

# **Hampden-Sydney College: Sexual Misconduct Policy**

## **Article I. Introduction**

### **1. Policy Overview**

Hampden-Sydney College is committed to maintaining and strengthening an environment founded on civility and respect. This Policy describes prohibited Sexual Misconduct (Article II), and establishes procedures for responding to reports of Sexual Misconduct (Articles III-VII). More information about this Policy and information about recognizing and preventing Sexual Misconduct is readily available to all students, employees, and other members of the College community.

### **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 recruitment activities, Hampden-Sydney College (the “College”) does not discriminate, and prohibits discrimination by students, employees, and third parties on the basis of race, color, sex, religion, age, national origin, disability, sexual orientation, or veteran status in the operation of its educational programs and with

respect to employment. Sexual Misconduct, as defined in this Policy, constitutes one type of sex discrimination prohibited by Title IX.

Questions about Title IX should be directed to Hampden-Sydney College's Title IX Coordinator. The College's Acting Title IX Coordinator is Ms. Sue Carter, Director of Human

Resources. Her office is on the second floor of the Business Office (Cabell House) and she can be reached by telephone at 434-223-6220, or by email at

[svcarter@hsc.edu](mailto:svcarter@hsc.edu). Questions can also be directed to the U.S. Department of Education's Office for Civil Rights (OCR),

<http://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. 20202-1475. Telephone: 202-453-6020. Fax: 202-453-6021.

### **3. Applicability of This Policy**

Except where noted, this Policy applies to any allegation of Sexual Misconduct 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 regardless of where the alleged Sexual Misconduct occurred, and irrespective of the Complainant's gender, sexual orientation, and/or gender identity, 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, or extracurricular programs or activities, based on sex. The purpose of this Policy is to eliminate sex discrimination including Sexual Misconduct, prevent reoccurrences, and remedy its effects. However, the College's disciplinary authority may not extend to third parties who are not students or employees of the College. Sexual Misconduct that occurs off campus, at parties, on field trips, at sporting events, etc. falls under the jurisdiction of this Policy if it interferes with an individual's ability to participate in, or benefit from the College's

programs or activities. In the case of allegations of Sexual Misconduct, 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. Period of Limitations**

A **Complaint** of Sexual Misconduct may be filed at any time, regardless of the amount of time that has passed between the alleged Sexual Misconduct 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 sex discrimination, prevent reoccurrences, and remedy its effects.

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

Underlined terms used in this Policy are defined in the glossary in Appendix A.

## **Article II. Statements of Policy**

### **1. Prohibition of Sexual Misconduct**

This Policy is designed to protect the rights and needs of all parties in Sexual Misconduct cases. Creating a safe environment is the responsibility of all members of the community. The College strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to a timely and fair **resolution** of Sexual Misconduct cases. Sexual Misconduct occurs when there is unwelcome conduct of a *sexual nature*. Conduct can be verbal, visual, or physical. Examples include the use of sexual slurs, unwelcome sexual touching, and non-consensual sexual intercourse. Sexual Misconduct can also occur when there is unwelcome verbal, visual, or physical conduct, not necessarily of a sexual nature, that is perpetrated *because of* the victim's sex. Examples include publicly posting non-sexual graffiti on

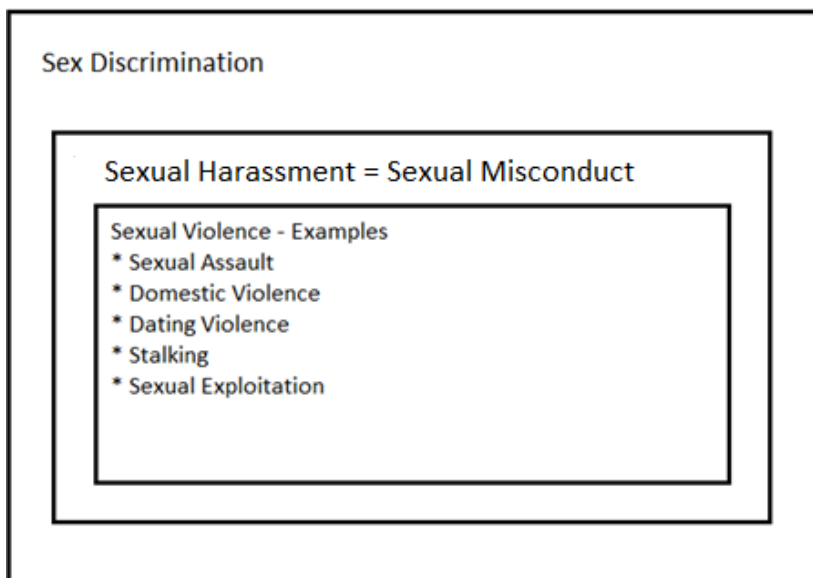
campus or in social media, damaging or destroying an individual's property, or physically assaulting an individual, because of his/her sex, gender identity, sexual orientation, or because of sexual stereotyping.

Sexual Misconduct encompasses a wide spectrum of misbehaviors, from the one-time use of a sexual slur, to violent sexual acts. The College will investigate all allegations of Sexual Misconduct. However, some matters involving Sexual Misconduct may be resolved without adjudication or disciplinary sanctions.

## 2. Types of Sexual Misconduct

Sexual Harassment is prohibited under Title IX and constitutes prohibited Sexual Misconduct under the College's Policy. Sexual Violence is one form of Sexual Harassment.

**Figure 1 – Sex Discrimination Prohibited Under Title IX**



### a. Categories of Sexual Harassment

(1) Hostile Environment Sexual Harassment is unwelcome conduct that is of a sexual nature, or which is targeted at an individual or a group because of sex, gender identity, sexual orientation, or because of sex-stereotyping. It occurs when there is unwelcome conduct that is sufficiently severe or pervasive that: (1) in the case of

students – it interferes with or limits a student’s ability to participate in or benefit from the school’s programs or activities; or (2) in the case of employees – enduring the offensive conduct becomes a condition of continued employment, or the conduct creates a work environment that is intimidating, hostile, or abusive. Sexually harassing behaviors differ in type and severity and can range from verbal harassment to unwelcome physical contact. A wide range of behaviors falls within the general definition of sexual harassment. Key determining factors are that the behavior is unwelcome, is gender-based or conduct of a sexual nature, and is reasonably perceived as offensive and objectionable under both a subjective and objective assessment of the conduct. 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. The determination of whether an environment is hostile must be based on all 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 mere utterance of an epithet that engenders offense in an employee or a student or offends by mere discourtesy or rudeness; and/or
- Whether the conduct deserves the protections of academic freedom.

(2) **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 supervisor’s request for sexual favors.

b. **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 can vary across states. Because the College’s

responsibilities under Title IX extend to prohibited acts of Sexual Misconduct in its 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 individual acts of sexual violence.

**(1) 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, or coercion or deception is used against the victim;
- Any sexual act where the victim 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**.

**(2) 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.

(3) **Dating 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. Additionally, dating violence can occur in relationships that are a-sexual. Dating violence may include verbal, emotional, physical, or sexual abuse, or a combination of these behaviors.

(4) **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 his/her safety, or the safety of others; or
- suffer substantial emotional distress.

(5) **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.

(6) **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 his/her safety, or the safety of others; or
- suffer substantial emotional distress.

### 3. 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 mentally disabled people (if their disability was reasonably knowable).

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.

Examples of non-consensual Sexual Misconduct 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 partner without his or her 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 private parts; 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 by a partner.
- Telling someone you will “out” them if they don’t engage in sex (disclose their sexual orientation without their consent).
- Telling someone you will fail them or give them a grade different from what they deserve if they don’t agree to have some form of sexual contact.

#### **4. Prohibition on Retaliation**

**Retaliation** against any person for filing, supporting, or providing information in good faith in connection with a Complaint of Sexual Misconduct is strictly prohibited. Violations of this prohibition will be addressed through this Policy. Any person who believes that he or she has been subjected to retaliation should make a report to the Title IX Coordinator or to the Deputy Title IX Coordinator assigned to resolve the Complaint.

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

Any individual who knowingly files a false Complaint under this Policy, who knowingly provides false information to College officials, or who intentionally misleads College officials who are involved in the investigation or resolution of a Complaint may be subject to disciplinary action. 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.

