and employees will receive ongoing training on a periodic basis. All educational programs include information about resources and reporting options available for students, faculty, and staff.

## **A. Training for Title IX Staff, Investigators, Adjudicators, and other Facilitators**

Any materials used to train Title IX Coordinators, Investigators, Adjudicators, and any person who facilitates an Informal Resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of Prohibited Conduct. All staff in the Office of Title IX Programs and Compliance, Investigators, Adjudicators, and any person who facilitates an informal resolution process will receive training on: the definition of sexual harassment and Prohibited Conduct; the scope of the Colleges' education program or activity; how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes (as applicable); and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Adjudicators will also receive training on any technology used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

All Investigators will receive annual training on issues related to Prohibited Conduct and on how to conduct an investigation that is trauma-informed as to *all* parties, fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and members of the Colleges' community while promoting accountability.

Adjudicators are also trained at least annually on non-discrimination; the dynamics of sexual misconduct; the factors relevant to a determination of credibility; the appropriate trauma-informed manner in which to receive and evaluate sensitive information from *all* parties; the manner of deliberation; evaluation of consent and incapacitation; the presumption of non-responsibility and the application of the preponderance of the evidence standard; sanctioning; and the Colleges' Title IX and Sexual Misconduct Policy and these Procedures.

## **IX. RELATED POLICIES**

For Students: [Handbook of Community Standards](#)

For Staff: [Employee Handbook](#)

For Faculty: [Faculty Handbook](#) & [Employee Handbook](#)

## **X. ANNUAL REVIEW**

The Colleges will evaluate changes in legal requirements, existing resources, the resolution of reports, including timeframes, sanctions and remedies, and other factors and update this Policy as appropriate. The Colleges will communicate any substantial changes to this Policy to the HWS community.<sup>5</sup>

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<sup>5</sup> Clarifying changes that were not substantial were made on August 28, 2020.

## **PROCEDURES FOR RESOLVING A FORMAL COMPLAINT OF PROHIBITED CONDUCT**

### **I. COMPLAINT RESOLUTION PROCESS**

Following an intake assessment and receipt of a Formal Complaint, the Title IX Coordinator will initiate the complaint resolution process. These Procedures offer two forms of resolution of Complaints of Prohibited Conduct: (1) Informal Resolution, which includes a variety of informal options for resolving Formal Complaints and (2) Formal Resolution, which involves a formal investigation and adjudicatory hearing. The institution may consolidate complaints alleging Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

#### **Where the Respondent is a student:**

For instances of Title IX Prohibited Conduct and/or Community Standards Prohibited Conduct, the Colleges will resolve Formal Complaints by the procedures outlined in the Procedures for Resolving a Formal Complaint of Prohibited Conduct, set out in Appendix A to this Policy.

#### **Where the Respondent is a faculty member:**

For instances of Title IX Prohibited Conduct by a Faculty member, the Colleges will resolve Formal Complaints by following the established procedures and protocols of this Policy, including an investigation, adjudication, a hearing with cross examination, and an appeal process. For instances of Community Standards Prohibited Conduct by a Faculty member, the Colleges may resolve formal complaints by appointing an Investigator to investigate the matter, who will make credibility determinations, observations of demeanor, and recommended findings. The Provost will either accept or reject the recommended finding of the Investigator and determine a sanction. If the faculty member does not accept the Provost's recommendations, then the faculty member may file a grievance under the procedures set out in the Faculty Bylaws and Procedures. Any procedures relating to termination of a tenured faculty member will be subject to the Faculty Bylaws and Procedures. A Complainant may appeal the determination of the Provost by following the appeal procedures from section III, Formal Resolution, part B, Adjudication, number 8, Appeals.

#### **Where the Respondent is a staff member:**

For instances of Title IX Prohibited Conduct by a staff member, the Colleges will resolve formal complaints by following the established procedures and protocols of this Policy, including an investigation, adjudication, a hearing with cross examination, and an appeal process. For instances of Community Standards Prohibited Conduct by a staff member, the Colleges may resolve formal complaints by appointing an Investigator to

investigate the matter, who will make credibility determinations, observations of demeanor, and recommended findings. The Vice President of Human will accept or reject the recommended finding of the Investigator and determine sanction. The Vice President of Human Resources may also consult with the Respondent's supervisor for resolution, including the imposition of any sanction(s). If the staff member does not accept the Vice President of Human Resources' decision, they may seek resolution under the Employee Conduct and Progressive Discipline policy outlined in the Employee Handbook. A Complainant may appeal the determination of the Vice President by following the appeal procedures from section III, Formal Resolution, part B, Adjudication, number 8, Appeals.

