

## **SMITH COLLEGE GENDER-BASED AND SEXUAL MISCONDUCT POLICY**

Smith College seeks to maintain an environment that is free of conduct that unreasonably interferes with the academic and professional experience of any member of the community. Consistent with this commitment, the College complies with Title IX of the Education Amendments of 1972 (“Title IX”), which prohibits discrimination on the basis of sex in education programs and activities, Title VII of the Civil Rights Act of 1964 (“Title VII”), which prohibits sex discrimination in employment and relevant laws of the Commonwealth of Massachusetts, which prohibit sex discrimination in education and employment. Smith College also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by relevant provisions of the Violence Against Women Reauthorization Act of 2013 (“VAWA”).

Gender-based and sexual misconduct on the College’s campus or in other settings related to the College’s educational or employment activities is a form of sex discrimination that is unlawful and unethical and is strictly prohibited by the College.

Under this Gender-Based and Sexual Misconduct Policy (“Policy”), the College will promptly respond to complaints of gender-based and sexual misconduct and, where it is determined that such misconduct has occurred, will take measures to eliminate the conduct, prevent its reoccurrence, address its effects and impose corrective action as appropriate.

### **I. SCOPE**

This Policy applies to all members of the College community, including students, faculty, staff, and third parties.

This Policy applies to conduct prohibited by this Policy (“Prohibited Conduct”) when the conduct occurs on campus; in the context of any College program or activity, including College-sponsored study abroad programs; or in any location, if the conduct has continuing adverse effects on campus or in any College program or activity.

This Policy applies to all acts of gender-based and sexual misconduct between individuals, regardless of the sex, gender identity, gender expression, and/or sexual orientation of those individuals.

All members of the community including students, faculty, and staff are expected to cooperate fully in efforts to investigate and enforce this Policy.

### **II. NOTICE OF NONDISCRIMINATION**

Smith College is committed to maintaining a diverse community in an atmosphere of mutual respect and appreciation of differences.

Smith College does not discriminate in its educational and employment policies on the bases of race, color, creed, religion, national/ethnic origin, sex, sexual orientation, gender identity and expression, genetic information, age, disability, or service in the military or other uninformed services.

Smith's admission policies and practices are guided by the same principle, concerning applicants to the undergraduate program who identify as women, and all applicants to the graduate programs.

## **Under Title IX:**

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

**The College's Title IX Coordinator is responsible for ensuring the College meets its Title IX obligations and will maintain oversight of the College's investigation, resolution and response to reports of gender-based and sexual misconduct.**

**Concerns about the College's application of Title IX may be directed to the Title IX Coordinator Sarah E. Harebo, Office of Inclusion, Diversity and Equity, 302 College Hall, 413-585-2141, sharebo@smith.edu or the United States Department of Education Office for Civil Rights Boston Office, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921, 617-289-0111, OCR.Boston@ed.gov.**

### **III. PROHIBITED CONDUCT AND DEFINITIONS**

**Smith College prohibits gender-based and sexual misconduct. For the purposes of this policy, gender-based and sexual misconduct are broadly defined to include acts of sexual or gender-based harassment, sexual assault, intimate partner violence, sexual exploitation, stalking, aiding or facilitating the commission of a violation, and retaliation ("Prohibited Conduct").**

**An attempt to engage in conduct that constitutes gender-based or sexual misconduct, as defined by this Policy, even if the attempt does not result in a completed act, may be treated itself as a violation of this Policy.**

#### **A. Sexual or Gender-Based Harassment**

**Sexual harassment is any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature when one of the following conditions are present:**

- (1) submission to or rejection of the conduct is made either explicitly or implicitly a term or condition of an individual's employment, evaluation of academic work, participation or enrollment (quid pro quo);**
- (2) submission to or rejection of the conduct is used as a basis for employment or educational decisions, placement services or evaluation of academic achievement (quid pro quo); or**
- (3) the conduct is sufficiently severe, persistent or pervasive that it unreasonably interferes with an individual's work or educational performance or denies or limits the individual's ability to participate or benefit from the College's employment or educational programs and/or activities by creating an intimidating, hostile or offensive working, academic, or social environment under both a subjective and an objective perspective (hostile environment).**

**Gender-based harassment includes acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, gender identity, gender expression or sex- stereotyping, even if those acts do not involve conduct of a sexual nature when one of the above conditions, quid pro quo or hostile environment, are present:**

## **B. Forms of Prohibited Sexual or Gender-Based Harassment**

Sexual or gender-based harassment can take many forms. It does not have to be “directed” at a particular individual to constitute sexual or gender-based harassment. Conduct reported as sexual or gender-based harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior.

Although repeated incidents generally create a stronger claim of sexual or gender-based harassment, a single incident, even if isolated, can create a hostile environment if sufficiently serious. For example, a single instance of sexual assault may constitute sexual harassment. In general, the more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. In addition, conduct that was initially welcomed may develop into a form of sexual or gender-based harassment depending on the circumstances.

Although it is not possible to list all circumstances that constitute sexual or gender-based harassment, the following are some examples of conduct that may constitute sexual harassment depending on the totality of the circumstances:

- Unwelcome sexual advances - whether they involve physical touching or not;
- Threats or insinuations that a person’s employment, wages, academic grade, promotional opportunities, classroom work assignments or other conditions of employment or academic life may be adversely affected by not submitting to sexual advances;
- Dissemination of sexually explicit voicemail, email, graphics, downloaded material or websites;
- Unwelcome sexual epithets, sexual jokes, written oral references to sexual conduct, or references to one’s own sex life;
- Unwelcome comments about an individual’s sexual activity;
- Displaying sexually suggestive objects, pictures or cartoons;
- Unwelcome leering, sexual behavior, or sexual gestures;
- Unwelcome inquiries into another’s sexual experiences;
- Unwelcome discussion of one’s sexual activities;
- Engaging in harassing conduct related to another’s sex, gender identity, gender expression, or sexual orientation that affects the workplace, or the educational environment, or affects others’ ability to compete for grades, research opportunities, academic or work assignments, compensation, and/or employment benefits.
- Direct or implied requests by a supervisor, professor, athletic coach or trainer, or other individual responsible for work or academic evaluations for sexual favors in exchange for actual or promised job or academic benefits. Actual or promised benefits may relate to grades, academic assignments, research

opportunities, favorable reviews and recommendations, salary increases, promotions, increased benefits, continued employment or enrollment, or any other benefit.

- Bullying or cyber-bullying based on sex or gender, gender identity, gender expression or sexual orientation.

## **C. Sexual Assault**

Sexual assault, as defined under this Policy, includes both Non-Consensual Sexual

Contact and Non-Consensual Sexual Penetration as defined below:

i. Non-Consensual Sexual Contact is any intentional sexual touching, however slight, with any object or body part, by a person upon another person, that is without consent. Sexual contact includes intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, making another touch you or themselves with or on any of these body parts, or making you touch yourself; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals or other orifice, or disrobing of another person without consent.

ii. Non-Consensual Sexual Penetration is having or attempting sexual penetration with another individual without consent. Sexual penetration

includes oral-genital contact, or vaginal or anal penetration by a penis, tongue or finger or other object, no matter how slight the penetration or contact.

### **a. Consent**

Consent to sexual activity is defined as: clear, unambiguous, mutual, and voluntary agreement between the participants to engage in specific sexual acts. Consent must be expressed affirmatively, either by a verbal statement (e.g., “yes”) or through mutually understandable conduct that plainly manifests affirmative consent (e.g., initiating contact, directing contact by hands or other body parts). Consent cannot be inferred from the absence of a “no.” Silence, passivity or lack of active resistance does not imply consent. When in doubt, ask. Any doubt about consent must be resolved before engaging in further sexual activity.