#### **6. Confidentiality**

To the extent possible, the College will seek to protect the privacy of the parties involved in Sexual Misconduct Complaints, as well as preserve the confidentiality of information obtained during the Complaint resolution process. However, the College may be required to disclose the party’s identities or other information during the process to comply with the law or guarantee student 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 Sexual Misconduct, prevent its recurrence, and remedy its effects.

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

- (a) **Strict Confidentiality**. Licensed professional employees in the Wellness Center, the Athletic Trainers Office, and the Chaplains employed by the College are authorized to receive reports of alleged Sexual Misconduct 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 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).
  
- (b) **Heightened Confidentiality**. If information regarding alleged Sexual Misconduct is shared with a Responsible Employee other than those held to strict confidentiality, the Responsible Employee is obligated to report that information to the College's Title IX Coordinator or a Deputy Title IX Coordinator. If the Complainant prefers not to make a Complaint and desires that the Title IX 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 Title IX 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 Title IX Coordinator must determine whether the request for heightened confidentiality can be honored while still allowing the College to satisfy obligations it has under the law. When making a decision to apply heightened confidentiality to a particular situation, the Title IX Coordinator

may conduct a preliminary investigation into the alleged Sexual Misconduct and will weigh requests for heightened confidentiality against the following factors:

- The seriousness of the alleged Sexual Misconduct;
- Whether the Complainant is a minor;
- Whether there have been other Complaints of Sexual Misconduct against the Respondent; and
- The applicability of any laws mandating disclosure.

The Title IX 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:

- The College will take prompt action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. For instance, the College may take appropriate [interim measures](#) to ensure an individual's safety even in the absence of a College proceeding.
- Information regarding alleged Sexual Misconduct may be included in College records for the purpose of assessing the campus climate and planning educational programming, as necessary, to eliminate sex discrimination in the College's educational programs and activities, but this information will not become part of the Respondent's educational records unless the case progresses and there is a finding of Sexual Misconduct.
- College personnel will handle information regarding alleged Sexual Misconduct 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 Sexual Misconduct. Similarly, information regarding the alleged Sexual Misconduct may be used as an anonymous report for data collection purposes under the Clery Act.

- As required by Virginia law (Virginia Code §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 Review Committee is required to 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 other individuals. The Review Committee will include 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 Review Committee may be required to share information about the Complainant and the Respondent with a Virginia Commonwealth Attorney.
- (c) If a Title IX 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 charges. The Title IX Coordinator will promptly schedule an intake meeting with Complainant and subsequently schedule an intake meeting with the Respondent.

## **7. Requests Not to Investigate and Refusals to File a Complaint or Participate in the Title IX Resolution Process**

A Complainant has multiple options for proceeding with a charge of Sexual Misconduct. 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 Title IX 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, Title IX requires the College to take action when responsible employees know, or should have known, that sex discrimination was present in its educational programs or activities. Thus, the College may still take measures, recommended by the Title IX Coordinator, to

eliminate sex discrimination, prevent its reoccurrence, and remedy its effects, even when the victim chooses not to file a Complaint or to participate in the complaint resolution process. Additionally, the Complaint or other information regarding alleged Sexual Misconduct may also be used to make an anonymous report for data collection purposes under the Clery Act.

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

The College considers the reporting and resolution of Sexual Misconduct cases on campus to be of paramount importance. The College does not condone underage drinking or the use of illegal drugs; however, the College 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 victims of Sexual Misconduct, provided that they are acting in good faith in such capacity. The College cannot extend immunity from criminal prosecution of underage drinking or substance abuse in cases that have also been reported to law enforcement personnel.

## **9. 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 Coordinator.

# **Article III. Reporting Sexual Misconduct**

## **1. Making a Decision to Report Sexual Misconduct**

Hampden-Sydney College encourages any individual impacted by Sexual Misconduct, any witness of sexual misconduct, or anyone with knowledge of an act of sexual misconduct to make a report to an appropriate College official as soon as

possible. Because the College is sensitive to cultural concerns, religious concerns, familial concerns, and personal concerns that sometimes play a role in an individual's decision-making, H-SC respects the discretion of the individual in these matters to the degree permitted by state, local and federal laws. Although the College strongly encourages victims of sexual misconduct to report that misconduct, the College will not take disciplinary action against a victim who chooses not to make a report.

- a. Male Victims of Sexual Misconduct.** Men and boys can also be victims of Sexual Misconduct. Male students, employees, or third parties who are targets of Sexual Misconduct are also encouraged to report to College officials so that H-SC can take action to eliminate and prevent reoccurrence of the misconduct, provide emotional support, counseling, medical treatment and other remedies.
- b. Indefinite Time Limit for Reporting.** It is not unusual for individuals who have experienced Sexual Misconduct to remain silent following the incident(s). Assistance is always 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 Sexual Misconduct under this policy, although 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 Sexual Misconduct may be limited.
- c. Reporting Acts of Sexual Misconduct.** In order to empower individuals to make informed decisions about reporting, it is useful to understand some basics about the College's procedures for handling these matters. H-SC recognizes that a *single* act of Sexual Misconduct (e.g., rape, hazing of a sexual nature that causes bodily injury, etc.) can simultaneously involve multiple violations under federal civil law and/or state criminal law. The following examples are for illustrative purposes only.

**Example 1.** If a student commits an act of hazing of a sexual nature that causes bodily injury to another student, that conduct would be a criminal act, in violation of the Virginia State Code. That hazing incident would also violate the College's Sexual Misconduct policies under Title IX.

**Example 2.** If an employee sexually assaults another employee, or a student, the sexual assault would be a criminal act in violation of the Virginia State Code. It would also constitute a violation of the College's Title IX policies.

In both of the above examples, one single act may create multiple violations that may be investigated and adjudicated through different processes. Consequently, Title IX resolution procedures are not a substitute for criminal resolution procedures. The different processes mandate different standards of evidence, different standards of proof, and allow the Respondent different types of assistance in responding to the allegations. The Title IX resolution process operates independently of local law enforcement.

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

The health of the individual impacted by Sexual Misconduct is of paramount 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 Sexual Misconduct to College officials, or to file a [Criminal Complaint](#). Licensed professional employees who work in the Wellness Center, Athletic Trainers, and health care providers at other medical facilities (as well as employees supervised by such personnel) are required to maintain absolute confidentiality regarding 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 Sexual Misconduct. The existence of physical evidence may subsequently prove important in resolving a Complaint if the patient decides to report the incident.

Specifically, in Virginia victims of sexual assault may elect to obtain medical care in which a forensic nurse, a [Sexual Assault Nurse Examiner](#) (SANE), collects evidence (including clothing fibers, hair, saliva, blood, semen, and body fluid) 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 best to 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 following an act of Sexual Misconduct include:

- **Campus Wellness Center.** 204 College Road, Hampden-Sydney, VA 23901. 434-223-6167
- **Centra Southside Medical Center Emergency Department.** 800 Oak St., Farmville, VA, 434-392-8811. A victim of sexual assault 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 his/her 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 his/her 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 .
- **Madeline's House/Piedmont Crisis Center.** 434-292-1077. Toll free hotline (24/7) 888-819-2926, email: [info@madelineshouse.org](mailto:info@madelineshouse.org), website: [www.madelineshouse.org](http://www.madelineshouse.org), P.O. Box 487, Blackstone, VA 23824.

### 3. Reporting to the Police

A Complainant's safety is also important. If an incident of Sexual Misconduct occurs, it is important to get to a safe place as soon as possible. In an emergency call 911.

- a. Campus Police.** Campus police can provide assistance anywhere on campus and on any College-owned property. Campus police can be reached by:
  - (1) Address:** Gilkeson House at the corner of College Road and Five Forks Road. 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.

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

A Complainant does not have to determine whether or not particular acts of Sexual Misconduct are violations of criminal law. Law enforcement personnel can 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 Sexual Misconduct, Campus Police 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 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, and other individuals reporting incidents of Sexual Misconduct or assisting 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 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 incident(s). This report will be important should a Complainant decide that he/she wants 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 Sexual Misconduct 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, Sexual Misconduct doesn't need to know which law enforcement agency has jurisdiction in his or her 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, 434-392-3160.

**(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 Sexual Misconduct case involves underage drinking, H-SC will not charge the following individuals with a violation of the College's alcohol policy: the Complainant, witnesses, and other individuals making a good faith report or attempting to assist victims of Sexual Misconduct. The College cannot grant immunity from drug or alcohol-related behavior that violates local, state or federal laws.

