

SMITH COLLEGE.

Interim Sexual Misconduct Policy

Approved: *President's team*

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Compliance and Title IX*

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Responsible Administrator: *Executive Vice-President for Finance and Administration*

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I. Introduction

This Sexual Misconduct Policy establishes Smith College’s policies and procedures for addressing and resolving allegations of Sex-Based Harassment and Sex-Based Discrimination under Title IX of the Education Amendments of 1972. The definitions of Sex-Based Harassment and Sex-Based Discrimination under Title IX are codified in the U.S. Department of Education’s Regulations implementing Title IX. This policy also applies to acts of retaliation as defined in the Title IX implementing regulations.

Discrimination on the basis of pregnancy or related conditions is prohibited under the College’s Policy on Pregnancy and Related Conditions. Complaints related to violations of the Policy on Pregnancy and Related Conditions will be resolved following the procedures set out in Appendix B, Adjudicating All Other Allegations of Prohibited Conduct, in this policy.

This policy applies to conduct alleged to have occurred on or after August 1, 2024. In accordance with Title IX, this policy does not apply retroactively. Reports of sexual harassment, sexual misconduct, domestic violence, dating violence or stalking that reportedly occurred between August 14, 2020 and July 31, 2024 are subject to policies and procedures set forth in the Sexual Misconduct Policy or the Gender-Based and Sexual Misconduct Policy in effect at that time.

The Title IX Coordinator, or their designee, administers this policy. All questions about this policy, including which policy applies in a specific instance, should be directed to the College’s Title IX Coordinator at 413-585-3547 or titleixcoordinator@smith.edu.

II. Notice of Nondiscrimination and Policy

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 practices on the basis of race, color, creed, religion, national/ethnic origin, sex, sexual orientation, age, genetics, or with regard to the bases outlined in the Veterans Readjustment Act and the Americans with Disabilities Act.

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

The College is committed to providing a safe learning, living, and working environment for all members of the College community. Consistent with this commitment, the College prohibits behavior identified under Title IX which includes quid pro quo sexual harassment, hostile environment sexual harassment, domestic violence, dating violence, sexual assault, stalking (collectively, “Sex-Based Harassment”). This policy also prohibits Sex-Based Discrimination, aiding or facilitating in the commission of Sex-Based Discrimination or Sex-Based Harassment, retaliation against any person for the good faith reporting of any Sex-Based Discrimination or Sex-Based Harassment and participation in any investigation or other proceeding under this policy.

These forms of Sex-Based Harassment and Sex-Based Discrimination are unlawful, undermine the character and purpose of the College, and will not be tolerated. This policy prohibits those behaviors regardless of whether they are subject to Title IX.

Employees or students who violate this policy will face disciplinary action up to and including termination or expulsion. The College will take prompt and equitable action to prevent Sex-based Harassment and Sex-Based Discrimination, discipline anyone who violates this policy, prevent further prohibited behavior, and remedy the effect of any such conduct. The College conducts ongoing prevention, awareness, and training programs for faculty, staff, and students to achieve the goals of this policy.

Every member of the College community is responsible for fostering an environment free from Sex-Based Harassment and Sex-Based Discrimination. All members of the College community are encouraged to take reasonable and prudent actions to prevent or stop any acts of Sex-Based Harassment and Sex-Based Discrimination. The College will support and assist community members who take such actions.

III. Scope

- A. This policy applies to all members of the Smith College (“the College”) community, including students, faculty, staff, registered student organizations, and third parties.
- B. This policy applies to Prohibited Conduct when that conduct occurs in the context of any of the College’s educational programs or activities within the United States. This policy applies to any activity or location off College premises if the activity is authorized, initiated, sponsored, aided, or supervised by the College or a registered student organization.
- C. This policy applies to Prohibited Conduct that occurs outside the context of College employment or a College education program or sponsored activity whenever the conduct (1) is otherwise subject to the College’s disciplinary authority or (2) has continuing adverse effects on or creates a hostile environment for students, employees, or third parties while on property owned, leased, or controlled by the College, or in any College employment or education program or activity.
- D. This policy applies to all acts of Prohibited Conduct between individuals, regardless of the sex, gender identity, gender expression, and/or sexual orientation of those individuals.

IV. Definitions

The following definitions apply to terms used in and for the purposes of this policy.

- A. *Advisor* means an advocate or other individual who may attend both an investigative meeting or live hearing to provide advice, support, or guidance to either Respondent or Complainant. An Advisor may be an attorney. An Advisor may not be a witness at the hearing of the matter for which they are serving as an Advisor.
- B. *Affirmative Consent* means a voluntary and ongoing expression of willingness, permission, or agreement to engage in a specific sexual activity throughout a specific sexual encounter.

Consent cannot be inferred from the absence of a "no"; consent, verbal or otherwise, must be obtained. 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.

It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other to engage in the sexual activity.

Consent cannot be granted by an individual who:

1. Is incapacitated as defined by this policy ;
2. Has been compelled by force or threat of force; or
3. Is subject to supervisory or disciplinary authority.

- C. *Amnesty* means a reprieve from disciplinary action for their own personal consumption of drugs or alcohol ancillary to a report or complaint of Prohibited Conduct.

Students who report Prohibited Conduct, either as a Complainant or a witness, will not be subject to disciplinary action by the College for their violation of the [Student Code of Conduct](#). Amnesty may not be granted when a report or complaint of Prohibited Conduct is not made in good faith or that the violation was egregious. An egregious violation shall include, but not be limited to, taking an action that places the health and safety of another person at risk.

- D. *Chair of the Decision-Makers* means the person designated by the Title IX Coordinator to act as the chairperson for the resolution process set forth in Appendix A. The chair does not cast a vote in the resolution process. This person may be internal or external to the College and may not be a student.

- E. *Complainant* means:

1. A student or employee who is alleged to have been subjected to conduct that could constitute Prohibited Conduct;
2. A person other than a student or employee who is alleged to have been subjected to Prohibited Conduct and who was participating or attempting to participate in the College's education program or activity at the time of the alleged Prohibited Conduct;
3. A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant.

- F. *Complaint* means an oral or written request to the College that objectively can be understood as a request for the College to investigate and make a determination about alleged Prohibited Conduct.

- G. *Confidential Employee* means:

1. An employee of the College whose communications are privileged or confidential under Federal or State law. All such employees have been identified as a Confidential Resource. The employee's confidential status, for purposes of this policy, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;

2. An employee of the College whom the College has designated as a Confidential Resource under this policy for the purpose of providing services to persons related to Prohibited Conduct. If such an employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Prohibited Conduct in connection with providing those services; or
3. An employee of the College who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee's confidential status is only with respect to information received while conducting the study.

H. *Confidential Resource* means Smith College Counseling Services, Smith College Health Services, the Director of Religious Life, the Jewish Student Advisor, the Muslim Student Advisor, and the College Ombudsperson when consulted in a privileged and/or confidential capacity regarding Prohibited Conduct, as explained in Section VI.

I. *Dating violence* meaning violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The parties' statements;
 - ii. The length of the relationship;
 - iii. The type of relationship; and
 - iv. The frequency of interaction between the persons involved in the relationship.

J. *Decision-Maker* means the individual or individuals selected by the College to make decisions related to allegations of Prohibited Conduct using the procedures outlined in Appendix A and Appendix B. Decision-makers may be internal or external and may not be students.

K. *Domestic violence* means felony or misdemeanor crimes committed by a person who:

1. Is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of the jurisdiction of the College, or a person similarly situated to a spouse of the Complainant;
2. Is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner;
3. Shares a child in common with the Complainant; or
4. Commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction.

