

# Hampden-Sydney College Harassment & Discrimination Policy for Staff

## Article I. Introduction

### 1. Policy Overview

Hampden-Sydney College is committed to maintaining and strengthening an environment founded on civility and respect. Articles I and II of this policy describe prohibited harassment and discrimination, including sexual misconduct (hereafter abbreviated as “HDSM”). Articles III through VI establish procedures for responding to HDSM.

The topics addressed in this policy may be subject to various state and/or federal laws, and it is the College’s intent that this Policy comply with all applicable laws. However, in the event of any conflict, discrepancy, or inconsistency between this Policy and applicable law, the College will endeavor to apply governing law in lieu of any contrary terms of this Policy.

### 2. Notice of Nondiscrimination

While exempted from Subpart C of [Title IX of the Higher Education Amendments of 1972](#), 20 U.S.C. § 1681 et seq. (“Title IX”) with respect to its admission and student recruitment activities, Hampden-Sydney College (the “College”) does not discriminate, and prohibits discrimination by students, employees, and third parties on the basis of the following [protected categories](#): race, color, sex (including pregnancy, sexual orientation, gender identity and gender expression), religion, age, national or ethnic origin, family medical or genetic information, disability, familial, or veteran status, or any other category protected by state or local law, in the operation of its educational programs, community social activities or programs, and with respect to employment. Federal regulations promulgated under the following statutes provide the minimum protections against harassment and discrimination: the [Equal Pay Act of 1963](#); [Title VI and Title VII of the Civil Rights Act of 1964](#); the [Age Discrimination in Employment Act of 1967](#); Title IX of the Higher Education Amendments of 1972; the [Rehabilitation Act of 1973](#); [Title I and II of the Americans with Disabilities Act \(ADA\) of 1990](#), the [Uniformed Services Employment and Reemployment Rights Act \(USERRA\) of 1994](#) and the [Genetic Information Non-discrimination Act of 2008](#). Other applicable policies are specified in the Code of Student Conduct located in *The Key: The Hampden-Sydney College Student Handbook*, the *Faculty Handbook*, and the *Employee Handbook*. In particular, students pledge to be bound by the Code of Conduct which states: **“The Hampden-Sydney Student will behave as a Gentleman at all times and all places.”** and the Honor Code which states: **“The Hampden-Sydney student will not lie, cheat or steal, nor tolerate those who do.”**

[Discrimination](#) is inequitable treatment that occurs: (1) because of an individual’s actual or perceived membership in one or more of the protected categories listed in the College’s non-discrimination statement; and (2) which has the effect of excluding an individual from participation in, denying an individual the benefits of, or otherwise adversely affecting a term or condition of an individual’s employment, education, living environment, or participation in a College educational program or activity. This includes failing to provide reasonable accommodations, consistent with state and federal law, to persons with disabilities under the ADA or Rehabilitation Act.

**Harassment** is a form of discrimination in which unwelcome verbal, visual, or physical conduct is directed toward an individual because of an individual's actual or perceived membership in one or more of the protected categories listed in the College's non-discrimination statement. Conduct does not have to include an intent to harm, be directed at a specific person, or involve repeated incidents to be prohibited under this policy. Conduct violates this Policy when it creates a hostile environment – meaning that the unwelcome conduct is sufficiently severe, or pervasive, and that it interferes with an individual's employment, academic performance or participation in College programs or activities, and creates a working, learning, program, or activity environment that a reasonable person would find intimidating, hostile, or offensive.

Questions about any aspect of the College's Harassment and Discrimination Policy, including those related to Title IX, should be directed to Hampden-Sydney College's **Title IX Coordinator**. The College's Title IX Coordinator and 504 Coordinator is Ms. Melissa Wood. Her office is in 101 Student Health Center and she can be reached by telephone at 434-223-6061, or by email: [mwood@hsc.edu](mailto:mwood@hsc.edu).

Questions about Title IX of the Higher Education Amendments Act, Title VI of the Civil Rights Act, Title II of the Americans with Disabilities Act, or the Rehabilitation Act can also be directed to the U.S. Department of Education's **Office for Civil Rights (OCR)**, available online at the following link: <https://www2.ed.gov/about/offices/list/ocr/index.html>. The District of Columbia office for the Office of Civil Rights serves as the regional field office for Virginia. The postal mail address is: U.S. Department of Education, Office of Civil Rights, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: 1-800-421-3481. Email: [ocr@ed.gov](mailto:ocr@ed.gov).

For faculty, staff, and student-employees of the College, questions about Title VII of the Civil Rights Act, the Equal Pay Act, Title I of the Americans with Disabilities Act, the Rehabilitation Act, the Age Discrimination in Employment Act, or the Genetic Information Nondiscrimination Act can also be directed to the **Equal Employment Opportunity Commission (EEOC)**. The postal mail address for the Richmond Office of the EEOC is 400 N. Eight Street, Suite 350, Richmond, VA, 23219. Telephone: 1-800-669-4000. Email: [info@eeoc.gov](mailto:info@eeoc.gov).

Questions about the Uniformed Services Employment and Reemployment Rights Act can also be directed to the US Department of Labor, Office of Veterans Employment and Training Service. The postal mail address for the office is: 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: 1-866-4-USA-DOL, Website: [www.dol.gov/agencies/vets](http://www.dol.gov/agencies/vets).

### **3. Applicability of this Policy**

The purpose of this Policy is to eliminate HDSM based on the protected categories listed above, prevent reoccurrences, and remedy its effects. Except where noted, this Policy applies to any allegation of HDSM made by or against a student or an employee of the College, or a third party (e.g., a visiting student or an independent contractor). The Policy applies if the conduct at issue has the potential to interfere with an individual's participation in, or experience of, the College's academic, educational, athletic, extracurricular programs, or activities, based on any of the protected categories listed above. HDSM that occurs off campus, during study abroad programs, on field trips, at parties, or sporting events, etc. falls under the jurisdiction of this Policy if it has the potential to interfere with an individual's ability to participate in, or benefit from the College's programs or activities. The College's jurisdiction over implementation and enforcement of the policy applies to all HDSM that occurs on campus or on College-

owned properties, whether or not the Complainant and/or Respondent are students or employees of the College. However, the College's disciplinary authority may not extend to third parties who are not students or employees of the College. In the case of allegations of HDSM, unless otherwise stated, this Policy supersedes and applies in lieu of all other procedures and policies set forth in any other document containing College policies and/or procedures.

#### ***4. Periods of Limitations for Filing Complaints***

A complaint of HDSM may be filed with the College at any time, regardless of the amount of time that has passed between the alleged incident(s) and the decision to file a complaint. However, the College strongly encourages individuals to file complaints promptly in order to preserve evidence for potential legal or disciplinary proceedings. Delays in filing a complaint may compromise the College's efforts to eliminate HDSM, prevent reoccurrences, and remedy its effects.

A student seeking to file a complaint of discrimination with the US Department of Education based on race, color, national or ethnic origin, sex, disability, or age must ordinarily file their complaint within 180 calendar days following the last act of alleged discrimination. More information is available at: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt> .

An individual seeking to make a complaint of employment discrimination to the EEOC has 180 calendar days to file their complaint. This 180-day filing deadline is extended to 300 days if the complaint also is covered by a state or local anti-discrimination law. More information is available at: <https://www.eeoc.gov/federal-sector/filing-formal-complaint>.

#### ***5. Definitions Applicable to this Policy***

Underlined terms used in this Policy are defined in the glossary in Appendix A. This Policy acknowledges that some students are also employees of the College and covered by prohibitions of harassment and discrimination based on employment status. Additionally, some employees of the College are also students at the College and covered by prohibitions of harassment and discrimination based on student status.

## Article II. Statements of Policy

This Policy is designed to protect the rights and needs of all parties involved in all complaints of HDSM. Creating a non-discriminatory environment is the responsibility of all members of the community. The College strongly encourages prompt reporting of all types of HDSM and is committed to a timely and fair [resolution](#) of complaints.

HDSM refers to unequal treatment of individuals, based on one or more of the protected classes, that is sufficiently severe or pervasive to unreasonably interfere with or limit the individual's opportunity to participate in or benefit from a College program or activity, or that otherwise adversely affects a term or condition of a student's education or living environment, or a term or condition of an individual's employment with the College. With respect to employment, prohibitions on HDSM apply to advertising, recruiting, applications, hiring, job assignments, promotions, pay, benefits, discipline, and discharge.

A wide range of behaviors falls within the general definition of prohibited HDSM under this Policy. Key determining factors are that the behavior is unwelcome, based on a protected category, and is reasonably perceived as offensive and objectionable under both a subjective and objective assessment of the conduct. Under this Policy a single, isolated incident of harassment alone may create a hostile environment if the incident is sufficiently severe. 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. The determination of whether an environment is hostile must be based on all of the circumstances. These circumstances could include, but are not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether a statement is a utterance of an epithet that engenders offense in an employee or a student or offends by mere discourtesy or rudeness; and/or
- In complaints in which a faculty member is a Respondent, whether the conduct deserves the protections of [Academic Freedom](#).

Offensive or derogatory comments, or other unwelcome verbal, visual, or physical conduct based on any protected category violates this Policy if the conduct creates an intimidating, hostile, or offensive learning, living, or working environment, or interferes with an employee's work performance or a student's ability to benefit from or participate in the College's academic programs or activities.

### ***1. Harassment and Discrimination Based on Race and/or Color***

Includes unequal treatment as defined in Article II based on an individual's membership in one or more racial groups, including White, Black or African American, American Indians and Alaska Native, Asian American, and Native Hawaiian and Other Pacific Islander. Racial discrimination also includes discrimination on the basis of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features. Race and color are not synonymous. Color discrimination occurs when a person is discriminated against based on the lightness, darkness, or other skin color characteristic of the person (e.g., showing a preference for individuals of one race with lighter skin than other individuals of the same race), and applies to individuals of all races.

## ***2. Harassment and Discrimination Based on Ethnicity or National Origin***

Includes unequal treatment as defined in Article II based on an individual's birthplace, their ancestry, culture, or linguistic characteristics that are closely associated with an ethnic or national origin group. Ethnic groups include individuals from regions of the world that do not conform to a particular nation state (e.g., Kurds). Under this Policy equal educational or employment opportunities will not be denied because of marriage or association with persons of a national origin group, membership or association with specific ethnic promotion groups, or a surname associated with a national origin group. The College will not base a decision on a job applicant's or an employee's foreign accent unless effective spoken communication in English is required to perform job duties and the individual's accent materially interferes with their ability to communicate in English. An English (or foreign language) fluency requirement is permissible if it is required for the effective performance of the position for which it is imposed.

## ***3. Harassment and Discrimination Based on Religion***

Includes unequal treatment as defined in Article II based on an individual's religious beliefs or lack of religious beliefs. The term religion includes all aspects of an individual's religious observance and practice. The College will reasonably accommodate the religious beliefs and practices of students, job applicants and employees, unless doing so would cause more than a minimal burden on the operations of the College. Flexible scheduling, voluntary shift substitutions or swaps, job reassignments, lateral transfers, and exceptions to dress or grooming rules are examples of accommodating an employee's religious beliefs. Allowing a student to live in a dormitory space that has a kitchen is an example of accommodating dietary practices associated with a student's religious beliefs. If a student's or employee's religious beliefs are closely held and take the place of religion in their life, the College will attempt to provide accommodations. Accommodations are not limited to individuals who belong to mainstream religious groups.

## ***4. Harassment and Discrimination Based on Age***

Includes unequal treatment as defined in Article II based on an individual's age, if the individual employee or student is 40, or older. The Age Discrimination in Employment Act permits employers to favor older workers based on age even when doing so adversely affects a younger worker who is 40 or older.

## ***5. Harassment and Discrimination Based on Disability***

Includes unequal treatment as defined in Article II based on an individual's disability, as defined by the Americans with Disabilities Act or the Rehabilitation Act. An individual with a disability is a person who: (1) has a physical or mental impairment that substantially limits one or more major life activities (e.g., walking, seeing, hearing, speaking, breathing, learning, caring for one's self, performing manual tasks); (2) has a record of having had such an impairment; or (3) is perceived as having such an impairment. The College will make a [reasonable accommodation](#) for the known disability of a qualified student, applicant for admissions or employment, or an employee if it would not impose an [undue burden](#) on the operations of the College. A qualified employee or job applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Students and employees seeking accommodations must contact the Title IX and 504 Coordinator, Ms.

Melissa Wood, to discuss accommodations requested and documentation that may be required. Her office is in 101 Student Health Center and she can be reached by telephone at 434-223-6061, or by email. [mwood@hsc.edu](mailto:mwood@hsc.edu). Reasonable accommodations offered by the College may include, but are not limited to, making existing facilities readily accessible to and usable by persons with disabilities, purchasing or modifying equipment or devices, adjusting or modifying examinations, and training materials.

#### ***6. Harassment and Discrimination Based on Family or Genetic Information***

Includes unequal treatment as defined in Article II based on an individual's family or genetic information, including information about an individual's genetic tests; information about the genetic test of a family member; family medical history; requests for and receipt of genetic services by an individual or a family member; and genetic information about a fetus carried by an individual or family member or of an embryo legally held by an individual or family member using assisted reproductive technology.

#### ***7. Harassment and Discrimination Based on Familial Status***

Includes unequal treatment as defined in Article II based on an individual's status as married or unmarried and an individual's status as a biological parent, adoptive parent, foster parent, legal guardian, or as a person without dependent children.

#### ***8. Harassment and Discrimination Based on Veteran's Status***

Includes unequal treatment as defined in Article II based on a job applicant's or employee's past or current service as a member of the uniformed services, or their application to serve in the uniformed service. The College will not deny such individuals initial employment, reemployment, retention in employment, promotion, or any benefit of employment. An employee has the right to be reemployed in their College job with the benefits they would have attained if they had not been absent due to military service, when they have left their college job to serve in the uniformed service as long as the employee: (1) provides advanced written or verbal notice of their service to their supervisor; (2) has five years or less of cumulative service in the uniformed services while employed by the College; (3) returns to work or applies for reemployment in a timely manner after conclusion of their service; and (4) has not been separated from uniformed service with a disqualifying discharge or under other than honorable conditions. Employees who leave their job to perform military service have the right to continue their existing employer-based health insurance plan for themselves and their dependents for up to twenty-four months while they are in the military.

