

Appendix 2
Hampden-Sydney College
Harassment and Discrimination Policy
(including Sexual Harassment)

Every College staff member, faculty member, and student has the right to work and study in an environment free from discrimination and harassment and should be treated with dignity and respect. The College prohibits discrimination and harassment against applicants for employment or admission, students, faculty, or staff on the basis of race, religion, national or ethnic origin, age, sex, disability, sexual orientation, status as a veteran or any other classification protected by local, state or federal law, as applicable.

The College's policy against discrimination and harassment ("Policy") incorporates protections afforded by Title IX of the Educational Amendments of 1972, which prohibits discrimination in educational programs and activities based on gender. The Policy also incorporates all other local, state, and federal laws, including Title VII of the Civil Rights Act of 1964. Any individual whose conduct violates the Policy will be subject to disciplinary action up to and including termination for the faculty and staff and expulsion for students.

Harassment is the creation of a hostile or intimidating environment, in which verbal or physical conduct, because of its severity and/or persistence, is likely to interfere significantly with an individual's work or education, or affect adversely an individual's work or living conditions on campus. Illegal and improper harassment of individuals who are in any of the protected classifications identified above may include, for example:

- Making unwelcome or offensive comments about a person's clothing, body, or personal life;
- Use of unwelcome or offensive nicknames or terms of endearment;
- Offensive jokes or unwelcome innuendoes;
- Any suggestion that sexual favors, or status as being in any protected classification identified above, would affect one's job, promotion, performance evaluations, grades, working or educational conditions; or
- Other conduct that creates a work or educational environment that may be considered offensive or hostile, even though some employees or students might not find it objectionable.

Sexual harassment, in particular, may consist of unwelcome advances, requests for sexual favors, or other verbal or physical conduct when one or more of the following occur:

- Submission to or rejection of such conduct is made a term or condition of an individual's employment or academic success;
- Submission to or rejection of such conduct is used as the basis for employment or academic decisions; or
- Such conduct has the purpose or effect of interfering with an individual's work or academic performance or creates a hostile, intimidating, or offensive work or educational environment.

The Policy is about human respect, dignity, and compliance with laws pertaining thereto. Nothing herein is intended to inhibit the faculty in its pursuit of free inquiry or the teaching of, or use of material concerning, topics that may be deemed offensive by some, but that have a legitimate academic and intellectual purpose. In some instances creating an uncomfortable environment challenging prejudices and preconceptions, may serve a legitimate educational purpose. Nothing in the Policy is intended to diminish the College's commitment to academic freedom or freedom of expression, each of which is essential to the work of an educational institution.

The College has designated the Director of Human Resources as its representative to handle issues arising under the Policy, including Title IX. Individuals who need further information or clarification of the Policy should contact the Director of Human Resources directly. Staff, faculty, students, and others protected hereby who feel they have suffered discrimination or harassment in violation of the Policy should follow the Complaint Resolution Procedure below.

The Policy also applies to complaints of harassment or discrimination by persons aggrieved by third parties such as contractors or vendors serving the College. The College cannot always control the conduct of third parties, but will attempt to take action to remedy any such situations that may arise.

Complaint Resolution Procedure ("Procedure")

(For ease in identifying individuals, the person making a complaint is referred to as the "Complainant," and the person about whom the complaint is being made is referred to as the "Respondent.")

The College will endeavor to respond to and resolve all complaints quickly and effectively. Individuals in the protected classifications who believe they have been harassed or discriminated against in violation of the Policy are encouraged to take action in any of the ways described in the Procedure.

Although none of the actions listed under the Options for Informal Resolution (below) are required before an individual may file a Formal Complaint, the College favors informal resolution of these claims whenever such resolution can be effected fairly. Except as expressly provided herein, the Procedure is the only grievance procedure available to staff, faculty, students, or other parties for violations of the Policy. No other grievance procedures otherwise available at the College are applicable.