L. *Disciplinary sanctions* means consequences imposed on a Respondent following a determination under this policy that a Respondent violated the College's prohibition on Prohibited Conduct. Supportive Measures are not a disciplinary sanction.

M. *Educational programs or activities* means any on campus or any other College owned, leased, controlled, or operated location, event, or circumstance over which the College exercises substantial control over both Respondent and the context in which the alleged violation occurred.

N. *False Allegation* means an allegation that was made in bad faith, e.g. an allegation that the person making the allegation knew to be untrue at the time it was made. The mere fact a decision-maker concluded there was no violation of this policy does not mean the allegation was made in bad faith.

O. *Incapacitated* means a person is impaired to such a level that they lack the physical and/or mental ability to make informed, rational judgments and/or cannot appraise or control their own conduct or make decisions with the degree of understanding they typically possess.

A person may be impaired by an intoxicant, by mental illness or deficiency, or by physical illness or disability to the extent that personal decision-making is impossible.

Willingness to imbibe an intoxicant does not negate incapacitation by that intoxicant. A person can be intoxicated without being incapacitated.

A person who is below the statutory age of consent is incapacitated. In the Commonwealth of Massachusetts, consent can never be given by minors under the age of 16, even if the parties involved are the same age or close in age.

P. *Making a False Statement* means providing a statement or information that the person providing such statement or information knows to be false at the time it is provided.

Q. *Party* means a Complainant or Respondent.

R. *Pregnancy or related conditions* means:

1. Pregnancy, childbirth, termination of pregnancy, or lactation;
2. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation;
or
3. Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

S. *Preponderance of the Evidence* is a standard of proof that considers whether it is more likely than not that certain facts at issue occurred, and/or whether Prohibited Conduct occurred.

T. *Prohibited Conduct* means Sex-Based Discrimination, Sex-Based Harassment (Quid Pro Quo harassment, Hostile Environment Harassment, Sexual Assault, Stalking, Dating Violence, Domestic Violence, and Sexual Exploitation), aiding or facilitating in the commission of Sex-Based Discrimination or Sex-Based Harassment, and Retaliation.

U. *Registered Student Organization* means a group of identifiable persons who have complied with the requirements for chartering a student organization as determined by the Student Government Association and the Office for Student Engagement in accordance with the [SGA Chartering Committee](#), and includes groups that are seeking but have not yet been granted registered status.

V. *Relevant* means related to the allegations of Prohibited Conduct under investigation as part of procedures described in this policy. Questions are relevant when they seek evidence that may

aid in showing whether alleged Prohibited Conduct occurred, and evidence is relevant when it may aid a decision-maker in determining whether alleged Prohibited Conduct occurred.

- W. *Remedies* means measures provided, as appropriate, to a Complainant or any other person the College identifies as having had their equal access to the College's education program or activity limited or denied by Prohibited Conduct. These measures are provided to restore or preserve that person's access to the College's education program or activity after the College determines that Prohibited Conduct occurred.
- X. *Respondent* means a person who is alleged to have violated the College's prohibition on Prohibited Conduct. If a Complaint alleges that a Smith College policy or practice has the purpose or effect of discriminating on the basis of sex, the College may investigate the Complaint without identifying an individual Respondent.
- Y. *Responsible employees* means all faculty, staff, and administrators, student employees who have a responsibility for student welfare, and student volunteers who have a responsibility for student welfare unless defined above as Confidential Employees. Employees are required to promptly report any information they become aware of about conduct that reasonably may constitute Prohibited Conduct to the Title IX Coordinator.
- Z. *Retaliation* means intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by this policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and/or the voluntary informal resolution processes described in this policy.

It is not retaliatory for the College to require an employee or other person authorized to provide aid, benefit, or service under the College's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding or hearing under this policy.

Retaliation prohibited by this policy includes action taken directly by the College, any individual Respondent, or any third party acting on behalf of an individual Respondent. Retaliation also includes retaliation by a Respondent or Respondents against a peer (i.e., student-student or employee-employee retaliation). Retaliation may occur regardless of the outcome of any proceeding described in this policy.

- AA. *Sanctioning Officer* means a person who has been designated by the College to determine and impose appropriate sanctions in matters that involve allegations of Sex-Based Harassment where one or more of the parties is a student, and where a decision-maker decides after a live hearing that the Respondent is responsible for Prohibited Conduct.
- BB. *Sex-Based Discrimination* means actions or policies that have the purpose or effect of treating a person differently and adversely because of their sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, or gender identity.
- CC. *Sexual Exploitation* means 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;
6. Exposing one's genitals in non-consensual circumstances;
7. Inducing another to expose their genitals under non-consensual circumstances;
8. Sexually exploitive non-consensual sexual contact that is not prohibited by other provisions of this policy; or
9. Causing the incapacitation of an individual for the purpose of compromising that person's ability to consent to sexual activity.

M. Sex-Based Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee or person otherwise authorized by the College to provide a benefit to the College community either explicitly or implicitly conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct. This type of sexual harassment is also referred to as Quid Pro Quo;
2. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's education program or activity. This type of sexual harassment is also referred to as hostile environment; or
3. Sexual Assault, Dating Violence, Domestic Violence, and Stalking (as defined in the uniform crime reporting system of the Federal Bureau of Investigation), or Sexual Exploitation.

EE. *Sexual assault* is a form of Sex-Based Harassment and means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual Assault means:

1. The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity;
2. Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity;
3. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity;
4. Fondling, that is, the touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the

victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity;

5. Incest, that is, nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and
6. Statutory Rape, that is, nonforcible sexual intercourse with a person who is under the statutory age of consent.

FF. *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's safety or the safety of others; or
2. Suffer substantial emotional distress.

Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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, for example, make unwelcome contact with another person.

This definition of Stalking includes behavior that does not occur on the basis of sex.

GG. *Supportive measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

1. Restore or preserve that party's access to the College's education program or activity, including measures that are designed to protect the safety of the parties or the College's educational environment; or
2. Provide support during the College's grievance procedures or during a voluntary informal resolution process.

HH. *Title IX Coordinator* means the College official responsible for ensuring compliance with Title IX, including investigating complaints of Sexual Harassment, resolving potential violations informally, and facilitating the hearing process. The Title IX Coordinator may delegate various functions described in this policy, therefore, references to the Title IX Coordinator throughout this policy should also be read as "Title IX Coordinator or designee."

II. *Third Party* means any individual not associated with the College and includes but is not limited to applicants for employment, applicants to any educational program or activity, and individuals visiting campus for any reason.

V. Prohibited Conduct

- A. Every member of the College community is prohibited from:
1. Engaging in or attempting to engage in Prohibited Conduct;
 2. Retaliating in any manner against an individual who makes a complaint or participates in the investigation of a complaint of Prohibited Conduct;
 3. Interfering with procedures to investigate or redress a complaint of Prohibited Conduct;
 4. Making a knowingly false statement or knowingly presenting false information during the investigation or hearing of a complaint of Prohibited Conduct; and
 5. Making an intentionally false accusation of Prohibited Conduct through the College's procedures.
- B. Faculty and Staff, with the exception of student employees, are prohibited from engaging in romantic or sexual relationships with students, even if said relationships are seemingly consensual. Additional information may be found in the [Policy on Sexual Relationships Between Faculty and Students](#).
- C. Any member of the College community who engages in one of these prohibited acts against any other member of the College community may be subject to corrective action and appropriate sanctions.

VI. Confidential Employees, Confidential Resources, and Reporting

The College respects the confidentiality of parties and has established confidential resources and confidential reporting structures. The College protects the confidentiality of parties as required by law and as described in this Section. Confidential Employees and Confidential Resources provide confidential services to students and employees. The College will not disclose the identity of the parties to third parties except as necessary to carry out the procedures outlined in this policy or as permitted under state or federal law.