#### ***9. Harassment and Discrimination Based on Pregnancy***

Includes unequal treatment as defined in Article II based on pregnancy, childbirth, or related medical conditions, including abortion. Pregnancy discrimination is a specific type of sex discrimination. Female job applicants or employees, including student-employees, affected by pregnancy or related medical conditions, must be treated in the same manner, with respect to hiring decisions or other terms and conditions of employment, as other job applicants or employees who are similar in their ability or inability to work. Pregnant employees are permitted to work as long as they are able to perform their major job functions. When an employee has been absent from work as a result of a pregnancy related condition and recovers the College will not require her to remain on leave until the baby's birth. If an

employee is temporarily unable to perform her major job functions due to pregnancy, the College will treat her similarly to other temporarily disabled employees, including provision of options for light duty, modified tasks, alternative assignments, short-term paid medical disability leave, or leave without pay, as applicable under the [Family and Medical Leave Act of 1993](#). Additionally, some impairments resulting from pregnancy (e.g., gestational diabetes) may be disabilities under the Americans with Disabilities Act (ADA). The College will provide a reasonable accommodation for a disability related to pregnancy, absent undue hardship (significant difficulty or expense). Employees with pregnancy related disabilities will be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculations, pay increases, granting of temporary disability benefits and with regards to eligibility for tenure, promotion, and for sabbaticals for faculty.

Female students affected by pregnancy, or pregnancy related conditions will be granted excused absences from classes or other College activities for as long as their doctor deems necessary. These students will be allowed to return to the same academic and extracurricular status as before their medical leave commenced and will be given an opportunity to make up any work missed while they were out on leave. If a faculty member's grading is based in part on class participation or attendance and a student misses class because of pregnancy or childbirth, the student will be allowed to make up participation or attendance credits. The College will also provide pregnant students with any special services or accommodations that it provides to students with other types of temporary medical disabilities, including on-line instruction or tutoring.

### ***10. Harassment and Discrimination Based on Sex, Sexual Orientation, Gender Identity, or Gender Expression***

Includes unequal treatment as defined in Article II based on an individual's biological sex, sexual orientation, gender identity, or gender expression. Prohibitions against harassment and discrimination based on biological sex apply to both males and females. Gender identity refers to an individual's inner sense of having a particular gender, which may or may not correspond to their gender at birth. In contrast, gender expression refers to the ways that an individual presents their gender through means such as appearance, behavior, grooming, and/or dress. Sexual orientation describes a person's emotional, romantic, or sexual attraction to individuals of a particular gender.

The College defines harassment based on sex (i.e., sexual harassment) as Sexual Misconduct which is further explained in section 11.

### ***11. Harassment and Discrimination in the Form of Sexual Misconduct***

Sexual misconduct occurs when there is unwelcome conduct of a sexual nature that a [reasonable person](#) would find to be so severe, or pervasive, and objectively offensive that it effectively denies a person equal access to the College's educational programs or activities. Conduct can be verbal, visual, or physical. Examples include the use of sexual slurs, unwelcome sexual touching, and non-consensual sexual intercourse. Sexual misconduct also occurs when there is unwelcome verbal, visual, or physical conduct, not necessarily of a sexual nature, that a reasonable person would find to be so severe, or pervasive, and objectively offensive that it effectively denies a person equal access to the College's educational programs or activities, and that is perpetrated because of the target individual's sex. Examples include publicly posting non-sexual slurs on campus or in social media, damaging or destroying an individual's property, or physically assaulting an individual, because of the individual's biological sex,

sexual orientation, gender identity, or gender expression. Sexual misconduct, as defined in this Policy, encompasses a wide spectrum of prohibited behaviors, from the use of a sexual slur, to acts of sexual violence.

A. Types of Sexual Misconduct

(1) Quid Pro Quo sexual harassment against a student occurs when decisions regarding grades, housing, scholarships, or participation in college activities and programs are conditional based on submission to requests for sexual favors. An employee is subject to tangible employment action sexual harassment when a term or condition of employment (e.g., pay or an employment benefit) is promised to an employee, or withheld from an employee because of the employee's response to a superior's request for sexual favors.

(2) Sexual violence. State law on sexual assault and other forms of sexual violence can be confusing, in part because terms such as *sexual assault*, *rape*, etc., have definitions that may vary across states. Given that this Policy applies to prohibited acts of sexual misconduct in the College's academic programs and activities anywhere in the United States or in the world, this Policy does not adhere to a particular state's criminal or civil definitions of acts of sexual violence.

a. Sexual assault is an actual, attempted, or threatened sexual act with another person without that person's consent. Sexual assault occurs when any of the following conditions are true:

- Intentional and unwelcome sexual touching (including undressing or sexually exposing another person) without their consent is non-consensual touching. It also includes coercing or forcing, or attempting to coerce or force another person to touch you, touch themselves, or a third party;
- Any sexual act where force, violence, coercion, or deception is used to engage in sexual conduct without the consent of another individual;
- Any sexual conduct with an individual who is unable to give consent;
- Allowing others to have sex with an incapacitated person;
- Sexual Intimidation, which includes, but is not limited to, stalking, cyber-stalking, bullying, or cyber-bullying;
- Hazing of a sexual nature; and
- Rape or attempted rape. This Policy defines rape as an act of completed or attempted sexual intercourse or penetration (i.e., anal, oral, or vaginal), however slight, with any body part or any object, by one person upon another person without consent – non-consensual sexual intercourse.

b. Domestic Violence includes acts of verbal, visual, and physical abuse committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who cohabitates with or previously cohabitated with the victim as a spouse or intimate partner, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of a U.S. state.

- c. Dating Violence also known as intimate partner violence, is controlling, abusive, or threatening behavior that takes place in the context of a romantic or intimate relationship. It can occur in heterosexual, homosexual, asexual, or other relationships. Dating violence may include verbal, emotional, physical, or sexual abuse, or a combination of these behaviors.
- d. Stalking occurs when an individual engages 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.
- e. Sexual Exploitation is any act of taking non-consensual sexual advantage of another person for one's own advantage or benefit, or to benefit a third-party. Sexual exploitation includes, but is not limited to:
- Causing or attempting to cause the incapacitation of another person to gain a sexual advantage over that person;
  - Prostituting another person or benefiting from such activity;
  - Non-consensual videotaping, photographing, or audio-recording of sexual activity and/or the non-consensual distribution of these materials to others (whether or not the original recording was consensual);
  - Exceeding the boundaries of consent (e.g., allowing a third-party to observe consensual sex without knowledge or consent from all parties);
  - Knowingly transmitting a sexually transmitted infection or disease (including HIV) to another person.

#### B. Understanding Consent and Incapacitation

Consent is informed and given actively without coercion or implied threat. It can be verbal or non-verbal (e.g., reciprocal actions) and it unambiguously indicates a willingness to participate in a mutually agreed-upon sexual activity. The person who initiates a sexual act is responsible for acquiring consent. Consent cannot be gained by ignoring or acting in spite of the objections of another. Consent cannot be inferred from silence, passivity, or a lack of resistance. It cannot be inferred from a current or previous dating or sexual relationship or the existence of such a relationship with anyone else. As a matter of law, some persons can never consent to sexual activity – including people under the age of 18 and intellectually disabled people (if their disability was reasonably knowable). Hampden-Sydney College policy prohibits consensual relationships between non-student employees and students enrolled at the College unless the student is also the employee's spouse.

Incapacitated individuals cannot give consent. Individuals are incapacitated when they are asleep or unconscious, or because they are mentally or physically unable to make informed, rational judgments (e.g., as a result of drug or alcohol usage). A person who knew, or should have known, that an individual was incapacitated and proceeds to engage in an act of sexual intercourse or penetration has committed rape.

A person experiencing a blackout from alcohol or drug use may, or may not be incapacitated. The National Institute on Alcohol Abuse and Alcoholism writes: "Blackouts are periods of amnesia during which a person actively engages in behaviors like walking and talking, but does

not create memories for these events as they transpire.” A person’s ability to make rational decisions regarding sex, (i.e., to understand Who, What, When, Where, Why, and How with respect to a sexual activity) may, or may not be intact during a blackout state.

Examples of non-consensual sexual behaviors include:

- Having sex or attempting to have sex with an unconscious or semi-conscious person.
- Having sex or attempting to have sex with someone who is asleep or passed out.
- Having sex or attempting to have sex with someone who has said “no.”
- Having sex with someone who is not reciprocating body movement.
- Allowing another person to have sex with your sexual partner without their consent.
- Having someone perform sexual acts as a condition of acceptance into a fraternity or athletic organization, or any other organization affiliated with the College. This includes acts of intercourse; penetration of the vagina, anus or mouth with any object; being made to facilitate the abuse of another; assisting with physically assaulting another’s genitals; or purchasing or providing alcohol or drugs to another for the purposes of facilitating a sexual assault (includes all forms of sex-based hazing).
- Having sex with a person who is vomiting, unable to stand without assistance, or has had to be carried to another location.
- Telling someone you will disclose their sexual orientation without their consent if they don’t engage in sex with you.
- A professor telling a student they will receive a grade different from what they deserve if the student won’t agree to some form of sexual contact.

## **12. Prohibition of Retaliation**

**Retaliation** against any person for making a report or complaint, testifying, or participating in an investigation, proceeding, or hearing related to alleged acts of HDSM under this Policy is strictly prohibited. Retaliatory acts include intimidation, threats, coercion, or other acts of discrimination, including making charges against an individual for a code of conduct violation that does not involve HDSM, but which arises out of the same circumstances of the complaint. Publicly sharing confidential documents (e.g., on social media) related to the investigation and adjudication of an HDSM complaint may constitute an act of retaliation. Violations of this prohibition will be handled through applicable College disciplinary procedures for students, faculty, and staff, respectively. Violations by other individuals will be addressed by the Assigned Coordinator. Retaliatory acts may constitute prohibited discrimination in violation of this Policy. Any person who believes that they have been subjected to retaliation should make a report to the Title IX and 504 Coordinator or to the Assigned Coordinator assigned to resolve the Complaint.

## **13. Prohibition on Providing False Information**

Individuals are prohibited from knowingly filing a false complaint under this Policy, knowingly providing false information to College officials, or intentionally misleading College officials who are involved in the investigation or resolution of a complaint. Violations of this prohibition will be handled through applicable College disciplinary procedures. Violations by other individuals will be addressed by the

Assigned Coordinator. Knowingly providing false information constitutes a violation of the Honor Code, which states: "The Hampden-Sydney Student will not lie, cheat, or steal, or tolerate those who do." Reports made in good faith, even if the outcome/finding with regard to the Respondent is "not responsible," do not constitute "false reports" for purposes of this Policy.

#### **14. Confidentiality**

To the extent possible, the College will seek to protect the privacy of the parties involved in HDSM complaints, as well as preserve the confidentiality of information obtained during the complaint resolution process. However, the College may be required to disclose the parties' identities or other information during the process to comply with the law or guarantee student or employee safety. With respect to any report under this Policy, the College will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate HDSM, prevent its recurrence, and remedy its effects.

Information regarding alleged HDSM will generally be disclosed by College personnel only as follows:

- A. **Strict Confidentiality.** Licensed professional employees in the Counseling Center and the Office of Student Health, the Athletic Trainers, and the Chaplains employed by the College are authorized to receive reports of alleged HDSM and to maintain strict confidentiality regarding information reported to them. **Personally Identifiable Information** shared with any individuals in the above categories is not part of students' or employees' College records and is not reported to other College personnel, unless the disclosing individual gives their consent to the disclosure, or in limited situations as required by law (e.g., in cases of alleged sexual misconduct involving a minor, or under conditions of imminent physical harm to other individuals).
- B. **Heightened Confidentiality.** If information regarding alleged HDSM, is shared with an employee of the College designated as a **Mandatory Reporter**, the employee is obligated to report that information to the College's Title IX and 504 Coordinator or a Deputy Coordinator. If the Complainant prefers not to make a complaint and desires that the Assigned Coordinator not share the information with the Respondent or with others, the individual must request that the College apply heightened confidentiality to information. Individuals desiring heightened confidentiality should contact the Assigned Coordinator directly and clearly request that the complaint remain confidential. The College takes requests for heightened confidentiality seriously; however, such requests may limit the College's ability to investigate and take reasonable action in response to a complaint. Consequently, the Assigned Coordinator must determine whether the request for heightened confidentiality can be honored while still allowing the College to satisfy obligations it has under this Policy and applicable law. When making a decision to apply heightened confidentiality to a particular situation, the Assigned Coordinator may conduct a preliminary investigation into the alleged HDSM and will weigh requests for heightened confidentiality against the following factors:
  - (1) The severity and/or pervasiveness of the alleged misconduct;
  - (2) Whether the Complainant is a minor;
  - (3) Whether there have been other complaints of HDSM against the Respondent; and
  - (4) The applicability of any laws mandating disclosure.