**a. Title IX Administrative Process.** Reports of Sexual Misconduct may be made in person, over the telephone, or in writing, in which case email is recommended

but not required. A person wishing to report Sexual Misconduct may contact any of the following College employees.

**(1) The Title IX Coordinator and Deputy Coordinators.**

- Ms. Sue Carter, Title IX Coordinator (Cabell Hall, Room 201, 434-223-6061, [svcarter@hsc.edu](mailto:svcarter@hsc.edu));
- Deputy Title IX Coordinators (3)

**(2) Responsible Employees.** Any college employees who have authority to take action to redress sexual misconduct, or who a student or employee could reasonably believe has this authority is a Responsible Employee.

Responsible Employees include:

- The Title IX 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 Provost
- The Dean of Students
- The Dean of the Faculty
- The Dean of Admissions
- The Vice President for Business Affairs & Finance
- The Director of Athletics
- The Vice President for Institutional Advancement
- The President of the College

*Before* a student or employee reveals information about an act of Sexual Misconduct that he or she might wish to keep confidential, a Responsible Employee should try to ensure that the individual understands that the Responsible Employee is obligated to report the following information, as soon as practicable, to the Title IX Coordinator:

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

**(3) 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 Sexual Misconduct Complaints to the Title IX Coordinator. These include the following professional employees:

- Wellness Center Staff;
- Athletic Trainers; and
- College Chaplains.

**b. Reporting and the Student Justice System.** Sexual misconduct cases in which the accused is a student are not addressed using the Student Justice system. They are resolved using Title IX process described in Articles IV-VI of this policy.

**5. Reporting to the U.S. Department of Education**

The Virginia field office of the Department of Education’s Office of Civil Rights is located at 400 Maryland Avenue, S.W., Washington, DC 20202-1475, Telephone: (202) 453-6020, Fax: (202) 453-6021.

## 6. Reporting Acts of Retaliation

Hampden-Sydney College prohibits retaliation against any person for filing, supporting, or providing information in connection with a Complaint of Sexual Misconduct. Violations of this prohibition will be handled through applicable College disciplinary procedures for students, faculty, and staff, respectively. Any individual who believes that he/she has been subjected to retaliation should report to the Title IX Coordinator, or Deputy Title IX 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 Sexual Misconduct Complaints and Procedures for Investigation

### 1. Overview of Procedures Available

The determination of which procedures apply to an incident of alleged Sexual Misconduct depends on the nature of the Sexual Misconduct reported. However, there are some differences in the *implementation* of the Title IX enforcement procedures the College utilizes which depend on whether the Respondent is a student, staff member, faculty member, or third party (e.g., a student from another college, an independent contractor performing work for the College, etc.).

**Table 1 – Potentially Applicable Procedures for Incidents of Alleged Sexual Misconduct**

| Type of Sexual Misconduct                                       | Applicable Procedures   |
|---|---|
| Criminal Sexual Misconduct (e.g., rape, stalking)               | <ul style="list-style-type: none"><li>• College Title IX Procedure and/or</li><li>• Criminal Justice System</li></ul> |
| Non-criminal Sexual Misconduct (e.g., verbal sexual harassment) | <ul style="list-style-type: none"><li>• College Title IX Procedure</li></ul>  |

## **2. Intake Process with Campus Police – for Cases of Criminal Sexual Misconduct**

Campus Police (434-223-6164) or other local law enforcement officers can explain the options available for pursuing a criminal investigation of Sexual Misconduct.

## **3. Intake Process with the Title IX or Deputy Title IX Coordinator**

When a report of Sexual Misconduct is received, the Title IX Coordinator will assign a Deputy Title IX Coordinator to oversee a prompt, fair, and impartial investigation of the Complaint, or the Title IX Coordinator may elect to oversee the investigation and complaint resolution process. The Title IX Coordinator or Assigned Deputy Title IX Coordinator will also be responsible for supervising the Complaint resolution process and insuring the availability of both interim measures and final remedies to the Complainant as appropriate.

As required by Virginia law (Virginia Code §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 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 Coordinator or a Deputy Title IX Coordinator, a representative from Campus 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 Campus Police must act or report the incident to the appropriate law enforcement agency. In cases involving alleged felony sexual assault, either a representative of Campus 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. There is no requirement to form a Review Committee and make a determination if the alleged act of Sexual Violence was located outside of the United States (e.g., on a study abroad trip). 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.** If either the Complainant or the Respondent believes that the Assigned Title IX Coordinator has a conflict of interest that impairs the Coordinator's ability to conduct a fair and impartial investigation, the Complainant or the Respondent may petition the Title IX Coordinator in writing (in which case email is preferred, but not required) for an alternative assignment. Potential alternates include the Title IX Coordinator or another Deputy Title IX 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 Title IX investigations

**b. Default Assignments of Deputy Title IX Coordinators.** The default assignments will be:

- (1) Associate Dean of Students – 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.

**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 Title IX Complaint resolution process. The advisor can be a friend, relative, mentor, attorney, or other support person of the individual's choosing. However, the advisor's role is limited to advising the person he/she is accompanying. The advisor may not ask questions of, or answer questions from, anyone other than the advisee at any meetings that are part of the Complaint resolution process under this Policy. In the case of a hearing, the advisor may not address the Hearing Panel, cross examine



witnesses, or make statements. If the Title IX Coordinator, the Assigned Deputy Title IX 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 a Title IX Complaint resolution process. H-SC 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.

**d. Timetable for Resolving Complaints**

Hampden-Sydney College will make every reasonable effort to ensure that the investigation and resolution of a Complaint occurs promptly. Unless there are extenuating circumstances, Complaints will normally be resolved within 60 days of their receipt. Investigations that dovetail with winter break or summer break may take longer if witnesses are unavailable. Appeals may also result in an extension of the 60 day time frame for Complaint resolution. 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 Title IX Coordinator. The request should include the basis for the request and the duration of the extension being sought.

**e. Interim Measures**

Interim measures may be appropriate 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 sex. Some specific examples of interim measures follow.

**(1)** When a student is the Complainant, interim measures may include, as appropriate:

- options for avoiding contact with the Respondent; potentially including changes in housing assignments, changes in course sections, and a no contact order;
  - the option to delay examinations, papers, or other coursework, as well as options to take an incomplete in a class and make up academic work later;
  - the option to utilize academic support services – including tutoring;
  - the option for a Campus Police escort while moving about campus; or
  - the option to temporarily withdraw from the College.
- (2) When an employee is the Complainant, interim measures may include, as appropriate:
- the option to avoid contact with the Respondent, potentially including a change in office assignments, work assignments, and a no contact order;
  - increased supervision of locations where the misconduct occurred; or
  - the option for a Campus Police escort while moving about campus.

If the Title IX Coordinator or the Assigned Deputy Title IX Coordinator believes it is necessary for the protection of any member of the College community, the following actions may be taken by the College.

- (3) When a student is the Respondent:
- Suspend the Respondent from campus housing;
  - Suspend the Respondent from classes;
  - Restrict the social activities of the Respondent; and
  - Bar the Respondent from campus.
- (4) When an employee is the Respondent:
- Reassign the Respondent to an alternative job or office;
  - Place the Respondent on administrative leave pending the outcome of the Complaint.

**f. Complainant’s Initial Meeting with the Title IX or Assigned Deputy Title IX Coordinator.** As soon as practicable after being assigned to oversee a Complaint, the Title IX Coordinator assigned to the case will contact the

Complainant to schedule an initial meeting. The Assigned Title IX Coordinator will notify the Complainant that he/she 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 Assigned Title IX Coordinator will:

- (1) Provide the individual with a copy of this Policy and a Written Notice of Rights as required by the Clery Act (Appendix C);
- (2) Explain procedures for a formal resolution of the Complaint or informal resolution (i.e., mediation by a trained College employee or third party). Informal resolution is not appropriate, and will not be utilized, in cases of alleged Sexual Violence.
- (3) Explain the steps involved in a Sexual Misconduct investigation and the major time frames for investigation and resolution;
- (4) Discuss confidentiality standards and concerns;
- (5) Explain to the Complainant that the College has an obligation to investigate the incident(s) and inquire to what degree the Complainant wants to participate in the College's investigation and 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) Explain what retaliation is and how to report it;
- (8) Discuss interim 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), interim measures are available.