Consent must be clear, mutual and unambiguous for each participant throughout any sexual encounter. Consent to some types of sexual contact does not imply consent to others, nor does past consent to a given act imply ongoing or future consent. Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual consent to engage in sexual contact. Consent to engage in sexual contact with one person is not consent to sexual contact with any other person.

Consent can be withdrawn at any time through clear words or mutually understandable actions. Once consent is withdrawn, the sexual activity must stop immediately and all parties must obtain mutually expressed or clearly stated consent before continuing with further sexual activity.

Consent must be freely given. Consent cannot be obtained by intimidation, threat, coercion or force. Agreement given under intimidation, threat, force or coercion does not constitute consent.

**Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request, but resistance will be viewed as a clear demonstration of non-consent.**

**Coercing someone into sexual activity violates this Policy in the same way as physically forcing someone into sex. Coercion is the use of unreasonable pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. Examples of coercion include, but are not limited, threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.**

**Consent cannot be gained by taking advantage of the incapacitation of another person, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated. A person who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of this Policy.**

**A person who is incapacitated cannot consent to sexual contact. A person is incapacitated if they are asleep, unconscious, intermittently conscious, unaware that sexual contact is occurring, or lack the physical and/or mental ability to make informed, rational judgments about whether or not to engage in sexual activity.**

**A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition. Where alcohol or drug use is involved, incapacitation is a state beyond intoxication, inebriation, impairment in judgment or "drunkenness." Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is incapacitated, and therefore unable to give consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically or mentally incapable of:**

- **Making decisions about the potential consequences of sexual contact;**
- **Appraising the nature of one's own conduct;**
- **Communicating consent to sexual contact; or**
- **Communicating unwillingness to engage in sexual contact.**

**Where an individual's level of impairment does not rise to incapacitation, it is still necessary to evaluate the impact of intoxication on consent. In evaluating whether consent was sought or given, the following factors may be relevant:**

- **Intoxication may impact one's ability to give consent and may lead to incapacitation;**
- **A person's level of intoxication is not always demonstrated by objective signs; however, some signs of intoxication may include slurred or incomprehensible speech; unsteady gait, difficulty walking or clumsiness; combativeness or emotional volatility; vomiting; incontinence, poor judgment and difficulty concentrating; and**

- An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass and metabolism.

No matter the level of an individual's intoxication, if that individual has not agreed to engage in sexual contact, there is no consent.

Voluntary intoxication by a respondent does not diminish the responsibility to obtain valid consent. The respondent's knowledge will be viewed from the perspective of a sober, reasonable person under the same circumstances.

In the commonwealth of Massachusetts, consent can never be given by minors under the age of 16.

## **D. Intimate Partner Violence**

Intimate partner violence is violence committed by a person who is or has been in a social relationship of a romantic, intimate, domestic partner, spousal, sexual or dating nature with the person subject to the violence. It is also referred to as dating violence, domestic violence and relationship violence.

Intimate partner violence includes behavior or physical force that intimidates, manipulates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures or wounds an intimate partner. The existence of a romantic, intimate, domestic partner, spousal, sexual or dating relationship may be determined by factors such as the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Intimate partner violence does not require sexual contact between partners, but non- consensual sexual contact or unwelcome conduct, including the specific forms of gender-based and sexual misconduct prohibited by this Policy, may constitute forms of intimate partner violence.

## **E. Sexual Exploitation**

Sexual exploitation is taking or attempting to take sexual advantage of another without consent for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Examples of sexual exploitation include, but are not limited to:

1. Prostituting another person;
2. Non-consensual taking of pictures, video recording and/or audio recording of a sexual activity;
3. Non-consensual distribution of pictures, video recording, audio recording, or live- streaming of a sexual activity;
4. Allowing third parties to observe sexual activities without consent;
5. Engaging in voyeurism (watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
6. Exposing one's genitals in non-consensual circumstances;

7. Inducing another to expose their genitals under non-consensual circumstances;

or

8. Causing the incapacitation of another for the purpose of compromising that person's ability to consent to sexual activity.

## **F. Stalking**

Stalking is a course of conduct involving more than one instance of unwelcome attention, harassment, physical or verbal contact, or any other course of conduct directed at a specific person, that could be reasonably regarded as likely to alarm or place the person in fear of bodily injury, or reasonably cause substantial emotional distress to the person. Stalking may include cyber-stalking, in which electronic media such as the internet, cell phone, texts, or other forms of electronic contact are used to make unwelcome contact with another person.

## **G. Retaliation**

Retaliation is defined as taking or attempting adverse action against a person or group because that person or group participated in a good faith report or investigation under this Policy, whether as a complainant, respondent, witness, administrator or in any other role. Retaliation can be committed by any individual or group of individuals, not just the respondent or complainant. Retaliation can take many forms, including threats, intimidation, bullying, harassment, physical harm, emotional abuse, damage to or theft of property, and exclusion from a position, association or event, among others.

## **IV. PROHIBITED RELATIONSHIPS BY PERSONS IN AUTHORITY**

### **A. Prohibition of Relationships between Faculty and Students and Staff and Students**

Sexual relationships between faculty and College students are prohibited by the Policy on Sexual Relationships between Faculty and Students.

Romantic involvement or sexual relationships between staff (who are not student employees) and College students, even if consensual, are prohibited by this Policy.

These prohibitions will not affect the Tuition Assistance Benefit that the College offers to spouses of faculty and staff members.

## **V. UNDERSTANDING THE DIFFERENCE BETWEEN PRIVACY AND CONFIDENTIALITY**

When disclosing information about gender-based or sexual misconduct to a College employee, all community members should be aware of how their information may be shared within the College based on the College's Title IX obligations, as well as the identity of confidential resources under state law. The following discussion on privacy and confidentiality may help a complainant make an informed choice.

The College recognizes that privacy is very important. All actions taken to investigate and resolve reports shall be conducted with as much privacy and discretion as possible without compromising the thoroughness and fairness of the investigation. All persons involved in an investigation are expected to treat the process with respect.

Privacy and confidentiality have distinct meanings under this Policy.

**Privacy:** Privacy generally means that information related to a report will only be shared with those College employees with a legitimate educational interest or with external individuals or entities only as permitted under College policy and applicable law. Members of the College community involved in reviewing a reported violation of this Policy are expected to fulfill their obligation to share information only on a need-to-know basis to fulfill the responsibilities of their position. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"). The privacy of an individual's medical and related records generally is protected by the Health Insurance Portability and Accountability Act ("HIPAA").

**Confidentiality:** Confidentiality means that information shared with campus or community professionals who have legal confidentiality will only be disclosed: 1) with the individual's expressed written permission; 2) where there is a continuing threat of serious harm to the patient/client or to others; 3) where there is suspected abuse or neglect of a minor; or, 4) as required by state law. An individual can seek confidential assistance and support by speaking with specially designated confidential resources, both on campus and in the surrounding community.

