

Sexual Respect and Title IX

The College of the Holy Cross is a community of trust based in the Jesuit tradition whose existence depends on strict adherence to standards of conduct set by its members. Among these

David Achenbach, Director of Human Resources
College of the Holy Cross
1 College Street
O'Kane Hall, Room B72
Worcester, MA 01610
508-793-3320
dachenba@holycross.edu

III. How the College Will Address Sexual Misconduct

V. College Resources and Other Community Resources

There are several departments within the College community that can be called upon to respond to incidents of behavior that could be subject to the Sexual Misconduct Policy and can serve as supports to individuals in many different ways. These resources are available to both Complaining Parties and Responding Parties.

- A. **Confidential On Campus Medical, Counseling and Pastoral Resources.** Some College resources are individuals designated as “confidential resources.” These College employees serve in professional roles in which communications are provided confidential status under the law (e.g., licensed mental health care providers, licensed medical providers, pastoral counselors and clergy) and may not report identifying information about behavior that may implicate the Sexual Misconduct Policy without the consent of the individual who supplied the information in question or otherwise in compliance with law.² However, these confidential resources are instructed to inform individuals of their right to file a complaint under the Sexual Misconduct Policy and/or with the police and may assist in that process.

The following chart is designed to assist members of the College community in understanding the different reporting obligations held by different community members. Any questions as to the reporting status of an individual should be directed to the Title IX Coordinator.

COMMUNITY MEMBER	STATUS	REPORTING OBLIGATIONS
Health Services Loyola Hall 508-793-2276 (M-F, 9:00-12:00; 1:00-5:00); Nights and Weekends: Contact the Physician On Call at 508-334-8830	Confidential (TU)	0 scn -0.001 Tc -7 96c7p6w1

COMMUNITY MEMBER

Psychologist On Call.

Employee Assistance Program (for employees only) 800-828-6025

Resource

None, except as required by law.

Faculty Ombudspersons:

ialvarez@holycross.edu, (508) 479 7246

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violence, relationship violence or stalking, or retaliation, outside of the College or in addition to a complaint filed under the College's Investigation and Resolution Procedures, contact the

In an emergency, dial 911. Immediately get to a safe place and call someone you trust.

1. **Consider Steps to Preserve Evidence.** Any person who has experienced sexual violence is encouraged to take steps to preserve evidence of the incident, as doing so may be necessary to the proof of the crime or to obtain a protective order. Your clothing and surroundings may contain valuable evidence. Try to refrain from going to the bathroom unless you save a urine specimen in a clean container. Try to refrain from drinking, showering, douching, brushing your teeth, combing your hair, changing your clothing, or straightening up anything. It is natural to want to do these things, yet it is important that a physician be able to examine you as you are from the incident. If you need to change your clothes, place each garment worn during the incident in a separate paper (not plastic) bag. If the incident involves any written or electronic communications (such as texts, pictures, videos, social media posts, phone calls) i0.011 (i)-i7(w)5 c 0 Tw 2.25 0 Td [(c)9 (t)ief* BTs4 (i)-5 (Tw 12.83)-3 (e)11 (a (h)11 (r)-Tw 11.0

except as required by law.³ You and your therapist will review confidentiality so you are able to make an informed decision about what information you choose to share.

All of the psychologists in the Counseling Center are experienced in counseling both Complaining and Responding Parties in sexual assault, dating violence and domestic violence matters. Psychological counseling is intended to help you process your emotions and thoughts related to the allegations and/or the incident. The course of treatment is determined by your needs, which may change over time. The goals of treatment may include establishing safety, regaining a sense of control, addressing depression and attending to any psychological symptoms that may result from this experience. The therapist can also make you aware of your options and support you in making important decisions.

The length of time a person is in counseling depends on many factors: circumstances of the incident; other significant events in your life; how you choose to proceed; and social supports available to you.

3. **Pastoral Counseling.** Your visits to the Chaplains' Office are confidential and no information will be released without your permission or as required by law. Holy Cross chaplains³ provide pastoral counseling for both Complaining and Responding Parties. They also work with those who have been sexually assaulted or subjected to dating or domestic violence, or accused of the same, previous to their attending the College. A chaplain can accompany individuals through their healing process by listening to their experience of what happened, affirming the dignity of the individual, and the belief that healing is possible. Questions commonly brought to pastoral counseling include: Why did God let this happen to me? Where is God now? How can I help my family and friends understand what is going on for me? Will I ever feel better again? Is it OK that I am angry with God and others? How can I restore my sense of self-esteem? Will I ever be able to forgive or do I have to forgive?
4. **Faculty Ombudsperson.** The Faculty Ombudsperson office is resource for faculty members only. The Ombudsperson is available to assist any member of the faculty with any issues related to the College, including understanding available leave and4.5201 3 (ssu)2 (e)11 (s r)9 (

- Complaint under this Policy. To make a complaint under this policy, contact the Title IX Coordinator or a Deputy Title IX Coordinator as described in Section IV.
- Criminal Report. To make a criminal complaint, dial 911 in an emergency or contact the Department of Public Safety or the Worcester Police Department as described in Section IV.C above.
- Report to Governmental Agency. To make a complaint with a governmental agency, please see Section IV.D above.