Questions about privacy, confidentiality, and employee reporting responsibilities, or the College's potential responses to a report, should be directed to the College's Title IX Coordinator. Notice to a College Confidential Resource of an alleged act of Prohibited Conduct or to a College Confidential Resource's performance of a service under this section shall not be considered actual or constructive notice to the College of such an alleged act, whether the College Confidential Resource is an employee or is providing contracted services.

- A. Reporting to a Confidential Employee or Confidential Resource. Reports made to Confidential Employees or Confidential Resources are confidential and will only be disclosed:
1. with the patient's or client'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;
 4. as required by state or federal law; or
 5. as required by the College's contracts with vendors.

These employees and 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 Prohibited Conduct to a College Confidential Resource, that confidential resource will not disclose to College officials any identifying information about the person subject to the alleged misconduct or the person alleged to have committed the misconduct.

B. Confidential Resources and Support. The College offers the following on campus College Confidential Resources:

1. Smith College Counseling Services, for counseling services, free of charge. Counselors can be seen on an emergency basis during the academic year. Contact Information: 413-585-2840.
2. Smith College Health Services for medical assistance and referrals. Contact information: 413-585-2811.
3. The Director of Religious Life, the Jewish Student Advisor, and the Muslim Student Advisor. Contact Information: 413-585-2750.
4. Employees may make a confidential report to the College Ombudsperson: cyurgelun@smith.edu or 413-585-7953.

C. Reports to law enforcement or state agencies. Confidential Employees and Confidential Resources are required to provide Campus Security with limited non identifying information 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.

Confidential Resources and Confidential Employees are not required to report an incident to the College or a law enforcement agency unless otherwise required to do so by state or federal law. College Confidential Resources and Confidential Employees will not share identifying information with law enforcement or any state agencies unless the report discloses the abuse of minors, suggests that the reporter or someone else presents a threat or imminent harm to themselves or others, or as otherwise required by state or federal law.

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.

D. Information provided to reporting individuals. If an individual discloses information to a College Confidential Resource and/or Confidential Employee within the scope of their roles about conduct that reasonably may constitute Prohibited Conduct, such employees will and must explain the following to the patient/client:

1. The employee's status as confidential for purposes of this policy, and that they will not report information about conduct that reasonably may constitute Prohibited Conduct to the Title IX Coordinator without the individual's permission;
2. How to contact the Title IX Coordinator and how to make a complaint of sex discrimination;

3. That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate a voluntary informal resolution process or an investigatory resolution process under this policy;
4. That requesting or asking the Confidential Resource to request supportive measures (e.g., a request to change an academic, living, campus transportation or working situation in response to alleged Prohibited Conduct) does not initiate a formal complaint process, and does not require the patient/client to file a formal complaint under this policy;
5. Reporting options and the effects of each option;
6. Counseling services available on campus and through a local, community-based rape crisis center or domestic violence program;
7. Medical and health services available on campus and off campus;
8. The College's disciplinary process;
9. The legal process carried out through local law enforcement agencies;
10. Provide notice of their rights;
11. Provide notice of the institution's responsibilities regarding a protection order, no contact order and any other lawful orders issued by the institution or by a criminal, civil or tribal court.

E. Training and authority. College Confidential Resources will receive training on the awareness and prevention of sexual misconduct and in trauma-informed response, and will assist the reporting party with requested Supportive Measures including:

1. Coordinating with any on-campus and off-campus sexual assault crisis service center or domestic violence program;
2. If directed by the reporting party, contacting campus or local law enforcement;
3. Contacting the appropriate College personnel to arrange interim College-based Supportive Measures as described in this policy. Supportive Measures do not require a report to the Title IX Coordinator.

A College Confidential Resource may attend meetings and proceedings under this policy as the Advisor of the student's or employee's choice.

F. Limitations for Confidential Resources. A College Confidential Resource will not act as a counselor or therapist unless the confidential resource provider holds a valid and applicable license under Massachusetts law and the reporting party engages the confidential resource provider in that capacity. The privileges available under Massachusetts law shall apply to all information received by a confidential resource provider.

A College Confidential Resource will not provide services to adverse parties in an incident of Prohibited Conduct and shall ensure confidentiality is maintained.

Unless otherwise required by state or federal law, a College Confidential Resource will not disclose confidential information without the prior written consent of the reporting party who shared the information; provided, however, that nothing in this section shall limit a responding party's right of cross examination of the College Confidential Resource in a civil or criminal proceeding if the College Confidential Resource testifies after being given written consent to do so by the party. A confidential communication shall not be subject to discovery and shall

be inadmissible in a criminal or civil proceeding without the prior written consent of the party who shared the information.

Information provided to College Confidential Resource shall not be released to a campus official or law enforcement officer or agency unless written consent has been given by the reporting party.

- G. Conflict of Interest. If a conflict of interest arises for an institution in which a College Confidential Resource is advocating for the reporting party's need for sexual assault crisis services or campus or law enforcement services, the institution shall not discipline, penalize or otherwise retaliate against a Confidential Resource for representing the interest of the reporting party.
- H. Off-Campus Confidential Resources
1. [UMass 24-Hour Sexual Assault Support & Advocacy SASA Hotline](#): 413-545-0800.
 2. [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 crisis center websites.
 3. [Safe Passage](#): provides a variety of support and advocacy services for women and children who have experienced domestic violence; 76 Carlon Drive, Northampton, Mass. Phone: 413-586-1125. Hotline: 413-586-5066 or TTY/TTD: 888-345-5282. General email: info@safepass.org.

VII. Reporting Prohibited Conduct

- A. Distinction between a Report and Complaint. A report of Prohibited Conduct is not the same as a Complaint. A report is notification to the College that an individual believes Prohibited Conduct occurred. Individuals can make a report and receive supportive measures without filing a Complaint. Making a report does not automatically initiate a Complaint.
- B. Submitting a Report: Any person may report Prohibited Conduct, regardless of whether the person reporting is the person alleged to be the person who experienced the conduct that could constitute Prohibited Conduct, and regardless of where the incident occurred.

An incident may be reported without filing a written report. Individuals who need assistance filing a report may contact the Office for Civil Rights Compliance and Title IX at 413-595-3547.

A report may be submitted using [Maxient](#) or [EthicsPoint](#), in person, by mail, by telephone or by electronic mail using the contact information listed for the Title IX Coordinator.

Such a report may be submitted at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Title IX Coordinator
Office for Civil Rights Compliance and Title IX

413-585-3547
titleixcoordinator@smith.edu

Anonymous reports may be submitted to the Office for Civil Rights Compliance and Title IX using any of these methods. However, the College has limited ability to address anonymous reports.

Reports may also be submitted to any Responsible Employee who will refer such reports to the Title IX Coordinator. Incidents that occur abroad may be reported to the [Lewis Global Studies](#) or directly to the Title IX Coordinator.

A person reporting Prohibited Conduct may be eligible for amnesty. Questions related to amnesty should be directed to the Title IX Coordinator. Amnesty is further defined above.

- C. Timeline for Reporting. The College encourages individuals to report Prohibited Conduct 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.
- D. Responsible Employees. Responsible Employees are not confidential and are not permitted to hold a report in confidence. Any Responsible Employee who witnesses or is made aware of an incident of Prohibited Conduct must report it to the Title IX Coordinator as soon as possible. Failure of Responsible Employees to report an incident of Prohibited Conduct in a timely manner may result in corrective action, up to and including termination of employment.

Information related to a report will be shared only with employees or external entities who have a legitimate interest related to the performance of their job duties as permitted under College policy and applicable law or as otherwise required by law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA").