Under this Policy, all faculty, staff, and administrators, student employees who have a responsibility for student welfare, and student volunteers who have a responsibility for student welfare are considered Responsible Employees under Title IX and are required to promptly report any acts of gender-based or sexual misconduct that they become aware of to the College's Title IX Coordinator. Further, in order to maintain a campus climate free of gender-based and sexual misconduct, Smith College also strongly encourages reporting of all incidents of perceived misconduct, including those not involving students. This includes information that is shared directly by a complainant or other individual, conduct that is observed, or other information that could reasonably raise a concern that gender-based or sexual misconduct may have occurred. While Responsible Employees may keep the information private, as above, they may not keep it confidential; all known information, including the names of the parties and any information about the details of the conduct must be shared with the Title IX Coordinator. As set forth later in this

Policy, the Title IX Coordinator will consider the interests of the complainant in determining how to proceed in response to the report. Questions about employee reporting responsibilities, or the College's

potential responses to a report, can be directed to the College's Title IX Coordinator.

## **VI. CONFIDENTIAL RESOURCES AND SUPPORT**

Although Smith encourages all College community members to promptly report all incidents of gender-based and sexual misconduct, the College recognizes that sometimes an individual may prefer to initially speak with someone in confidence. Accordingly, for members of the College community who do not want details of their report of gender-based or sexual misconduct to be shared with the College's Title IX Coordinator, the College offers on-campus mental health counselors, campus health service providers and the Dean of Religious Life as confidential resources. These resources are subject

to confidentiality obligations that generally prohibit release of information without an individual's express consent, unless otherwise required by law.

If someone discloses gender-based or sexual misconduct to a College confidential resource, that confidential resource will not disclose to College officials any identifying information about the person subject to the misconduct or the person alleged to have committed the misconduct, but may provide the Title IX Coordinator with limited non-identifying information about the incident to permit the College to determine if the incident should be reported among the crime statistics the College is required to report under federal or state laws.

Ordinarily, reports made to individuals at the College designated as confidential resources will not be shared with law enforcement or any state agencies. However, there are limited exceptions to a confidential resource's legal ability to keep a report of gender-based or sexual misconduct confidential. For example, Massachusetts law requires the reporting of abuse of minors (under the age of 18). Further, if someone discloses to a confidential resource information suggesting they or someone else presents an imminent threat or danger to harm themselves or others, confidentiality cannot be maintained.

In addition, Massachusetts General Laws chapter 112, §12A 1/2 requires medical personnel to report to the state and the police in the town where a rape or sexual assault occurred data concerning any and all cases of rape where the survivor seeks medical treatment. The data that must be reported does not include the survivor's name, address or other identifying information.

### **A. Confidential Resources**

The following have been designated confidential resources pursuant to this Policy:

- Smith College Counseling Center for counseling services, free of charge. Counselors can be seen on an emergency basis during the academic year. Contact Information: 413-585-2840.
- Smith College Health Services for medical assistance and referrals. Contact information: 413-585-2811.
- In addition, the Director of Religious and Spiritual Life is a confidential resource who will keep details of a report confidential upon request and subject to applicable law. Contact Information: 413-585-2750.

## **B. Off-Campus Resources and Support**

Off-campus organizations can provide resources in response to a report of gender-based or sexual misconduct, including counseling, crisis intervention, and medical services. Some resources in the local area include:

- Cooley Dickinson Hospital (has Sexual Assault Nurse Examiner (SANE)

program) Contact Information: 413-582-2000, open 24 hours.

- Center for Women and Community University of Massachusetts, Amherst Contact Information: 413-545-0800 or 1-888-337-0800, 24-hour hotline (anonymous and confidential).

- Sexual Assault Prevention and Survivor Services, Commonwealth of Massachusetts: Department of Public Health, provides resources including a list of rape crisis center hotlines and direct links to rape crises center websites. See website:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/community-health/dvip/violence/sapss/>.

- Safe Passage, provides a variety of support and advocacy services for women and children who have experienced domestic violence. 43 Center Street Suite 304, Northampton, MA 01060. Phone: (413) 586-1125. Hotline: (413) 586-5066 or TTY/TTD: (888) 345-5282. General email: [info@safepass.org](mailto:info@safepass.org).

- Victim/Witness Assistance Unit, Northwestern District Attorney, Greenfield, MA Contact Information: 413-774-3186.

## **VII. REPORTING ACTS OF GENDER-BASED AND SEXUAL MISCONDUCT**

The College strongly encourages prompt reporting of conduct that may violate this policy. Prohibited Conduct may be reported to local law enforcement and/or the College. Any individual may make a report under this policy, and all individuals are encouraged to make a report, regardless of when or where the incident occurred, and to seek any necessary help from campus or community resources. This section of the Policy provides information concerning to whom individuals can report gender-based or sexual misconduct to ensure that the report will be brought to the attention of appropriate administrators for investigation and response.

### **A. Emergency/Immediate Reporting Options**

The first priority for any individual should be personal safety and well-being. The College encourages all individuals to make a prompt report to law enforcement and/or seek immediate medical treatment in

response to an incident in order to address immediate safety concerns and allow for the preservation of evidence and an immediate investigative response. The College will help any individual get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about the College's resources and complaint processes.

## **B. Campus Reporting Options**

All members of the College community are encouraged to report incidents of gender-based and sexual misconduct directly to the Title IX Coordinator. The College has appointed Sarah E. Harebo, Office of Inclusion, Diversity and Equity to serve as the Title IX Coordinator. Any individual may contact the College's Title IX Coordinator by phone, email or in person at the following contact information:

Sarah E. Harebo  
Office of Inclusion, Diversity and Equity  
302 College Hall  
413-585-2141  
Email: sharebo@smith.edu

Undergraduate students may also report gender-based and sexual misconduct to the Dean of Students office at 413-585-4940. Graduate students may also report gender-based and sexual misconduct to the director of graduate students at 413-585-3017. School for Social Work students may also report misconduct to the associate dean at 413-585-7966. Staff may also report gender-based and sexual misconduct to Human Resources at 413-585-2288. Faculty may also report gender-based and sexual misconduct to the Associate Provost and Dean for Academic Development at 413-585-3000.

Individuals who choose to report information to the Dean of Students, Department of Human Resources, Provost's Office, or Campus Police will receive immediate assistance from each of those departments. Each of these departments will refer the report to the Title IX Coordinator as part of the College's commitment to consistent, sensitive, trauma-informed and Title IX-compliant responses.

## **C. Reporting to Law Enforcement**

The College encourages members of the College community to pursue criminal action for incidents of gender-based or sexual misconduct when the incident may also constitute a crime under the law of the jurisdiction where the incident occurred. Individuals have the right to notify law enforcement or decline to notify law enforcement and may do so directly to the appropriate agency. Reporting incidents of gender-based and sexual misconduct may help protect others from future victimization, apprehend the alleged assailant and maintain options regarding criminal prosecution.

A report to Campus Police can be filed by going to 126 West Street in the Facilities Building from 8:30 a.m. to 4:00 p.m., Monday through Friday, or by calling extension 2490 from a campus phone or 413-585-2490 from off-campus phones or cell phones, 24 hours a day, seven days a week. Campus Police and/or the Title IX Coordinator may assist the reporter in identifying the appropriate law enforcement agency if the incident occurred off-campus. Incidents of gender-based or sexual misconduct reported to the College's Office of Campus Safety ("Campus Safety"), will be shared with the local law enforcement agency with jurisdiction.

When an individual reports the incident to Campus Police, a Campus police officer will take a statement regarding what happened. Under Massachusetts law, the reporting individual may request that their identity be kept confidential in law enforcement records; however, because Campus Police are employees of the College, information about the report, including personally identifiable information, will be shared with the Title IX Coordinator. Filing a police report does not obligate the reporter to participate in criminal or campus proceedings.