Through the Procedure, the College will take necessary steps to prevent recurrence of any harassment and/or discrimination determined to have occurred, and will take necessary steps to correct the discriminatory effects of the conduct on the Complainant and others, if appropriate. During all stages of the Procedure, every effort will be made to insure fundamental fairness to all parties involved in the complaint process. The College will make good faith efforts to protect the confidentiality of those involved in the Procedure to the extent permitted by law and to the extent that continued protection does not interfere with the College's ability to investigate allegations or to take corrective action.

The College prohibits retaliation against any individual who files a complaint (informal or formal) in good faith or participates in a harassment or discrimination inquiry. Disciplinary action will be taken against any individual who retaliates against a Complainant or participant in a harassment or discrimination inquiry, or who files a discrimination or harassment complaint in bad faith, or who maliciously or knowingly files false charges.

Respondent and Complainant may each choose someone in the College community to serve in an advisory role throughout the Procedure.

Procedures for Informal Resolution

(The Informal Resolution process often provides an effective means of resolving most disputes. However, the Complainant may terminate the Informal Resolution process at any time and initiate a Formal Complaint without prejudice.)

1. Informal Discussion with Respondent: Prior to the involvement of other parties or College officers, the Complainant may choose to discuss the concerns directly with the Respondent. The Respondent may not realize that his or her conduct is offensive or unwelcome. Many disputes can be resolved quickly and effectively with such direct communication. A complaint brought to the attention of the Respondent shortly after the allegedly offensive behavior occurs (i.e., immediately or in a few days) will usually result in more effective resolution.

2. Informal Discussion with College Officials: A Complainant may, of course, discuss concerns with a friend, confidant, advisor, or counselor. To initiate an informal discussion with College officials, however, a Complainant should contact one of the following individuals in a timely manner, ordinarily within fifteen days of the offending conduct (“days” as used herein shall mean “days when the College administrative offices are open”):

Students should contact: Dean of Students

Faculty (or librarians with special faculty status) should contact: Dean of the Faculty

Staff should contact: Vice President for Business Affairs & Treasurer

(If the complaint is against one of the designated College officials, the Complainant should contact the Director of Human Resources, who will designate a representative of the College to handle the matter. In cases where the Complainant deems it necessary or desirable to avoid any possible conflict of interest, a more readily available supervisor or an officer in a different administrative branch of the College may be contacted.)

3. The Informal Discussion can help with any or all of the following options:

a. Assisting the Complainant to determine whether the behavior violates the Policy or to learn more about the Policy generally.

b. Meeting with the individual whose behavior is alleged to be offensive or unwelcome and discussing the situation to make it clear that the behavior is offensive or unwelcome and should cease.

c. Conducting an informal investigation with the effect and goal of ending the alleged behavior in an effective and expeditious manner.

d. Contacting the supervisor of the person whose behavior is alleged to be offensive or unwelcome and requesting assistance to stop the behavior.

Based on the Informal Discussion, the College official designated in paragraph 2 above will determine what additional action, if any, is necessary.

4. The Informal Discussion process will last as long as the Complainant deems it desirable to continue to meet with the College official designated above, but usually the College will try to resolve the problem at this early stage within ten days. Most complaints can be resolved at this stage. If not satisfied with the resolution from the Informal Discussion, the Complainant may proceed to the Formal Complaint process described below.

Procedures for Formal Resolution

(If the complaint is against one of the designated College officials, the Complainant should contact the Director of Human Resources, who will designate a representative of the College to handle the matter. In those cases where the Complainant deems it necessary or desirable to avoid any possible conflict of interest, an officer in a different branch of the college may be contacted.)

1. A Complainant may omit the Informal Discussion process entirely and file a Formal Complaint with the Director of Human Resources. Formal Complaints alleging violation of the Policy must be filed in the Director's office in a timely manner, ordinarily within fifteen days of the offending conduct, or shortly after the conclusion of the Informal Discussion process, usually within ten days. Formal Complaints must be in writing (except in cases where this would not be feasible) and should set out the details of the allegations. If the Complainant, after an initial meeting with the designated college official, decides to proceed, the official should inform the alleged offender of the allegation, of the identity of the Complaint, and provide a copy of the Formal Complaint.