The Assigned Coordinator will inform the individual requesting heightened confidentiality whether it can be granted, and will disclose any limitations on maintaining heightened confidentiality. In situations where the College will maintain heightened confidentiality, the following actions may occur:

- (1) The College will take prompt action to limit the effects of the alleged HDSM and to prevent its recurrence. For instance, the College may implement appropriate [supportive measures](#) to ensure an individual's safety even in the absence of a College proceeding.
- (2) Information regarding alleged HDSM may be included in College records for the purpose of assessing the campus climate and planning educational programming, as necessary, to eliminate discrimination based on the protected categories in the College's educational programs and activities, but this information will not become part of the Respondent's educational and/or employment records unless the complaint progresses and there is a finding of responsibility for a violation of this Policy's prohibitions on HDSM.
- (3) College personnel will handle information regarding alleged HDSM in accordance with applicable local, state, and federal laws. For example, under conditions of potential imminent harm to the community, the College may be required by law to inform the community of the occurrence of the alleged incident(s) of HDSM. Similarly, information regarding the alleged HDSM may be used as an anonymous report for data collection purposes under the [Clery Act](#).
- (4) As required by Virginia law (Code of Virginia, § 23.1- 806), in cases where an act of sexual violence has allegedly been committed against a student, the Title IX Coordinator must convene a [Review Committee](#) within 72 hours of receiving information about an alleged incident(s). The College extends this requirement to acts of [bias based violence](#) against students and employees, in any type of HDSM allegation. The Review Committee will conduct a [Threat Assessment](#) and determine if reporting the alleged incident to the law enforcement agency with jurisdiction for investigation is necessary to protect the health or safety of the Complainant or others. The Review Committee will include the Title IX and 504 Coordinator or a Deputy Coordinator, a representative from Campus Police, and a representative from the Office of Student Affairs. The Review Committee may be required to share information about the Complainant and the Respondent with a Virginia Commonwealth Attorney.

If an Assigned Coordinator determines the College cannot honor a Complainant's request for confidentiality, the Complainant will be notified of this before the Respondent is notified of the allegations. The Coordinator will promptly schedule an intake meeting with Complainant and subsequently schedule an intake meeting with the Respondent.

### ***15. Requests not to Investigate and Refusals to File a Complaint or Participate in the Resolution Process***

A Complainant has multiple options for proceeding with a charge of HDSM. The Complainant may request that the College not investigate the allegation(s) reported. The individual may decline to file a complaint, and/or decline to participate in a College investigation and/or resolution of allegation(s).

However, such requests may limit the College's ability to investigate and resolve a complaint. Regardless of an individual's decisions or requests, this Policy stipulates that the College will respond when an employee who is a Mandatory Reporter knows, or should have known, of allegations of HDSM in its educational programs or activities. Thus, the College may still take action, recommended by the Title IX and 504 Coordinator, to eliminate discrimination, prevent its reoccurrence, and remedy its effects, even when the target of the alleged discrimination chooses not to file a complaint or to participate in the complaint resolution process. Additionally, the complaint or other information regarding alleged HDSM may also be used to make an anonymous report for data collection purposes under the Clery Act.

#### ***16. Related Misconduct and Limited Immunity***

The College considers the reporting and resolution of HDSM complaints on campus to be of great importance. While the College does not condone underage drinking or the use of illegal drugs, it may extend limited immunity from its internal punitive sanctioning in the case of illegal alcohol or drug use to the Complainant, witnesses, and those reporting incidents and/or assisting the potential target(s) of the alleged HDSM, provided that the individuals are acting in good faith in such capacity. Limited immunity may also be extended to the Respondent(s), if found "not responsible". The College cannot extend immunity from criminal prosecution of underage drinking or substance abuse when incidents have also been reported to law enforcement personnel.

#### ***17. Individuals with Disabilities***

The College will make arrangements to ensure that individuals with disabilities are provided reasonable accommodations in order to participate in the procedures outlined in this Policy. Requests for accommodations should be made to the Title IX and 504 Coordinator as soon as practicable.

## **Article III. Reporting HDSM**

### ***1. Making a Decision to Report Acts of HDSM***

Hampden-Sydney College encourages any individual subjected to HDSM, any witness of HDSM, or anyone with knowledge of an act of HDSM to make a report to an appropriate College official as soon as possible. Because the College is sensitive to cultural, religious, familial, and personal concerns that sometimes play a role in a Complainant's decision-making, the College respects the discretion of the individual in these matters to the degree permitted by state, local, and federal laws. Although the College strongly encourages reporting by individuals subjected to HDSM, the College will not take disciplinary action against an individual if they choose not to make a report.

- A. Indefinite Time Limit for Reporting to the College. It is not unusual for individuals who have experienced HDSM, to remain silent following the incident(s). Supportive measures are available, regardless of how long ago the incident(s) occurred. Talking with someone immediately may be helpful. There is no time limit for filing a report of HDSM to an appropriate College official under this Policy. However, if the Respondent is no longer enrolled at the College, employed by the College, or a third-party over whom the College has control, the options for addressing past acts of HDSM may be limited.
- B. Reporting Acts of HDSM. In order to empower individuals to make informed decisions about reporting, it is useful to understand the College's procedures for handling these matters. The College recognizes that a single act of HDSM can simultaneously involve multiple violations under federal civil law and/or state criminal law. Specifically, one single act may create multiple violations that may be investigated and adjudicated through different processes. Consequently, the College's complaint resolution procedures are not a substitute for criminal resolution procedures and vice-versa. The different processes mandate different standards of proof and allow the Respondent different types of assistance in responding to the allegations. Criminal enforcement processes are not designed to provide supportive measures (e.g., counseling, changes in room assignments, class schedules, etc.) for either the Complainant or the Respondent. The College's complaint resolution process operates independently of local law enforcement.

### ***2. Reporting to Medical Professionals***

The health of an individual impacted by harassment, discrimination, or violence, especially sexual misconduct, is of great importance. If the nature of the misconduct warrants it, the individual should seek medical attention as soon as possible. Some injuries may not be immediately apparent.

Seeking medical care does not obligate an individual to report an incident of HDSM to College officials, or to file a [Criminal Complaint](#). Licensed professional employees in the Student Health Center, Certified Athletic Trainers, and health care providers at other medical facilities (as well as employees supervised by these personnel) are required to maintain absolute confidentiality of patient information.

During a medical examination by a trained health care provider, an individual may receive necessary medical treatment (e.g., to treat wounds, prevent sexually transmitted diseases, or pregnancy, etc.). Physical evidence may also be collected during a medical examination. The collection of evidence doesn't obligate the patient or health care provider to report an incident of HDSM. The existence of physical evidence may subsequently prove important in resolving a complaint if the patient decides to report the incident.

In Virginia, an individual who has been sexually assaulted may elect to obtain medical care in which a forensic nurse collects evidence and submits a [Physical Evidence Recovery Kit \(PERK\)](#) to a state laboratory for storage, without making a report to law enforcement officials. There is no cost to the patient for the medical exam and collection of evidence. If the patient subsequently decides to file a criminal complaint, evidence collected in the PERK can be recovered and utilized. The evidence collection process will be enhanced if the patient does not wash or use the toilet before being seen by a health care provider. If the patient needs to change clothing, it is recommended that they put all clothing that was worn at the time of the incident in a paper bag, not a plastic bag.

Resources for insuring an individual's health after any act of HDSM include:

- **Student Health Center.** 204 College Road, Hampden-Sydney, VA 23943. 434-223-6167
- **Centra Southside Medical Center Emergency Department.** 800 Oak St., Farmville, VA, 23901. 434-315-2401. An individual who has been sexually assaulted may be referred to Lynchburg, VA for treatment by a forensic nurse at the Centra Lynchburg General Hospital. Other medical injuries may be treated in the hospital's Emergency Department in Farmville. A patient who is 18 years old, or older and who is a dependent on another individual's health insurance policy may keep their medical treatments for sexual assault private from the policyholder. Medical personnel cannot share any of a patient's medical information with another individual without the patient's permission. However, when a medical care provider submits a claim for payment to the patient's insurance company, an [Explanation of Benefits \(EOB\)](#) form is sent by the insurance company to the policy holder, specifying which treatments were provided and which insured person received medical care. A dependent seeking treatment following sexual assault who does not want the health insurance policy holder to receive an EOB form describing their treatment may ask the hospital staff to be treated without being billed.
- **Hampden-Sydney Volunteer Fire Department.** First Responders – 911.
- **Prince Edward County Volunteer Rescue Squad.** 911.
- **Southside Center for Violence Prevention.** 434-394-3505. Toll free hotline (24/7) 888-819-2926, website: <https://www.scvpcares.org>, P.O. Box 466, Farmville, VA 23901.

### ***3. Reporting to the Police***

A Complainant's safety is important. If an assault of any kind occurs, it is important to get to a safe place as soon as possible. In an emergency, call 911.

- A. Office of Public Safety and Police. Campus police can provide assistance on campus and on any College-owned property. Campus police can be reached by:  
**(1) Address:** Bush House. Hampden-Sydney, VA, 23943.

**(2) Telephone.** 434-223-6164 or 911.

**(3) Blue Light Telephones.** The following locations are equipped with emergency blue light phones. The phone can either be manually dialed by pressing the black button to dial campus police at 223-6164, or pressing the red button automatically dials 911.

- a. Walter Bortz Library Rear Parking Lot, Phone 434-223-7298, Address: 257 Via Sacra, Hampden-Sydney, VA 23943.
- b. Venable Dormitory Parking Lot, Phone 434-223-7208, Address: rear of Venable Hall, 77 Via Sacra, Hampden-Sydney, VA 23943.
- c. Theta-Chi Fraternity House, Phone 434-223-7209, Address: Curb in front of 117 Atkinson Avenue, Hampden-Sydney, VA 23943.
- d. The Walkway for Carpenter Z and Cushing Hall Dormitory, Phone 434-223-7210, Address: 390 Crawley West, Hampden-Sydney, VA 23943.
- e. Alpha Dormitory Parking Lot, Phone 434-223-7087, Address: 737 Alpha Drive, Hampden-Sydney, VA 23943.
- f. Crawley Forum Parking Lot, Phone 434-223-7305, Address: 679 College Road, Hampden-Sydney, VA 23943.

A Complainant does not have to determine whether or not particular acts of HDSM, are violations of criminal law. Law enforcement personnel will do this. Complainants are welcome to have a friend, parent, or other supporter present while making a report to Campus Police.

Following a report of harassment, Campus Police Officers will interview the Complainant about the events that occurred and may take notes during the conversation. One purpose of the interview is to gather information that can be used to identify the accused individual(s). Campus Police Officers may ask questions about the location of the incident, whether there were any witnesses, and what happened before and after the incident. Although the College may extend limited immunity from its internal alcohol policies and substance abuse policies to the Complainant, witnesses, the Respondent (if found “not responsible”), and other individuals reporting alleged incidents of HDSM, or assisting potential victims, Campus Police Officers cannot offer immunity from local, state, or federal laws regarding the use of these substances. Campus Police officers may take photographs of the location where the alleged misconduct occurred and collect physical evidence. Officers are trained to treat all persons interviewed with sensitivity, privacy, and respect. Once the information collection process is complete, a police officer will write a report about the alleged incident(s). This report will be important should a Complainant decide that they want to file formal charges, whether immediately, or at a later date.

- B. **Other Local Law Enforcement Agencies.** Hampden-Sydney College recommends that any individual who is the target of HDSM, outside of the jurisdiction of Campus Police report the incident to the local law enforcement agency. An individual who was the target of, or a witness to, HDSM doesn’t need to know which law enforcement agency has jurisdiction in their locale. Regardless of an individual’s location, local law enforcement can be contacted by calling 911 and asking the dispatcher to send the appropriate authorities. Reporting to local law enforcement facilitates warning others, apprehending the accused individual(s), bringing awareness to the community, and maintaining options for criminal prosecution in the future.

**(1) Farmville Police,** 116 North Main St. Farmville, VA, 23901, 434-392-3332.

**(2) Longwood University Police**, Dorrill Dining Hall, 201 High Street, Farmville, VA 23909, 434-395-2091.

**(3) Prince Edward County Sheriff's Office**, 124 South Main St., Farmville, VA, 23901, 434-392-8101.

#### **4. Reporting to the College**

In order to encourage reporting, when a complaint of HDSM involves underage drinking, the College will not charge the following individuals with a violation of the College's alcohol policy: the Complainant, the Respondent (if found to be "not responsible"), witnesses, and other individuals making a good faith report or attempting to assist alleged or potential targets of HDSM. The College cannot grant immunity from drug or alcohol-related behavior that violates local, state or federal laws.

The College's HDSM Complaint Process, including Title IX.

##### A. The Title IX and 504 Coordinator and Deputy Coordinators

- Ms. Melissa Wood, Title IX and 504 Coordinator, Student Health Center 101, 434-223-6061, [mwood@hsc.edu](mailto:mwood@hsc.edu)
- Mr. John Hollemon, Dean of Inclusive Excellence, 301 Brown Student Center, 434-223-7154, [jhollemon@hsc.edu](mailto:jhollemon@hsc.edu)
- Dr. Eric Dinmore, Deputy Coordinator, Atkinson Hall, Room 301, 434-223-6118, [edinmore@hsc.edu](mailto:edinmore@hsc.edu)
- Ms. Sue Carter, Deputy Coordinator, Gilkeson House 202, 434-223-6220, [svcarter@hsc.edu](mailto:svcarter@hsc.edu).

##### B. Mandatory Reporters. Any college employees who have authority to take action to redress HDSM, or who a student or employee could reasonably believe has this authority is a Mandatory Reporter who is obligated to report information they obtain regarding allegations of HDSM to the Title IX and 504 Coordinator, or one of the Deputy Coordinators. **Ma**andatory Reporters include:

- The Title IX and 504 Coordinator and Deputy Coordinators;
- Residential Advisors;
- Members of the Faculty;
- Athletics Coaches;
- College Librarians;
- Employees in the Office of Student Affairs;
- Campus Police Officers;
- Employees in the Office of Academic Success;
- Employees in the Office of Human Resources;
- The Dean of Students;
- The Dean of the Faculty;
- The Vice President for Enrollment;
- The Vice President for Business Affairs and Finance;
- The Director of Athletics;
- The Vice President for College Advancement, and
- The President of the College.

Before a student or employee reveals information about an act of HDSM that they might wish to keep confidential, a Mandatory Reporter should try to explain that Mandatory Reporters are obligated to report the following information, as soon as practicable, to the Title IX and 504 Coordinator or Deputy Coordinator:

- The name(s) of the accused, i.e., the Respondent(s);
- The name(s) of the accuser and the name of the Complainant if they are different people; and
- All known relevant facts regarding the alleged incident – including the date, time and location.