### **Where the Respondent is a third party:**

The Title IX Coordinator will determine the appropriate manner of resolution to ensure a prompt and equitable process and provide for the safety and well-being of the Complainant and the broader campus community. When a report involves students or employees from the Colleges and another institution, the institutions may work collaboratively to address Prohibited Conduct provided that such collaboration complies with the Family Educational Rights and Privacy Act codified at 20 U.S.C 123g; 34 C.F.R Part 99 and other applicable federal and state laws.

#### **A. Notice of Allegations/Formal Complaint**

The Title IX Coordinator will simultaneously notify the Complainant and the Respondent, in writing via the Colleges' email accounts or by other reasonable means, after the receipt of a Formal Complaint. Such notice will (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location, and nature of the alleged Prohibited Conduct and include the written complaint; (3) identify potential Policy violation(s) and the essential facts underlying the potential violation(s); (4) identify the type of resolution (informal or formal); (5) include information about the Student Bill of Rights; (6) inform the parties of the right to choose and consult with an Advisor, who can accompany the parties to any meeting or hearing under this Policy and Procedures; (7) explain the prohibition against Retaliation; (8) instruct the parties to preserve any potentially relevant evidence in any format; (9) include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; (10) identify how the parties can inspect and review evidence obtained as part of the investigation (for Formal Resolution only) that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which HWS does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source; and (11) provide a copy of the Policy and these Procedures via a hyperlink. Either party may submit a written electronic appeal to the Title IX Coordinator within three (3) calendar days regarding the Prohibited Conduct Policy violations



chosen in the Notice of Allegations. The Title IX Coordinator will have sole discretion to determine the type of policy violation.

Typically, a no-contact order (NCO) will be issued by the Title IX Coordinator to both parties with the Notice of Allegations. A NCO is a directive that requires involved parties to not have contact in any way, including in person, via email, telephone, text messaging, social media, or any other method of electronic or direct communication. The orders will be mutual to both parties, unless designated by the Title IX Coordinator as a one-way order, which would be issued based on a fact specific inquiry, such as to enforce an order of protection issued by a court. The order also includes third parties acting on either the Complainant or Respondent's behalf. The Colleges may issue a NCO order when it is deemed necessary to provide any or all individuals an opportunity to participate fully in the life of the Colleges, and may also be issued as supportive measures. Modifications to a NCO may be requested to the Title IX Coordinator. Failure to meet a NCO directive, may result in disciplinary action. Students may appeal a NCO, including the ability to submit evidence for a modification of the NCO, through appropriate procedures in the Handbook of Community Standards. Employees may appeal a NCO through the Title IX Coordinator.

**B. Dismissal of Formal Complaint**

The Title IX Coordinator will dismiss a Formal Complaint for the purposes of any form of Title IX Prohibited Conduct if any of the following circumstances are met:

- Even if proved, the misconduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in Section IV. Part A;
- The misconduct alleged in the Formal Complaint did not occur in the Colleges' education program or activity; or
- The misconduct alleged in the Formal Complaint is not alleged to have occurred in the United States.

Dismissal of Title IX Prohibited Conduct for the foregoing reasons does not preclude the Colleges from proceeding with charges of other forms of misconduct, including Community Standards Prohibited Conduct.

Further, if any of the above circumstances are met, the Title IX Coordinator may still dismiss the Formal Complaint for purposes of any form of Title IX Prohibited Conduct and/or Community Standards Prohibited Conduct, in the Title IX Coordinator's sole discretion:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer enrolled or employed by the Colleges; or
- If specific circumstances prevent the Colleges from gathering sufficient evidence to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

If a Formal Complaint is dismissed, the involved parties will receive simultaneous written electronic notice of the dismissal, including the reason for the dismissal. Any party may appeal the decision by submitting a request for appeal to the Title IX Coordinator by email within seven (7) calendar days of the date of the notice from the Title IX Coordinator. The appeal will be determined using the procedures set forth in this Policy.