To the extent permitted by law, the College will assist a reporting College community member with making a report to law enforcement and will cooperate with law enforcement agencies if the complainant decides to pursue law enforcement action. Proceedings under the College's Gender-Based and Sexual Misconduct Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus. Cooperation with law enforcement agencies may require the College to temporarily suspend its own investigation while the law enforcement agency gathers evidence. The College will promptly resume its own investigation as soon as it is notified that the law enforcement agency has completed its evidence gathering process.

The College's definitions of gender-based and sexual misconduct, and its process and standard of proof for finding a College community member responsible for gender-based or sexual misconduct, differ from those used in criminal prosecutions. Accordingly, a reporter may reasonably seek resolution through the College's complaint process, may pursue criminal action, may choose one but not the other, or may choose both. Law enforcement's determination whether to prosecute an individual alleged to have engaged in gender-based or sexual misconduct does not determine whether the College will conduct a Title IX investigation. However, the College may take into consideration any criminal disposition or any information shared by law enforcement in the investigation and resolution of the report of gender-based or sexual misconduct.

## **D. Timeline for Reporting**

The College encourages individuals to report gender-based and sexual misconduct immediately in order to maximize the College's ability to respond promptly and equitably. Although prompt reporting helps the investigation process, the College does not limit the timeframe for reporting. The College cannot pursue disciplinary action against an individual who is no longer affiliated with the College. Under those circumstances, however, the College will help a complainant identify external reporting options, provide reasonably available support and resources, and take other steps designed to eliminate any hostile environment, prevent recurrence of the conduct, and address its effects.

## **E. Amnesty for Students Who Report Gender-Based or Sexual Misconduct**

The College encourages reporting incidents of gender-based or sexual misconduct and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. The College recognizes that Smith students who have been drinking or using drugs at the time of the incident may be hesitant to report gender-based or sexual misconduct because of potential consequences for their own alcohol or drug violations of the Code of Student Conduct. Students who report gender-based or sexual misconduct, either as a complainant or a witness, will not be subject to disciplinary action by

the College for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such consumption did not and does not place the health or safety of any person at risk. The College may, nevertheless, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. The amnesty policy applies only to the College's Code of Student Conduct process.

## **F. Retaliation**

It is a violation of College policy to retaliate in any way against an individual or a group because the individual or group made a good faith report concerning a violation of this Policy, was the subject of a report, or otherwise participated in the College's investigation of such a report. Individuals who believe they have been subject to retaliation should immediately report their concerns to the Title IX Coordinator. The College will take immediate and appropriate action to any report of retaliation and may pursue disciplinary action as appropriate. This disciplinary action may be separate and apart from the underlying conduct at issue, and a person may be found responsible for retaliation even if the underlying report is later not proven to be a violation of this Policy. The Title IX Coordinator will review all reports of retaliation and determine whether to impose immediate corrective action (including sanctions) or whether to refer the report for further investigation and resolution pursuant to the Investigation, Gender-Based and Sexual Misconduct Hearing Process for Student Respondents, or Sexual Misconduct Adjudication Process for Staff and Faculty sections of this Policy. In making this determination, the Title IX Coordinator may consult with other College administrators.

## **G. Bystander Intervention**

The College expects all of its community members to take reasonable and prudent actions to prevent or stop an act of gender-based or sexual misconduct. Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. Community members who choose to exercise this positive moral obligation will be supported by the College.

## **VIII. SMITH COLLEGE'S PROCEDURE FOR RESPONDING TO INCIDENTS OF GENDER-BASED AND SEXUAL MISCONDUCT**

In all cases, the College will respond to reports of violations of this Policy in a prompt, fair and impartial manner. The College will also seek to balance trauma-informed practices with procedural due process considerations.

Every report received by a responsible employee of the College will be referred to the Title IX Coordinator, who will conduct an initial assessment. Following the initial assessment, the College may seek Voluntary Resolution of the report or pursue steps to investigate or otherwise determine what occurred. The goal of the investigation is to gather all relevant facts and determine if there is sufficient information to pursue disciplinary action. Disciplinary action against a student will be pursued according to the Hearing Process section of this Policy. Disciplinary action against an employee will be pursued according to the Gender-Based and Sexual Misconduct Adjudication Process for Staff and Faculty

Respondents section of this Policy. Each resolution process is guided by the same principles of fairness and respect for all parties.

The College will work closely with complainants and respondents to ensure their ability to complete their academic program or professional responsibilities during the review of a reported violation of this Policy.

The College may amend or modify the procedures set forth in this Policy at any time if it determines such amendment or modification is warranted under the circumstances.

For the purposes of this Policy, the person who reports that they have been subject to gender-based or sexual misconduct or is the subject of such a report shall be referred to as the “complainant.” The person against whom a report of gender-based or sexual misconduct is brought is referred to as the “respondent.” A person who reports an incident of gender-based or sexual misconduct, but who is not the subject of the report, is referred to as the “reporter.”

## **A. Initial Assessment**

Upon receipt of a report of gender-based or sexual misconduct, the Title IX Coordinator will review the report and conduct an initial assessment of the reported conduct, the safety and emotional well-being of the complainant, the complainant’s expressed preference for resolution, and the necessity for any interim interventions to protect the safety of the campus community. This will typically involve a preliminary meeting between the complainant or reporter and the Title IX Coordinator. The Title IX Coordinator may also consult with other College administrators, including the Dean of Students, Campus Police, the Department of Human Resources and the Provost’s Office. As part of the initial assessment, the College will:

- Assess the nature and circumstances of the reported conduct
- Address immediate physical safety & emotional well-being
- Discuss the complainant’s expressed preference for manner of resolution and any barriers to proceeding
- Notify the complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist them with notifying law enforcement
- Notify the complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence
- Notify the complainant of the importance of preservation of evidence
- Evaluate required actions under the Clery Act, including entering the report into the College’s daily crime log if required and issuing a timely warning as appropriate
- Provide the complainant with information about on- and off-campus resources
- Notify the complainant of the range of reasonably available interim interventions

- Provide the complainant with an explanation of the procedural options, including voluntary resolution and disciplinary action (through an investigation and hearing)
- Inform the complainant of the right to have an advisor of their choosing to assist them throughout the investigation and resolution of the complaint, including accompanying the complainant to any meeting or proceeding under this Policy
- Assess for pattern evidence or other similar conduct by the respondent
- Explain the College's policy prohibiting retaliation

The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the Title IX Coordinator has sufficient information to determine the best course of action. If the Title IX Coordinator determines that additional information is required to make this determination, the Title IX Coordinator will direct the gathering of the additional information. If the Title IX Coordinator decides that an investigation is warranted, the College will proceed as described in the Investigation section below.

#### **B. Review of Complainant Requests for Anonymity or Not to Proceed with Investigation**

If the complainant requests anonymity or asks that the report of gender-based or sexual misconduct not be pursued, the College will, before taking any further investigative steps, forward that information, along with all available information about the report, to the Title IX Coordinator who will decide whether the College must proceed with an investigation.