**(2) Employees Who Can Accept Completely Confidential Reports.** Employees who have the right to protect the confidentiality of patients as part of their work, or who are providing pastoral care, as well as individuals who are supervised by these employees, are not required to report information about HDSM complaints to the Title IX and 504 Coordinator. These include the following professional employees:

- Student Health Center Staff;
- Counseling Center Staff;
- Athletic Trainers; and
- College Chaplains.

### ***5. Reporting to the U.S. Department of Education or the Equal Employment Opportunity Commission***

The District of Columbia office of the Office of Civil Rights serves as the regional field office for the Commonwealth of Virginia. The postal mail address is 400 Maryland Avenue, S.W., Washington, D.C. 20202, Telephone: (800)421-3481, Email: [ocr@ed.gov](mailto:ocr@ed.gov). The postal mail address for the Richmond Office of the EEOC is 400 N. Eight Street, Suite 350, Richmond, VA, 23219. Telephone: 1-800-669-4000. Email: [info@eEOC.gov](mailto:info@eEOC.gov).

### ***6. Reporting Acts of Retaliation***

The College prohibits retaliation against any person for filing, supporting, or providing information in connection with a complaint of HDSM. Violations of this prohibition will be handled through applicable College disciplinary procedures. Any individual who believes that they have been subjected to retaliation should report to the Title IX and 504 Coordinator, or Deputy Coordinator assigned to the complaint. Reports can be made in person, over the telephone, or in writing, in which case email is recommended, but not required.

## Article IV. Intake of HDSM Complaints and Procedures for Investigation

### 1. Overview of Procedures Available

The determination of which procedures apply to an incident of alleged HDSM depends on the nature of the misconduct reported. However, there are some differences in the implementation of the procedures the College utilizes to enforce its HDSM Policy which depend on whether the Respondent is a student, staff member, or a faculty member. See Table 1 for clarification.

Table 1:  
Potentially Applicable Procedures for Incidents of Alleged HDSM

Type of Misconduct	Applicable Procedure
Criminal Misconduct (e.g. assault, stalking)	College Administrative Procedures and/or Criminal Justice System
Non-criminal Misconduct (e.g. verbal harassment)	College Administrative Procedures

### 2. Reporting a Criminal Complaint to Law Enforcement

Campus Police (434-223-6164) or other local law enforcement officers can explain the options available for pursuing a criminal investigation of harassment, including sexual misconduct.

### 3. Intake Process with the Assigned Coordinator

When a report of HDSM is received, the Title IX and 504 Coordinator will assign a Deputy Coordinator to directly oversee a prompt, fair, and impartial investigation and resolution of the complaint, or the Title IX and 504 Coordinator may elect to directly oversee the investigation and complaint resolution process. The Assigned Coordinator will also be responsible for ensuring the availability of both supportive measures and final remedies to the Parties to the complaint as appropriate. The Title IX and 504 Coordinator will supervise the Deputy Coordinators to ensure fairness and standard processes across different cases/complaints. No student may be required to waive their right to an investigation and adjudication of a formal complaint of HDSM as a condition of enrollment. No employee may be required to waive their right to an investigation and adjudication of a formal complaint of HDSM as a condition of employment.

As required by Virginia law (§ 23.1- 806), in cases where an act of sexual violence has allegedly been committed against a student, the Title IX Coordinator must convene a Review Committee within 72 hours of receiving information about an alleged incident(s). The College extends this requirement to acts of bias based violence against students and employees, in any type of harassment or discrimination allegation. The Review Committee is required to evaluate the incident and determine if reporting the alleged incident(s) to the law enforcement agency with jurisdiction for investigation is necessary to protect the health or safety of the Complainant or other individuals. The Review Committee will include the Title IX and 504 Coordinator or a Deputy Title IX Coordinator, a representative from the Department of Campus Security and Police, and a representative from the Office of Student Affairs. If the Review Committee determines that preserving confidentiality poses a threat to the health and safety of the Complainant or other individuals, then the representative of the Department of Public Safety and Police must act or report the incident to the appropriate law enforcement agency. In complaints involving

alleged felony sexual assault, either a representative of the Department of Public Safety and Police or another Review Committee member must consult with the appropriate Commonwealth Attorney who would be responsible for prosecuting the alleged act of Sexual Violence. The Complainant retains the right to participate, or not participate, in any subsequent investigation. More detailed information on the College's obligations under Virginia law (Virginia Code § 23.1- 806) appear in the [Appendix \(B\)](#) to this Policy. Note: this process may run concurrently with Steps 4 and 5 listed below.

- A. Conflict of Interest. The Title IX and 504 Coordinator, Deputy Coordinators, Investigators, and Decision-Makers are committed to ensuring that there are no conflicts of interest or bias for or against Complainants or Respondents generally or against an individual Complainant or Respondent. If either the Complainant or the Respondent believes that the Assigned Coordinator has a conflict of interest that impairs the Coordinator's ability to oversee a fair and impartial investigation, and/or complaint resolution, they may ask the Title IX and 504 Coordinator in writing (in which case email is preferred, but not required) for an alternative assignment. Potential alternates include the Title IX and 504 Coordinator or another Deputy Coordinator. In order to assure a fair process, the College will carefully consider all such petitions, including the possibility of hiring third parties trained to complete HDSM investigations.
- B. Default Assignments of Deputy Coordinators. The assignments are:
  - (1) Dean of Inclusive Excellence – if the Respondent is a Hampden-Sydney College student.
  - (2) Associate Dean of Faculty – if the Respondent is a faculty member.
  - (3) Director of Human Resources – if the Respondent is a staff member or third-party.
- C. Advisors for the Complainant and the Respondent. Both the Complainant and the Respondent may be accompanied by an Advisor of their choice during meetings that are part of the complaint resolution process. The Advisor can be a friend, relative, mentor, attorney, or any support person of the individual's choosing. However, the Advisor's role outside of the administrative hearing is limited to advising the person that they are accompanying. The Advisor is not an advocate for a party, nor do they serve in a representative capacity. In any pre-hearing meetings that are part of complaint resolution the Advisor may not speak on behalf of the advisee, and the Advisor may not ask questions of, or answer questions from, anyone other than the advisee. During an administrative hearing the Advisor is permitted to cross-examine the other party and witnesses. However the Advisor may not address the [Hearing Panel](#), or make statements. If the Title IX and 504 Coordinator, the Assigned Deputy Coordinator, or the Chair of the Hearing Panel determines that an Advisor is not complying with these expectations or is being disruptive to the process, then the Advisor may be barred from meetings that are part of the complaint resolution process. The Advisor must maintain confidentiality regarding all communications exchanged as part of this resolution process. The College will not pay attorney's fees in cases where the Complainant or the Respondent choose to have an attorney as their Advisor, nor will the College delay its investigative or resolution process due to the availability of a party's counsel. If a Complainant and/or a Respondent will not have an Advisor present at the hearing, the College will provide a trained Advisor at no cost to conduct cross-examinations. Requests for an Advisor should be made to the Assigned Coordinator in writing at least 7 days before the hearing date, unless there are extenuating circumstances.

- D. Timetable for Resolving Complaints. While there is no fixed time frame under which a HDSM investigation must be completed, Hampden-Sydney College will make every reasonable effort to ensure that the investigation and resolution of a complaint occurs promptly and in a manner that is not deliberately indifferent to either the Complainant or Respondent. Unless there are extenuating circumstances, complaints will normally be resolved within 90 days of their receipt. Investigations interrupted by winter break or summer break may take longer if witnesses are unavailable. Other circumstances that may result in a reasonable extension of the 90 day time frame for complaint resolution include temporary absence of a party, Advisor, or witness; concurrent law enforcement investigative activity; the need for language assistance or disability accommodations; or appeals. Either the Complainant or the Respondent may request an extension of up to 7 days in any deadlines for interviews or hearings. Requests should be made in writing to the Assigned Coordinator. The request should include the basis for the request and the duration of the extension being sought.
- E. Supportive Measures will be offered to both the Complainant and the Respondent prior to the completion of an investigation in order to ensure that there is equal access to the College's educational programs and activities based on any category protected under this policy. Some specific examples of supportive measures follow.
- (1) When a student is a Complainant or Respondent, supportive measures may include, as appropriate:
- Options for avoiding contact with the other party; potentially including changes in housing assignments, changes in course sections, and a no contact order;
  - Options to delay examinations, papers, or other coursework, as well as options to take an incomplete in a class and make up academic work later;
  - Options to utilize academic support services – including tutoring;
  - Increased supervision of locations where the misconduct occurred, and
  - Options for a Campus Police escort while moving about campus.
- (2) When an employee is a Complainant or Respondent, supportive measures may include, as appropriate:
- Options to avoid contact with the other party, potentially including a change in office assignments, work assignments, and a no contact order;
  - Increased supervision of locations where the misconduct occurred; and
  - Options for a Campus Police escort while moving about campus.

If it becomes necessary for the protection of any member of the College community, the following actions may be taken by the College.

- (1) When a student is the Respondent, the Dean of Students may:
- Suspend the Respondent from campus housing;
  - Suspend the Respondent from classes;
  - Restrict the social activities of the Respondent; or
  - Bar the Respondent from campus.
- (2) When a staff member is the Respondent, the Vice President for Business Affairs and Finance may:
- Reassign the Respondent to an alternative job or office;

- Place the Respondent on administrative leave pending the outcome of the complaint.
- (3)** When a faculty member is the Respondent, the Dean of Faculty may:
- Reassign the Respondent to an alternative office;
  - Place the Respondent on administrative leave pending the outcome of the complaint.
- F. Complainant's Initial Meeting with the Assigned Coordinator. As soon as practicable after being assigned to oversee a complaint, the Coordinator assigned to the case will contact the Complainant to schedule an initial meeting. The Assigned Coordinator will notify the Complainant that they may bring an Advisor of choice to the meeting and that the Advisor can be a friend, relative, mentor, attorney, or any other person of their choosing. At this meeting the Coordinator will:
- (1)** Provide the individual with a copy of this Policy and a Written Notice of Rights (Appendix C);
  - (2)** Explain procedures for a formal resolution of the complaint or informal resolution (i.e., mediation by a trained College employee or a third party). Informal resolution will not be utilized, to resolve allegations that a non-student employee harassed or discriminated against a student;
  - (3)** Explain the steps involved in a HDSM investigation and the major time frames for investigation and resolution;
  - (4)** Discuss confidentiality standards and concerns;
  - (5)** Ask the Complainant if they want to make a formal complaint, while also notifying them that if necessary to eliminate HDSM Assigned Coordinator has the discretion to be the source of the formal complaint, in which case the Complainant may determine the degree to which they want to participate in the complaint resolution process;
  - (6)** Explain options for counseling, and advising regarding financial aid (e.g., if the complainant desires to drop classes, or to request a medical withdrawal from the College) and other support options that are available on- and off-campus;
  - (7)** Discuss prohibitions on retaliation and how to report acts of retaliation to the Assigned Coordinator; and
  - (8)** Discuss supportive measures that might be helpful or necessary to protect the Complainant during the investigation and resolution process. Also, explain that even if the individual does not want to make a complaint (formal or informal), supportive measures are available.
- G. Respondent's Initial Meeting with the Assigned Coordinator. Once the College receives a formal complaint of an incident of HDSM, whether filed by a person affected by HDSM or by the College (through the Assigned Coordinator), the Assigned Coordinator will schedule a meeting with the Respondent as soon as practicable after meeting with the Complainant. When scheduling the meeting, the Assigned Coordinator will provide the Respondent with a copy of the complaint in writing. The information provided to the Respondent should conform to federal and state privacy laws, and any promises of confidentiality made to the Complainant. If possible, the information should include the name of the Complainant, as well as the date, location and

nature of the alleged HDSM. The information provided should be sufficient to allow the Respondent to address the substance of the complaint. The Assigned Coordinator will, when scheduling the intake meeting, also inform the Respondent of their right to have an adviser present in all the meetings related to the complaint. The Assigned Coordinator will explain that the Advisor can be a friend, relative, mentor, an attorney, or any individual of their choosing. During the initial meeting with the Respondent, the Assigned Coordinator will, as appropriate:

- (1) Review the information provided to the Respondent in the complaint when the intake meeting was scheduled and inform the Respondent that they may provide a written response to the allegations, turned in to the Assigned Coordinator within 7 days;
- (2) Provide the Respondent with a copy of this Policy and a Written Notice of Rights (Appendix C);
- (3) Explain the College's procedures for formal resolution and, where appropriate, informal resolution (mediation) of the complaint. Informal resolution will not be utilized, to resolve allegations that a non-student employee harassed or discriminated against a student;
- (4) Explain the steps and major time frames in a HDSM investigation and resolution process and inform the Respondent that the College's initial presumption will be that the Respondent is not responsible for the alleged conduct and that this presumption holds until a determination regarding responsibility is made at the conclusion of the complaint resolution process;
- (5) Discuss confidentiality standards and concerns with the Respondent;
- (6) Discuss prohibitions on retaliation and how to report acts of retaliation to the Assigned Coordinator;
- (7) Inform the Respondent of any supportive measures being provided to the Complainant – but only if those measures directly affect the Respondent (e.g., changing their class schedule, room or office assignment, etc.);
- (8) Explain options for counseling, advising by financial aid personnel, and other support services available to the Respondent on- and off-campus;
- (9) Discuss possible supportive measures that can be provided to the Respondent during the investigation and resolution phases of the process. The College may implement supportive measures on behalf of the Respondent, whether a formal complaint has been filed, or whether an investigation is being conducted by either campus officials, or law enforcement; and

#### ***4. Informal Resolution Prior to Adjudication***

- A. Respondent Does Not Contest the Charges. At any time prior to the date of the hearing a Respondent may choose to acknowledge actions and take responsibility for any alleged acts of HDSM. If this occurs, the Assigned Coordinator will propose a resolution. The purpose of the resolution is to ensure that there is no recurrence of HDSM and to remedy the effects of the past HDSM. Sanctions may, or may not be necessary to achieve these outcomes. If the Complainant and the Respondent both agree to the resolution proposed by the Assigned Coordinator, then the complaint may be resolved without a hearing and without any further rights of appeal by either party. If either the Complainant or the Respondent objects to the

proposed resolution, then the complaint will proceed with an investigation (if one has not yet started) and formal, or informal resolution.