## **II. Informal Resolution**

Informal Resolution presents the opportunity for the Complainant and Respondent to resolve allegations of Prohibited Conduct without an investigation or hearing. Participation in Informal Resolution in lieu of the Formal Resolution Process is purely voluntary. As to Title IX Prohibited Conduct, Informal Resolution is available only when a Formal Complaint has been filed and the parties agree to its use in writing. For cases involving Community Standards Prohibited Conduct, the Title IX Coordinator may use any form of Informal Resolution and need not strictly follow the procedures set out in this section. Informal Resolution may be used only with the approval of the Title IX Coordinator, who may deem its use inappropriate based on the specific allegations involved or other factors. Informal resolution is not available to resolve a student-Complainant's allegation that an employee has engaged in Title IX Prohibited Conduct. Prior to initiating Informal Resolution, the Title IX Coordinator will provide the Parties with written notice disclosing the allegations, the requirements of the process, the right to withdraw from Informal Resolution to pursue Formal Resolution, and any consequences of participation (*e.g.*, as it relates to any subsequent Formal Resolution if Informal Resolution is not achieved).

Informal Resolution can be commenced at any point prior to the conclusion of a Hearing under the Formal Resolution Processes. It may be conducted by an Informal Resolution Facilitator appointed by the Title IX Coordinator. The Complaint, Respondent, Title IX Coordinator, or Facilitator may terminate Informal Resolution at any time prior to its completion. If Informal Resolution is terminated, the Formal Resolution Process will promptly commence or resume, as appropriate.

Informal Resolution may take many forms as agreed to between the Complainant, Respondent and Title IX Coordinator, including, but not limited to:

- Mediation: Mediation may involve the Complainant and Respondent being in the same or different rooms, but they will never be required to be in the same room. Mediation typically does not require an admission of responsibility for the Prohibited Conduct by the Respondent.
- Restorative Justice: Restorative Justice may involve the Complainant and Respondent being in the same or different rooms, but they will never be required to be in the same room. Restorative Justice typically requires an admission of responsibility for the Prohibited Conduct, or certain allegations, by the Respondent.

- Educational Programming/Training: Targeted or broad-based educational programming or training for relevant individuals or groups may be provided by the Title IX Coordinator, or the facilitator of their choice based upon an agreement of the involved parties.

Where the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the Informal Resolution will not be considered in a subsequent investigation and Formal Resolution. Any facilitator chosen by the Title IX Coordinator to oversee Informal Resolution may not serve as a witness in the event the Formal Resolution process commences.

The outcome of the Informal Resolution will be documented in an agreement or other form that is signed by both the Complainant and the Respondent. Informal Resolution will not be used to impose disciplinary action against the Respondent and will not be reported to third parties; however, it may be taken into consideration in the event of future findings of responsibility for Prohibited Conduct or other violations of the Colleges' policies.

The Informal Resolution process typically should be completed within thirty (30) calendar days of the parties documenting their agreement to participate. That period may be extended at the discretion of the Title IX Coordinator. The Title IX Coordinator will maintain records of all reports referred for Informal Resolution.

### **III. Formal Resolution**

Formal Resolution is commenced upon receipt of a Formal Complaint, when the Complainant elects this option, or the Colleges determine that Formal Resolution is appropriate for resolution of the Formal Complaint, or the Informal Resolution process is halted or fails to resolve the Formal Complaint.

#### **A. Investigation**

Whenever Formal Resolution is commenced, the Title IX Coordinator will designate one or more Investigators from the Colleges and/or an experienced external investigator to conduct an investigation. The Title IX Coordinator will simultaneously notify the Complainant and the Respondent, in writing via HWS email accounts or by other reasonable means, of the commencement of an investigation, and how to challenge participation by the Investigator(s) for bias or conflict of interest – which the Title IX Coordinator will resolve in their sole discretion. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Adjudicator concludes that there is sufficient evidence, by a preponderance of the evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation or any form of resolution under these Procedures.

##### **1. Timing of Investigation**

The Colleges will seek to complete the investigation within sixty (60) calendar days from the date a Formal Complaint is filed. This period is not guaranteed or achievable in all cases and may be for good cause, as described in the section on Timeframe for Completion of Investigation Extension for Good Cause. Any extension, and the reason for the extension, will be shared with the parties in writing.

## **2. Overview of Investigation**

During the investigation, the parties will have an equal opportunity to be heard, to review the relevant information considered by the Investigator including the evidence upon which the Colleges does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation, to submit information and corroborating evidence, to recommend witnesses who may have relevant information, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will notify and seek to interview separately the Complainant, the Respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party). Parties will be provided sufficient time to prepare to participate in any meetings with the Investigator and provided the date, time, location, and participants.