H. Additional Off-

Resources for legal advice or representation or require immigration of visa assistance:

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inequitable professional advantage or favoritism that is destructive of the working or learning environment and may raise doubts about the integrity of work performed. In addition to the prohibition of employee/student relationships described above, Holy Cross administrators, faculty, and staff should be aware that any romantic involvement with any individual, including faculty, staff, or person engaged as volunteer, intern, or independent contractor, over whom they have direct supervisory responsibility, even if consensual, is prohibited by this policy. Even when both parties have initially consented to such a relationship, it is the administrator, faculty member, or staff member who, by virtue of his/her special supervisory responsibility, will be held accountable for the unprofessional relationship or abuse of authority. The Title IX Coordinator, together with either the Vice President of Academic Affairs with respect to faculty members, or the Director of Human Resources with respect to other employees will make exceptions to this prohibition in appropriate circumstances (e.g., a dual career couple recruited to work in the same scholarly area), with implementation of any necessary measures to avoid conflicts or the appearance of conflicts of interest.

VII. How the College Will Address Unlawful Discrimination and Harassment, including Sexual Misconduct and Retaliation

The College's commitment to non-discrimination includes an assurance that the College will not tolerate unlawful discrimination or harassment on the basis of person's sex, marital or parental status, sexual orientation, gender identity or any other unlawful basis or retaliation in its community.

The College follows through on that commitment, in part, through the implementation of its Sexual Misconduct Policy and Process for Investigating and Resolving Complaints. These policies and procedures apply to all College community members, and all members of the College community are responsible for being familiar with and abiding by them at all times.

A. Definitions of Prohibited Conduct Under the College of the Holy Cross Sexual Misconduct Policy

The following are the definitions of conduct that is prohibited under the College's Sexual Misconduct Policy. If you have any questions about the definition or application of any of these terms, the Sexual Misconduct Policy in general, or the resources available to you as a member of the College community, please contact the Title IX Coordinator or a Deputy Title IX Coordinator. The contact information for these individuals, as well as other individuals at the College who can provide support is provided in Sections IV and V.

Sex Discrimination. An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's sex, marital or parental status, sexual orientation or gender identity. Discrimination may be classified as either disparate impact (facially neutral practices that fall more harshly on one group than another and cannot be justified by business necessity) or disparate treatment (treatment of an individual that is less favorable than treatment of others based upon unlawful discriminatory reasons.)

Sexual Harassment

Sexual harassment consists of two basic types:

Quid Pro Quo Harassment: Any action in which submission to or rejection of unwelcome conduct of a sexual nature is made either explicitly or implicitly a term or condition of an individual's education, grades, recommendations, extracurricular programs or activities, or employment opportunities.

Intimidating or Hostile Environment: Any unwelcome conduct of a sexual nature that is severe, persistent, or pervasive, and creates an intimidating, hostile or offensive working or educational environment, or has the purpose or effect of unreasonably interfering with an individual's employment, academic performance, education, or participation in extracurricular programs or activities.

In either type of sexual harassment noted above, the effect will be evaluated from both a subjective perspective, as well as the objective perspective of a reasonable person in the position of the person who experienced the conduct.

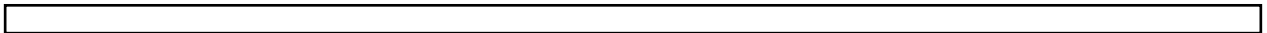
Engaging in other conduct which is prohibited by this Policy (e.g., recording the proceedings) or failure to comply with a duty or obligation set forth in, or imposed pursuant to, this Policy (e.g., duty of honesty, duty of cooperation or duty to report).

B. Process for Investigating and Resolving Complaints

This process describes how the College will investigate a report that an individual has engaged in conduct that could violate the College of the Holy Cross Sexual Misconduct Policy, and determine what, if any, safety measures and/or disciplinary sanctions are appropriate.