- B. Mediation Option. Any time after a complaint is made, and before a Hearing Panel convenes, the parties may elect to follow an informal complaint resolution process, subject to the constraint that mediation is not permissible when a complaint alleges HDSM by a faculty or staff member against a student. Mediation is described in greater depth in Article V.

## **5. The Investigation**

- A. Appointment of Investigators. The Assigned Coordinator will select at least two Investigators from a pool of staff and tenured faculty professionally trained (with annual refresher training) to investigate complaints of HDSM. For complaints in which a faculty member is the Respondent, at least two members of the investigation team will be tenured faculty. Where appropriate internal Investigators may be accompanied by an external Investigator contracted by the College. Following their appointment, the Assigned Coordinator will share the Investigators' names and contact information with the Complainant and the Respondent. Within 2 days of their appointment, the Investigators, the Complainant, and/or the Respondent may notify the Assigned Coordinator in writing of any perceived bias against Complainants or Respondents in general or in particular, and/or any conflicts of interest posed by the choice of Investigators. The Assigned Coordinator will carefully consider such statements and may assign different individuals as Investigators, in the event of any perceived bias against Complainants or Respondents in general, or in particular, and/or any conflicts of interest. The Assigned Coordinator will forward the complaint to the Investigators once their assignments are finalized.
- B. Investigation Procedures and Report. Upon receipt of the complaint, the Investigators will promptly begin their investigation. The Assigned Coordinator will assure that neither the Complainant or the Respondent are unduly restricted in discussing the allegations as necessary for a thorough and impartial investigation, however, publicly sharing the allegations (e.g., on social media) may constitute an act of prohibited retaliation. The investigation will be thorough and impartial – and will include the following steps, as appropriate:
  - (1) Interviews with the Complainant, the Respondent, third-party witnesses, or experts with all interviews summarized in writing. During their interviews the Complainant and Respondent may present evidence, either inculpatory or exculpatory, as well as identify fact or expert witnesses. Both the Complainant and the Respondent are entitled to be accompanied during their interviews by an Advisor of their choice, who may be, but is not required to be, an attorney. During interviews with the Investigators, Advisors will only confer with the party they are accompanying and will not speak to the Investigators. Any person invited or expected to be available for an interview will be notified in writing of the names of the interviewers as well as the date, time, location, and purpose of the interviews. Persons being interviewed will be given adequate time to prepare to participate;
  - (2) Visit, inspect, and take photographs at relevant sites. Because the prohibitions stated in this Policy apply both to HDSM that occurs on-campus or off-campus, Investigators may

need to visit off-campus sites to obtain evidence (e.g., at off-campus residences, sites of field trips, or sporting events);

- (3) Collect and preserve relevant evidence where appropriate – including electronic records and social media. In cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies to determine if the College’s investigative team can utilize evidence collected by law enforcement personnel. In cases where Campus Police have jurisdiction, the Chief of Police, the Commonwealth’s Attorney, and the Assigned Coordinator will meet to determine what, if any, evidence can be provided by law enforcement. Any pauses in the investigation necessary to accommodate a criminal investigation will be as brief as possible, usually no more than 7 days;
- (4) Review relevant student or employee personnel files. The Investigators will not seek any records for either the Complainant or the Respondent that are made or maintained by a physician, psychiatrist, psychologist, or other professional or paraprofessional acting in their professional or paraprofessional capacity, or assisting in that capacity when such records are a result of the provision of treatment to either the Complainant or Respondent. The Complainant and/or the Respondent may voluntarily consent to the release of their own records, in writing, for use in the resolution process. If a Complainant or Respondent is under the age of 18, such consent must come from a parent or legal guardian;
- (5) In the case of a complaint against a faculty member, the Investigators will consider whether the charges in the complaint arise from conduct that is protected under the faculty member’s rights to [Academic Freedom](#), as stated by the American Association of University Professors in *The 1940 Statement of Principles on Academic Freedom and Tenure*. Academic Freedom never provides protection for acts of violence;
- (6) If facts discovered during the investigation indicate that the original complaint should be amended (e.g., additional allegations added to or deleted from the complaint), the Assigned Coordinator will provide simultaneous written notice of the amended allegations to both the Complainant and Respondent;
- (7) During the investigation and throughout the complaint resolution process the Assigned Coordinator will ensure that the burden of gathering evidence sufficient to reach a determination regarding responsibility for the allegations in the complaint rest on the College and not on the Complainant or Respondent;
- (8) The investigative team will complete a detailed written investigative report that includes the evidence collected. The investigative report is a factual report of evidence collected and does not draw a conclusion of whether or not [a preponderance of the evidence](#) supports the complaint. The investigative report will be submitted to the Assigned Coordinator, who will make the report available to both the Complainant and Respondent.
- (9) The Complainant and Respondent will each have 10 days to submit a written response or supply additional information in response to the investigative report. Such information will be provided to the Investigators, who then may amend and/or supplement the investigative report to reflect such input from the parties. Upon the completion of any amendments or supplementation, the Investigators will then provide the Assigned Coordinator with the Final Investigative Report.

**6. Post-Investigation Meetings with the Complainant and the Respondent**

Once the investigative report has been submitted the Assigned Coordinator will meet separately with the Complainant and the Respondent. A written electronic or hard copy of the final investigative report will be provided to both the Complainant and Respondent and their Advisors. The Complainant and Respondent will each be given an additional 10 days to review and comment on the final investigative report, before proceeding to an administrative hearing.

**7. Post-Investigation Determination by the Assigned Coordinator**

The Assigned Coordinator may opt to dismiss the formal complaint, or a subset of the allegations after the investigation is completed if circumstances prevent the College from gathering sufficient evidence to reach a determination regarding the allegations of the formal complaint, or if the Respondent is no longer enrolled at or employed by the College. A sexual misconduct complaint found not to be germane under Title IX (e.g., alleged actions occurred on a study abroad trip) may still be pursued as a violation of the College's Student Code of Conduct and/or this Policy's prohibitions of HDSM. If a complaint is dismissed, the Assigned Coordinator will send simultaneous written notice of the dismissal and reasons for the dismissal to both the Respondent and Complainant.

If the investigative report indicates that the misconduct being charged is not severe and/or pervasive, the Assigned Coordinator will consult with the Complainant, the Respondent, and the Appropriate Vice-President. If the Respondent is a student, the Appropriate Vice-President is the Dean of Students. For a staff member or third-party Respondent, the Vice President for Business Affairs and Finance is the Appropriate Vice-President. The Dean of Faculty is the Appropriate Vice-President when a faculty member is the Respondent. Without making a finding on whether or not a preponderance of the evidence supports the complaint, the Assigned Title IX Coordinator's consultations will seek to determine if there is a resolution that will achieve this Policy's goals of eliminating HDSM, preventing reoccurrences, and remedying its effects. If such a resolution can be identified, the Assigned Coordinator will document the appropriate resolution of the complaint and will concurrently notify the parties of the determination, and the rationale behind it. If no resolution can be identified at this stage, the complaint will proceed to mediation (if appropriate) or to formal resolution.

When the investigative report indicates that the charged HDSM is severe and/or pervasive, the complaint will move to the next stage in the resolution process.

## Article V. The Informal Resolution Process – Mediation Procedures

### 1. Overview of Informal Resolution

A. Informal resolution may be utilized if all the following conditions are met:

- (1) The complaint does not involve a person under the age of 18;
- (2) The complaint does not involve an allegation of HDSM by a non-student employee against a student;
- (3) All parties agree in writing to participate in a specific form of informal resolution;
- (4) The Assigned Coordinator determines that it is an appropriate mechanism for resolving the complaint.

Both parties have the right to end the informal resolution process at any time and proceed with the formal resolution process. Additionally, if the Assigned Coordinator makes a determination that the process is not moving towards an effective resolution of the complaint (i.e., one that prevents reoccurrence of HDSM and one that remedies its effects) the Assigned Coordinator may end the informal resolution and proceed to the formal resolution process.

If the informal resolution process reaches a successful conclusion, the College will maintain a record of the complaint and the agreement. Information that is part of this record, including the allegations and the results of the informal resolution process, may be considered if there are any subsequent allegations of HDSM against the Respondent.

B. The Mediator. The parties shall agree upon an approved individual to oversee and facilitate the informal resolution process (“Mediator”). The Assigned Coordinator may help identify appropriate personnel for the parties’ consideration.

C. Notice of Mediation. The Mediator will set the date of the first meeting after consulting with the Complainant and the Respondent.

D. No Contact Prior to Mediation. The Complainant and the Respondent should not contact each other outside of the mediation. The Assigned Coordinator will stipulate exceptions, if appropriate. The Assigned Coordinator may implement supportive measures, as necessary, to reduce or eliminate contact between the parties in the Complaint during mediation (e.g., students’ housing assignments or course schedules may be altered, employees may have their office assignments or work schedules altered).

E. Attendance Requirements. Both the Complainant and the Respondent are expected to attend mediation meetings. If either party fails to appear, unless there are extenuating circumstances, the Mediator may determine that the complaint will proceed to the formal resolution process.

F. Mediation Meetings: Counsel and Advisors. Both the Complainant and the Respondent may bring an Advisor to the mediation, who may be a friend, parent, mentor, an attorney, or any other person of their choosing. The Advisor will not speak to the Mediator, or to the other party. The Advisor, as well as either party to the complaint may request pauses in the mediation so that they can speak in private.

- G. Resolution. If the mediation results in a resolution between the parties, the Assigned Coordinator will review it. The Assigned Coordinator will ascertain whether the resolution will prevent reoccurrence of HDSM and if it will remedy the effects of HDSM that may have occurred. If the Assigned Coordinator concludes that these requirements are met, the informal procedure will end and the complaint will be closed. If the parties are unable to reach a resolution, the formal resolution process outlined in Article VI of this Policy will commence.
- H. Privacy and Disclosure. In order to comply with the [Family Educational Rights and Privacy Act \(FERPA\)](#) as well as any other applicable federal and state laws, and this Policy's mandates regarding confidentiality, the mediation process is not open to anyone other than the Mediator, the Complainant, the Respondent, and their respective individual Advisors. Documents prepared to facilitate the mediation (including the investigative report and the notice of the mediation), and any other information introduced at the mediation may not be disclosed outside of the mediation, unless it is required or authorized by law. Neither this section nor any other provision of the College's Harassment and Discrimination Policy prohibits or discourages employees from bringing complaints to the Equal Employment Opportunity Commission ("EEOC"), the U.S. Department of Education's Office for Civil Rights (OCR), or the US Department of Labor.
- I. Documentation. The College will retain any documentation of the mediation for at least 7 years.

## **Article VI. The Formal Resolution Process: Staff and Third-Party Respondent(s)**

A [Hearing Panel](#) will be convened as soon as practicable, given the 10 day period for parties to review the final investigative report. The Hearing Panel will conduct a live hearing during which it will interview and question the Complainant, the Respondent, as well as any witnesses, or other third parties whose testimony the Hearing Panel deems relevant. The hearing will also provide an opportunity for both the Complainant and Respondent to present evidence and call witnesses, and for their Advisors to conduct a cross-examination of the other party and any witnesses present.

### ***1. The Hearing Panel***

The Assigned Coordinator will appoint three Hearing Panel members. Investigators in a complaint will not serve on the Hearing Panel. The Hearing Panel will include at least one tenured faculty member from the Faculty Grievance Committee. Staff appointees will come from a pool of staff trained to adjudicate HDSM complaints. The members of the Hearing Panel will elect their own Chair. A staff member will not serve on the Hearing Panel if the Respondent or Complainant is someone to whom the staff member reports.

### ***2. Hearings that Include Third-Parties as Respondents***

The College may have limited authority to conduct hearings or carry out internal discipline against third-party Respondents (i.e., those who are not enrolled at or employed by the College). Regardless of the College's ability to hold a hearing with a third-party Respondent present, the College will investigate complaints filed and implement appropriate remedies, possibly including referrals to outside institutions or law enforcement and/or other measures to remedy the effects of HDSM on the Complainant and the College community.

### ***3. Notice of Composition of the Hearing Panel***

Promptly after appointing the members of the Hearing Panel, the Assigned Coordinator will provide simultaneous written notice to the Complainant and the Respondent, identifying the individuals who will serve on, and chair the Hearing Panel. If only a portion of the alleged misconduct justifies continuing to the hearing process, the Assigned Coordinator will also specify in the notice which alleged conduct or violations will be the subject of the hearing.

The Assigned Coordinator will simultaneously notify the parties in writing if there will be a consolidation of HDSM complaints. Complaints may be consolidated when allegations arise from the same facts or circumstances and are made by one Complainant against multiple Respondents or by more than one Complainant against one or more Respondents.

### ***4. Challenging the Membership of the Hearing Panel***

Either the Complainant or the Respondent may challenge the participation of any, or all of the members of the Hearing Panel for having a conflict of interest, or for having a bias against Complainants or Respondents generally, or for having a bias against a specific Complainant or Respondent. Challenges can be made by submitting a petition, in writing, to the Assigned Coordinator. There is a 3 day time

limit, following notification of the membership of the Hearing Panel for submitting a petition. The petition must state the specific reason(s) for the perceived conflict of interest or bias. The Assigned Coordinator will evaluate objections and determine whether to replace members of the Hearing Panel. Any changes in the membership of the Hearing Panel will be provided simultaneously in writing to the Complainant and the Respondent at least 3 days before the hearing is to take place. Once the membership of the Hearing Panel is finalized the Assigned Coordinator will provide the Panel with the following documents: the complaint, the Respondent's written response to the complaint, the investigative report, and any written responses that the parties submit regarding the investigative report.