Reports of behavior that constitute an immediate threat to the safety or security of the person experiencing the behavior or the campus community should be made to Campus Safety. College employees who are not employed by one of the offices identified in section VI are Responsible Employees.

- E. Campus Security Authorities. Individuals designated as Campus Security Authorities are required by law to report certain crimes, including alleged sex offenses, stalking, dating violence, and domestic violence, to Campus Safety. These reports are made for statistical purposes, without the inclusion of identifying information of the parties. For reporting responsibilities of individuals designated as Campus Security Authorities, see Annual Security Report.

- F. Retaliation. The College will take immediate and appropriate action in response to reports 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 found to be a violation of this policy. Retaliation-related reports will be handled under the procedures outlined in Appendix B.
- G. Confidential Reports. Individuals can make confidential reports to any Confidential Resource identified in Section VI.
- H. Institutional reporting, criminal reporting, civil reporting. Reports and complaints made through the processes described in this policy are separate from and are not dependent on the outcome of any criminal or civil process that may be occurring concurrently.

Individuals may choose to pursue any of the following: (1) the process described in this policy, (2) criminal, or (3) civil processes concurrently, individually, in any combination, or not at all. The outcome of a civil or criminal proceeding does not dictate the outcome of the process described in this policy, but that outcome may be considered as relevant evidence in the adjudication of any matter in this process. Likewise, the outcome of any adjudication pursuant to this policy does not dictate but may be used as evidence in a civil or criminal proceeding.

- I. Reports to law enforcement. The College encourages members of the College community to pursue criminal action for incidents of Prohibited Conduct 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 Prohibited Conduct may help protect others from future victimization, apprehend any alleged assailant and maintain options regarding criminal prosecution.

A report to the Office of Campus Safety (“Campus Safety”) 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 Safety, the Title IX Coordinator, or Confidential Resources may assist the reporter in identifying the appropriate law enforcement agency if the incident occurred off-campus.

Students and employees have a right to notify or decline to notify law enforcement, including local and state police, of an alleged incident of Prohibited Conduct that may also constitute a crime, to receive assistance from the College in making any such notification, to obtain a court-issued protective order or a College-issued no contact order against an alleged perpetrator of certain Prohibited Conduct (including but not limited to sexual assault), and to concurrently utilize the College’s process for investigating Prohibited Conduct complaints and any external civil or criminal processes available to the student or employee.

When an individual reports an incident to Campus Safety, a campus safety 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 Safety are employees of the College, information about the report, including

personally identifiable information, will be shared with the Title IX Coordinator. Filing a campus safety 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. 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.

- J. Seeking medical attention. Individuals who experience sexual assault, dating violence, or domestic violence are strongly encouraged to seek medical attention and be examined for physical injury, the presence of sexually transmitted diseases, or pregnancy as a result of rape. 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.

NOTE: An individual who is considering making a criminal complaint or taking other legal action should seek medical care as soon as possible after the assault. It is important for the individual to not bathe, douche, or change clothing before the medical examination in order to avoid inadvertently removing important evidence. The kind of evidence that supports a legal case against an accused should be collected as soon as possible, at maximum within ninety-six (96) hours of an assault.

- K. Important Off Campus Resources and Support. Off-campus organizations can also provide resources in response to a report of Prohibited Conduct, including counseling, crisis intervention, and medical services. Some resources in the local area include:
1. Cooley Dickinson Hospital (open 24/7; has Sexual Assault Nurse Examiner—SANE—Program): 413-582-2000.
 2. University of Massachusetts Health Services: 413-577-5000.
 3. [UMass 24-Hour Sexual Assault Support & Advocacy SASA Hotline](#): 413-545-0800.
 4. City of Northampton Police: 413-587-1100.
 5. [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 crisis center websites.
 6. [Safe Passage](#): provides a variety of support and advocacy services for women and children who have experienced domestic violence; 76 Carlon Drive, Northampton, Mass. Phone: 413-586-1125. Hotline: 413-586-5066 or TTY/TTD: 888-345-5282. General email: info@safepass.org.
 7. Victim/Witness Assistance Unit, Northwestern District Attorney, Greenfield, Mass.: 413-774-3186.
 8. [Victim Rights Law Center](#), Legal Assistance Intake Line: 413-842-4020.

VIII. Initiating a Complaint

- A. Distinction Between Report and Complaint. Submitting a report is not the same as making a Complaint. A Complaint means an oral or written request to the College for the College to investigate and make a determination about alleged Prohibited Conduct.
- B. Making a Complaint. An individual who qualifies as a Complainant may make a Complaint by notifying the Office for Civil Rights Compliance and Title IX verbally or in writing that they are making a complaint and requesting an investigation.

A Complaint may not be initiated against an unknown Respondent. The College will take reasonable steps to identify the Respondent based on all known information.

The Title IX Coordinator may initiate a Complaint without having received a Complaint from a Complainant and independent of a Complainant's expressed wishes in circumstances when the known facts present an imminent and serious threat to the health or safety to the campus community.

- C. Anonymous Complaints. If a known Complainant requests anonymity in the investigation and adjudication process, the Title IX Coordinator will make a fact specific determination as to whether an investigation and adjudication process can occur without an identified Complainant.
- D. Institutional reporting, criminal reporting, civil reporting. For information about filing a Complaint while also engaging in a criminal or civil process, see Section VII.H.
- E. Retaliation. The College will take immediate and appropriate action in response to reports 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 found to be a violation of this policy. Retaliation-related complaints will be handled under the procedures outlined in Appendix B.
- F. Timeframe for resolution. The College resolves Complaints of Sex-Based Harassment and Sex-Based Discrimination within a period that is reasonable given the nature of the complaint. The College has established the following timeframes for the major stages of these procedures: 1) initial assessment (10 days); 2) investigation (60 days); 3) determination (30 days); and 4) appeal (14 days). The College will keep the Complainant and Respondent informed of the progress of the proceedings.

IX. Procedures for Addressing and Resolving Allegations of Prohibited Conduct

- A. Introduction. The College has adopted procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would constitute Prohibited Conduct as defined in this

policy. In all cases, the College will respond to reports of violations of this policy in a prompt, fair and impartial manner. Consistent with Title IX, some of the procedures described in this Section apply to all matters that fall within the scope of this policy, while others apply only to reports of Sex-Based Harassment that involve a student as a party. Certain decision-making procedures that apply only to reports of Sex-Based Harassment that involve a student as a party are described in Appendix A.

These procedures are applicable to allegations, investigations, and adjudication of cases involving this policy. These procedures apply in all cases involving violations of this policy regardless of whether the Respondent is a faculty employee, staff employee, or student. Although a violation of this policy is a violation of the Student Code of Conduct, the Student Code of Conduct explicitly provides that these procedures—not the Code’s procedures—apply when a student is accused of violations of this policy. Moreover, for staff employees, these procedures—not the Employee Handbook—apply when a staff member is accused of violations of this policy. Although there are procedures for the termination of a faculty employee in the Code of Faculty Governance, these procedures—not the grievance procedures specified in the Code of Faculty Governance—apply for the investigation and initial determination of a faculty employee’s responsibility for a violation of this policy. If a faculty employee is found responsible for a violation of this policy, the Provost may initiate termination procedures under the Code of Faculty Governance.

B. Addressing and Resolving Reports

1. Information related to submitting a report is outlined in Section VII above.
2. Individuals reporting that they have experienced Prohibited Behavior may initiate a Voluntary Informal Resolution (“VIR”) process without making a Complaint. To do so, the individual must inform the Title IX Coordinator of their concerns and request a VIR as set forth in Section IX.J.
3. Upon receipt of a report the Title IX Coordinator will conduct an initial assessment as described in Section IX.D.
4. Matters that are reported to the Office for Civil Rights Compliance and Title IX are private and will not be disclosed except for legitimate business needs or as required by law. The Clery Act requires the College to provide statistical information to the public in its Annual Security Report.