**g. Respondent's Initial Meeting with the Assigned Title IX Coordinator.** Once the College receives notice of an incident of Sexual Misconduct, or if the College decides that further investigation is warranted regardless of the presence of a Complaint, the Assigned Title IX Coordinator will schedule a meeting with the

Respondent as soon as practicable after meeting with the Complainant. When scheduling the meeting, the Assigned Title IX Coordinator will notify the Respondent about the subject of the meeting and also notify the Respondent that he/she may bring an advisor of choice to the meeting. The Assigned Title IX Coordinator will explain that the advisor can be a friend, relative, mentor, an attorney, or any other individual of their choosing. During the initial meeting with the Respondent, the Assigned Title IX Coordinator will, as appropriate:

- (1)** Provide the Respondent 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 Sexual Misconduct. The information provided should be sufficient to allow Respondent to address the substance of the Complaint;
- (2)** Provide the Respondent a copy of this Policy;
- (3)** Explain the College's procedures for formal resolution and, where appropriate, informal resolution (mediation) of the Complaint;
- (4)** Explain the steps and major timeframes in a Sexual Misconduct investigation and resolution process;
- (5)** Discuss confidentiality standards and concerns with the Respondent;
- (6)** Discuss non-retaliation requirements with the Respondent;
- (7)** Inform the Respondent of any interim measures being provided to the Complainant – but only if those measures directly affect the Respondent (e.g., changing his/her class schedule, room or office assignment, etc.);
- (8)** Explain options for counseling, advising by financial aid personnel, and other support services available on- and off-campus;
- (9)** Discuss possible interim measures that can be provided to the Respondent to protect his or her safety, as necessary, during the investigation and resolution phases of the Title IX process. The College may implement interim 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

- (10)** Notify the Respondent that he/she has an opportunity to provide a written statement in response to the allegations and that the statement should be turned into the Assigned Title IX Coordinator within 7 days.

#### **4. Informal Resolution Options 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 his/her actions and take responsibility for any alleged acts of Sexual Misconduct. If this occurs, the Assigned Title IX Coordinator will propose a resolution. The purpose of the resolution is to ensure that there is no recurrence of Sexual Misconduct and to remedy the effects of the past Sexual Misconduct. 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 Title IX 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 object 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 filed, and before a Hearing Panel convenes, the Complainant and the Respondent may elect to follow an informal Complaint resolution process. However, mediation is never appropriate for responding to Complaints of Sexual Violence. Mediation is described in greater depth in Article V.

#### **5. The Investigation**

- a. Appointment of Investigators.** The Assigned Title IX Coordinator will select at least two Investigators from a pool of staff and tenured faculty professionally trained (with annual refresher training) to investigate Title IX Complaints. When possible the investigative team will include at least one male and one female.

For Complaints in which a faculty member is the Respondent, at least two members of the investigation team will be *tenured* faculty. Following their appointment, the Assigned Title IX Coordinator will share the investigators' names and contact information with the Complainant and the Respondent. In certain circumstances, it may be necessary to appoint outside, trained investigators to assist the College with its investigation.

Within 2 days of their appointment, the Investigators, the Complainant, or the Respondent may notify the Assigned Title IX Coordinator in writing of any perceived conflicts of interest posed by the choice of Investigators. The Assigned Title IX Coordinator will carefully consider such statements and will assign different individuals as Investigators, in the event of any conflict of interest. Outside investigators may be used in addition to, or instead of, faculty or staff in situations involving otherwise intractable conflicts. The Assigned Title IX 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 investigation will be thorough and impartial – and will include the following steps, as appropriate:
- (1)** Conduct interviews with the Complainant, the Respondent, third-party witnesses, or experts and summarize all interviews in writing. The Complainant and Respondent may present evidence or identify witnesses to the investigators at this stage.
  - (2)** Visit, inspect, and take photographs at relevant sites. Because Title IX prohibitions apply both to Sexual Misconduct on campus as well as incidents that occur off-campus and which have the potential to affect individuals' access to the College's educational programs and activities, investigators may sometimes need to visit off-campus sites to obtain evidence (e.g., at off-campus residences, sites of off-campus 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 Title IX 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 Title IX Coordinator will meet to determine what, if any, evidence can be provided by law enforcement authorities in order to aid the Title IX Complaint investigation. Any pauses in the Title IX 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;
- (5) Review other expert witness *written* testimony that either the Complainant or the Respondent desire to submit; and
- (6) 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 Sexual Violence.

The investigative team will complete a detailed written report (“Investigative Report”) that includes all of 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 Title IX Coordinator.

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

Once the Investigative Report has been submitted the Assigned Title IX Coordinator will meet separately with the Complainant and the Respondent. Both parties will have separate opportunities to review the Investigative Report and to take notes, but

neither party will receive a copy of the Investigative Report. Parties may identify any information that might have been left out of the investigation, and which is relevant to the Complaint. When necessary, the investigators will collect additional information and amend the Investigative Report.

## **7. Post-Investigation Determination by the Assigned Title IX Coordinator**

In circumstances where the Investigative Report finds that the Sexual Misconduct that was *charged* is minor and not pervasive, the Assigned Title IX 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 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 Title IX's goals of eliminating sexual misconduct, preventing reoccurrences, and remedying its effects. If such a resolution can be identified, the Assigned Title IX 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.

In circumstances where the Investigative Report finds that the alleged Sexual Misconduct that was charged 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 Mediation**

Mediation may be utilized if all the following conditions are met.

- The Complaint does not involve a person under the age of 18.



- The Complaint does not involve Sexual Violence, Domestic Violence, Dating Violence, or Stalking.
- Either party requests it.
- The other party agrees to it.
- The Assigned Title IX Coordinator determines that it is an appropriate mechanism for resolving the Complaint.

If Mediation is used to resolve a Complaint, it must be used for all of the charges that are part of the Complaint. In a Complaint that includes two different charges, there is no option to resolve one charge using mediation and the other using the formal resolution process.

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

If the mediation is terminated before reaching a successful conclusion, statements or disclosures made by either the Complainant or the Respondent in the course of the mediation may be considered during the formal resolution proceedings. If the mediation reaches a successful conclusion, the Title IX Coordinator will maintain a record of the Complaint and the mediation agreement. Information that is part of this record, including the allegations and the results of the mediation, may be considered if there are any subsequent allegations of Sexual Misconduct against the Respondent.

## **2. The Mediator**

Mediation is overseen by a professionally trained mediator.

### **3. Notice of Mediation**

Once the mediator has been appointed, the Assigned Title IX Coordinator will provide concurrent written notice to the Complainant and the Respondent of the name of the mediator.

Any party may appeal the choice of mediator by submitting a written objection to the Assigned Title IX Coordinator within 3 days of receiving notice of the named mediator. The specific reason(s) for the objection must be stated in the petition. The Assigned Title IX Coordinator will evaluate the objection and determine whether to select an alternate mediator. The name of any alternate mediator selected will be sent to both the Complainant and the Respondent. The Mediator will set the date of the first meeting after consulting with the Complainant and the Respondent.

### **4. No Contact Prior to Mediation**

The Complainant and the Respondent should not contact each other outside of the mediation. The Assigned Title IX Coordinator will stipulate exceptions, if appropriate. The Assigned Title IX Coordinator may take interim measures, as necessary, to reduce or eliminate contact between the parties in the Complaint. For example, students' housing assignments or course schedules may be altered. Employees may have their office assignments or work schedules altered for the duration of the mediation.

### **5. Attendance Requirements**

Both the Complainant and the Respondent are expected to attend mediation meetings. Unless there are extenuating circumstances, if either party fails to appear, the mediator may determine that the Complaint proceed to the formal resolution process.

### **6. Mediation Meetings**

**a. Rights of the Parties.** During the mediation meetings, the Complainant and the Respondent may:

- (1) Communicate their feelings and perceptions regarding the alleged incident and its impact on themselves;
- (2) Communicate their wishes and expectations regarding protection in the future.

**b. 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.

## **7. Resolution**

If the mediation results in a resolution between the parties, the Assigned Title IX Coordinator will review the resolution. The Assigned Title IX Coordinator will ascertain whether the resolution will prevent reoccurrence of Sexual Misconduct and if it will remedy the effects of Sexual Misconduct. If the Assigned Title IX Coordinator concludes that these mandates of Title IX are met, the informal procedure will be concluded 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.