### ***5. Hearing Policies and Procedures***

- A. Submission of Written Materials by the Complainant and the Respondent. The Assigned Coordinator will advise both the Complainant and the Respondent that they have 3 days following notification of the composition of the Hearing Panel to provide the Assigned Coordinator with a list of witnesses, if any, that either party wants to provide information at the hearing along with a brief description of each witness's connection to and/or knowledge of the issues in dispute. Each party is responsible for providing the Assigned Coordinator with contact information for witnesses they intend to call during the hearing at this time. The College may not be able to compel witnesses to appear at a hearing, and the failure of a witness to appear shall not invalidate the complaint resolution process. If either party wishes to submit an expert analysis report at the hearing it should be submitted to the Assigned Coordinator at this time.
- B. Notice of the Hearing Date. Within 7 days after all parties have been notified of the final composition of the Hearing Panel, the Assigned Coordinator will notify the Complainant, the Respondent, and any witnesses, or other third parties who will testify regarding the date, time, and location of the hearing. Both the Complainant and the Respondent will receive lists that include the names of all persons who will be interviewed during the Hearing.
- C. Failure to Appear. Unless there are extenuating circumstances, if either the Complainant or the Respondent fails to appear before the Hearing Panel, the Hearing Panel will proceed to resolve the complaint based on evidence and testimony of those who are available to testify. The Assigned Coordinator will determine what constitutes extenuating circumstances.
- D. Language and Disability Accommodations. Requests for language or disability-related accommodations must be submitted to the Assigned Coordinator no later than 3 days before the hearing. The Assigned Coordinator will attempt to accommodate such requests, to the extent that they don't create an undue technological or financial burden to the College, or to either party in the complaint.
- E. Live Hearing. The hearing will be live, but the default hearing procedure will be for the Hearing Panel, the Complainant and their Advisor, the Respondent and their Advisor, and any witnesses to participate virtually, with technology enabling the hearing participants to see and hear each other. The Assigned Coordinator will assure that an audio-visual recording of the hearing is created and make it available to the parties after the hearing for their inspection and review.

- F. **No Contact Prior to the Hearing.** The Complainant and the Respondent should not contact each other or members of the Hearing Panel outside of the hearing. Supportive measures may be implemented by the Assigned Coordinator to reduce or eliminate contact between the parties in the complaint. For example, students' housing assignments or course schedules may be altered. Student employees may have their office assignments or work schedules altered for the duration of the hearing. Employees may have their office assignments or work schedules altered for the duration of the hearing.
- G. **Evidentiary Matters.** The Complainant and the Respondent will have equal opportunities to present evidence during the hearing. Formal rules of evidence will not be observed during the hearing. In complaints alleging sexual misconduct, questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless they are being introduced into the record for the purpose of proving that someone other than the Respondent committed the alleged conduct, or 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. The College recognizes that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent. The College will attempt to conduct the hearing in a manner that does not inflict additional trauma on the Complainant, the Respondent, or witnesses.
- H. **Hearing Procedures.** The hearing will be open to a limited number of individuals, including the members of Hearing Panel, the Assigned Coordinator, the Complainant, the Respondent, and their respective Advisors. Witnesses will only be present for their own interviews. Both the Complainant and the Respondent will be provided equal opportunities to make opening and closing statements, to present witnesses, including fact and expert witnesses, and to proffer inculpatory and exculpatory evidence. The Hearing Panel will have an opportunity to ask questions of the parties and the witnesses in order to develop evidence through testimony. The Chair of the Hearing Panel will resolve any questions concerning procedure or the admission of evidence or testimony (including the relevancy and reliability of the evidence and testimony).

All witnesses are expected to provide truthful testimony. Students of Hampden-Sydney College are reminded of the Honor Code, which states: "The Hampden-Sydney student will not lie, cheat, or steal, nor tolerate those who do."

- I. **Cross Examination.** In addition to questions posed by the Hearing Panel, each party's Advisor will have an opportunity to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Both the Complainant and the Respondent will submit their preliminary lists of cross-examination questions in writing to the Assigned Coordinator 48 hours prior to the commencement of the hearing. [Cross-examinations](#) will be conducted by the Advisors and not the parties to the complaint. Cross-examinations will be direct, oral, and in real time. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Panel Chair will first determine whether the question is relevant and explain any decision to exclude a question deemed as not relevant. The

Hearing Panel Chair will oversee cross-examination in order to proscribe aggressive or abusive questioning of any party or witness.

If a party does not have an Advisor present at the live hearing the College will provide one without fee from a pool of faculty and staff trained to serve as Advisors. The Advisor will conduct cross-examinations on the party's behalf. Requests for an Advisor should be made in writing to the Assigned Coordinator 7 days prior to the Hearing date, unless extenuating circumstances exist.

If a party or witness is unwilling to be cross-examined in the live hearing the Hearing Panel will not rely on any statements that were made by that party or witness in reaching a determination of responsibility for the alleged misconduct. However, the Hearing Panel will not make inferences regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

## **6. Hearing Outcome**

- A. The Decision of the Hearing Panel. Following the conclusion of the hearing, the members of the Hearing Panel will confer. A majority vote of the Hearing Panel will determine whether the evidence presented at the hearing, as well as the information provided in the investigative report, the parties' written statements (if any), and witness testimony establishes that it is more likely than not (i.e., more than 50 percent likely) that the Respondent committed the alleged HDSM. This preponderance of the evidence standard is the only evidentiary standard that may be used to resolve a complaint of HDSM. The Hearing Panel will immediately report their findings and rationale behind the same, along with recommended sanctions, if applicable, to the Assigned Coordinator.

The Hearing Panel will make a written determination of its findings which will be provided simultaneously and in writing to the Complainant and Respondent. This document will include the following information:

- (1)** Allegations of HDSM that constitute the complaint;
- (2)** The procedural steps taken by the College from the receipt of the complaint through the determination (including notifications of the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held);
- (3)** Findings of fact supporting the Hearing Panel's determination;
- (4)** Conclusions regarding this Policy's application to the facts;
- (5)** A rationale for the determination of responsibility made in each allegation;
- (6)** Disciplinary sanctions to be imposed on the Respondent (if applicable);
- (7)** A list of any remedies provided by the College to the Complainant that are designed to prevent HDSM from being a factor in the terms and conditions of an employee's employment, as well as restore or preserve equal access to the College's education programs or activities;
- (8)** and the College's appeals procedures and bases for appeals.

The Hearing Panel Chair, or their designee, will draft the first 6 points of the written determination described above. The Assigned Coordinator will complete the written determination by adding points 7 and 8. If no appeal is filed, the written determination becomes a final determination on the date on which options to appeal expire. If an appeal is filed, the written determination becomes a final determination when the result of the appeal is issued.

- B. **Sanctions.** The purpose of the College's response to a finding of HDSM is to eliminate it, prevent reoccurrences, and remedy its effects. Given their role as the decision-makers in the complaint resolution process, if a majority of Hearing Panel members conclude that a preponderance of the evidence supports a finding of HDSM under this Policy, they may recommend sanctions. The Assigned Coordinator will consider these recommendations and then determine sanctions to be applied to the Respondent.

Sanctions may be one of multiple College responses to acts of HDSM. Others may include educational interventions, changes in campus security practices – including increased monitoring of the location(s) where HDSM occurred. Sanctions adopted following a finding of HDSM will depend upon the nature and gravity of the charges, any record of prior discipline for HDSM, or both. If there is no appeal, sanctions will take effect immediately. In the case of an appeal, sanctions will not be effective until the resolution of the appeal. An exception to this Policy will apply if the Vice President for Business Affairs and Finance concludes that in order to protect the welfare of the Complainant or the College community it is advisable for any sanctions on a staff-Respondent to be effective immediately and to continue in effect until the appeal process is concluded.

Sanctions applied to staff-Respondents may include: issuing a no-contact order to the Respondent, a change in the Respondent's office location, mandated counseling, and/or educational sanctions (e.g., bias awareness training), suspension, or termination from employment. Sanctions applied to third-party respondents may include no trespass orders for College-owned property. Once sanctions have been determined, the Assigned Coordinator will simultaneously notify the Complainant and the Respondent of the outcome of the hearing and sanctions imposed in writing. The full Hearing Panel report will follow.

- C. **Accommodations and Corrective Action.** Once the hearing has concluded, and if there has been a finding of HDSM the Assigned Coordinator will meet with the Complainant to determine what, if any accommodations should be made. The Assigned Coordinator will notify the Complainant in writing of the accommodations the College will provide. If any of these accommodations affect the Respondent, the Assigned Coordinator will notify the Respondent in writing. Any party may request, and the Assigned Coordinator may provide, additional accommodations or support services as warranted following the adjudication of a formal complaint.
- D. **Preventing Retaliation.** Retaliation includes intimidation, threats, or coercion of individuals for the purpose of interfering with any rights or privileges under this Policy, or because an individual has made a report or complaint under this Policy or has participated, or refused to participate in any manner in a HDSM investigation or hearing.

Publicly releasing confidential documents (e.g., on social media) that are part of the complaint resolution process, including the complaint, the investigative report, the recording of the hearing, or Hearing Panel determination, may constitute retaliation under this Policy. In order to prevent retaliation the College will maintain confidentiality regarding the identities of any individual(s) who has made a report or filed a formal complaint of HDSM, any Complainant, any Respondent, and any witness, except as required by law, or to carry out the purposes of this Policy (e.g., conduct of an investigation, hearing, or appeal).

Charges against a student for code of conduct violations that do not involve HDSM, but arise from the same facts or circumstances as a report or complaint of HDSM that are made for the purpose of interfering with any rights an individual has under this Policy constitute retaliation. Complaints alleging retaliation may be filed according to the grievance procedures for HDSM specified in this Policy.

The Assigned Coordinator will take steps to prevent retaliation against persons who participated, or were asked to participate in the resolution of a complaint under this Policy by briefing them on how to report retaliation and their options for filing a complaint under this Policy if they do become a target of retaliation, following up with them to ensure that there have been no retaliatory actions, and providing appropriate education for the College community, as necessary to prevent or eliminate retaliation.

- E. Outcome Letter. Within 7 days following the conclusion of the hearing, the Assigned Coordinator will issue an outcome letter simultaneously to each party in the complaint. If sanctions are imposed, the outcome letter will describe the disciplinary actions taken, the date disciplinary actions are imposed, and the duration of the sanction(s).
- F. Confidentiality and Disclosure. All documents prepared in anticipation of the hearing, including: the complaint, the investigative report, notice of the hearing, pre-hearing submissions, documents, testimony, or other information introduced at the hearing, and the final outcome letter may not be further disclosed, except as authorized by law.

## **7. Appeals**

The Complainant and/or the Respondent may appeal the decision of the Hearing Panel and/or the sanction imposed on the Respondent within 7 days from the date the outcome letter is received. Both the decision of the Hearing Panel and the sanction(s) imposed on the Respondent are open to appeal, and may be appealed simultaneously.

- A. Appeals of the Hearing Panel's Decision Regarding Responsibility. The only permissible grounds for an appeal are: (1) availability of new germane evidence that was not, despite the due diligence of the parties, available at the time of the hearing; (2) procedural irregularity during the resolution process that affected the outcome of the matter; and/or (3) the Assigned Coordinator, Investigator(s), or Hearing Panel members 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 complaint resolution process.

- B. Appeals of the Sanctions. The Complainant may appeal on grounds that the sanctions are insufficient to achieve the Policy's goals of eliminating acts of HDSM, preventing reoccurrence of such acts, and remedying the effects of HDSM, and the Respondent may appeal on the grounds that the sanctions are excessive.
- C. The Appeals Procedure. The Assigned Coordinator will ensure that the decision makers for appeals do not have a conflict of interest, or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent. The respective appellate decision-maker will immediately determine if the appeal is viable (e.g., submitted within the applicable time limit and justified under one of the established bases for appeal) and simultaneously notify both parties in writing whether or not the appeal can go forward. Both parties will have 7 days from the decision-maker's notification to submit a written statement to the decision maker in support of, or challenging the outcome of the hearing.

Appeals must be made in writing to the Vice President for Business Affairs and Finance, who will notify the Assigned Coordinator that an appeal has been received. After reviewing the evidence from the hearing, including the recording of the hearing, the Vice President for Business Affairs and Finance will determine if: (1) the decision of the Hearing Panel should stand; or (2) the decision of the Hearing Panel should be overturned; or (3) additional evidence should be obtained before making an appellate decision. If the Vice President for Business Affairs and Finance decides to overturn the decision of the Hearing Panel, or that additional evidence should be obtained, the Vice President will consult with the Assigned Coordinator on the appropriate steps to take to come to a final resolution of the complaint. The Vice President of Business Affairs and Finance will notify the Assigned Coordinator, the Complainant, and the Respondent simultaneously in writing of the decision and actions to be taken. There is no further appeal.

### ***8. Documentation***

The College will retain documentation (including but not limited to the written complaint, notifications, the investigative report, any written findings of fact, petitions for appeal, and any written communication between the parties) for at least 7 years.

## **Appendix A: Glossary**

### Academic Freedom

Academic freedom is defined by the American Association of University Professor's 1940 Statement of Principles of Academic Freedom and Tenure. Faculty are entitled to full freedom in research and in the publication of the results. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.

### Academic Transcript

An academic transcript is a student's academic record, including all courses completed, all grades received, all honors received and degrees earned.

### Advisor

An advisor may be a friend, relative, mentor, or attorney of either a complainant or respondent in an HDSM investigation and/or proceeding. The advisor may accompany the person he/she is advising at meetings that are part of the complaint resolution process. The advisor's role is limited; outside of the hearing, he or she may not speak on behalf of a complainant or respondent nor ask questions, address a hearing panel, cross-examine witnesses, or make other statements. A disruptive advisor will be asked to leave any proceeding and barred from future meetings. The advisor is bound by confidentiality.

### Age Discrimination in Employment Act of 1967

The Age Discrimination in Employment Act of 1967 protects certain applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment.

### Bias-based Violence

Acts of physical violence by one person upon another that may constitute hostile environment harassment based on one of the protected categories in the Policy, including race, color, sex (e.g., pregnancy, sexual orientation, gender identity and gender expression), religion, age, national or ethnic origin, family medical or genetic information, disability, familial, or veteran status.