Typically, the Investigator will prepare a written narrative of interviews with various involved parties (interview summary). The interview summary will be shared with the respective interviewee to review accuracy prior to being included in the record of the investigation. Finalized interview summaries and all other relevant evidence will be shared electronically with the Complainant, Respondent, and their Advisors prior to inclusion in the Preliminary Investigative Report (PIR).

The Investigator may not access, consider, disclose or otherwise use records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment to the Complainant or Respondent, unless the Investigator obtains the Complainant's or Respondent's, as appropriate, voluntary, written consent to do so.

### *i. Relevance of Evidence - Prior Sexual History*

The sexual history of a Complainant or Respondent will never be used to prove character or reputation. Subject to federal and state law, evidence related to the prior sexual history of either of the parties is generally not relevant to the

determination of a Policy violation and will be considered only in limited circumstances. For example, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report and prior sexual interactions between the Complainant and Respondent may be relevant to understand the nature of the conduct at issue. The Colleges will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

**3. Site Visit(s) and Expert Consultation(s)**

The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.

The Investigator may consult medical, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

**4. Preliminary Investigation Report; Review and Response Period**

Prior to the conclusion of the investigation, the Investigator will prepare a Preliminary Investigation Report (PIR) summarizing the information gathered and outlining the contested and uncontested information. The PIR will not include any findings or credibility assessments, which are reserved for the adjudicator, but may note observations relevant to credibility. The Complainant and the Respondent, in consultation with their Advisors if they so choose, will have an opportunity to review the PIR, respond to it in writing, meet with the Investigator if needed, submit additional comments and information to the Investigator, identify any additional witnesses or evidence for the Investigator to consider, and submit any further questions that they believe should be directed by the Investigator to the other party or to any witness. As part of the review of the PIR, the Title IX Coordinator will make available to all Parties any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the Colleges does not intend to rely in reaching a determination regarding responsibility; and inculpatory or exculpatory evidence whether obtained from a Party or other source, so that each Party can meaningfully respond to the evidence prior to conclusion of the investigation. The Title IX Coordinator will designate ten (10) calendar days for the review and response by the parties after the submission of the PIR. The Investigator will consider any written response by the parties prior to the completion of the investigative report. The parties may submit information, witness names and any evidence during the investigation or designated review and response period. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator during the investigation or designated review and response period will generally not be

considered in the determination of responsibility for a violation of the Policy, and will not be considered by the Adjudicator or the Appeal Panel.

## **5. Final Investigation Report**

Unless there are significant additional investigative steps required as identified by the Investigator, after receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, the Investigator will prepare a Final Investigation Report (FIR). The Investigator will deliver the FIR to the Title IX Coordinator. The Title IX Coordinator will notify both parties, simultaneously, that the FIR is complete and available for electronic review. The Title IX Coordinator will then create and electronically send to the Complainant, Respondent, and their Advisors a Notice of Adjudication letter.

## **B. Adjudication**

Subject to Appendix A, section I. Complaint Resolution Process above (describing procedures for faculty and staff), the Colleges hold a live hearing by a single decision-maker or panel of decision-maker(s), known as the Adjudicator(s).

### **1. Notice and Timing of Hearing**

Within ten (10) calendar days prior to the date of the hearing, the Title IX Coordinator will notify the parties in writing of the specific charge, the date, time, and location of the hearing, the name of the Adjudicator, and how to challenge participation by the Adjudicator for bias or conflict of interest – which the Title IX Coordinator will resolve in their sole discretion. The Colleges may, at the discretion of the Title IX Coordinator, postpone the hearing or determine that multiple hearing sessions are necessary for a continuance. Good cause for extension may include the unavailability of the parties, the timing of semester breaks or holidays designated by the Colleges, or other extenuating circumstances requiring more time. Any extension, including the reason for the extension, will be shared with the parties in writing. The Complainant or the Respondent may seek to postpone the hearing. Permission to postpone a hearing may be granted provided that the request to do so is based on a compelling need and communicated to the Title IX Coordinator prior to the time of the hearing.