1. Initial Steps; Interim Measures

After receiving a report of conduct that could fall under the Sexual Misconduct Policy, the Title IX Coordinator or his or her designee⁵ will take a number of initial steps. These initial steps are not an investigation. Rather, these initial steps will enable the College to assess the need to take any immediate action to address the safety and health needs of the Complaining Party⁶ and the College community, and



with an interim restriction is a violation of this Policy and may lead to additional disciplinary action. The decision to impose interim restrictions will be communicated by the Title IX Coordinator in writing and will be effective immediately.

- (c) The Title IX Coordinator will notify the Complaining Party about: (a) the availability of the Sexual Misconduct Policy; and (b) the right to report and the right to decline to report the matter to Department of

appropriate College administrators. A Party may withdraw from the informal resolution process at any time.

The Title IX Coordinator may initiate an investigation at any time that deems it appropriate in his or her sole discretion.

3. The Investigation Phase

(a) **Notice of an Investigation.** If it is determined that the reported conduct could trigger the Sexual Misconduct Policy and an investigation is required, the Title IX Coordinator will prepare a written notice to the Complaining Party and Responding Party that will include a brief description of the allegations, the portions of the this Policy that are alleged to have been violated, and any interim measures in place about which either Party must be made aware. This written notice does not constitute a finding or a determination of responsibility.

(b) **Information about Advisors in Connection with Allegations of Sexual Violence, Other Inappropriate Sexual Contact, Relationship Violence and Stalking.** In connection with an allegation of sexual misconduct involving sexual violence, other inappropriate sexual contact, relationship violence or stalking⁷, each Party, including any Reporting Party, may have a single advisor of such Party's choice present during any College disciplinary proceeding, including any related meeting, interview, or hearing, held pursuant to the Sexual Misconduct Policy. Advisors may not participate actively while present at any disciplinary proceeding and may not speak or otherwise communicate on the part of the Party that the advisor is advising. However, the advisor may ask to suspend any meetings, interviews, or hearings briefly to provide private consultation related to the disciplinary proceeding in progress. An advisor is subject to the same confidentiality expectations applicable to others

discretion, the investigator may be an internal or an external investigator and more than one investigator may be assigned. All investigators – internal or external – will be selected from a group of qualified and trained individuals employed by the College or engaged by the College for the purpose of conducting investigations under the Sexual Misconduct Policy. The Title IX Coordinator will provide the Parties with the name of the person(s) assigned to investigate the reported conduct (the “Investigator(s)”). As soon as possible, but no later than three (3) calendar days after delivery of the identity of the Investigator(s), the Parties should inform the Title IX Coordinator (in writing) of any conflicts of interest with regard to the selected Investigator(s). The Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The Title IX Coordinator’s decision regarding any conflicts is final. The Title IX Coordinator may consult with other College personnel (e.g., the chair of the Committee on Faculty Affairs

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(a) Content of the Investigative Report. At the conclusion of the Investigation Phase, the Investigator(s) will prepare an Investigative Report, which should include a summary of the factual information presented during the Investigation Phase, a separate section where the Investigator(s) point out relevant consistencies or inconsistencies (if any) between different sources of information, and a separate section describing the Investigator(s)' perception of the demeanor of the individuals interviewed. The Investigative Report will not include a determination by the Investigator(s) as to whether a Party has violated the Sexual Misconduct Policy or what sanctions may be appropriate. These determinations will be made by the Determination Panel, as described below.

(b) Review by the Parties. The Parties will have an opportunity to review the Investigative Report and may submit written comments about the content of the Investigative Report to the Investigator(s) within five (5) calendar days of the date they are notified that the Investigative Report is available for review. This review will take place at a secure location and in a secure manner determined by the College. The time to submit written comments can be extended for a brief period if the Title IX Coordinator concludes, in his/her sole discretion, that the additional time is warranted. Likewise, the secure location and manner of reviewing the Investigative Report can be modified if the Title IX Coordinator deems it necessary and appropriate. Each Party may have such Party's advisor review the Investigative Report with them. Photographs or any other copies of the Investigative Report are not allowed by either Party or advisor. The comments submitted by the Parties may not exceed ten (10) double spaced pages unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Title IX Coordinator. After reviewing the submissions, if any, from the Parties, the Investigator(s) may determine that either additional investigation is required or no further investigation is needed. If further investigation is conducted, the Investigator(s) will include any additional relevant information in the Investigative Report. The Investigative Report will

who is a teaching faculty member) to assess any conflicts of interest. The Title IX Coordinator's decision regarding any conflicts is final. The Title IX Coordinator will then submit the Investigative Report to the Determination Panel members and set a subsequent date for the Determination Panel to meet to determine responsibility.