C. Addressing and Resolving Complaints

1. Information about making a Complaint may be found in Section VII above.
2. An individual is not required to submit a report prior to making a complaint.
3. The following people have a right to make a complaint and request that the College investigate and make a determination about Prohibited Conduct: A Complainant or the Title IX Coordinator.
4. The College may consolidate complaints of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, when the allegations of Prohibited Conduct arise out of the same facts or circumstances. When more than one Complainant or more than one

Respondent is involved, any reference to a party, Complainant, or Respondent will include the plural.

5. Upon receipt of a complaint, the Title IX Coordinator will conduct an initial assessment as described in Section IX.D.
6. Complaints may be resolved using the VIR process set forth in Section IX.J or the Investigatory Resolution Process (“IRP”) set forth in Appendix A and Appendix B.
7. Complaints may be dismissed as described in Section IX.F.

D. Initial Assessment. The College will strive to complete initial assessments as promptly as reasonably practicable, and absent extenuating circumstances, will usually be able to complete the initial assessment process within 10 days of the Title IX Coordinator’s initial meeting with the Complainant or reporter. If the Complainant does not respond to the Title IX Coordinator and 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.

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator will review the report and conduct an initial assessment. The initial assessment will consist of the Title IX Coordinator notifying the Complainant of their rights pursuant to this policy and state and federal law, notifying Complainant of the prohibition of retaliation, offering supportive measures, determining the Complainant’s resolution preference and any barriers to proceeding, and evaluating the report to determine whether additional measures are necessary to ensure the health and safety of the campus community. The Title IX Coordinator may take additional steps, including but not limited to:

1. Assessing the nature and circumstances of the reported conduct;
2. Address immediate physical safety and emotional well-being;
3. Notify the complainant of the right to contact or decline to contact law enforcement if the conduct may be criminal in nature, and if requested, assist them with contacting law enforcement;
4. Notify the complainant of the availability of medical treatment to address any physical and mental health concerns and to preserve evidence;
5. Notify the complainant of the importance of preservation of evidence;
6. Evaluate required actions under the Clery Act, including taking steps that will result in the report’s being entered into the college’s daily crime log, if required, and the issuance of a timely warning as appropriate;
7. Provide the complainant with information about on- and off-campus resources;
8. Notify the complainant of the range of reasonably available supportive measures;
9. Provide the complainant with an explanation of the college’s procedural options, including investigative resolution and voluntary informal resolution;
10. Inform the complainant of the right to have an adviser 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; and
11. Assess for pattern evidence or other similar conduct by the respondent.

Based on the initial assessment, the Title IX Coordinator may initiate the complaint process independent of a Complainant when the behavior reported constitutes an imminent and serious threat to the health or safety of the campus community or is part of a known pattern of behavior.

The College will make reasonable efforts to notify the Complainant of this action prior to initiating the complaint process.

Anonymous reports will be reviewed to determine whether additional measures are needed. The College is limited in its ability to evaluate and respond to anonymous reports and makes all decisions based on known information.

E. Review of Complainant Requests for Anonymity or Not to Proceed with Investigation

The College recognizes that some Complainants may want to proceed with an investigatory resolution process anonymously or not proceed at all. The College addresses such requests as outlined here.

1. Requests not to proceed with Investigatory Resolution. In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of a voluntary informal resolution process, the Title IX Coordinator will make a fact-specific determination regarding whether to initiate an investigatory resolution process.

The College will attempt to accommodate the Complainant's request for anonymity. If it cannot do so, the College will notify the Complainant prior to initiating or continuing the investigatory resolution process, address reasonable concerns about the complainant's safety or the safety of others, provide supportive measures, and keep the complainant informed about the College's course of action.

2. Determining whether to initiate or continue an investigatory resolution process. The Title IX Coordinator will consider, without limitation, the following factors: (1) Complainant's request that the College not proceed; (2) Complainant's reasonable safety concerns; (3) the risk that additional acts of misconduct would occur if a complaint is not initiated; (4) the severity of the alleged misconduct; (5) whether the alleged misconduct, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the misconduct and prevent its recurrence; (6) the age and relationship of the parties; (7) whether the Respondent is an employee; (8) whether available information suggests a pattern, ongoing misconduct, or misconduct alleged to have impacted multiple individuals; (9) the availability of evidence to assist a decisionmaker in determining whether misconduct occurred; and (10) whether the College could end the alleged misconduct and prevent its recurrence without initiating a complaint.

If the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents the College from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate or continue an investigative resolution process.

3. Requests for Anonymity. 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.

F. Dismissals

1. The College may dismiss a complaint if:
 - i. The College is unable to identify the Respondent after taking reasonable steps to do so;
 - ii. The Respondent is not participating in the College's education program or activity and is not employed by the College;
 - iii. The Complainant voluntarily withdraws any or all of the allegations in their complaint, the Title IX Coordinator declines to initiate a complaint, and the College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute Prohibited Conduct even if proven; or
 - iv. The College determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct. Before dismissing the complaint, the College will make reasonable efforts to clarify the allegations with the Complainant.
2. Notification of Dismissal. Upon dismissal, the College will promptly notify the applicable party as follows:
 - i. If Respondent has not been notified of a complaint, the College will notify only the Complainant in writing that a dismissal may be appealed on the bases and using the procedures outlined in Section IX.N.
 - ii. If a Respondent has been notified of a complaint, the College will notify both Complainant and Respondent simultaneously in writing that the dismissal may be appealed on the bases and using the procedures outlined in Section IX.N.
3. When a complaint is dismissed, the College will, at a minimum:
 - i. Offer supportive measures to the Complainant as appropriate;
 - ii. If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
 - iii. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that Prohibited Conduct does not continue or recur within the College's education program or activity.

- G. Emergency Removal of Students. Where there is an imminent and serious threat to the health or safety of any person arising from the allegations of Prohibited Conduct, the College can remove a student Respondent from its education program or activity on an emergency basis, and issue any necessary related no-trespass and no-contact orders. The Title IX Coordinator will make such a removal decision based on an individualized safety and risk analysis, in consultation as deemed necessary with other College personnel, departments, and/or teams. If the College makes such a decision, the student Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal.

- H. Administrative Leave for Employees. The College maintains the discretion to place employee Respondents, including student-employee Respondents, on paid or unpaid administrative leave from employment responsibilities during the pendency of an investigation and/or resolution process.
- I. Supportive Measures. Supportive measures are available for any report of Prohibited Conduct regardless of where the conduct occurred or whether the conduct occurred outside of the College's programs or activities.
1. The College will offer and provide reasonable available and appropriate supportive measures to both Complainant and Respondent. Supportive Measures may be provided at any time, regardless of whether a resolution process has been initiated or completed, and will be offered to each party upon their first interaction with the Title IX Coordinator and continuing thereafter. The College may, as appropriate, modify or terminate supportive measures at the conclusion of any investigative resolution or voluntary informal resolution process, or may continue them in the same or modified form beyond that point.
 2. Supportive measures may include but are not limited to:
 - i. counseling;
 - ii. extensions of deadlines and other course-related adjustments;
 - iii. letters instructing the parties not to contact each other;
 - iv. training and education programs related to Prohibited Conduct;
 - v. academic accommodations, such as access to tutoring, rescheduling of exams or assignments, and/or the ability to drop a course without penalty;
 - vi. modifications of work schedules, change in work locations, changing working arrangements, or providing other employment accommodations as appropriate;
 - vii. residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate;
 - viii. leaves of absence;
 - ix. increased security and monitoring of certain areas of the campus;
 - x. assistance setting up initial appointments for counseling and/or medical services;
 - xi. providing an escort and other safety planning steps;
 - xii. assistance in evaluating implications for financial aid, immigration or visa status;
 - xiii. referral to resources that can assist in obtaining a civil order of protection;
 - xiv. other changes in class, work, housing or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative;
 - xv. changes to another party's schedule, housing, academic arrangements and/or participation in College education programs or activities that do not unreasonably burden that party; and/or
 - xvi. other measures tailored to the involved parties.
 3. The availability of supportive measures will be determined by factors such as the specific circumstances of each report, the party's wishes regarding supportive measures, and an individualized assessment of the circumstances of each case. The College will work in good faith to implement the requirements of judicially-issued protective orders and similar orders, to the extent that doing so is within its authority.