### **2. Hearing Format**

The hearing may be conducted with all parties physically present in the same geographic location, or, at the Colleges' discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually through remote video conferencing. Remote video conferencing will enable participants to simultaneously see and hear each

other. The Colleges may delay or adjourn a hearing based on technological errors not within a party's control. The Colleges will make all evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. Each party has the opportunity to be heard, to identify witnesses for the Adjudicator's consideration, and to respond to any questions of the Adjudicator. While the parties may not directly question each other or any witness, their Advisors may cross examine witnesses as described below. A typical hearing may include brief opening remarks by the Complainant and/or Respondent, with follow-up questions posed by the Adjudicator, information presented by the parties or witnesses deemed relevant by the Adjudicator, with follow-up questions of the parties or witnesses by the Adjudicator and the parties' Advisors for cross-examination, and brief concluding remarks by the Complainant and Respondent.

All hearing proceedings will be, at a minimum, audio-recorded and made available for parties' review upon completion of the hearing.

**i. Expectations of Decorum**

The following Expectations of Decorum are to be observed in the hearing, during cross-examination, and as applicable to any meetings associated with resolution of a Formal Complaint; and applied equally to all parties and Advisors. The Title IX Coordinator will have the authority to remove from the meeting, process, or hearing an involved party and/or Advisors who do not comply with the Expectations of Decorum.

- Questions must be conveyed in a neutral tone.
- Parties and Advisors will refer to other parties, witnesses, Advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
- No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, Advisors, or Adjudicators.
- While an Advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
- The Advisor may not yell, badger, or physically "lean in" to a party or witness's personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Adjudicator.
- The Advisor may not use profanity or make irrelevant *ad hominem* attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.

- The Advisor may not ask repetitive questions. This includes questions that have already been asked by the Adjudicator, the Advisor in cross-examination, or the party or Advisor in direct testimony. When the Adjudicator determines a question has been “asked and answered” or is otherwise not relevant, the Advisor must move on.
- Parties and Advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

## ii. Cross Examination

Each party’s Advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the Advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

### a. *Determining Relevance of Questions*

Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Adjudicator must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant unless (1) such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (2) if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

Other forms of evidence and information that are not considered relevant include: information protected by a legally recognized privilege and any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. Cross-examination questions that are duplicative of those already asked, including by the Adjudicator may be deemed irrelevant if they have been asked and answered.

## 3. Participation in Hearing

Both the Complainant and the Respondent have a right to be present at the hearing. Either party may be accompanied in the hearing by an Advisor of their choice and must provide



the name of their Advisor to the Title IX Coordinator at least three (3) days prior to the hearing. When a party does not have an Advisor of choice at the hearing, the Colleges must provide an Advisor solely to conduct cross examination - see section VII, part D.1 of this Policy regarding Advisors.

If, despite being notified of the date, time, and location of the hearing, either party is not in attendance, the hearing may proceed the Adjudicator may reach a determination in the parties' absence, including through any evidence gathered that does not constitute a "statement" by that party. Neither party is required to participate in the hearing in order for the hearing to proceed. The Colleges will not threaten, coerce, intimidate, or discriminate against the party in any attempt to secure the party's participation.

**i. Responding to Questions**

If a party or witness is present at the live hearing, but disagrees with a relevance determination, they may have the choice of either (1) abiding by the Adjudicator's determination and answering or (2) refusing to answer the question.

- If a witness or party refuses to submit themselves to cross-examination questioning by a *party's Advisor*, the Adjudicator may not rely on the statement(s) of that party or witness in reaching a determination regarding responsibility. In this instance, the Adjudicator may rely on non-statement evidence.
- If a party or witness refuses to submit themselves to questioning by the *Adjudicator*, the Adjudicator may not draw any inference about the determination of responsibility based solely on the refusal by the party or witness but can still rely on statement evidence.

**ii. Participation by Witnesses**

The parties may submit to the Title IX Coordinator a list of witnesses they believe have relevant information to the outcome of the hearing. The Adjudicator will review the parties' requested witnesses and consider any other witnesses. The Adjudicator has discretion to determine which witnesses are relevant and may decline to hear from witnesses where they conclude that the information is not necessary for the review. Witnesses will only be permitted inside the hearing location during their own testimony.

Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. If a witness *does not* submit to cross-examination, the Adjudicator cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. Witnesses are subject to the Expectations of Decorum.