2. In cases where the Respondent is a member of the faculty or staff, the Director or his or her designee will review the Formal Complaint and conduct an investigation, including relevant interviews. The Director or his or her designee will prepare a written report of his or her findings ("Findings") as expeditiously as possible, usually within thirty days from the date that the Formal Complaint was filed, and will deliver the Findings to the Complainant and Respondent. In cases where the Respondent is a student, the Director will deliver the Formal Complaint to the Dean of Students, who will proceed according to the Procedure in Step 3c below.

3.a. The Director of Human Resources will then forward the Formal Complaint and the Findings to the Appropriate College Official. ("Appropriate College Official" as used herein, shall mean (i) the Dean of the Faculty when the Respondent is a member of the faculty, and (ii) the Vice President for Business Affairs and Treasurer, if the Respondent is anyone other than a student or faculty member.)

3.b. The following procedure will be followed when the Respondent is a faculty member with continuous tenure or an unexpired special or probationary appointment:

Step One. Upon receipt and review of the Formal Complaint and Findings, the Dean of the Faculty (or the President, if the charge is against the Dean, or the Chairman of the Board of Trustees, if the charge is against the President), prior to making a preliminary determination on the matter, will consult with the Respondent to ascertain whether a mutually acceptable resolution to the Formal Complaint exists. If there is no mutually acceptable resolution then the respective college official responsible for handling the Formal Complaint will consult in confidence with an Advisory Committee of tenured faculty about the Complaint and Findings, about strategies for resolution of the Complaint, and about possible sanctions against the Respondent. The Advisory Committee will be the three members of the Faculty Affairs Committee with the longest time in service at the College, but not the Chair, who may later be called upon to serve on the Hearing Committee. Following consultation with the Advisory Committee, the Dean will make a preliminary determination as to whether the Complaint, if found to be true, would be likely to result in the severe sanction or dismissal of the Respondent. Copies of the preliminary determination will be delivered to the Complainant and Respondent.

Mediation

After the Dean has made a preliminary determination, the Dean may wish to suggest that the matter be submitted for mediation, or the Complainant and Respondent may themselves elect to submit the matter to mediation by a mutually acceptable mediator. Under some circumstances, when the College deems it appropriate, the College may assume some or all the costs of the mediation. If the parties mediate and agree with the outcome, the results of the mediation will be entered as the Final Determination of the case.

Step Two. If the Dean's preliminary determination inclines towards severe sanction or dismissal, unless the Respondent requests in writing that the matter be resolved as the Dean has proposed, the Dean, prior to proceeding as described in paragraph 4 of this section, will forward copies of the Complaint and Findings, together with the preliminary determination, to a special ad hoc committee of tenured faculty, to be called herein the "Hearing Committee," comprising the chairs of the following faculty committees:

Faculty Affairs Committee
Academic Affairs Committee
Committee on Professional Development
Gender Issues Committee
Student Affairs Committee

(The Complainant or Respondent may request that up to two members of the Hearing Committee be replaced peremptorily. If the Complainant or Respondent objects to additional members as interested parties, the objection must be communicated to the Director of Human Resources within three days of the formation of the committee, and the Director of Human Resources will rule on the validity of the objection. If the objection is ruled valid, or in the case of the chairs excused peremptorily, or in the case

of committee members who are not tenured, the affected faculty committee will designate an alternative tenured member of the faculty to serve on the Hearing Committee. Ex officio and student members of these committees will not participate in the process of designating an alternative member of the Hearing Committee.)

Step Three. The Hearing Committee will study the Complaint, the Findings, a statement from the Respondent, the Dean's preliminary determination, and conduct its own investigation, and will then advise the Dean, in writing, of its recommendation (a) on the merits of the allegations, (b) on whether overriding questions of academic freedom are at stake, and (c) on whether the Dean's preliminary determination should go forward.

Governing Procedures for the Hearing Committee

The Hearing Committee will elect a chair, who will oversee its work and preside at the formal hearing. The Hearing Committee will conduct its own investigation, which may include gathering additional documents and interviewing both the Complainant and the Respondent and also other witnesses. Following its investigation, the Hearing Committee will hold a formal hearing, usually within a period of fifteen days from its receipt of the case. Both Complainant and Respondent may be present at the formal hearing, unless they explicitly waive that right or choose to submit only a written statement. The hearing affords both parties an opportunity to offer evidence, to answer questions from the Hearing Committee, and to confront adverse witnesses. Both Complainant and Respondent may have a colleague who works at the College present at the hearing in an advisory role. Because the formal hearing is a proceeding before the Respondent's faculty peers, the presence of legal counsel at the formal hearing is not permitted. The Hearing Committee will make an electronic record of the formal hearing, but not of its deliberations.