(d) Review and Determination by the Determination Panel. The Determination Panel will make a determination as to whether or not the Responding Party is responsible for violating the Sexual Misconduct Policy by having engaged in some or all of the reported conduct. The Determination Panel has the authority to accept the Investigative Report without seeking additional investigation, or to ask the Investigator(s) to conduct additional investigation on specific points. The Determination Panel, in its discretion, may invite the Investigator(s) to attend a Determination Panel meeting if the Panel believes it would be helpful to have an opportunity to ask the Investigator(s) any questions arising from the Investigative Report. The Determination Panel also has the authority, in their discretion, to speak directly with any persons identified in the Investigative Report. The Determination Panel, as the ultimate decision-maker in the matter, is provided broad discretion.

(e) Notification of Decision. Upon reaching a (h)13 5 (e)3 (c)1er(in tthetec -0.005 Tw 12.815 0 Td 1eD-6f(15)0

- the misconduct grows out of, occurs during, or is related to any activity or event sponsored, financed or endorsed by the group, organization or team;
- any leader, officer, or team captain of group, organization or team had knowledge of the misconduct or incident before or while it occurred and failed to take corrective action; and/or
- a pattern of individual misconduct by members of the group, organization or team is found to exist.

The designated student leader or leaders (e.g., president, officer(s), or team captain(s)) shall represent the student group, organization or team throughout the process. There shall be no right of individual appeal of any member of the student group, organization or team to a group sanction.

5. Determining Sanctions

(a) **Sanctioning Decision.** The College employees responsible for determining sanctions are as follows:

- (i) **Students.** Sanctions regarding students and student groups, organizations and teams will be determined by the Determination Panel. The Determination Panel, in its discretion, may ask a Student Affairs representative to appear before and address the Determination Panel regarding se sh51 (h51 (h51] ()]TJ : (h51] TJ 0 Tw w 0.239 0 Td (D)5 (e)-2 (t)6 (e)-2 (r)-4 (m)17 (

Probation 8 semesters
Suspension 1 semester
Suspension 2 semesters
Suspension 3 semesters
Suspension 4 semesters
Suspension 5 semesters
Suspension 6 semesters
Suspension 7 semesters
Suspension 8 semesters
Suspension 9 semesters
Suspension 10 semesters

Expulsion/termination of employment

Except for expulsion/termination of employment, all sanctions may be combined with one or more other sanctions listed in Section VII.B.5(b)(i) or (ii) above

- (v) **Additional Remedies.** The sanctioning authority described in Section VII.B.5(a) may also identify additional remedies to address the effects of the conduct on the impacted Party. Remedies may include extending or making permanent any interim or safety measures. If a Complaining Party declined or did not take advantage of a specific service or resource previously offered, the College may re-offer the service as applicable or necessary. The Title IX Coordinator also may consider broader remedial action for the campus community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. In addition, in the Title IX Coordinator may refer any matter raised, but not addressed hereunder, that may potentially violate any other College policy, rule, or procedure to the appropriate College officials to address such matters, irrespective of the finding under this Policy.

6. Notification of Investigation Outcome

Upon completion of Sections VII.B.4 or 5, as necessary, the Title IX Coordinator will inform the Parties simultaneously and in writing of (i) the outcome of the disciplinary proceeding; and (ii) the procedures for either Party to appeal the result of the disciplinary proceeding. The Title IX Coordinator will also inform other College officials with a legitimate educational interest about the outcome of the finding. Notice to these other individuals will be accompanied with a request that the information should remain confidential except in situations in which disclosure is necessary to protect the safety of the community.

If the alleged victim is deceased as a result of a crime involving sexual assault, other nonconsensual sexual contact, stalking, domestic/dating violence or hate crime, the next of kin of such alleged victim will be provided the notice of outcome upon written request to the Title IX Coordinator.

7. Appeals

- (a) **All Appeals (Other Than Appeals Involving a Responding Party Who Is a Teaching Faculty Member with a Recommended Sanction of Dismissal).**

Within seven (7) calendar days of the delivery of the notice of the decision of responsibility and/or sanction, either Party may appeal the decision by submitting to the Title IX Coordinator a letter stating why the Party requesting the appeal believes the determination of responsibility and/or the sanctions were inappropriate. A Party appealing uc

(b) Appeals with respect to a Responding Party who is a Teaching Faculty Member Involving a Recommended Sanction of Dismissal.

Any appeal involving a determination in which a Responding Party is a Teaching Faculty Member with a recommended sanction of dismissal of the Teaching Faculty Member will be reviewed under the *Statutes of the Faculty* only.