In making such a determination, the Title IX Coordinator will review of the totality of the known circumstances, and will be guided by a consideration of the following factors:

- The available facts and circumstances and context of the report;
- The impact on the complainant's emotional well-being or safety by proceeding (or not proceeding) with an investigation;
- 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 interim interventions or similar impositions, and/or any civil 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;
- Whether the report reveals a pattern of Prohibited Conduct by the respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location;

- Whether the Prohibited Conduct was facilitated through the use of “date-rape” or similar drugs or intoxicants;
- Whether the Prohibited Conduct involved the use of a weapon;
- Whether the Prohibited Conduct occurred while the complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring;
- The respective ages and roles of the complainant and respondent, including whether the complainant is (or was at the time of the Prohibited Conduct) a minor (under 18);
- Whether any other aggravating circumstances or signs of predatory behavior are present;
- Whether the College possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence); and,
- The right of the respondent to receive notice and an opportunity to meaningfully respond to relevant information before disciplinary action is sought.

The Title IX Coordinator is charged with balancing the College’s commitment to supporting victim/survivor-centered practices with its equally strong commitment to providing fair and impartial process to the respondent and promoting a safe College community.

In reviewing complainant requests for anonymity or requests not to pursue an investigation, the Title IX Coordinator will consider the wishes of the complainant, the risk that declining to investigate might jeopardize the safety of the complainant or any members of the Smith community, and Smith’s responsibility to provide a safe and nondiscriminatory environment for all College community members. The College will seek to respect the request of the complainant and where it cannot do so, it will consult with the complainant and keep the complainant informed about the chosen course of action. The College will not compel the Complainant to participate in an investigation where the complainant has requested that the College not pursue the investigation. In all cases, the final decision on whether, how, and to what extent the College will maintain the complainant’s confidentiality or conduct an investigation, and whether other measures will be taken in connection with a report of a violation of this Policy, rests with the Title IX Coordinator.

The College’s ability to investigate and pursue disciplinary action may be limited when the identity of the respondent is unknown or when a complainant requests that their identity not be revealed to the respondent.

### **C. Interim Interventions**

To achieve the goals of this Policy, upon receipt of a report of gender-based or sexual misconduct, the College will implement interim interventions, as may be reasonable and appropriate for the individuals involved and for the larger College community. These measures may be both remedial (designed to address a complainant’s safety and well- being and continued access to educational opportunities) or protective (involving action against a respondent). The College will determine the necessity and scope of any interim interventions.

Complainants seeking an interim intervention should speak with the Title IX Coordinator, who will evaluate and coordinate such requests on the behalf of the complainant. Interim remedial interventions and campus resources are always available to support a complainant regardless of the course of action chosen or their level of participation in College proceedings. Protective measures, which involve restricting the rights of a respondent, may require participation in an investigation. When implementing interim interventions, consistent with available information to support the reasonableness of the request, the College will seek to minimize the burden on the individuals seeking the intervention. These interim interventions may be kept in place until the end of any investigation and/or until further notice from the College.

Even when a complainant or respondent does not specifically request an interim intervention, the College may choose to implement such an intervention at its discretion to ensure the safety of any individual or the College community. Interim interventions may be modified by the College as circumstances change or new information is available.

The College offers a range of interim interventions, including, but are not limited to, letters instructing the respondent (or, where appropriate, a restriction on both parties) not to contact the complainant; separation of or modification to the complainant's or the respondent's academic, employment, extra-curricular, and living situations; academic accommodations or modifications, including access to tutoring, rescheduling of exams or assignments, the ability to drop a course without penalty; assistance setting up initial appointments for counseling and/or medical services; providing an escort; assistance in evaluating implications for financial aid, immigration or visa status; assistance in obtaining a civil order of protection; and other interventions tailored to the involved parties.

Where the report of gender-based or sexual misconduct poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, the College may place an individual or organization on interim suspension or impose leave for an employee. Pending resolution of the complaint, the individual or organization may be denied access to campus. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

The College will maintain the privacy of any remedial and protective measures provided under this policy to the extent practicable. The Title IX Coordinator shall maintain information about interim interventions in their file regarding the gender-based or sexual misconduct. All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim intervention. The College will take prompt and responsive action to enforce interim interventions.

## **D. Voluntary Resolution**

The College recognizes that voluntary resolution options may, if implemented consistently with institutional values and legal obligations, be an appropriate means of addressing some forms of Prohibited Conduct reported under this Policy. Voluntary resolution options are designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the complainant and the safety and welfare of the campus community.

In some forms of voluntary resolution, the remedies imposed will focus on supporting the complainant with no participation or involvement by the respondent. Depending on the type of action taken under voluntary resolution, it may be possible for a complainant to maintain anonymity. In other forms of voluntary resolution, the respondent may agree to participate. Voluntary resolution typically does not involve disciplinary action against a respondent, unless agreed upon by all parties.

Voluntary resolution is not appropriate for all forms of Prohibited Conduct, and the Title IX Coordinator retains the discretion to determine which cases are appropriate for voluntary resolution. If a complainant requests voluntary resolution, and the Title IX Coordinator concludes that voluntary resolution is appropriate based on the factors outlined in the Initial Assessment, the College will take appropriate action by imposing individual and community remedies designed to maximize the complainant's access to all employment, educational, and extracurricular opportunities and benefits at the University and to eliminate a potential hostile environment. The outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved.

Voluntary resolution may include: implementing interim interventions, conducting targeted or broad-based educational programming or training for relevant individuals or groups; service options; permanent interventions; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; communication with the respondent by the Title IX Coordinator and/or the Dean of Students; other forms of restorative justice options; and any other remedy that can be tailored to the involved individuals to achieve the goals of the policy. Voluntary resolution may also include conflict mediation or a restorative conference with a trained College community member selected by the Dean of Students. However, the College will never use mediation or any method of face-to-face resolution to resolve a report of Sexual Assault.

A complainant may request to end voluntary resolution and pursue an investigation at any time. Similarly, the College may determine to end voluntary resolution at any time where appropriate. Pursuing voluntary resolution does not later preclude resolution through formal adjudication process, unless disciplinary action has been imposed and all parties agree that the voluntary resolution is final. Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Dean of Students or designee for investigation and resolution. Both the complainant and the respondent have the right to withdraw from voluntary resolution at any time and begin a formal investigation. No statements made during the voluntary resolution process may be submitted to or considered in the investigation or by the Hearing Board.

In order to fairly assess pattern or systemic behavior, the Title IX Coordinator will maintain records of all reports and conduct referred for voluntary resolution. The time frame for completion of voluntary resolution may vary, but the University will seek to initiate action within thirty (30) work days of the complainant's request.

## **E. Investigation**

The Title IX Coordinator will determine the most effective method of investigating the report of a violation of this Policy. The Title IX Coordinator may investigate reports of Prohibited Conduct or designate an investigator of the Title IX Coordinator's choosing to conduct a prompt, thorough, fair and

impartial investigation. Any investigator used by the College, whether internal or external, will be impartial, free from any conflict of interest, and have received annual and specific training on investigating Prohibited Conduct. Investigators do not function as advocates or support persons for complainants or respondents. Investigators may, however, identify issues of concern and refer the parties to the Title IX Coordinator for assistance in obtaining resources.

The College will afford both the complainant and respondent a full and fair opportunity to be heard, including the opportunity to identify witnesses and other evidence. The parties may choose to provide a written statement, and other supporting materials regarding the matter under review. However, it is the responsibility of the College, not the complainant or respondent, to gather the relevant evidence to the extent reasonably available. The investigator or designee will provide timely updates, as appropriate or requested, about the timing and status of the Investigation.

Both the complainant and respondent will receive written notice that an investigation has been initiated. The notice will include a concise summary of the conduct, and the potential policy violations, the name and contact information of the assigned investigator and an overview of the investigation procedures. The investigator may amend the potential charges as part of the investigative process if additional information is disclosed that would suggest the existence of additional policy violations. At the conclusion of the process, the complainant and respondent are entitled to equal and timely access to all information that will be considered in the Investigation.