## **8. Privacy and Disclosure**

In order to comply with the [Family Educational Rights and Privacy Act](#) (FERPA) and Title IX, 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 policy prohibits or discourages employees from bringing complaints to the Equal

Employment Opportunity Commission (“EEOC”) or the U.S. Department of Education’s Office for Civil Rights (OCR).

**9. Documentation**

The College will retain any documentation of the mediation for at least 10 years.

**Article VI. The Formal Resolution Process**

A **Hearing Panel** will be convened as soon as practicable following the completion of the Investigative Report and a decision by the Assigned Title IX Coordinator and the Appropriate Vice President not to close the Complaint. The Hearing Panel will conduct a 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, or whom the Complainant or Respondent name to provide relevant testimony.

**1. The Hearing Panel**

The Assigned Title IX Coordinator will appoint Hearing Panel members as specified below.

**Table 2 – Membership and Organization of the Hearing Panel**

| Respondent is a Student  | Respondent is a Faculty Member – Potential Sanctions do Not Include Suspension or Termination  | Respondent is a Staff Member  |
|--|--|---|
| One faculty member from the Grievance Committee will chair the Hearing Panel. The second panel member will be from a pool of staff trained to adjudicate Title IX Complaints. The Student Court Chair serves as the third member of the Panel. A faculty member will not serve | The Assigned Title IX Coordinator will appoint three tenured faculty members from the Faculty Grievance Committee to the Hearing Panel. The members of the Hearing Panel will elect their own Chair. | 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 Title IX Complaints. The members of the Hearing Panel will |

|  |  |  |
|--|--|--|
| <p>on the Hearing Panel if a student he/she has been an academic advisor to is a party in the Complaint. Staff who have worked with or supervised a student who is a party in the Complaint will not serve on the Hearing Panel. Coaches will not serve on the Hearing Panel if a student-athlete is a party in the Complaint. If the Student Court Chair is unavailable to serve on the Hearing Panel, or if either the Complainant or the Respondent successfully petition the Assigned Title IX Coordinator to replace the Student Court Chair for a perceived conflict of interest, the Assigned Deputy Title IX Coordinator will designate another member of the Student Court to serve on the Hearing Panel.</p> |  | <p>elect their own Chair. A staff member will not serve on the hearing panel if the Respondent is someone the staff member reports to.</p> |
|--|--|--|

**2. Third-Parties as Respondents**

HS-C may have limited authority to implement hearings or internal discipline against third-party Respondents who are not enrolled or employed by the College. The College nevertheless strongly encourages reporting instances of third-party sexual misconduct, just as it does reports involving student, faculty, or employee Respondents. As with all instances of Sexual Misconduct, in cases involving third-party Respondents, the College will investigate and take appropriate remedial steps possibly including, where appropriate, referrals to outside institutions or law enforcement and/or other measures to protect the College community.

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

Promptly after appointing the members of the Hearing Panel, the Assigned Title IX Coordinator will provide concurrent 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 Title IX Coordinator will also specify in the notice which alleged conduct or violations will be the subject of the hearing.

Either the Complainant or the Respondent may challenge the participation of members of the Hearing Panel for having a conflict of interest by submitting a petition, in writing, to the Assigned Title IX Coordinator. There is a 3 day time limit for submitting a petition. The petition must state the specific reason(s) for the perceived conflict of interest. The Assigned Title IX 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 in writing to the Complainant and the Respondent at least 10 days before the hearing is to take place. Once the membership of the Hearing Panel is finalized the Assigned Title IX Coordinator will provide the Panel with the Complaint, any written response provided by the Respondent, and the Investigative Report.

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

**a. Submission of Written Materials by the Complainant and the Respondent.** The Assigned Title IX 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 Hearing Panel Chair with: (1) a written statement regarding the charges and allegations to be adjudicated, (a) in the case of Complainant, this will be his or her allegations related to the charges; (b) in the case of the Respondent, this will be his or her responses to the charges and the Respondent's defense to the charges; and (2) a list of witnesses, if any, that either party wants the Hearing Panel to interview along with a brief description of each witness's connection to and/or knowledge of the issues in dispute.

If either party wishes to submit an expert analysis report at the hearing it should be submitted at this time. Whether such written expert testimony or reports will be presented and considered at the hearing will be left to the discretion of the Assigned Title IX Coordinator; oral testimony by experts will not be permitted save for in extraordinary circumstances. In determining whether to permit expert reports at the hearing, the Assigned Title IX coordinator will consider (a) whether the expert's scientific, technical, or other specialized knowledge will help the Hearing Panel to understand the evidence or to determine a fact in issue; (b) the written testimony or report is based on sufficient facts or data; (c) the testimony or report is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts at issue.

- b. Notice of the Hearing Date.** Within 7 days after all parties have been notified of the final composition of the Hearing Panel, the Chair 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, and will have the option to review and take notes on a copy of the Investigative Report.
- c. Failure to Appear.** Unless there are extenuating circumstances, if either the Complainant or the Respondent fails to appear before the Hearing Panel, then the Hearing Panel will proceed to resolve the Complaint based on evidence and testimony of those who are available to testify. The Assigned Title IX Coordinator will determine what constitutes extenuating circumstances.
- d. Special Arrangements and/or Accommodations.** In addition to disability-related accommodations, both the Complainant and the Respondent may request special accommodations during the hearing. Such accommodations may include the provision of a screen between both parties – if both individuals are in the same room as the Hearing Panel, use of video-conferencing

technology to participate in the hearing remotely from another room on campus, or from a location off-campus. Requests for special accommodations must be submitted in writing to the Assigned Title IX Coordinator no later than 3 days before the hearing. The Assigned Title IX 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. 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. The Assigned Title IX Coordinator will stipulate exceptions as appropriate. The Assigned Title IX Coordinator may take interim measures, as necessary, to reduce or eliminate contact between the parties in the Complaint. For example, students' housing assignments or course schedules may be altered. Employees may have their office assignments or work schedules altered for the duration of the hearing.
- f. 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. Evidence concerning the prior sexual history of Complainant with anyone other than the Respondent will not be permitted at the hearing. 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 or preclude a finding of sexual violence or misconduct. The College will attempt to conduct the hearing in a manner that does not inflict additional trauma on the Complainant, the Respondent, or witnesses.
- g. Hearing Procedures.** An audio recording of the hearing will be made and the hearing will be open to a limited number of individuals, including the members of



Hearing Panel, the Assigned Title IX Coordinator, the Complainant, and the Respondent. Additionally, both the Complainant and the Respondent are permitted to have an advisor of choice with them throughout the hearing. The advisor may be a friend, relative, mentor, attorney, or any other individual. The advisor may not speak to anyone other than the person they are advising. The advisor may not address the Hearing Panel, or cross-examine witnesses. The Hearing Panel will be responsible for asking questions of the parties and the witnesses and developing 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 and in particular members of the College community are expected to provide truthful testimony. Both the Complainant and the Respondent will have equal opportunities to introduce evidence into the hearing record, but they will not cross-examine each other. Each party may submit questions for the other party, in writing, to the Hearing Panel Chair, who will determine whether, or in what form, to pose such questions. Witnesses and others called to testify will be present only during their own interviews.

## **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 Sexual Misconduct. This **Preponderance of the Evidence Standard** is the only evidentiary standard that may be used in a Title IX resolution process. The Hearing Panel will immediately report their findings, along with recommended sanctions, if applicable, to the Assigned Title IX Coordinator.

**b. Sanctions.** The purpose of the College’s response to a finding of Sexual Misconduct is to eliminate it, prevent reoccurrences, and remedy its effects. If a majority of Hearing Panel members conclude that a preponderance of the evidence supports a finding of Sexual Misconduct, they may recommend sanctions. Except for cases where a faculty member is the Respondent, the Assigned Title IX Coordinator will make a **final determination** regarding any sanctions to be applied to the Respondent. If the Respondent is a faculty member and the potential sanctions do not include suspension or termination, the Provost and Dean of the Faculty will make a final determination regarding any sanctions to be applied to the Respondent. Sanctions may be one of multiple College responses to acts of Sexual Misconduct. Others may include educational interventions, changes in campus security practices – including increased monitoring of the location(s) where Sexual Misconduct occurred. Sanctions adopted following a finding of Sexual Misconduct will depend upon the nature and gravity of the charges, any record of prior discipline for Sexual Misconduct, or both.