### Clery Act

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, commonly known as the "Clery Act," is a federal statute first passed in 1990. The Clery Act requires, among other things, that all institutions of higher education participating in federal financial aid programs maintain and publicly report information about crime on or near campus.

### Commonwealth's Attorney

A commonwealth's attorney is an elected prosecutor of felony crimes in the Commonwealth of Virginia. A commonwealth's attorney is an elected constitutional officer who serves as the senior law enforcement official in his or her jurisdiction (i.e. city or county).

### Complaint

A complaint under this policy is an allegation of harassment or discrimination, including sexual misconduct, levied against another individual, or individuals, and reported to the College. The complaint resolution process is fully explained in the College's Harassment and Discrimination Policy.

### Consent

Consent is voluntary, informed, and actively given using words and/or actions that clearly indicate permission to engage in mutually agreed-upon sexual activity. Consent cannot be obtained by force including physical violence, threats, intimidation, or coercion. As a matter of law, consent may never be given by minors (even if the other participant was unaware of the minor's age), mentally disabled individuals (even if the other participant is unaware of the disability), or individuals who are incapacitated. The individual who initiates sexual activity is responsible for obtaining consent. Either party may withdraw consent at any time. Withdrawal of consent should be outwardly communicated by words or actions that clearly indicate a desire to end sexual activity. In order to avoid confusion or ambiguity, participants should talk to each other before engaging in sexual activity. Participants should also stop and clarify mutual willingness to continue any sexual activity if confusion or ambiguity arises. Consent cannot be inferred from silence, passivity, lack of resistance, or lack of an active response alone.

### Criminal Complaint

A criminal complaint charges a named or unknown person with one or more criminal offenses. Some acts of sexual misconduct under this policy may also constitute criminal behavior. In such cases, a victim may choose to pursue a criminal complaint with law enforcement personnel and/or a complaint utilizing the College's Harassment and Discrimination Policy.

### Cross Examinations

Cross-examinations may take place at a live hearing that is part of the resolution of a formal complaint under the Policy. Cross-examinations are conducted directly, orally, and in real time by the advisors for the Complaint and Respondent, respectively. At a live hearing each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

### Discrimination

Discrimination is inequitable treatment that occurs: (1) because of an individual's actual or perceived membership in one or more of the protected categories listed in the College's non-discrimination statement; and (2) which has the effect of excluding an individual from participation in, denying an individual the benefits of, or otherwise adversely affecting a term or condition of an individual's employment (e.g., pay or benefits), education, living environment, or participation in a College educational program or activity.

### Domestic or Dating Violence

Domestic violence and dating violence (also known as intimate partner violence), includes any threat or act of violence that occurs between two individuals who are currently or were previously in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate partner violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a pattern

of power and control perpetrated by one intimate partner against another. It includes physical violence, sexual violence, psychological violence, and emotional abuse.

#### [Equal Employment Opportunity Commission](#)

The U.S. Equal Opportunity Employment Commission is the federal agency that enforces federal laws that prohibit employment discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, age, and genetic information.

#### [Equal Pay Act of 1963](#)

Part of the Fair Labor Standards Act, Equal Pay Act of 1963 prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions.

#### [Explanation of Benefits \(EOB\)](#)

An explanation of benefits form is a document used by insurance carriers to detail medical services rendered by a health care provider; the cost of services and materials, copays, coinsurance, or deductibles paid by a covered individual; and amounts paid by the insurance company. After an individual seeks medical attention and provides insurance information for billing, an EOB is sent to the primary insured person, either by mail or electronically.

#### [Family Educational Rights and Privacy Act of 1974 \(FERPA\)](#)

The Family Educational Rights and Privacy Act is a federal statute that protects the privacy of student educational records that are maintained by educational institutions that receive funding under a program administered by the U.S. Department of Education. Among other things, FERPA also provides certain access rights to eligible students.

#### [Family Medical Leave Act of 1993 \(FMLA\)](#)

The Family Medical Leave Act of 1993 provides certain employees with up to 12 weeks of unpaid, job protected leave per year and requires that the employee's health benefits be maintained during the leave.

#### [Final Determination and Final Outcome Letter](#)

The final determination is the outcome of an HDSM complaint, investigation and adjudication in which responsibility for the charges is determined. The written determination of the Hearing Panel is sent to the Complainant and Respondent simultaneously and becomes a final determination on the date when options to appeal the result expire. If an appeal is filed, the written determination becomes a final determination when the result of the appeal is issued. The final outcome letter states the disposition, applicable sanctions, and rights to appeal. If sanctions are imposed, the letter will indicate the disciplinary action taken, the date of the disciplinary action, and its duration.

#### [Forensic Nurse Examiner \(FNE\)](#)

Forensic Nurse Examiner is a registered nurse who is specially trained to provide medical forensic care to a survivor of a physical assault, including sexual abuse and sexual assault.

## Gender

Gender is a range of characteristics pertaining to, and differentiating between, masculinity and femininity. These characteristics may include gender roles and gender identity.

## Gender Identity and Gender Expression

Gender identity is an individual's psychological gender identification. It is not always based on sex assigned at birth. Gender identity is distinctly different from sexual orientation. Gender expression refers to external characteristics deemed masculine or feminine, such as dress, speech, behavior, grooming, or social interactions.

## Harassment

Harassment is a form of discrimination in which unwelcome verbal, visual, or physical conduct is directed toward an individual because of an individual's actual or perceived membership in one or more of the protected categories listed in the College's non-discrimination statement. Conduct does not have to include an intent to harm, be directed at a specific person, or involve repeated incidents to be prohibited under this policy. Hostile environment harassment occurs when the unwelcome conduct is sufficiently severe, or pervasive that it interferes with an individual's employment, academic performance, or participation in College programs or activities, and creates a working, learning, program, or activity environment that a reasonable person would find intimidating, hostile, or offensive.

## Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act of 2008 prohibits discrimination on the basis of genetic information with respect to health insurance and employment.

## Hazing

Hazing is recklessly or intentionally endangering the health or safety of a student or students, or inflicting bodily injury on a student or students in connection with or for the purpose of initiation, admission into or affiliation with or as a condition for continued membership in a club, organization, association, fraternity, sorority, or student body regardless of whether the student or students so endangered or injured participated voluntarily in the relevant activity.

## Hearing Panel

A hearing panel conducts a hearing to interview and question the complainant, respondent, third-party witnesses whose testimonies may be relevant for making a finding, and otherwise to review evidence, when there is a HDSM complaint. The hearing panel also supervises the cross-examination of the complainant, respondent, and witnesses by the parties' advisors.

## Heightened Confidentiality

Heightened confidentiality may be requested by a complainant when charge(s) of a violation of the HDSM policy have been reported to the Title IX and 504 Coordinator. If the Title IX and 504 Coordinator grants an individual's request for heightened confidentiality, the College will only investigate the complaint to the extent possible without sharing information about the charges. Under heightened confidentiality information about the charges is not shared with the respondent and there is no formal

or informal complaint process. In such circumstances the College's response to the complaint may be limited.

### Incapacitation

Incapacitation occurs when an individual is incapable of self-care and consequently cannot make informed, rational judgments about whether or not to engage in sexual activity. An incapacitated individual may be temporarily or permanently mentally or physically helpless, asleep, unconscious, or unaware of his or her surroundings (or that sexual activity is taking place), or otherwise incapable of making informed, rational judgments and decisions. This may or may not be due to alcohol or drug consumption or some other physical or mental health condition. Some signs of incapacitation include, but are not limited to, an individual who is unaware of where he or she is, or is unable to stand up and walk without assistance. A person initiating sexual activity should attempt to discern if his or her desired partner is incapacitated. If a reasonable person, in the respondent's place, could have known, or should have known that the complainant was incapacitated, then regardless of the actions of the complainant, consent cannot be obtained.

### Investigative Report

An investigative report is a document written by investigators that details evidence and testimony that is provided by the complainant, respondent, witnesses, and through the investigators' own discovery or inspections, and which may have a bearing on the charges included in the complaint. The investigative report does not draw conclusions or determine if a preponderance of evidence supports the charges.

### Mandatory Reporter

An employee of the College who is not able to accept a confidential report of harassment or discrimination, including sexual misconduct under this policy. Mandatory reporters are obligated to notify the Title IX and 504 Coordinator or a Deputy Coordinator following the receipt of information about alleged violations of the College's HDSM policy.

### Non-Consensual Sexual Intercourse

An act of penetration (i.e., anal, oral, or vaginal), however slight, with any body part or any object, by one person upon another person without consent.

### Non-Consensual Sexual Touching

Non-consensual sexual touching is intentional and unwelcome sexual touching (including undressing or sexually exposing another person) without their consent. It also includes coercing or forcing, or attempting to coerce or force another person to touch themselves, or have sexual contact with another individual. Non-consensual sexual touching includes genital-genital or oral-genital contact not involving penetration; contact with the breasts, buttocks, or genital area, including over clothing; removing the clothing of another person; and kissing.

### Office for Civil Rights (OCR)

The Office for Civil Rights (OCR) is part of the U.S. Department of Education whose mission "is to ensure equal access to education and to promote educational excellence throughout the nation through

vigorous enforcement of civil rights.” The OCR is responsible for resolving discrimination complaints against educational institutions on the basis of race, color, national origin, sex, disability, or age.

### Personally Identifiable Information

Personally identifiable information for a student includes (but is not limited to) a student’s name, the name of a student’s parents or legal guardians, a student’s college address, home address, personal identifiers (e.g., social security number, student identification number, etc.), or other information that may be used to identify an individual student. Personally identifiable information for a non-student employee includes the employee’s name, job title, office location, home address, personal identifiers (e.g., social security number), or other information that may be used to identify an individual employee.

### Physical Evidence Recovery Kit (PERK)

A Physical Evidence Recovery Kit (PERK) is a term used in the Commonwealth of Virginia to describe a container of materials, instructions, and checklists to collect and package specimens collected during a forensic exam following sexual assault. Ideally this type of forensic exam should be conducted within 72 hours of a physical assault. The term “rape kit” is commonly used by laypeople to describe a PERK. The forensic exam is conducted by a specially trained nurse, known as a Sexual Assault Nurse Examiner (SANE) or a Forensic Nurse Examiner (FNE).

### Preponderance of the Evidence Standard

Under the College's Harassment and Discrimination Policy, the standard used to adjudicate administrative grievances and determine responsibility for charges of HDSM is a preponderance of the evidence standard. The preponderance of the evidence standard is met when the greater weight of evidence supports the determination at issue; that is, that the determination is “more likely than not” accurate or that the evidence points to at least a 51% probability that one side should prevail.

### Protected Categories

A group of people with a common characteristic who are legally protected from discrimination on the basis of that characteristic. Protected categories may be created by federal, state, and local law, as well as College policy. Protected categories include race, color, sex (e.g., pregnancy, sexual orientation, gender identity and gender expression), religion, age, national or ethnic origin, family medical or genetic information, disability, familial, or veteran status.

### Rape

Rape is an act of completed or attempted sexual intercourse or penetration (i.e., anal, oral, or vaginal), however slight, with any body part or any object, by one person upon another person without consent.

### Reasonable Accommodations

For employees or job applicants with a disability (as defined by law) a reasonable accommodation is any change to the application or hiring process, to a job, to the way a job is done, or the work environment that allows an individual qualified for the job to perform the essential functions of that job and enjoy equal employment opportunities. Reasonable accommodations are also available to job applicants or employees to enable them to practice their religion. For applicants for admission or students with a disability or a religious conflict a reasonable accommodation is a modification or service

that gives the student an equal opportunity to enjoy the benefits of the College's educational programs and activities. Accommodations are considered "reasonable" if they do not create more than a minimal burden on the operations of the College.

### Reasonable Person

A reasonable person refers to a hypothetical person in society who exercises average care, skill, and judgment in their actions and who serves as a basis to set a standard for evaluating conduct alleged to be harassing.

### Rehabilitation Act of 1973

The Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors.

### Resolution

A resolution to all HDSM cases includes the final determination to a charge of HDSM, as well as any sanctions (if applicable), extensions of supportive measures beyond the conclusion of the resolution process, and other steps taken by the College to eliminate HDSM, prevent reoccurrences, and remedy the effects of HDSM on the complainant and campus community.

### Retaliation

Retaliation occurs when an individual intimidates, threatens, coerces, or in any way discriminates or takes an adverse action against an individual because that individual is in the process of procuring any right or privilege secured by federal and state civil rights laws or has done so in the past. Protections against retaliation extend to individuals who bring concerns about possible civil rights problems to the College's attention, including publicly opposing bias based violence or filing a complaint with the College, or any state or federal agency. Protections against retaliation also extend to individuals who testify or participate in any manner in an HDSM investigation or proceeding.

### Review Committee

When the College receives a report that an act of sexual violence has been committed against a student, as mandated by Virginia law the Title IX Coordinator will report the charge to the Review Committee, which shall meet within 72 hours of receiving a report of an act of sexual violence. The College extends this requirement to acts of bias based violence against students and employees in any category of HDSM allegation. The members of the Review Committee will include at least a Title IX and 504 Coordinator or designee, a representative of Campus Police, and a student affairs representative. If the Review Committee determines that disclosure of the information regarding the alleged act of violence is necessary to protect the health and safety of the victim or other individuals, the representative of law enforcement on the Review Committee will forward information about the charge, including personally identifiable information, to the law-enforcement agency with jurisdiction for investigation of the alleged act. In other situations the Review Committee may make a report, without identifying information, to the appropriate Commonwealth's Attorney.

### Sex Discrimination

Sex discrimination (also known as gender-based discrimination) is prohibited by federal and state law. Sex discrimination occurs when there is adverse treatment of an individual or group of individuals because of sex, including pregnancy, sexual orientation, gender-identity, or gender expression. Sexual harassment (including sexual misconduct) is one type of sex discrimination prohibited by law. Employees are protected by civil rights laws from sex discrimination in the terms and conditions of their employment. Students and visitors are protected from sex discrimination that impacts their ability to participate in, or benefit from, the College's educational programs and activities.