4. Requests for supportive measures may be made by either party to the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of supportive measures and coordinating the College's response with the appropriate offices on campus.
 5. The Title IX Coordinator has the discretion to provide, deny, modify, or terminate any supportive measure based on all available information and is available to meet with a Complainant or Respondent to address any concerns about the provision of supportive measures.
 6. The College will provide a Complainant or Respondent with a timely opportunity to initiate a supportive measure review process, through which a party may seek, from an impartial College employee or designee, modification or reversal of the Title IX Coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to them. The question for consideration in such reviews will be whether the supportive measure under review is consistent or inconsistent with the definition of supportive measure stated above. Reviewing officials will have the authority to modify or reverse decisions related to supportive measures, if they conclude that the decision under review is inconsistent with the definition of supportive measure stated above. Parties may also seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.
 7. The College will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures.
 8. The College will promptly address any violation of supportive measures. All individuals are encouraged to report concerns about the failure of another individual to abide by any restrictions imposed by a supportive measure. The College will take prompt and responsive action to enforce supportive measures, which may include additional supportive measures and/or disciplinary penalties under student or employment disciplinary policies, as applicable.
- J. Voluntary Informal Resolution Process. The College recognizes that voluntary informal resolution ("VIR") options may be an appropriate means of addressing some forms of Prohibited Conduct reported under this policy. VIR 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.

The time frame for completion of VIR may vary, but the College will seek to initiate VIR or decline VIR within thirty (30) business days of the Complainant's request. Where VIR is initiated, to either complete the process or initiate or resume an investigative resolution process, as appropriate, within 45 days of the initiation of the VIR process.

1. A VIR process may be initiated without making a Complaint. It is not necessary to participate in VIR before making a Complaint.

2. Before the initiation of a VIR process, the College will explain in writing to the parties:
 - i. The allegations;
 - ii. The requirements of the VIR process;
 - iii. That any party has the right to withdraw from the VIR process and initiate or resume investigative resolution procedures at any time before the parties sign a voluntary resolution agreement;
 - iv. That if the parties agree to a resolution at the end of the VIR process, they cannot initiate or resume investigative resolution procedures arising from the same allegations;
 - v. The potential terms that may be requested or offered in a VIR agreement, including notice that a VIR agreement is binding only on the parties; and
 - vi. What information the College will maintain and whether and how the College could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.
3. Parties must provide their voluntary, written consent to the informal resolution process to the Title IX Coordinator in order to proceed with informal resolution. The College will not require or pressure a party to participate in a VIR process or to engage in any particular form of VIR, and will not require waiver of applicable rights to participate in investigative resolution of this matter as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.
4. VIR is not appropriate in all cases. The Title IX Coordinator retains the discretion to determine which cases are or are not appropriate for VIR and may decline to offer VIR despite one or more of the parties' wishes. The College may also decide to end VIR at any time before all parties have signed a VIR agreement, when deemed appropriate. Factors considered by the Title IX Coordinator in exercising this discretion may include but are not limited to whether the alleged Prohibited Conduct would present a future risk of harm to others. The College will not offer a VIR process if doing so would conflict with federal, state or local law.
5. If the parties and the College agree to pursue a VIR process, the Title IX Coordinator will designate a facilitator for the process. The facilitator will not be the same person as an investigator or decision-maker who participates in any investigative resolution involving the same parties. Designated facilitators will not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

Designated facilitators will have received training regarding:

- i. The College's obligation to address Prohibited Conduct in its education program or activity;
- ii. the scope of conduct that constitutes Prohibited Conduct, including the definition of sex-based harassment;
- iii. all applicable notification requirements;
- iv. the rules and practices associated with the College's VIR process; and

- v. how to serve impartially, including by avoiding conflicts of interest and bias.
6. Potential terms that may be requested or offered in a VIR agreement include but are not limited to:
 - i. restrictions on contact between the parties;
 - ii. restrictions on the Respondent's participation in one or more of the College's programs or activities or attendance at specific events, including restrictions agreed to between the parties that the College could have imposed as remedies or disciplinary sanctions had the College determined at the end of an investigative resolution that Prohibited Conduct occurred;
 - iii. supportive measures;
 - iv. conducting targeted or broad-based educational programming or training for relevant individuals or groups;
 - v. service options;
 - vi. permanent measures;
 - vii. providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred;
 - viii. communication with the Respondent by the Title IX coordinator and/or the dean of students;
 - ix. other forms of restorative justice options; and
 - x. any other remedy that can be tailored to the involved individuals to achieve the goals of the policy.
7. Impact of VIR on the Investigative Resolution Process. Prior to the signing of a VIR agreement, either party has the right to withdraw from the VIR process and initiate or resume investigative resolution procedures. Parties cannot initiate or resume investigative resolution procedures arising from the same allegations after a VIR agreement has been signed.

When VIR is stopped prior to all parties having signed the written VIR agreement and an investigative resolution process is initiated or resumed, information shared with or documented by the facilitator and statements made during the process will not be shared with, submitted, or considered by the investigator or decision-maker. A party's willingness to participate in VIR will not be considered as evidence of responsibility in an investigative resolution process.

8. Record Retention. Records will be maintained by the Title IX Coordinator to assess patterns, systemic behavior, or other appropriate purposes.

Records developed exclusively during and for the purposes of a VIR process will not be considered in any subsequent investigative resolution process. If the Respondent is found responsible for any violations of this policy in the future, information regarding the prior report processed through VIR may be used in the sanctioning phase provided that the Respondent is granted the opportunity to address the prior report as well.

9. Confidentiality. The College will strive to respect the confidentiality of the parties' communications with the facilitator during the voluntary resolution process to the extent necessary to facilitate the resolution. The College may share information discussed or created during this process only for a legitimate business purpose or as required by law, such as compliance with a lawfully-issued subpoena or a FERPA education record request.
10. Appeals of the process or the result are not permitted because the outcomes of VIR processes are mutually developed and agreed upon by the parties involved.

K. Investigatory Resolution Procedures. The College will utilize the following investigation procedures to resolve all reports of Prohibited Conduct that are addressed through this policy, and that are not otherwise resolved through a VIR process. The investigation procedures are the same for allegations of Sex-Based Harassment and Sex-Based Discrimination. The decision-making procedures vary between the two as detailed in Section IX.L and are detailed in Appendix A and Appendix B. Appeals procedures are detailed in Section IX.N and apply to all allegations of prohibited conduct, including appeals of dismissal decisions.

1. General Provisions. Complainants and Respondents are treated equitably and the Investigatory Resolution Procedure will be prompt, fair, and impartial from the initial investigation to the final result.

Respondents are presumed not responsible for the alleged sex discrimination. Determinations regarding responsibility are made at the conclusion of the College's procedures.