**Table 3 – Sanctions in Cases of Sexual Misconduct**

| Respondent is a Student  | Respondent is a Faculty Member – (where potential sanctions do not include suspension/termination) <sup>3</sup>  | Respondent is a Staff Member   |
|--|--|--|
| Sanctions may include; issuing a no-contact order to the Respondent, disciplinary probation, expulsion from campus housing, mandated counseling, educational sanctions (e.g., sexual assault awareness training), suspension, or expulsion from the College. If the charges include Sexual | The Assigned Title IX Coordinator will report the findings of the Hearing Panel and the recommended sanctions to the Provost and Dean of the Faculty. He/she will make a determination regarding sanctions to be applied to the Respondent. Sanctions may include; issuing a no-contact order to the | Sanctions 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., sexual assault awareness training), suspension, or termination from employment. Once |

<sup>3</sup> Procedures in cases involving faculty that include potential sanctions up to suspension or termination are discussed below.

|   |  |  |
|---|--|--|
| <p>Violence and the sanction is suspension or expulsion, or if a Respondent withdraws from the College prior to a resolution of the Complaint, then a notation will be made on the student's academic transcript. The notation will state: <i>"Suspended, Dismissed, or Withdrew while under investigation for an offense involving Sexual Violence in violation of Hampden-Sydney College's Code of Student Conduct."</i> If a student who has been suspended completes the suspension and returns to the College as a student in good standing, the notation will be removed from his/her academic transcript. Once sanctions have been determined, the Deputy Title IX Coordinator will concurrently notify the Complainant and the Respondent of the outcome of the hearing and sanctions imposed via telephone or email.</p> | <p>Respondent, a change in the Respondent's office location, mandated counseling, and/or educational sanctions (e.g., sexual assault awareness training). Once sanctions have been determined, the Provost and Dean of the Faculty will concurrently notify the Complainant and the Respondent of the outcome of the hearing and sanctions imposed via telephone or email.</p> | <p>sanctions have been determined, the Deputy Title IX Coordinator will concurrently notify the Complainant and the Respondent of the outcome of the hearing and sanctions imposed via telephone or email.</p> |
|---|--|--|

If there is no appeal, sanctions will take effect immediately. If there is an appeal, sanctions will not be effective until the resolution of the appeal. An exception to this Policy will apply if the Assigned Title IX Coordinator concludes that in order to protect the welfare of the Complainant or the College community it is advisable for any sanctions be effective immediately and to continue in effect until the appeal process is concluded.

- c. Final Accommodations and Corrective Action.** Once the hearing has concluded, and if there has been a finding of Sexual Misconduct, the Assigned Title IX Coordinator will meet with the Complainant to determine what, if any final accommodations should be made. The Assigned Title IX Coordinator will notify the Complainant in writing of the accommodations the College will provide. If any of these accommodations affect the Respondent, the Assigned Title IX Coordinator will notify the Respondent in writing.
- d. Preventing Retaliation.** The Assigned Title IX Coordinator will also take steps to prevent harassment of, or retaliation against any of the parties who participated in the investigation and hearing process, by briefing them on how to report retaliation, following up with them to ensure that there have been no retaliatory actions, and providing appropriate education for the College community if necessary, and providing counseling for the Respondent. The Assigned Title IX Coordinator will also, where appropriate, take steps to prevent the harassment of the Respondent. Finally, the Assigned Title IX Coordinator will take prompt corrective action if any party to the Complaint experiences further harassment, or if there is non-compliance with the original sanctions imposed on the Respondent. In cases involving Sexual Harassment, the Assigned Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created. In taking such steps, the Assigned Title IX Coordinator will make every reasonable effort to minimize the burden on the Complainant.
- e. Final Outcome Letter.** Within 7 days following the conclusion of the hearing, the Assigned Title IX Coordinator will issue a **Final Outcome Letter** concurrently to each party in the Complaint. If sanctions are imposed, the Final Outcome Letter will describe the disciplinary actions taken, the date disciplinary actions are imposed, and the duration of the sanction(s). If there has been a finding of Sexual Violence against a Student-Respondent and the sanctions include suspension or expulsion, or if the student withdraws from the College prior to the completion of the Title IX resolution process, the Final Outcome Letter will notify

the Respondent that one of the following statements will appear on his/her academic transcript.

**f. Academic Transcript Notations.**

- (1) If sanctions include suspension of a student Respondent for offenses of Sexual\_Violence, the Registrar of the College will place a prominent notation on the student's **academic transcript** stating, "*Suspended for an offense involving Sexual Misconduct in violation of Hampden-Sydney College's Code of Student Conduct.*"
- (2) If sanctions include expulsion of a student Respondent for offenses of Sexual Violence, the Registrar of the College will place a prominent notation on the student's academic transcript stating, "*Expelled for an offense involving Sexual Misconduct in violation of Hampden-Sydney College's Code of Student Conduct.*"
- (3) If a Student-Respondent in a Complaint involving Sexual Violence withdraws from the College before the resolution process concludes, the Registrar of the College will place a prominent notation on the student's academic transcript stating, "*Withdrew prior to the conclusion of a Complaint resolution procedure for an offense involving Sexual Misconduct in violation of Hampden-Sydney College's Code of Student Conduct.*"
- (4) If a student Respondent is subsequently found not to have committed the offense(s) that gave rise to the transcript notation, the statement will be expunged from the student's academic transcript.
- (5) Notice of a student Respondent's suspension will be expunged from the student's academic transcript if the student: (1) completes the term of the suspension and any conditions thereof, and (2) has been found by the Title IX Coordinator to be in good standing upon any subsequent readmission to the College.

**g. Confidentiality and Disclosure.** All documents prepared in anticipation of the hearing – including: the Complaint; the Investigative Report; notice of the hearing; any 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 (e.g., in a subpoena that is part of a criminal proceeding).

## **7. Appeals.**

The Complainant 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 Final 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) substantial and material procedural errors during the hearing that may have impacted the outcome and/or (3) the panel substantially and materially abused its discretion in weighing the available evidence or in reaching its conclusion.

**b. Appeals of the Hearing Panel’s Decision Regarding Sanctions.** The sanctions imposed on the Respondent may be appealed on grounds that the sanction imposed was not appropriate given the nature of the Sexual Misconduct for which the Respondent was found responsible. The Complainant may appeal on grounds that the sanctions were insufficient and the Respondent may appeal on the grounds that the sanctions were excessive.

**c. The Appeals Procedure.** Appeals to the findings of the Hearing Panel can be filed by either the Complainant or the Respondent. However, the mechanism for

addressing the appeal varies depending on whether the Respondent is a student, or a faculty member.

**d. Table 4 – Appealing the Decision of the Hearing Panel**

| Respondent is a Student  | Respondent is a Faculty Member (where potential sanctions do not Include suspension/termination) <sup>4</sup>   | Respondent is a Staff Member   |
|--|---|--|
| <p>Appeals must be made in writing to the Dean of Students, who will notify the Assigned Title IX Coordinator and the other party (i.e., the Complainant or the Respondent) that an appeal has been filed. After reviewing the evidence from the hearing, including the recording of the hearing, the Dean of Students 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 Dean of Students decides to overturn the decision of the Hearing Panel, or that additional evidence should be obtained, he/she will consult with the Assigned Title IX Coordinator on the appropriate steps to be taken to come to a final resolution of the complaint. The Dean of Students will notify the Assigned Title IX Coordinator, the Complainant, and the Respondent concurrently of the decision and actions to</p> | <p>Appeals must be made in writing to the President of the College, who will notify the Assigned Title IX Coordinator and the other party (i.e., the Complainant or the Respondent) that an appeal has been filed. After reviewing the evidence from the hearing, including the recording of the hearing, the President 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 President decides to overturn the decision of the Hearing Panel, or that additional evidence should be obtained, the President will consult with the Assigned Title IX Coordinator on the appropriate steps to be taken to come to a final resolution of the complaint. The President will notify the Assigned Title IX Coordinator, the Complainant, and the Respondent concurrently of the decision and actions to be taken. There is no further appeal..</p> | <p>Appeals must be made in writing to Vice President for Business who will notify the Assigned Title IX Coordinator and the other party (i.e., the Complainant or the Respondent) that an appeal has been filed. After reviewing the evidence from the hearing, including the recording of the hearing, the Vice President 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 decides to overturn the decision of the Hearing Panel, or that additional evidence should be obtained, the Vice President will consult with the Assigned Title IX Coordinator on the appropriate steps to be taken to come to a final resolution of the complaint. The Vice President will notify the Assigned Title IX Coordinator, the Complainant, and the Respondent concurrently of</p> |

<sup>4</sup> Procedures in cases involving faculty that include potential sanctions up to suspension or termination are discussed below.

|                                       |  |  |
|---------------------------------------|--|--|
| be taken. There is no further appeal. |  | the decision made 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 10 years.