### Sexual Assault

Sexual assault is any actual, attempted, or threatened sexual act with another individual without that person's consent. It includes but is not limited to:

- Intentional and unwelcome sexual touching (non-consensual touching) or coercing or forcing another person to touch themselves, or another individual;
- Any sexual act where force, violence, coercion, or deception is used;
- Any sexual act when a victim is unable to give consent;
- Rape or attempted rape;
- Hazing acts of a sexual nature;
- Sexual intimidation; and
- Non-consensual sexual intercourse.

### Sexual Assault Nurse Examiner (SANE)

A Sexual Assault Nurse Examiner is a registered nurse who is specially trained to provide medical forensic care to a survivor of sexual abuse or sexual assault.

### Sexual Exploitation

Sexual exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person, without that person's consent. Sexual exploitation includes:

- Attempting to cause, or causing the incapacitation of another individual in order to gain a sexual advantage over such person. This may be done through alcohol, drugs, or any other means with the intent of compromising that individual's ability and agency to give affirmative consent to a sexual activity.
- Recording, videotaping, audiotaping, or photographing a sexual activity and/or an individual's intimate body parts (genitalia, groin, breasts, or buttocks) without consent.
- Disseminating or distributing images or media of private sexual activity and/or an individual's intimate body parts (genitalia, groin, breasts, or buttocks) without consent. This includes, but is not limited to, social media, text messaging, and the internet.
- Voyeurism or exceeding the boundaries of consent by allowing a third-party to observe a sexual act.
- Prostituting another individual.
- Recklessly and knowingly exposing or transmitting a sexual transmitted disease or infection to another individual."

### Sexual Harassment

Sexual harassment includes a wide variety of behaviors ranging from verbal or visual harassment to unwelcome physical contact. Sexual harassment occurs when there is unwelcome conduct of a sexual nature, or unwelcome conduct of a non-sexual nature that is gender-based, and that is reasonably perceived as offensive and objectionable under both a subjective and objective assessment of the conduct. Sexual harassment encompasses conduct that is verbal, nonverbal, written, electronic, or physical. Sexual violence is considered a form of sexual harassment. Sexual harassment is a form of sexual discrimination.

- Quid pro quo harassment occurs when there is an explicit or implied demand for sexual favors in exchange for some benefit (including a promotion, a raise, a good grade or recommendation) or to avoid some detriment (including termination, demotion, a failing grade, denial of a scholarship) in the workplace or in the classroom. By definition, it can only be perpetrated by someone in a position of power over another.
- Tangible employment action harassment occurs when there is a significant negative change in an individual's employment status that occurs because of sex. This may include quid pro quo harassment, as well as significant negative changes in employment status enacted by a supervisor, because of an employee's sex, sexual orientation, gender identity, or gender expression.
- Hostile environment sexual harassment is a particular type of sexual harassment. In cases involving employees, hostile environment sexual harassment occurs when unwelcome and offensive conduct of a sexual nature is sufficiently severe or pervasive that it creates a work environment that a reasonable person would consider intimidating, hostile, or abusive. Students experience hostile environment sexual harassment when they must endure conduct that is sufficiently severe or pervasive that it limits a student's ability to participate in or benefit from the school's educational program. A single, isolated incident of sexual harassment alone may create a hostile environment if the incident is sufficiently severe. 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."

### Sexual Intimidation

Sexual intimidation occurs when one or more persons threatens or coerces another individual to engage in unwelcome conduct of a sexual nature. Sexual intimidation may include threats of a physical or financial nature, as well as threats to "out" a closeted individual.

### Sexual Misconduct

Sexual misconduct is any unwelcome sexual conduct and includes acts perpetrated against another individual without consent. This includes: sexual assault, sexual harassment, non-forcible sex acts, sexual exploitation, domestic violence, stalking, and dating violence. Sexual misconduct may occur between strangers or acquaintances and is not gender specific.

### Sexual Orientation

Sexual orientation refers to an individual's physical and/or emotional attraction to either the same or other genders. Sexual orientation includes attractions that are heterosexual, homosexual, bisexual, asexual, or pansexual in nature.

### Sexual Stereotyping

Sexual stereotyping refers to the formation or promotion of a fixed idea or image of how men or women should behave, oftentimes conforming to traditional gender roles and behaviors.

### Sexual Violence

Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the individual's age or use of drugs or alcohol, or because an intellectual or other disability prevents the individual from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. All acts of sexual violence are forms of sex discrimination prohibited by Title IX.

### Stalking

Stalking is defined as a course of conduct involving more than one instance of unwanted attention, harassment, unwanted physical or verbal contact, use of threatening words and/or conduct, or any other course of conduct directed at an individual that could be reasonably regarded as alarming or likely to place that individual in fear of harm or injury, including physical, emotional, or psychological harm. Examples include, but are not limited to: following a person; appearing at a person's home, class, or work; continuing to contact a person after receiving requests to stop; leaving written messages, objects, or unwanted gifts; vandalizing a person's property; photographing a person; and other threatening, intimidating, or intrusive behavior. Cyber-stalking may involve the use of electronic media such as the internet, social networks, blogs, cell phones, or text messages.

### Strict Confidentiality

Strict confidentiality is granted for all communications between parties in an HDSM complaint and licensed professional employees in the Student Health Center, Counseling Center, the Athletic Trainers Office, and the Chaplains employed by the College, as well as College employees who are supervised by the licensed professionals listed here. These individuals are authorized to receive reports of HDSM and are not required, or permitted to share personally identifiable information with other College personnel, including the Title IX and 504 Coordinator, unless the disclosing individual gives his or her consent to the disclosure, or in limited situations as required by law (e.g., in cases of alleged sexual misconduct involving a minor, or under conditions of imminent physical harm to other individuals).

### Supportive Measures

Supportive measures are individualized services offered without charge to the Complainant and the Respondent, whether or not a formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the College's educational programs or activities without unreasonably burdening the other party. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations,

leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

### Threat Assessment

A threat assessment occurs within 72 hours after the College's Title IX Coordinator has received a report that an act of bias based violence has been committed against a student. The threat assessment is conducted by the Review Committee, which includes the Title IX Coordinator (or a Deputy Title IX Coordinator), a representative from Campus Police, and a representative from the Office of Student Affairs. The purpose of the threat assessment is to determine if the alleged act of bias based violence should be reported to the law enforcement agency with jurisdiction for investigation in order to protect the health or safety of the complainant or other individuals.

### Title IX Coordinator

The Title IX and 504 Coordinator oversees resolution of HDSM complaints, training, and policy implementation at the College. The Title IX and 504 Coordinator is responsible for addressing systematic problems at the institution involving HDSM and is available to meet with any individual in the community regarding concerns about issues, processes, incidents, patterns, or problems. All reports of HDSM must be directed to the Title IX and 504 Coordinator or other designated officials as indicated in the policy.

### Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972, is a federal civil rights law that prohibits discrimination on the basis of sex in educational institutions that receive federal education funding. The law states, ""No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."" Title IX prohibits sex-based discrimination against both men and women students, employees, and visitors seeking to participate in the College's educational programs and activities. The College has an exemption to Subpart C of Title IX with respect to recruitment and admission of students.

### Title VI of the Civil Rights Act of 1964

Title IV of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives federal funds or other federal financial assistance.

### Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 prohibits discrimination against employees and job applicants on the basis of race, color, religion, gender, pregnancy, and national origin, by any U.S. employer with 15 or more employees.

### Titles I and II of the Americans with Disabilities Act of 1990

Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in applying for jobs, hiring, firing, and job training. Title II prohibits schools, including nursery, elementary, secondary, undergraduate, or postgraduate private schools, from discriminating against qualified students or applicants for admission who have defined disabilities.

### Undue Hardship

An undue hardship refers to a disability or religious accommodation that can only be implemented with significant difficulty or expense. In addition to financial difficulty undue hardship also includes accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operations of the College.

### Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

The Uniformed Services Employment and Reemployment Act of 1994 is a federal statute that protects service members' and veterans' civilian employment rights. Under certain conditions, USERRA requires employers to reinstate qualified individuals back to work in their civilian jobs after military services. USERRA also protects service members from discrimination in the workplace based on their military service or affiliation.

**Appendix B: Threat Assessment in Cases Involving Sexual Violence Against a Student****(Under VA. Code §23-9.2:15)**

Following the initial assessment of a report regarding “sexual violence”, which means physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent, the Title IX Coordinator will promptly forward such a report to the College’s Sexual Violence Review Committee. All information then known about the incident of sexual violence will be evaluated. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident.

**1. Sexual Violence Review Committee (SVRC)**

The Sexual Violence Review Committee will evaluate every report of Sexual Violence. The SVRC will convene (in person, by telephone, or by videoconference) within 72 hours after receiving information from the Title IX Coordinator, as described above, and will convene again, as necessary, to review new information as it becomes available. The SVRC is a sub-committee of the College’s Threat Assessment Team which shall include: (1) the Title IX Coordinator, (2) a representative of the Campus Police Department (the “Law Enforcement Representative”), and (3) The Director of Housing and Residential Life (the “Student Life Representative”).

The College’s Sexual Violence Review Committee operates pursuant to Va. Code §23-9.2:15 and has access, under Virginia law, to certain otherwise confidential information, including law enforcement records, criminal history record information, as provided in Va. Code §19.2-389 and §19.2-389.1; health records, as provided in Va. Code §32.1-127.1:03; College disciplinary, academic and/or personnel records; and any other information or evidence known to the College or to law enforcement. The SVRC may seek additional information about the reported incident through any other legally permissible means.

**2. Health and Safety Threat Assessment**

**a. Risk Factors.** SVRC will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the Complainant or to any other member of the College community. The team will make this determination

based upon a review of the totality of the known circumstances, and will be guided by a consideration of the following factors (the “Risk Factors”):

- Whether the Respondent has prior arrests, 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 College No-Contact Directive, other College protective measures, and/or any judicial protective order;
- 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. “Physical violence” means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking and brandishing or using any weapon;
- Whether the report reveals a pattern of Sexual Violence (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- Whether the Sexual Misconduct was facilitated through the use of “date-rape” or similar drugs or intoxicants;
- Whether the Sexual Misconduct occurred while the Complainant was unconscious, physically helpless or unaware that the misconduct was occurring;
- Whether the Complainant is (or was at the time of the Sexual Misconduct) a minor (under 18); and/or
- Whether any other aggravating circumstances or signs of predatory behavior are present.

**b. Disclosure(s) of Information to Law Enforcement.** Pursuant to Virginia law, the SVRC is *required* to disclose information about alleged Prohibited Conduct to law enforcement in the following circumstances:

(1) If SVRC (or, in the absence of consensus within the team, the Law Enforcement Representatives) concludes that there is a significant and articulable threat to the health or safety of the Complainant or to any other member of the College community and that disclosure of available information (including the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident)

is necessary to protect the health or safety of the Complainant or other individuals, the Law Enforcement Representative will immediately disclose the information to the law enforcement agency that would be responsible for investigating the alleged act of Sexual Violence. The SVRC will make this determination based upon a review of the totality of the known circumstances and consideration of the list of Risk Factors. The Title IX Coordinator will promptly notify the Complainant whenever such disclosure has been made. If the law enforcement agency that would be responsible for investigating the alleged act of Sexual Misconduct is located outside of the United States, this disclosure is not required by Virginia law.

(2) If the alleged act of Prohibited Conduct constitutes a felony violation of the Code of Virginia, the Law Enforcement Representative will so inform the other members of the SVRC and will, within 24 hours, (i) consult with the appropriate Commonwealth's Attorney or other prosecutor who would be responsible for prosecuting the alleged act of Prohibited Conduct (the "Prosecuting Authority"), and (ii) disclose to the Prosecuting Authority the information then known to SVRC. This disclosure is required by Virginia law where the alleged act of Sexual Misconduct would violate Article 7 (§18.2-61 et seq.) of Chapter 4 of title 18.2 of the Code of Virginia. Such disclosure will exclude the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident (the "Identifying Information"), unless the Identifying Information was disclosed to law enforcement under the health and safety exception described in paragraph (a), above, in which case the Identifying Information also will be disclosed to the Prosecuting Authority. If the Law Enforcement Representative declines to so consult with the Prosecuting Authority, any member of the SVRC who individually concludes that the alleged act of Sexual Misconduct would constitute such a felony violation may consult with the Prosecuting Authority and make the required disclosure(s) in the manner and within the timeframe set forth above.

The SVRC will reconvene as necessary to continue to evaluate whether any new or additional information received triggers any further obligation(s) under the Clery Act or with respect to any child protective service agency, and will direct the Title IX Coordinator to take such further actions, as necessary.

**Appendix C: Campus Sexual Assault Victims' Bill of Rights**

The "Campus Sexual Assault Victims' Bill of Rights" exists as a part of the campus security reporting requirements, commonly known as the Jeanne Clery Act, of the federal law that establishes all student aid programs, the Higher Education Act of 1965.

The United States Congress enacted the "Campus Sexual Assault Victims' Bill of Rights" in 1992 as a part of the *Higher Education Amendments of 1992* (Public Law: 102-325, section 486(c)). It was signed into law by President George Bush in July of 1992.

This law requires that all colleges and universities (both public and private) participating in federal student aid programs afford sexual assault victims certain basic rights.

It also requires the school to notify victims of their option to report their assault to the proper law enforcement authorities. Schools found to have violated this law can be fined or lose their eligibility to participate in federal student aid programs. Complaints about schools that have failed to comply with this law should be made with the U.S. Department of Education.

Public Law: 102-325, section 486(c)

- Accuser and accused must have the same opportunity to have others present.
- Both parties shall be informed of the outcome of any disciplinary proceeding.
- Survivors shall be informed of their options to notify law enforcement.
- Survivors shall be notified of counseling services.
- Survivors shall be notified of options for changing academic and living situations.