8. Timeframe for Completion of Investigation and Disciplinary Process

The College cannot promise the definitive timeframe of this process, but ordinarily will complete its investigation and disciplinary process, if any, within sixty (60) days of the delivery of the written notice of the investigation to the Parties. This time period does not include the time for any appeal. The U.S. Department of Education has made clear that the length of investigations may vary with the complexity and unique factors in each case. Examples of such factors include, without limitation, circumstances in which critical witnesses are unavailable or if law enforcement requests the College temporarily halt its investigation for a brief period of time. Accordingly, all timeframes set forth in this Policy may be altered by the Title IX Coordinator for good cause. The College’s overarching goal is that all complaints be investigated in a prompt, fair, and impartial manner.

9. Additional Matters

- (a) Duty of Honesty.** All Parties and witnesses are obligated to be completely honest during the course of the entire process set forth in this Policy. Any person who knowingly makes a false statement – either explicitly or by omission – in connection with any part of the process may be subject to separate College disciplinary action. A report made in good faith, however, is not considered false merely because the evidence does not ultimately support the allegation of violation of the policy.
- (b) Duty of Cooperation.** All Parties and witnesses are obligated to cooperate with the Title IX Coordinator and any persons charged with implementing the Sexual Misconduct Policy and these procedures. Any person who knowingly interferes with the actions taken to implement the reporting, investigation, or resolution of matters under the Sexual Misconduct Policy may be subject to separate and/or additional College disciplinary action.
- (c) Respect for Privacy.** The College values the privacy of individuals involved in the reporting, investigation, and/or resolution of matters subject to the Sexual Misconduct Policy. The U.S. Department of Education has provided guidance indicating that there are situations in which it may be necessary for an institution to override a request for privacy or confidentiality in order to meet its obligations under the law. In the event circumstances result in the College overriding a request for privacy or confidentiality to meet its obligations, the College will do so with the utmost sensitivity and respect for the circumstances and the individuals involved. See Section VI.A.1.

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(e) Follow-up with Reporting Party. Where the Title IX Coordinator deems appropriate, he or she may contact the Reporting Party to provide an update on the process, the timing and extent of which will be determined by the Title IX Coordinator and depend upon the nature of the allegations and the situation.

(f) Prohibition against Retaliation.

C. State Law Definitions

The following are excerpts compiled from the Massachusetts General Laws that describe how certain relevant behavior is defined in Massachusetts. These definitions are not identical to the definitions of conduct prohibited in the College's Sexual Misconduct Policy, but the College considered these definitions in developing its Policy.

Sexual Harassment

(compiled from M.G.L. Ch. 151B)

“Sexual harassment” means sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or enrollment or is used as a basis for employment or educational decisions, placement services or evaluation of academic achievement; or
- Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work or educational performance by creating an intimidating, hostile, humiliating or sexually offensive work or educational environment.

Sexual Assault (Rape, Indecent Assault & Battery)

(compiled from M.G.L. Ch. 265, § 13 & 22)

Sexual assault is defined under Massachusetts law as rape or indecent assault and battery.

Rape is defined as occurring when a person has “sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise...”

Indecent assault and battery occurs when one person touches another person in an “indecent” way. Examples of indecent assault and battery include touching a person's buttocks, breasts, or genitals without consent. The Commonwealth must prove that the defendant touched the alleged victim without justification or excuse; and that the touching was “indecent;” and that the alleged victim did not consent.

An indecent act is one that is fundamentally offensive to contemporary standards of decency.

Stalking

(compiled from M.G.L. Ch. 265, § 43)

The act of “willfully and maliciously engaging in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress and makes a threat with the intent to place the person in imminent fear of death or bodily injury.” Stalking includes, but is not limited to, acts or threats conducted by mail or by use of a telephonic or electronic communication device. Communications include, but are not limited to, electronic mail, internet communications, instant messages or facsimile communications.

Domestic and Dating Violence

(compiled from M.G.L. Ch. 209A)

“Abuse” is defined as “the occurrence of one or more of the following acts between family or household members:

- attempting to cause or causing physical harm;
- placing another in fear of imminent serious physical harm;
- causing another to engage involuntarily in sexual relations by force, threat, or duress.”

Family or household members are defined as “persons who:

- are or were married to one another;
- are or were residing together in the same household;
- are or were related by blood or marriage;
- having a child in common regardless of whether they have ever married or lived together; or
- are or have been in a substantive relationship, which shall be adjudged in consideration of the following factors: (1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.