**Article VII. The Formal Resolution Process in Cases Involving Faculty as Respondents – Where Suspension or Termination is a Potential Sanction**

The following procedure will be utilized in cases where the Respondent is a faculty member with continuous tenure, or an unexpired special or probationary appointment, and where the severity of the Sexual Misconduct would warrant a sanction of suspension or termination if the allegations are supported by a preponderance of the evidence. .

**1. Assessment of the Charges**

Following the completion of the Investigative Report, the Title IX Coordinator will first confer with the Provost and Dean of the Faculty who will make a preliminary determination of sanctions to apply if the charges in the Complaint were to be supported by a preponderance of the evidence. If the list of sanctions includes either suspension or termination of employment, the Title IX Coordinator will provide the President of the College with a copy of the Complaint and the Investigative Report. The Title IX Coordinator and the Provost and Dean of the Faculty will confer with the President regarding the nature of the charges and the potential sanctions. Afterwards, the President will meet with the Respondent who has the option to accept responsibility for the charges and to also accept any sanctions proposed by the President. Alternatively, the Respondent may choose to proceed with a hearing on the Complaint.



## **2. The Hearing Panel**

If the Respondent chooses to proceed with a hearing, the Provost and Dean of the Faculty will select three members of the Faculty Grievance Committee to serve on the Hearing Panel, which will elect its own chair. If the Hearing Panel will hear only a subset of the initial Complaint, then the President will specify which part(s) of alleged misconduct will be the subject of the hearing.

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

Promptly after the Provost and Dean of the Faculty has appointed the members of the Hearing Panel, the Assigned Title IX Coordinator will provide concurrent written notice to the Complainant and the Respondent, identifying the individuals who will serve on, and chair the Hearing Panel.

Either the Complainant or the Respondent may challenge the participation of members of the Hearing Panel for having a conflict of interest by submitting a petition, in writing, to the Assigned Title IX Coordinator. There is a 3 day time limit for submitting a petition. The petition must state the specific reason(s) for the perceived conflict of interest. The Provost and Dean of the Faculty will evaluate the objection and determine whether to appoint other members of the Faculty Grievance Committee to the Hearing Panel to replace the individual(s) who have been challenged. Any changes in the membership of the Hearing Panel will be provided in writing to the Complainant and the Respondent at least 10 days prior to the date of the first hearing.

Once the membership of the Hearing Panel is finalized, the Assigned Title IX Coordinator will forward copies of the Complaint and the Investigative Report to the members of the Hearing Panel.

## **4. Hearing Policies and Procedures**

**a. Submission of Written Materials by the Complainant and the Respondent.** The Deputy Title IX Coordinator assigned to the Complaint 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 Hearing Panel Chair with: (1) a written statement regarding the charges and allegations to be adjudicated, (a) in the case of Complainant, this will be his or her allegations related to the charges; (b) in the case of the Respondent, this will be his or her responses to the charges, allegations and the Respondent's defense to the charges; and (2) a list of witnesses, if any, that they want the Hearing Panel to interview along with a brief description of each witness's connection to and/or knowledge of the issues in dispute.

If either party wishes to submit an expert analysis report at the hearing it should be submitted at this time. Whether such written expert testimony or reports will be presented and considered at the hearing will be left to the discretion of the Title IX Coordinator; oral testimony by experts will not be permitted save for in extraordinary circumstances. In determining whether to permit expert reports at the hearing, the Title IX coordinator will consider (a) whether the expert's scientific, technical, or other specialized knowledge will help the Hearing Panel to understand the evidence or to determine a fact in issue; (b) the written testimony or report is based on sufficient facts or data; (c) the testimony or report is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts at issue.

**b. Notice of the Hearing Date.** Within 7 days after all parties have been notified of the final composition of the Hearing Panel, the Chair 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, and will have the option to review and take notes on a copy of the Investigative Report.

**c. Failure to Appear.** Unless there are extenuating circumstances, if either the Complainant or the Respondent fails to appear before the Hearing Panel, then

the Hearing Panel will proceed to resolve the Complaint based on evidence and testimony of those who are available to testify. The Provost and Dean of the Faculty will determine what constitutes extenuating circumstances.

**d. Special Arrangements and/or Accommodations.** In addition to disability-related accommodations, both the Complainant and the Respondent may request special accommodations during the hearing (e.g., being allowed to participate in the hearing remotely from a separate room, the provision of a screen between the Complainant and the Respondent – if both are in the same room as the Hearing Panel). Requests for special accommodations must be submitted in writing to the Assigned Title IX Coordinator no later than 3 days before the hearing. The Assigned Title IX 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. 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. The Provost and Dean of Faculty will stipulate exceptions as appropriate. The Provost and Dean of Faculty may take interim measures, as necessary, to reduce or eliminate contact between the parties in the Complaint. For example, faculty members may have their office assignments or work schedules altered for the duration of the hearing.

**f. 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. Evidence concerning the prior sexual history of Complainant with anyone other than the Respondent will not be permitted at the hearing. 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 or preclude a finding of sexual violence. The

College will attempt to conduct the hearing in a manner that does not inflict additional trauma on the Complainant, Respondent, or witnesses.

**g. Hearing Procedures.** An audio recording of the hearing will be made and the hearing will be open to a limited number of individuals, including the members of Hearing Panel, the Assigned Title IX Coordinator, the Complainant, and the Respondent. Additionally, both the Complainant and the Respondent are permitted to have an advisor with them throughout the hearing. The advisor may be a friend, relative, mentor, an attorney, or any other person of their choosing. The advisor may not speak to anyone other than the person they are advising. The advisor may not address the Hearing Panel, or cross-examine witnesses. The Hearing Panel will be responsible for asking questions of the parties and the witnesses and developing 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). Members of the College community are expected to provide truthful testimony. Both the Complainant and the Respondent will have equal opportunities to introduce evidence into the hearing record, but they will not cross-examine each other. Each party may submit questions for the other party, in writing, to the Hearing Panel Chair, who will determine whether, or in what form, to pose such questions. Witnesses and others called to testify will be present only during their own interviews.

## **5. 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 any expert witness written testimony establishes that it is more likely than not (i.e., more than 50 percent likely) that the Respondent committed Sexual Misconduct. This *Preponderance of the Evidence Standard* is the only

evidentiary standard that may be used in a Title IX adjudication process. The Hearing Panel will immediately report their findings to the Assigned Title IX Coordinator, who will report them to the Provost and Dean of the Faculty.

**b. Sanctions.** The purpose of the College's response to a finding of Sexual Misconduct is to eliminate it, prevent reoccurrences, and remedy the effects of Sexual Misconduct. If a majority of Hearing Panel members conclude that Sexual Misconduct occurred, the Provost and Dean of the Faculty will make a final determination regarding any sanctions to be applied to the Respondent. Sanctions may be one of multiple College responses to acts of Sexual Misconduct. Other College responses may include educational interventions, and changes in campus security practices – including increased monitoring of the location(s) where Sexual Misconduct occurred. Once sanctions have been determined, the Provost and Dean of the Faculty will concurrently notify the Complainant and the Respondent of the outcome of the hearing and sanctions.

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 Provost and Dean of the Faculty concludes that in order to protect the welfare of the Complainant or the College community it is advisable for any sanctions be effective immediately and to continue in effect until the appeal process is concluded.

**c. Final Accommodations and Corrective Action.** Once the hearing has concluded, and if there has been a finding of Sexual Misconduct, the Provost and Dean of the Faculty and the Assigned Title IX Coordinator will meet with the Complainant and determine what, if any final accommodations should be made. The Assigned Title IX Coordinator will notify the Complainant of the accommodations the College will provide. If any of these accommodations affect the Respondent, the Provost and Dean of the Faculty will also notify the Respondent (e.g., a change in office location or classroom location).