#### **4. Decision and Deliberation by Adjudicator**

The Adjudicator will simultaneously issue a written decision (the “Final Outcome Letter”) to both the Complainant and the Respondent, via the Title IX Coordinator, within seven (7) calendar days following the hearing. The Final Outcome Decision Letter will include:

- A description of the allegations that lead to the hearing, as potentially constituting Prohibited Conduct.
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination.
- A statement of factual findings supporting the determination.
- A statement of the conclusions regarding the application of this Policy to the facts.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.
- An explanation of the disciplinary sanctions imposed on the Respondent, if any.
- A statement of whether remedies designed to restore or preserve equal access to the Colleges’ education program or activity will be provided to the Complainant. Specific remedies will be identified in the Hearing Outcome Decision Letter only to the extent those remedies directly affect the Respondent. The Title IX Coordinator is responsible for implementing such remedies.
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The Adjudicator may consult with the Title IX Coordinator or their designee for questions regarding policy, procedures, and/or prohibited conduct.

#### **5. Post-Finding Written Impact and Mitigation Statements**

Where there is a finding of responsibility on one or more of the charges, the Adjudicator will review any written statements to the Title IX Coordinator for consideration by the Adjudicator in determining an appropriate sanction. The Complainant may submit a written statement describing the impact of the Prohibited Conduct and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The parties may submit their statements to the Title IX Coordinator prior to the hearing but no later than 24 hours after the close of the hearing. The Title IX Coordinator will ensure that each of the parties has an opportunity to review any statement submitted by the other party. The Title IX Coordinator will only provide such statement(s) to the Adjudicator upon a finding of responsibility.

## 6. **Disciplinary Sanctions for Students**

Where a student is found responsible for a violation of this Policy, the Title IX Coordinator will designate an appropriate administrator from the Colleges to provide a record of disciplinary history to the Adjudicator. The Adjudicator will then determine the appropriate sanction(s). Sanctions imposed by the Colleges include, but are not limited to:

- Probation;
- Conduct warning;
- Suspension;
- Expulsion/permanent separation;
- Organizational sanctions including probation and rescinding recognition; and/or
- Any other educational and/or remedial measures to eliminate, prevent or address the Prohibited Conduct.

In general:

- Any student who is found responsible for Sexual Assault (involving sexual intercourse) will receive a sanction ranging from suspension to expulsion.
- Any student who is found responsible for Sexual Assault (involving sexual contact) will receive a sanction ranging from conduct warning to expulsion.
- Any student who is found responsible for any other form of Prohibited Conduct will receive a sanction ranging from conduct warning to expulsion.
- When any group (student group, student organization or team) is determined to have acted in violation of this Policy, the group will receive a sanction ranging from probation to loss of recognition or status.
- The Adjudicator may broaden or lessen any range of recommended sanctions based on mitigating or aggravating circumstances. A single sanction or a combination of sanctions may be issued.

In considering the appropriate sanction within the recommended outcomes, the Adjudicator will consider the following factors:

- the Respondent's prior discipline history;
- how the Colleges have sanctioned similar incidents in the past;
- the nature and violence of the conduct at issue;
- the impact of the conduct on the Complainant;
- the impact of the conduct on the HWS community;
- any written impact and mitigation statements submitted by the parties;
- whether the Respondent has accepted responsibility;
- whether the Respondent is reasonably likely to engage in the conduct in the future;
- location of incident;

- whether the conduct reflects collusion with other individuals;
- the need to deter similar conduct by others; and
- any other mitigating or aggravating circumstances.

Absent justifications, if the Respondent has engaged in the same or similar conduct in the past, the sanction will be greater than the previous sanction.

The Adjudicator will also consider other remedial actions that may be taken to address any Prohibited Conduct and prevent its recurrence, including strategies to protect the Complainant and any witnesses from retaliation; counseling for the Complainant; other steps to address any impact on the Complainant, any witnesses, and the broader student body; and any other necessary steps reasonably calculated to prevent future occurrences of Prohibited Conduct.

## **7. Disciplinary Sanctions for Non-Student Employees**

Sanctions may vary depending on the totality of the circumstances and potentially range from a written warning to the termination of the Respondent's employment. Any procedures relating to termination of a tenured faculty member will be subject to review under the relevant provisions of the Faculty Bylaws and Procedures.