The Title IX Coordinator and any investigator or decision-maker will not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

Officials conducting this process (including investigators, decision-makers, and other persons responsible for implementing the College's procedures and/or who have the authority to modify or terminate supportive measures) shall receive annual training on: (1) the issues related to Prohibited Conduct and on how to conduct an investigation and resolution process that protects the safety of the parties and promotes accountability; (2) the College's obligations in responding to sex discrimination, as outlined in applicable Title IX regulation; (3) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and (4) the meaning of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance.

2. Extensions of applicable timeframes. The College has established the following timeframes for the major stages of these procedures: 1) initial assessment (10 days); 2) investigation (60 days); 3) determination (30 days); and 4) appeal (14 days). The College may also extend timeframes for major stages of the procedures at its own discretion as necessary, and if it does so it will inform the parties of that and summarize the reason for the extension.

The College has also established the following process that allows for parties to request the reasonable extension of time frames for any part of these procedures on a case-by-case basis for good cause with written notice of any extension to the parties that includes the reason for the delay. Requests for extensions are addressed as follows:

- i. A party who wishes to request an extension of any timeframes established by this process, should make that request via email to the person who established the deadline;
 - ii. The person who established the deadline will inform the requesting party promptly regarding whether the requested extension will be granted, modified, or denied. The person who established the deadline may in their discretion determine it necessary to allow the non-requesting party an opportunity to respond to the request prior to making a determination on the request;
 - iii. When an extension is granted in whole or in part, the non-requesting party will be notified and will receive a corresponding extension for the other party's compliance with any similar deadline, as applicable.
3. Privacy. The College will take reasonable steps to protect the privacy of the parties and witnesses during the Investigatory Resolution procedure, which will include requiring the parties and any Advisors to sign an agreement that they will not download, copy, photograph, otherwise reproduce, publish, or distribute any evidence that is provided to them for review through these procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, Advisors; or otherwise prepare for or participate in the procedures. The parties cannot engage in retaliation, including against witnesses.
4. Written Notice of Allegations. Upon initiation of these procedures, the College will notify the parties in writing of the following with sufficient time for the parties to prepare a response before any initial interview:
 - i. These procedures and their right to request a voluntary informal resolution process at any time;
 - ii. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute Prohibited Conduct, and the date(s), time(s) and location(s) of the alleged incident(s);
 - iii. Which College policies were allegedly violated and by what actions;
 - iv. That retaliation against any party or witness is prohibited;
 - v. That the College presumes that the Respondent is not responsible for the alleged Prohibited Conduct and that determinations regarding responsibility are made at the conclusion of the College's procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision-maker;
 - vi. The parties may have an Advisor of their choice who may be, but is not required to be, an attorney;
 - vii. The name and contact information of the investigator and how to challenge participation by the investigator on the basis of a conflict of interest or bias;

- viii. The importance of preserving any potentially relevant evidence in any format, including evidence that may assist in proving that an alleged criminal offense occurred or may be helpful in obtaining a protection order;
- ix. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence and an investigative report that summarizes this evidence; and
- x. That the College's [Code of Student Conduct](#) and/or this policy prohibit student and employee witnesses from knowingly making false statements or knowingly submitting false information during these procedures.

The College will provide the parties with a copy of the College's policies regarding the submission and consideration of evidence that may be used during any hearing or disciplinary proceeding, as applicable.

If, in the course of an investigation, the College decides to investigate additional allegations of Prohibited Conduct by the Respondent toward the Complainant that are not included in the written notice or that are included in a consolidated complaint, it will provide written notice of the additional allegations to the parties.

- 5. Notice of investigatory meeting. The College will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate.
- 6. Advisors. The College will provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the Advisor of their choice, who may be, but is not required to be, an attorney, subject to the following:
 - i. The College will not limit the choice or presence of the Advisor for the Complainant or Respondent in any meeting or proceeding.
 - ii. The College has established restrictions regarding the extent to which the Advisor may participate in the College's process. An Advisor may not interfere with the purpose of or create a disturbance in any investigative meeting. If an Advisor interferes with the purpose of an investigative meeting, disrupts, or obstructs a live hearing or investigative meeting, or fails to comply with procedures in a live hearing, they will be asked to leave the investigative meeting or live hearing. These restrictions will apply equally to the Advisors for each party, if any.
- 7. Neutral evaluation of evidence. Parties and witnesses may present all evidence they believe to be relevant to the investigator and/or decision-maker.

The investigator and/or decision-maker will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

Through the procedures outlined in Appendix A and Appendix B, the College will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. The College will

review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

8. Impermissible evidence. The following types of evidence, and questions seeking that evidence, are impermissible regardless of whether they are relevant:
 - i. Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
 - ii. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the College obtains that party's or witness's voluntary, written consent for use in this process; and
 - iii. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged Sex-Based Harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to alleged Sex-Based Harassment or preclude determination that Sex-Based Harassment occurred.

The College may access or consider evidence to determine whether it is impermissible as outlined above. Any such evidence the College possesses that is deemed impermissible will not be disclosed and will not otherwise be used.

9. Investigation Procedures. The College endeavors to complete the investigation process within 60 days from the date when the notice of investigation was sent to the parties, unless that timeframe is extended for good cause as discussed above.

The College will provide for adequate, reliable, and impartial investigation of complaints. The burden is on the College—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred.

10. Investigator. The Title IX Coordinator will either investigate a complaint themselves, or appoint an investigator or investigators, internal or external, at the discretion of the Title IX Coordinator. The Title IX Coordinator will inform the parties of the identity of the investigator.

Complainants or Respondents generally or the specific Complainant or Respondent may object to the investigator on the basis of conflict of interest or the perceived or actual bias of the investigator. Any such objections must be raised within 3 business days.

The Title IX Coordinator will decide whether to sustain or deny such objections within 5 business days of receiving a party's objection. If the Title IX Coordinator sustains the

objection, an alternate investigator will be appointed following the procedures in this section.

11. Conduct of Investigations. In conducting an investigation, the investigator may meet separately with any party who is participating in the investigation, with the reporter (if applicable), and other 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 parties will be given equal opportunities to identify fact witnesses. The parties should indicate the general subject matter of the information the witness is likely to have. The decision to interview witnesses is at the discretion of the investigator.

The parties may also provide inculpatory or exculpatory evidence to the investigator, at a time or times deemed appropriate by the investigator.

The investigator may also gather relevant physical and medical evidence, relevant communications between the parties, and other relevant information offered by either party or discovered independently by the investigator.

12. Preliminary Investigative Report. Once the investigator has conducted interviews and gathered evidence as they deem necessary, they will write a preliminary investigative report that summarizes the evidence, and create an appendix that consists of all of the relevant and not otherwise impermissible evidence gathered to that point in the investigation.

The preliminary investigative report will not contain any recommendation regarding responsibility.

The investigator and/or the Title IX coordinator will provide each party and the party's Advisor, if any, with an equal opportunity to access the preliminary investigative report and the appendix, through a secure electronic file-sharing platform or other means as appropriate.

The parties will have 10 business days to review the preliminary investigative report and prepare a written response. The investigator or Title IX Coordinator will share any written response submitted by one party with the other party, through a secure electronic file-sharing platform. Parties may reply to the written response of the other party within 5 business days.

The investigator will consider the parties' written responses to the preliminary investigative report, if any, and will decide whether to conduct any additional investigation. If additional investigation is performed, the investigator or Title IX Coordinator will create a supplement to the investigative report and supplemental appendix as necessary. The parties will then have time to review and respond in writing to any supplemental preliminary report.