The Provost and Dean of the Faculty will also take steps to prevent harassment of, or retaliation against any of the parties who participated in the investigation and hearing process, by briefing them on how to report retaliation, following up with them to ensure that there have been no retaliatory actions, providing education, as appropriate, for the school community, and providing counseling for the Respondent. The Provost and Dean of the Faculty will also take steps to prevent the harassment of the Respondent.

Finally, the Provost and Dean of the Faculty will take prompt corrective action if any party to the Complaint experiences further harassment, or if there is non-compliance with the original sanctions imposed on the Respondent. In cases involving Sexual Harassment, the Provost and Dean of the Faculty will also take reasonable steps to eliminate future harassment. In taking such steps, the Provost and Dean of the Faculty will make every reasonable effort to minimize the burden on the Complainant.

**d. Preventing Retaliation.** The Assigned Title IX Coordinator will also take steps to prevent harassment of, or retaliation against any of the parties who participated in the investigation and hearing process, by briefing them on how to report retaliation, following up with them to ensure that there have been no retaliatory actions, and providing appropriate education for the College community if necessary, and providing counseling for the Respondent. The Assigned Title IX Coordinator will also, where appropriate, take steps to prevent the harassment of the Respondent. Finally, the Assigned Title IX Coordinator will take prompt corrective action if any party to the Complaint experiences further harassment, or if there is non-compliance with the original sanctions imposed on the Respondent. In cases involving Sexual Harassment, the Assigned Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created. In taking such steps, the Assigned Title IX Coordinator will make every reasonable effort to minimize the burden on the Complainant.

**e. Final Outcome Letter.** Within 7 days following the conclusion of the hearing, the Provost and Dean of the Faculty will issue a Final Outcome Letter concurrently to each party in the Complaint. For faculty Respondents found responsible for acts of Sexual Misconduct, the Final Outcome Letter will state (1) the name of the Respondent, (2) the violation(s) of the College's Sexual Misconduct Policy that are supported by a preponderance of the evidence – or a statement that the Respondent was found *not* to have violated the Policy, (3) the rationale for the specific finding(s); and (4) any sanctions that were imposed on the Respondent, including suspension or termination. If sanctions are imposed, the Final Outcome Letter will describe the disciplinary actions taken, the date disciplinary actions were 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; any pre-hearing submissions; documents, testimony, or other information introduced at the hearing; and the Final Outcome Letter may not be disclosed, except as authorized by law (e.g., in a subpoena that is part of a criminal proceeding).

## **6. First Appeal: To the President of the College**

The Complainant 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 Final Outcome Letter is sent. Both the decision of the Hearing Panel and the sanction 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) material procedural errors during the hearing that may have impacted the outcome and/or (3) the panel substantially and materially abused its

discretion in weighing the available evidence or in reaching its conclusion. Appeals of the decision of the Hearing Panel must be made in writing to the President of the College, who will notify the Assigned Title IX Coordinator and the other party (i.e., the Complainant or the Respondent) that an appeal has been filed. The President will not confer with the Provost and Dean of the Faculty regarding the appeal.

The President will make a determination that: (1) that the decision of the Hearing Panel should stand; or (2) that the decision of the Hearing Panel should be overturned; or (3) that additional evidence should be obtained before making an appellate determination. If the President determines that the decision of the Hearing Panel should be overturned, or that additional evidence should be obtained, the President will consult with the Assigned Title IX Coordinator on the appropriate steps to be taken to come to a final resolution of the Complaint. The President will notify the Provost and Dean of the Faculty, the Assigned Title IX Coordinator, the Complainant, and the Respondent concurrently of the decision he/she makes and actions to be taken.

- b. Appeals of the Provost and Dean of the Faculty’s Decision Regarding Sanctions.** The sanctions imposed on the Respondent may be appealed on grounds that the sanction imposed was not appropriate given the nature of the Sexual Misconduct for which the Respondent was found responsible. The Complainant may appeal on grounds that the sanctions were insufficient and the Respondent may appeal on the grounds that the sanctions were excessive.

Appeals must be made in writing to the President of the College within 10 days from the date the Final Outcome Letter is sent. The President will not confer with the Provost and Dean of the Faculty regarding the appeal. The President’s Office will provide a copy of the written appeal to the Assigned Title IX Coordinator and to the non-appealing party. The President will make a determination that: (1) the decision of the Provost and Dean of the Faculty regarding sanctions should



stand; or (2) the decision of the Provost and Dean of the Faculty regarding sanctions should be overturned; or (3) additional evidence should be obtained before making an appellate determination. If the President determines that the sanctions imposed by the Provost and Dean of the Faculty should be modified, the President will concurrently notify the following individuals of his/her decision and actions to be taken; the Complainant, the Respondent, the Provost and Dean of the Faculty, and the Assigned Title IX Coordinator. If the President determines that additional evidence should be obtained, the President will consult with the Assigned Title IX Coordinator in order to gather the necessary evidence to come to a final resolution of the Complaint.

## **7. Second Appeal: To the Board of Trustees' Executive Committee**

The Complainant or the Respondent may appeal the decision of the President of the College and/or the sanction imposed on the Respondent within 10 days from the date they are notified of the President's decision. Both the decision of the President and the sanction imposed on the Respondent are open to appeal, and may be appealed simultaneously.

**a. Appeals of the President's Decision Regarding Responsibility.** The only permissible grounds for an appeal to the Board of Trustees' Executive Committee 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) material procedural errors during the hearing that may have impacted the outcome and/or (3) the President substantially and materially abused his/her discretion in weighing the available evidence or in reaching a conclusion. Appeals of the decision of the President must be submitted in writing to the Vice President for Strategy, Administration, and Board Affairs who will transmit the appeal to the Chair of the Board of Trustees, to the Assigned Title IX Coordinator, and to the other party (i.e., the Complainant or the Respondent). The Assigned Title IX Coordinator will send the members of the Executive Committee of the Board copies of the Complaint, the Investigative Report, evidence presented to the

Hearing Panel, the audio recording of the hearing and the first appeal to the President. The Executive Committee of the Board of Trustees will not confer with the President of the College or the Provost and Dean of the Faculty regarding the appeal.

The Executive Committee of the Board of Trustees will make a determination that: (1) the decision of the President should stand; or (2) the decision of the President should be overturned; or (3) additional evidence should be obtained before making an appellate determination. If the Board of Trustees' Executive Committee determines that additional evidence should be obtained, the Board Chair will consult with the Assigned Title IX Coordinator on steps to take to acquire the additional evidence. The Board Chair will notify the President of the College, the Provost and Dean of the Faculty, the Assigned Title IX Coordinator, the Complainant, and the Respondent concurrently of the decision the Executive Committee of the Board and actions to be taken.

**b. Appeals of the President's Decision Regarding Sanctions.** The sanctions imposed on the Respondent may be appealed on grounds that the sanction imposed was not appropriate given the nature of the Sexual Misconduct for which the Respondent was found responsible. The Complainant may appeal on grounds that the sanctions were insufficient and the Respondent may appeal on the grounds that the sanctions were excessive.

Appeals of the decision of the President must be submitted in writing to the Vice President for Strategy, Administration, and Board Affairs who will transmit the appeal to the Chair of the Board of Trustees, to the Assigned Title IX Coordinator, and to the other party (i.e., the Complainant or the Respondent). The Assigned Title IX Coordinator will send the members of the Executive Committee of the Board copies of the Complaint, the Investigative Report, evidence presented to the Hearing Panel, the audio recording of the hearing and the first appeal to the President.

The Executive Committee of the Board of Trustees will make a determination that: (1) the decision of the President should stand; or (2) the decision of the President should be overturned; or (3) additional evidence should be obtained before making an appellate determination. If the Board of Trustees' Executive Committee determines that additional evidence should be obtained, the Board Chair will consult with the Assigned Title IX Coordinator on steps to take to acquire the additional evidence. The Board Chair will notify the President of the College, the Provost and Dean of the Faculty, the Assigned Title IX Coordinator, the Complainant, and the Respondent concurrently of the decision the Executive Committee of the Board and actions to be taken.

**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 10 years.

**Appendix A: Glossary (here)**

**Appendix B: Threat Assessment in Cases Involving Sexual Violence Against a Student**

**(Under VA. Code §23.1 - 806)**

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 §23.1 – 806 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.