## **8. Appeals**

The Complainant and the Respondent may appeal the Dismissal of Complaint and/or the Final Outcome. An appeal must be submitted electronically to the Title IX Coordinator in writing within seven (7) calendar days of receiving the Final Outcome Letter. The grounds for appeal are:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, Investigator(s), or Adjudicator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter;
- The sanction is grossly disproportionate to the conduct committed.

The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for the appeal and should not exceed 10 pages single spaced, including any attachments. Appeals that do not meet these standards may be returned to the party for correction. Upon receipt of an appeal, the Title IX Coordinator will notify both parties and provide them with the written statement of appeal. Each party has an opportunity to respond in writing to the appeal. Any response to the appeal must be submitted to the Title IX Coordinator within three (3) calendar days from receipt of the appeal.

The appeal will be conducted in an impartial manner by an Appeal Panel, consisting of the Vice President for Campus Life (or their designee), the Provost (or their designee) and the Vice President of Human Resources (or their designee). The Title IX Coordinator will inform the parties regarding the composition of the Panel at the outset of the appeal and provide information on how to challenge the composition of the Panel for bias or conflict of interest. In any appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Appeal Panel will consider an appeal only on the basis of one or more of the four (4) grounds for appeal stated above, and will make a determination based on supporting information provided in the written request for appeal, the written response of both parties, the Final Investigative Report and the written record of the original hearing including the Final Outcome Letter. The Appeal Panel may decide to:

- dismiss the appeal for failing to state a ground(s) for appeal;
- send the case back to the original Adjudicator for reconsideration of previously unavailable relevant evidence;
- In the event of a finding of bias, designate a new Investigator and/or Adjudicator, not previously involved in the matter, to oversee a new investigation and/or hearing of the claim;
- make a final determination either upholding or altering the sanction decision of the Adjudicator, which may include but is not limited to:
  - Adding or removing one or more sanctions;
  - Increasing or decreasing the duration of one or more sanctions;
  - Alteration of deadlines related to sanction completion.

The submission of an appeal stays any sanctions for the pendency of an appeal. Generally, the Appeal Panel will communicate the result of the appeal to the Complainant and the Respondent within ten (10) calendar days from the date of the submission of all appeal documents by both parties. Appeal decisions are final, and after any appeal is resolved, the decision is not subject to further review.

## **9. Timeframe for Completion of Investigation and Adjudication; Extension for Good Cause.**

The Colleges' goal is that the period from commencement of an investigation through resolution (finding and sanction, if any) will not exceed ninety (90) calendar days. This timeframe is not guaranteed or achievable in every case and may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for breaks or vacations in the Colleges' calendar, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Title IX

Coordinator will notify the parties in writing of any extension of this timeframe and the reason for such extension.

#### **10. Transcript Notations**

After a finding of responsibility at the close of the claim, the Title IX Coordinator will direct the Colleges' Registrar to make a notation on the Respondent's transcript stating the student was "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." Notations following an expulsion are permanent. One year after the conclusion of the suspension, Respondents who have been suspended may appeal to the Appeals Panel, requesting the removal of the notation. A Respondent may appeal the notation regarding suspension no more than one time per year.

### **IV. RELEASE OF DOCUMENTS**

As to matters involving students, under federal privacy laws, the Final Investigation Report, statements of one party that are shared with the other party in the resolution process, and any documents prepared by the Colleges, including documents by or for the adjudicators in advance of the Hearing, constitute education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law.

Complainants and Respondents are free to discuss their own experiences; however, the investigative reports and evidence obtained during any investigation, and any information used during a hearing, are confidential and may not be shared by parties or their advisors, unless specifically permitted by law. Access to materials will be provided only by a secure method and parties and advisors are not permitted to make copies of any documents shared or make use of the documents outside of the Title IX and Sexual Misconduct Policy process.

### **V. RECORDS**

The Title IX Coordinator will maintain for a period of at least seven (7) years records of Prohibited Conduct, including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the Colleges' education programs or activities; any appeal and the result therefrom; any Informal Resolution; and all materials used to train Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution process. Additionally, the Colleges will create, and maintain for a period of seven (7) years, records of any actions, including supportive measures, taken in response to a report or Formal Complaint of Prohibited Conduct. The Colleges will document the basis for their conclusion, that their response was not deliberately indifferent, and document that they have taken measures designed to restore or preserve equal access to the Colleges' education programs or activities. If the Colleges do not provide a Complainant with supportive measures, then such documentation will include the reasons why such a response was not clearly unreasonable in light of the known circumstances.