A primary responsibility of the Hearing Committee is to determine whether, in its judgment, overriding questions of academic freedom are at stake. Following the formal hearing, usually within five days, the Hearing Committee will advise the Dean in writing of its recommendation as to whether the Dean's preliminary determination should go forward. The Hearing Committee may also suggest changes to the Dean's preliminary determination. Copies of the recommendation of the Hearing Committee to the Dean will be given to both the Complainant and the Respondent.

3.c. The following procedure will be followed when the Respondent is a student.

Upon receipt and review of the Complaint, the Dean of Students will make a preliminary determination as to whether such information, if found to be true, would be likely to result in the suspension, expulsion, or other severe sanction of the Respondent. If both Complainant and Respondent are students, the Dean, prior to proceeding, will forward copies of the Complaint to the Chairman of Student Court, and together they shall decide whether the case should be presented to the Student Court.

Mediation

After the Dean of Students has made a preliminary determination, the Dean may wish to suggest that the matter be submitted for mediation, or the Complainant and Respondent may themselves elect to submit the matter to mediation by mutually acceptable mediator.

If the Complainant is a member of the staff or the faculty and consents to adjudication of the Complaint by the Student Court, it will be adjudicated according to the procedures found in Section V of "The Student Justice System" in *The Key*; or, if the Complainant is a member of the staff or the faculty and does not consent to adjudication by the Student Court, the Dean of Students will forward copies of the Complaint to a special ad hoc committee comprising

The Associate Dean of the Faculty

The tenured faculty member of the Student Affairs Committee with the longest service at the College

The Chairman of the Student Court

(The Complainant or Respondent may request that up to two members of the ad hoc Committee be replaced peremptorily. If the Complainant or Respondent objects to additional members as interested parties, the objection must be communicated to the Director of Human Resources within three days of the formation of the committee, and the Director of Human Resources will rule on the validity of the objection. If the objection is ruled valid, or in the case of the members excused peremptorily, substitutes will be appointed as follows: if the Associate Dean of the Faculty is excused, the Director of Human Resources will designate an exempt staff member as a substitute; if the tenured faculty member of the Student Affairs Committee is excused, either another tenured member of the Student Affairs Committee will serve or the tenured faculty member of the Appeals Committee having the longest service at the College will serve. If the Chairman of the Student Court is excused, the Dean of Students will designate as a substitute either the President of the Student Body or another member of the student court.)

Governing Procedures for the ad hoc Committee

The Associate Dean of the Faculty (or substitute) will serve as chair of the ad hoc Committee and will oversee its work. The ad hoc Committee will conduct its own investigation, which may include gathering additional documents and interviewing both the Complainant and the Respondent and also other witnesses. Following its investigation, the ad hoc Committee may choose to hold a formal hearing, usually within a period of fifteen days from its receipt of the case. Both Complainant and Respondent may be present at the formal hearing, unless they explicitly waive that right or choose to submit only a written statement. The hearing affords both parties an opportunity to offer evidence, to answer questions from the ad hoc Committee, and to confront adverse witnesses. Both Complainant and Respondent may have someone who works at or attends the College present at the hearing in an advisory role. The presence of legal counsel at the formal hearing is not permitted. The ad hoc Committee will make a record of the formal hearing, but not of its deliberations. The Committee will inform the Dean of Students of its Recommendation.

4.a. As expeditiously as possible, usually within fifteen days from the date of receipt of the Findings, the Appropriate College Official shall review the Findings and conduct additional investigations, as needed, to make a final determination as to what action, if any, is necessary (the “Determination”). Either party may appeal the Determination within the time period and in the method described below.