In conducting an investigation, the investigator may meet separately with the complainant (if participating), respondent, and reporter (if applicable), and other pertinent witnesses. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The investigator may also consider relevant physical and medical evidence, relevant communications between the parties, and other relevant information offered by either party or discovered independently by the investigator.

In general, a party's medical and counseling records are confidential and not accessible to the investigator unless a party voluntarily chooses to share those records with the investigator. Any records shared with the investigator will become part of the investigative file and available for review by either party. The investigator may consult an expert to evaluate the relevance and probative value of any medical or counseling records.

All parties and witnesses are expected to provide truthful information in any proceeding under this policy. Knowingly providing false or misleading information is a violation of College policy and can subject a student or employee to disciplinary action. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

The investigator will determine the relevance of any proffered information. In general, the investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait, including honesty or chastity.

Complainants or respondents may choose to participate or decline to participate in the process. However, even if a complainant or respondent declines to participate, the College may continue to

investigate the matter and issue findings based on available information. Absent compelling circumstances, witnesses, both students and employees, are expected to participate in the process.

The investigator and Title IX Coordinator have the discretion to consolidate multiple reports against a respondent into one Investigation and resolution if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident.

The College will maintain appropriate investigative files and will document the provision of interim measures, investigative steps and information gathered in the Investigation.

## **F. Evidence of Prior Sexual History or Pattern Evidence**

The complainant or respondent's character or reputation with respect to other sexual activity is never relevant and will not be considered as evidence. However, prior sexual history may be considered under the following circumstances:

(1) Where there was a prior or ongoing relationship between the complainant and respondent, and the respondent asserts that consent was sought and given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of the policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.

(2) Where there is evidence of a pattern or conduct similar in nature by the respondent, either before or after the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant to the investigator or Hearing Board's determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the prior or subsequent incident was substantially similar to the present allegation or the information indicates a pattern of behavior and substantial conformity with that pattern by the respondent.

(3) In addition, other conduct by either party may, under limited circumstances, be relevant to establish intent, motive, absence of mistake, to explain an injury or physical finding, or another ground deemed probative by the investigator.

If either party wishes to bring forth information concerning the other party's sexual history, other acts or pattern evidence in the hearing, such information must be brought to the attention of the investigator during the Investigation. Where the investigator intends to consider evidence of prior sexual history as part of the Investigation, the investigator will provide written notice to the parties and allow them the opportunity to challenge its inclusion. The investigator may consult with the Dean of Students or Title IX Coordinator in making the determination of relevance or probative value. Relevant evidence of prior sexual history must be based on direct information, not rumor, hearsay, speculation or conjecture.

## **G. Acceptance of Responsibility**

If a student respondent admits to a violation, the Title IX Coordinator in their discretion may forego an investigation and refer the matter directly to the Hearing Board to issue a sanction as described in the Hearing Process section of the Policy.

If a faculty or staff respondent admits to a violation, the Title IX Coordinator in their discretion may forego an investigation and refer the matter directly to adjudication pursuant to the Gender-Based and Sexual Misconduct Adjudication Process for Staff and Faculty Respondents section of this Policy.

## **H. Withdrawal or Report**

If a complainant or reporter withdraws the report, the Title IX Coordinator will assess whether sufficient evidence of misconduct exists to support completing an investigation. The Title IX Coordinator will consider the factors set forth in the section regarding Review of Complainant Requests for Anonymity or Not to Proceed with Investigation in making this determination, including whether prior reports have been made against the respondent and whether there may be an ongoing health or safety threat to the College community. The College's decision to proceed in investigating a student member of the community when the complainant or reporter has withdrawn the report shall be made by the Title IX Coordinator but will take the complainant's wishes into consideration. If the Title IX Coordinator determines that no action will be taken against the respondent because the report has been withdrawn, a file concerning the withdrawn report will be maintained by the Title IX Coordinator, so that the matter can be re-opened if, among other things, independent evidence of misconduct by the respondent comes to the College's attention, which the Title IX Coordinator determines warrants re-opening the investigation.

## **I. Standard of Proof**

Findings of responsibility for conduct prohibited by this Policy will be made using the preponderance of the evidence standard. This standard requires the information supporting a finding of responsibility to be more convincing than the information in opposition to it. Under this standard, individuals are presumed to not have engaged in prohibited conduct unless a preponderance of the evidence supports a finding that the prohibited conduct occurred and the respondent was responsible for it.

## **J. Advisors**

Throughout the process, both the complainant and the respondent have the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. The advisor may be any individual selected by the complainant or respondent, including an attorney at the party's own expense. The advisor shall have no active participation role during any meeting or proceeding related to the review of the reported gender-based or sexual misconduct and is there solely to observe, provide support and advise the complainant or respondent. To serve as an advisor, the individual will be required to meet with the Title IX Coordinator or designee in advance of participating in the Investigation to understand the expectations of the role, privacy, and appropriate decorum. The Title IX Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. Any person who serves as an advisor should plan to make themselves available for meetings

throughout the process, as the advisor's unavailability will not serve as a basis to significantly delay the proceedings.

## **K. Timeframe for Resolution**

Upon receipt of a report, the College will strive to complete the investigation and disciplinary process within sixty (60) calendar days. The time for any appeal is not included in the sixty (60) days. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fairness with promptness. In general, any timeframe in this Policy may be extended for good cause, described below, with notice to the complainant and respondent of the delay and the reason for the delay.

For the purposes of this Policy, a "work" day is a day where the College is open and conducting regular College operations. Work days do not include weekends, holidays that close the College, and days where emergency conditions result in College closure.

Timeframes may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, comply with a request by law enforcement for temporary delay to gather evidence for a criminal investigation, accommodate the availability of witnesses, account for College breaks or vacations, account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Title IX Coordinator will notify the parties in writing of any extension of this timeframe and the reason for such extension.

## **IX. INVESTIGATION PROCEDURES AND FINDINGS FOR STUDENT RESPONDENTS**

### **A. Preliminary Investigation Report**

Once an investigation is completed, the investigator will prepare a preliminary written Investigation Report, with a summary and synthesis of the relevant facts determined through the Investigation, but without findings. The Investigation Report will include summaries of interviews with the complainant, respondent, reporter, any witnesses and refer to or attach other relevant information reviewed by the investigator, including, but not limited to, photographs of relevant sites, physical and medical evidence (as available), and communications between the parties. Both parties will have equal and timely access to all information gathered in the Investigation that will be used in the resolution of the report.

The investigator shall submit the preliminary written Investigation Report to the Title IX Coordinator for review. The Title IX Coordinator may suggest additional clarification, the gathering of additional evidence, or other changes as appropriate. If the Title IX Coordinator conducts the investigation, the Title IX Coordinator shall submit the draft written Investigation Report to the Chief Diversity Officer.

Both the complainant and respondent will have the opportunity to submit comments, feedback, any proposed corrections and any additional information, including the identity of additional witnesses or

evidence for the investigator to pursue to the investigator within five (5) workdays after receiving the draft for review.

## **B. Final Investigation Report**

Following the receipt of any proposed corrections, or after the five (5) day review period has lapsed without comment, the investigator will conduct any additional investigation as appropriate, consult with the Title IX Coordinator, and prepare a final Investigation Report that includes the investigator's findings, by a preponderance of the evidence, as to whether the respondent violated any provisions of the Smith College Gender-Based and Sexual Misconduct Policy and the rationale in support of the findings.