4.b. In a case where paragraph 3(b) of this section applies, if the final Determination of the Dean of the Faculty (i.e., the determination rendered after the Dean has received the recommendation of the Hearing Committee described in “step three” above) would require severe sanction or dismissal of the Respondent, and if either the Respondent or the Complainant appeals the Determination, then the Dean’s Determination and any appeals of the Respondent or the Complainant shall be communicated in writing to the Hearing Committee described in paragraph 3.b. above, and such committee shall, usually within a period of five days, advise the Dean, in writing, whether they concur with the Determination. A copy of such written communication from the Hearing Committee to the Dean, together with the Dean’s written comment, if any, will be forwarded by the Dean to the President of the College to be associated with the written appeal and reviewed by the President as a part of the appeal.

4.c. In a case where paragraph 3(c) of this section applies, if the final Determination of the Dean of Students would require severe sanction or suspension or expulsion of the Respondent, and if either the Respondent or the Complainant appeals the Determination, then the Determination of the Dean of Students, the recommendation of the ad hoc Committee, and any appeals of the Respondent or the Complainant shall be communicated in writing to the President of the College for review.

(The provisions in this Grievance Procedure for notifying all parties of findings and determinations will be followed so long as the College determines that there are no violations of state or federal privacy laws, including, but not limited to, the Family Educational Rights and Privacy Act.)

5. If no appeal is filed within the designated time period (defined below in Section 1 of “Procedures for Appeal”), the Determination will be final. The Director will then work with other College officials to enforce the Determination. Regardless of whether an appeal is filed, no party will have a right to pursue any other College grievance procedures relevant to this complaint.

Procedures for Appeal

1. Either the Complainant or the Respondent may initiate an appeal from the Determination. The appeal must be filed in the President’s office within five working days from the date of the Determination. (If the President is involved as either Complainant, Respondent, or an interested party, the appeal will be filed with the Chairman of the Board of Trustees.) The appeal must be in writing and must set forth (1) the substantive reason(s) for the appeal; (2) any new information; and (3) the identity of all witnesses. A copy of the appeal must be given to the non-appealing party, who must provide a written response to the appeal to the President’s office

within five working days after receiving the copy of the appeal, and must set forth: (1) a response to the appeal allegations; and (2) the identity of all witnesses.

2. The President will conduct an appeal hearing to gather any additional information deemed necessary. Following the appeal hearing, the President will make a final determination, as expeditiously as possible, usually within twenty days from the date that the appeal was filed. Except as provided in paragraph 3 below, the decision of the President is final. The College will take appropriate corrective action in the event an employee or student is found to have violated this Policy, up to termination for employees or expulsion for students.

3. If the President's decision on an appeal would result in the dismissal of a Respondent who is a faculty member with continuous tenure, or an unexpired special or probationary appointment, such Respondent shall be entitled, upon written request within fourteen days of the President's decision, to have the record in the matter reviewed by the Executive Committee of the Board of Trustees. It shall then be the responsibility of the Executive Committee to reverse, affirm, or modify the President's decision on the appeal.

Additional Violations Subsequent to the Final Determination

Any violation by the Respondent of the terms of the Final Determination imposed by the College—either by renewed acts of harassment or retaliation against the Complainant or by a breach of agreed confidentiality—is regarded as a severe infraction under this Policy, subject to additional sanctions, including dismissal. In the case of a faculty member with continuous tenure, or an unexpired special or probationary appointment, the President will present the alleged violation of the Final Determination to the Hearing Committee described above (even if, because of the passage of time, the membership will be different) and seek its recommendation on any additional sanctions being considered. The Hearing Committee will review the evidence of the alleged violation and statements from the Respondent before making a written recommendation to the President. Imposition by the College of additional sanctions or of dismissal may be appealed to the Executive Committee of the Board of Trustees (see "Procedures for Appeal," Section 3, above).

Glossary: Hampden-Sydney College Sexual Misconduct Policy

(Draft: 3/8/2016)

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.¹

Academic transcript

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

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.

Complaint

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

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., a county or city).

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,

¹ American Association of University Professors, <http://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>, checked on 12/18/15.

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 Sexual Misconduct Policy.