The investigator's final written Investigation Report will generally contain, at a minimum:

1. A summary of the investigation;
2. The investigator's findings, and
3. A summary of the investigator's rationale in support of the findings.

The Title IX Coordinator will review the final Investigation Report and send a summary of the findings simultaneously to the complainant and respondent. Both parties will have the opportunity to view the final Investigation Report. A complainant who has declined to participate in the Investigation will be provided with all notice and related correspondence, unless they notify the Title IX Coordinator that they do not wish to receive such correspondence.

Where the Title IX Coordinator serves as the investigator of a violation of this Policy, the Vice President of Inclusion, Diversity and Equity will assume responsibility for the oversight of the investigation, including review of the draft and final Investigation Report.

After the investigation concludes, the Title IX Coordinator will refer the matter for resolution as appropriate in accordance with this Policy. Except for reports that are eligible for the Voluntary Resolution section of this Policy, reported violations of this Policy by a student respondent will be resolved in accordance with the Gender-Based and Sexual Misconduct Hearing Process for Student Respondents and reported violations of this Policy by a faculty or staff respondent will be resolved in accordance with the Gender-Based and Sexual Misconduct Adjudication Process for Staff and Faculty.

## **X. GENDER-BASED AND SEXUAL MISCONDUCT HEARING PROCESS FOR STUDENT RESPONDENTS**

### **A. Acceptance or Rejection of Investigation Report**

If the complainant and the respondent both accept the findings in the Investigation Report and the report contains a finding of responsibility of the respondent for violating the Policy, the matter will be referred to the Hearing Board to determine appropriate sanctions. If either or both the complainant or respondent reject the findings in the Investigation Report and request a hearing, the investigator's determination as to responsibility (or non-responsibility) will be reviewed by the Hearing Board in

accordance with the Gender-Based and Sexual Misconduct Hearing Process for Student Respondents to determine if the respondent is responsible for a violation of this Policy. The complainant and respondent must request a hearing in writing to the Title

IX Coordinator within three (3) work days of the receiving the Investigation Report.

## **B. Hearing Board Composition**

Hearings to address reports of gender-based or sexual misconduct shall be conducted by the Hearing Board, except that the Dean of Students may conduct a hearing if a full Hearing Board cannot reasonably be convened. The Hearing Board for a particular hearing is comprised of three persons who are drawn from a pool of trained individuals from within the Five College Consortium community. The composition of the panel will be determined by the Dean of Students and may consist of faculty and staff from other members of the Five College Consortium. No College students shall serve on the Hearing Board.

All Hearing Board members will receive annual training regarding issues relating to gender-based and sexual misconduct, including how to conduct a hearing process for a report of gender-based and sexual misconduct, as well as training on the College's policies and procedures. The Dean of Students or designee will serve as the non-voting chairperson and advisor to the Hearing Board.

## **C. Notice of Hearing**

The Dean of Students or designee will deliver a written Notice of Hearing to the complainant and the respondent electronically or by hand delivery. The Notice of Hearing will identify the date, time and place of the hearing and identify the persons serving on the Hearing Board. The Notice of Hearing will be sent at least seven (7) calendar days prior to the hearing date.

## **D. Pre-Hearing Procedures**

### **1. Meeting with Complainant and Respondent**

As soon as possible after issuing the Notice of Hearing, the Dean of Students or designee will seek to meet individually with complainant (if participating) and respondent and their respective support persons and/or advisors to discuss the hearing process and answer any questions.

### **2. Request to Reschedule Hearing**

Either party may request to reschedule the hearing for academic, health-related, or other legitimate reasons. Requests to reschedule must come directly from the complainant or respondent, must be submitted to the Dean of Students at least three (3) calendar days prior to hearing, whenever possible, and must explain the reason for the request. The Dean of Students will decide whether to grant any such request.

### **3. Request to Remove Board Member**

The complainant and respondent may submit written requests to the Dean of Students asking that a member of the Hearing Board be removed if the complainant or respondent believes there are reasonable articulable grounds of actual bias or conflict of interest, or otherwise an inability to be fair and impartial. Absent extenuating circumstances, the written request must be received by the Dean of Students within three calendar (3) days following delivery of the Notice of Hearing and must identify the grounds for the requested removal. The Dean of Students will decide whether to grant any such request.

If the Dean of Students removes a member of the Hearing Board in response to a request from the complainant or respondent, the Dean of Students will issue an updated Notice of Hearing identifying the new board members. The complainant and the respondent will have the opportunity to review the request in accordance with this section, and the process will repeat until a three person panel is formed.

## **E. The Hearing Process**

The complainant (if participating) and respondent will both have the opportunity to appear in person before the Hearing Board on the date and time designated on the Hearing Notice and may present an oral statement to the Hearing Board regarding the reported violation(s) of the Policy. The complainant(s) and respondent(s) will not be present at the hearing at the same time. The complainant and respondent will be given the opportunity to hear the other party's statement by audio or video means, but not in person. If the complainant or respondent are unable or choose not to attend the hearing, the hearing will proceed even in the absence of one or both of the parties. The investigator must also appear before the Hearing Board.

The Hearing Board will be provided with a copy of the Investigation Report in sufficient time before the hearing to allow a thorough review. During the hearing, the Hearing Board may ask questions of the investigator, complainant, and respondent regarding the reported violation(s) of the Policy.

The complainant and respondent may not directly question one another or the investigator during the Hearing. The complainant and respondent may submit proposed questions for the other party to the Hearing Board. The Hearing Board will review the questions and determine, in its discretion, whether to ask the questions.

In lieu of or in addition to appearing at the hearing, either party may also submit to the Hearing Board a written statement outlining their understanding of what occurred, the impact it has had on them, or other information relevant to the Hearing Board's decision regarding whether the respondent was responsible for violating the Policy and/or appropriate sanctions for such violation.

## **F. Standard of Review**

The Hearing Board will review the final Investigation Report to determine whether (1) the investigation was conducted in a fair, impartial and reliable manner, (2) the information is sufficient to support the factual findings, and (3) there is a rational basis, applying a preponderance of the evidence standard, for the recommended finding(s) of responsibility or non-responsibility. In conducting this review, the

Hearing Board may accept or reject the investigator's finding in whole or in part, may request that further investigation be undertaken by the same or another investigator, and/or may request that a de novo investigation be conducted. The Hearing Board may not conduct its own investigation.

## **G. Hearing Outcome**

After the Hearing Board has concluded its review of the final Investigation Report, any attachments to the Investigation Report, the statements of the complainant and respondent, the responses to any questions posed during the hearing, and any additional information shared at the hearing, the Hearing Board shall either affirm or reject the investigator's finding(s).

If the Hearing Board concludes that the respondent violated College policy, the Hearing Board will determine sanctions in accordance with the Sanctions section below.

## **H. Sanctions**

If the Hearing Board finds the respondent responsible for violations of the Gender- Based and Sexual Misconduct Policy and/or other College policies, or if the parties both accept an investigator's finding of a violation of College policy, the Hearing Board will evaluate appropriate sanctions to address the misconduct, prevent its recurrence, and remedy its effects. Some behavior is so harmful to the College community or so deleterious to the educational process that it may require serious sanctions or interventions, such as removal from College housing, removal from specific courses or activities or suspension or expulsion from the College.

In determining the appropriate sanction(s), the Hearing Board may consider a number of factors including: the harm suffered by the complainant; the risk to either the complainant or the community posed by the respondent; the impact of the violation(s) on the College community; any previous conduct violations by the respondent; any mitigating or aggravating circumstances; and the information contained in any written statement submitted by the complainant and respondent to the Hearing Board in accordance with the Hearing Process. The Hearing Board may consult with the Title IX Coordinator or designee in reaching its determination of appropriate sanctions.

Following is a list of all possible sanctions for student respondents:

- **Formal Reprimand:** A formal written censure that the student has violated College policy and that future violations of College policy may result in further disciplinary action, up to, and including, suspension or expulsion from the College.
- **Disciplinary Probation:** This sanction will be in effect for a specified period of time determined by the Hearing Board. Should a student be found responsible for another violation of this Policy or of the Code of Student Conduct during the probationary period, the Hearing Panel will be made aware of the student's standing on disciplinary probation and may impose additional sanctions to reflect a repeated offense. A student's status on disciplinary probation may have an impact on their ability to participate in certain activities connected with or related to the College both on and off campus.

- **Apology:** Letters of apology to individuals, houses, and/or the entire Smith community designed to help the respondent assess the effects of their policy violation(s). These letters will be maintained as part of the respondent's disciplinary record for as long as the record is maintained.
- **Loss of authority:** Removal from appointed or elected office or position of authority.
- **Restriction from employment at the College:** Prohibition of, or limitation of College employment.
- **Restorative Project:** A project specifically designed to lead the Respondent to understand the harm done to the complainant and the community, to accept the responsibility for that harm, and to repair that harm, if possible.
- **College House Transfer or College House Removal:** Placement in another room or College house, or removal from a College house. Housing transfers or removals may be temporary or permanent depending on the circumstances.
- **Professional Assessment:** Completion of a professional assessment that could help the student or the College ascertain the student's ongoing supervision or support needed to successfully participate in the College community. The cost of professional assessment will be paid by the respondent.
- **Removal from specific courses or activities:** Suspension or transfer from courses or activities sponsored by or affiliated with the College for a specified period of time.
- **Removal or non-renewal of College sponsored academic scholarship.**
- **No Contact Directive:** Restriction from entering specific College areas and/or from all forms of contact with certain person(s).
- **Suspension:** The rights and privileges of being a student at the College are suspended for a specified period of time. The individual may not participate in academic or extracurricular activities, is required to leave Smith's campus, and restricted from College property. As part of the suspension, a respondent who later seeks re-admittance to the College may be required to complete a project specifically designed to help the respondent assess the violation(s) of College policy, and to prevent recurrence of the behavior.
- **Dismissal:** The respondent is no longer a student at Smith College and must leave the campus. An individual who has been dismissed from the College may be eligible to apply for readmission, but should not expect the application to be considered for a minimum of one full semester after dismissal. The individual seeking readmission may be required to provide supporting documentation sufficient to satisfactorily demonstrate to the College readiness to resume the college career and fulfill standards of responsible conduct and citizenship at Smith. The College may deny any application for readmission in its discretion.
- **Permanent separation:** The respondent is no longer a student at Smith College and must leave the campus. The student is not eligible for readmission.

In addition to the sanctions imposed on the respondent, the College may initiate additional corrective action or remedial measures in response to a report to seek to eliminate the misconduct identified in

the report, prevent its recurrence, or remedy its effects. Examples of additional actions may include, but are not limited to, the following:

- Requesting or requiring a College entity or organization to conduct training for its staff or members;
- Making involved parties aware of available academic support services;
- Making involved parties aware of available counseling or medical services;
- Arranging, where possible, for a party to re-take or withdraw from a course without penalty, and;
- Revising College policies, practices or services in light of information learned about climate, trends, patterns and culture.

#### **I. Notice of Outcome**

Generally, the Hearing Board will notify the Dean of Students of the result of the hearing and any sanction(s) imposed. The Dean of Students will then simultaneously send the respondent and the complainant written notice of the outcome of the hearing and sanction(s) within three (3) work days from the date the Hearing Board notifies the Dean of Students that it has concluded its deliberations, absent extenuating circumstances.

The notice of outcome will include the findings, the sanction, the rationale for each, and the time frames and process for appealing the outcome.

#### **J. Appeal Process**

Either party may appeal within seven (7) calendar days of receiving notice of the outcome from the Dean of Students. The appeal must be made in writing to the Dean of Students and must explain the grounds for the appeal. If either the respondent or complainant appeals, the Dean of Students will notify the other party in writing that an appeal has been submitted, and the other party will have three (3) work days to submit a response in writing if they choose to do so.

#### **K. Grounds for Appeal**

The only grounds for appeal are (1) new evidence that was not available at the time of the hearing, and (2) a substantial error in procedure that substantially affected the outcome of the hearing. Disagreement with the Hearing Board's decision or sanctions is not, by itself, grounds for an appeal.

#### **L. Scope of Review**

The appeal is an impartial review of the information considered by the Hearing

Board. The appeal is not a new investigation of the report. The Appeal will be heard by The Dean of the College, who is a trained and impartial adjudicator. The Dean of the College may affirm, reject or modify

the decision of the Hearing Board, or may direct the Hearing Board to reconsider certain findings. The Title IX Coordinator will communicate the outcome of the appeal to the parties within three (3) work days.

#### **M. Records Maintained**

An audio-recording of the hearing and any documents or other evidence presented at the hearing will serve as the record of the hearing proceedings and will be maintained by the Dean of Students as part of the respondent's conduct record for as long as the conduct record is maintained. Notes and records of the proceedings will be disposed of after the appeal period has expired.

If a student has been found responsible by the Hearing Board for violating this Policy, the violations will be considered by the College in the review of any later reported conduct issues by the respondent, including the evaluation of appropriate sanctions if the respondent is found responsible for subsequent violations of College policies.

#### **XI. GENDER-BASED AND SEXUAL MISCONDUCT RESOLUTION PROCESS FOR STAFF AND FACULTY RESPONDENTS**

When the investigator has completed the investigation, the findings will be shared with the complainant and the respondent. It may also be shared with other College administrators on a need-to-know basis and to the extent appropriate in the discretion of the Title IX Coordinator and in consultation with appropriate College administrators.

If the investigator reaches a finding that a faculty or staff respondent violated this Policy, the College will take corrective action appropriate to the circumstances. The list of all potential corrective actions includes written warnings, required counseling, training, probation, suspension, or termination, and other such other forms of disciplinary action as the College deems appropriate. Both the respondent and the complainant will receive written notice of the final outcome of the College's review and written notice of corrective action imposed on the respondent. There is no right to appeal.

#### **XII. TRAINING, PREVENTION AND AWARENESS PROGRAMS**

The College provides training to students and employees to ensure they understand this Policy and the topics and issues related to maintaining an education and employment environment free from harassment and discrimination.

The College is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming as part of their orientation, and returning students and current employees receive ongoing training and related education.

#### **XIII. COMMITMENT TO ACADEMIC FREEDOM**

**As an academic institution, teaching, conducting research, and learning are subject to the protections of 'academic freedom' as described in the College's Statement on Academic Freedom and Freedom of Expression. Actions or words used in the context of the academic curriculum and teaching environments that serve legitimate and reasonable educational purposes will not be evaluated as sexual harassment or other unlawful discrimination because of the principles underlying academic freedom.**

**This policy replaces and supersedes all policies on sexual harassment and sexual assault.**

**(9/2017)**