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.²

Explanation of benefits (EOB)

² See generally The Violence Against Women Act (1994) and its subsequent amendments and reauthorizations, codified in part at 42 U.S.C. § 13701 – 14040; and see 34 C.F.R. § 668.46.

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.

Final determination and final outcome letter

The *final determination* is the outcome of a sexual misconduct complaint, investigation and adjudication in which responsibility for the charges is determined as well as appropriate sanctions, if applicable. The *final outcome letter* is issued within seven days after the *final determination* is reached and is simultaneously mailed to both the complainant and the respondent. 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.

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.

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 sexual misconduct complaint.

Heightened confidentiality

Heightened confidentiality may be requested by a complainant whose charge(s) have been reported to a responsible employee. If an individual's request for *heightened confidentiality* is granted, 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.

Interim measures

Interim measures are actions taken by the College to ensure the safety and well-being of an individual subsequent to the receipt of a sexual misconduct complaint, but prior to the final determination. *Interim measures* are designed to ensure that a complainant is not denied equal access to the College's education programs and activities during the complaint resolution process, or to protect the campus community at large. Examples of *interim measures* may include relocating a student to a different residence hall, providing a security escort, barring contact between two or more individuals, or increased security measures on campus.

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.

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 of Civil Rights (OCR)

The [Office of 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.

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 sexual 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).

Personally identifiable information

Personally identifiable information 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.

Preponderance of the evidence standard

The U.S. Department of Education, Office of Civil Rights requires that campus Title IX administrative procedures utilize a *preponderance of the evidence standard* to determine responsibility for charges of sexual misconduct. 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.

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.

Resolution

A *resolution* to a sexual misconduct case includes the final determination to a charge of sexual misconduct, as well as any sanctions (if applicable), extensions of interim measures beyond the conclusion of the resolution process, and other steps taken by the College to eliminate sexual misconduct, prevent reoccurrences, and remedy the effects of sexual misconduct on the complainant.

Responsible employee

A *responsible employee* is any College employee who has the authority to take action to redress sexual misconduct, or who an individual student or employee could reasonably believe has this authority. *Responsible employees* include:

- The Title IX Coordinator (or interim Title IX Coordinator) and Deputy Coordinators and every person identified as a Campus Security Authority under the Clery Act
- Residential advisors
- All members of the faculty
- Athletic coaches
- College librarians
- Employees in the Office of Student Affairs, Office of Academic Success, and Office of Human Resources
- Campus police officers
- Dean of Students
- Provost and Dean of Faculty

- Dean of Admissions
- Vice President for Business Affairs and Finance
- Director of Athletics
- Vice President for Strategy, Administration, and Board Affairs
- Vice President for Institutional Advancement
- President of the College

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 sexual 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 a sexual misconduct 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 members of the *Review Committee* will include at least a Title IX 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 sexual 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 Attorney.

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 (SANE)* is a registered nurse who is specially trained to provide medical forensic care to a survivor of sexual abuse or sexual assault.

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 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 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 a sexual misconduct complaint and licensed professional employees in the Wellness 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 sexual misconduct and are not required, or permitted to share personally identifiable information with other College personnel, including the Title IX 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).

Support person or advisor

A *support person or advisor* may be a friend, relative, mentor, or attorney of either a complainant or respondent in a sexual misconduct investigation and/or proceeding. The *support person* may accompany the person he/she is advising at meetings that are part of the complaint resolution process. The *support person's* role is limited; 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 *support person or advisor* will be asked to leave any proceeding and barred from future meetings. The *support person or advisor* is bound by confidentiality.

Threat assessment

A *threat assessment* occurs within 72 hours after the College's Title IX Coordinator has received a report that an act of sexual 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 sexual 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 Coordinator* oversees resolution of Title IX complaints, training, and policy implementation at the college. The *Title IX Coordinator* is responsible for addressing systematic problems at the institution involving sexual misconduct and is available to meet with any individual in the community regarding concerns about issues, processes, incidents, patterns, or problems. All reports of sexual misconduct must be directed to the *Title IX 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, 20 U.S.C. § 1681, 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. The College has an exemption to Subpart C of *Title IX* with respect to recruitment and admission of students.