13. **Final Investigative Report.** When the investigator determines that it is appropriate based on the evidence gathered and the parties' written submissions to conclude the investigation, they will prepare a final investigative report. The final investigative report will contain the investigator's recommended findings of fact and the investigator's recommendations as to whether the Respondent should or should not be found responsible for some or all of the alleged Prohibited Conduct at issue.

The parties will be provided with access to the final investigative report and the appendix through a secure file-sharing platform. If they wish to do so, each party may, within 10 business days, prepare and submit to the Title IX Coordinator a written response to the final investigative report, for consideration by the decision-maker.

- L. **Decision-making Procedures.** The College uses two types of decision-making procedures. One type of decision-making procedure will be used to resolve matters involving alleged sex-based harassment where one or more of the parties is a student. These procedures are outlined in Appendix A. One procedure will be used to resolve any and all matters that fall within the scope of this policy but that do not involve alleged sex-based harassment where one or more of the parties is a student. These procedures are outlined in Appendix B. When a party is both a student and an employee, the College will make a fact-specific inquiry focused on whether the party's primary relationship with the College is to receive an education and whether the alleged Prohibited Conduct occurred while the party was performing employment-related work.
- M. **Sanction and Remedy-Related Issues.** The College will not impose discipline on a Respondent for Prohibited Conduct unless there is a determination at the conclusion of the College's procedures that the Respondent engaged in Prohibited Conduct.

The College anticipates that the determination stage of the process will take approximately 30 days from the time when the final investigation report, appendix and any party written statements are provided to the decision-maker.

1. **Written Determination.** At the conclusion of the resolution procedures set forth in Appendix A and Appendix B and before notifying the parties of the outcome, the decision-maker will provide the sanctioning officer a draft of the determination for the purposes of issuing a sanction. The decision-maker will not select the sanctions, and the sanctioning officer will not change the outcome of the process.

The draft determination provided to the sanctioning officer will include all of the elements of the written determination set forth in Appendix A and Appendix B, except the sanction. Instead, the draft will include a description of any disciplinary sanctions the College may impose on the Respondent.

2. **Determination of Sanction.** The sanctioning officer will determine what sanctions are appropriate for the Respondent, in light of the information in the determination provided by the decision-maker and the factors outlined below. Once the sanctioning officer has determined appropriate sanctions, they will inform the decision-maker of those sanctions

and the decision-maker will incorporate them into the written determination to be provided to the parties. At that point, the decision maker will provide the written determination to the parties.

In determining appropriate sanctions, the sanctioning officer will consider what sanctions are appropriate to address the misconduct, prevent its recurrence, and remedy its effects, and that 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, expulsion from the College or termination of employment.

The sanctioning officer 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; and any mitigating or aggravating circumstances. The sanctioning officer may consult with the Title IX Coordinator in reaching their determination of appropriate sanctions.

3. Possible Sanctions. The following sanctions are available for those found responsible for prohibited conduct under this policy.
 - i. *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 or termination from the College.
 - ii. *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.
 - iii. *Loss of authority*: Removal from appointed or elected office or position of authority.
 - iv. *Restriction from employment at the College*: Prohibition of, or limitation of College employment.
 - v. *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.
 - vi. *Removal or non-renewal of a College-sponsored academic scholarship*.
 - vii. *No Contact Directive*: Restriction from entering specific College areas and/or from all forms of contact with certain person(s).
 - viii. *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 readmittance 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.

- ix. *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.
 - x. *Permanent separation*: The Respondent is no longer a student at Smith College and must leave the campus. The student is not eligible for readmission.
 - xi. *Termination of employment*.
4. Sanctioning Officer. The Sanctioning Officer is determined by the Respondent's affiliation with the College.
- i. For matters involving student Respondents, the sanctioning officer will be the Dean of the College.
 - ii. For matters involving staff Respondents, the sanctioning officer will be the Vice-President for Human Resources.
 - iii. For matters involving faculty Respondents, the sanctioning officer will be Provost/Dean of the Faculty. In the case of a recommendation of termination, the procedures outlined in the Code of Faculty Governance will be implemented by the sanctioning officer.
5. Implementation of Sanctions and Remedies. If there is a determination that Prohibited Conduct occurred, as appropriate, the Title IX Coordinator will:
- i. Coordinate the provision and implementation of remedies to a Complainant and other people the College identifies as having had equal access to the College's education program or activity limited or denied by sex discrimination;
 - ii. Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
 - iii. Take other appropriate prompt and effective steps to ensure that Prohibited Conduct does not continue or recur within the College's education program or activity.

N. Appeals. This section applies to appeals of the procedures outlined in Appendix A, Appendix B, or to the appeal of dismissals as otherwise referenced in this policy.

The College endeavors to complete the appeals process within 14 days from the date when the appeal was filed, unless that timeframe is extended for good cause as discussed above.

1. Grounds for Appeal. The College will offer an appeal from a dismissal or determination whether Prohibited Conduct occurred on the following bases:
- i. Procedural irregularity that would change the outcome;

- ii. New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; and
- iii. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

The appeal is an impartial review of the information considered by the decision-maker, in light of one or more of the grounds of appeal. The appeal is not a new investigation of the merits of the matter.

2. **Timeline for Filing an Appeal.** Appeals must be filed in writing within 10 days of the date when the College provides notice to the appealing party of the dismissal or determination being appealed. Appeals should consist of a written statement challenging the dismissal or determination being appealed, framed within one or more of the limited grounds of appeal outlined above.
3. **Conduct of Appeal.** If a party appeals a dismissal or determination whether Prohibited Conduct occurred, the College will:
 - i. Notify the parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
 - ii. Implement appeal procedures equally for the parties;
 - iii. Ensure that the decision-maker for the appeal (“the appeals officer”) did not take part in an investigation of the allegations or dismissal of the complaint;
 - iv. Ensure that the appeals officer has been trained consistent with the Title IX policy;
 - v. Notify the parties of the identity of the appeals officer;
 - vi. Communicate to the parties in writing that the College will provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
 - vii. Notify the parties in writing of the result of the appeal and the rationale for the result.
4. **Appeals Officer.** The appeals officer will be appointed by the Title IX Coordinator, unless the ground of appeal is that the Title IX Coordinator had a bias or conflict of interest; in such cases, the Dean of the College and Vice President for Campus Life will appoint the appeals officer.

The appointing officer will provide the parties with 3 business days to submit to the Title IX Coordinator any objection to the appointment of the appeals officer based on grounds that the appeals officer has a bias toward Complainants or Respondents generally or a particular Complainant or Respondent, or has a conflict of interest. The appointing official will decide whether to sustain or deny such objections within 5 business days of receiving a party’s objection, and appoint an alternate appeals officer as necessary, following the same procedure.

5. **Material available upon appeal.** The Title IX Coordinator will make the appealing party’s written appeal document available to the other party for review. A party who did not file an appeal may, if they wish to do so, submit to the Title IX Coordinator within 10 days of

receiving access to the appealing party's written statement a written statement in support of the outcome.

If both or multiple parties file appeals, all other parties will receive a reasonable and equal opportunity to submit a written statement in support of, or challenging, the outcome, consistent with the process and time periods stated above.

6. Notification of Outcome. The appeals officer may affirm, reject or modify the decision of the decision-maker, or may direct the decision-maker to reconsider certain findings. The appeals officer will issue a written decision describing the result of the appeal and the rationale for the result. The Title IX coordinator will simultaneously communicate the appeal determination to the parties within three (3) business days of the appeals officer's decision.

X. Records Maintained

All records related to complaint resolution will be maintained for seven (7) years by the Title IX Coordinator, including:

- For each complaint of Prohibited Conduct, records documenting any voluntary informal resolution process or investigative resolution process, and the resulting outcome;
- For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute Prohibited Conduct, records documenting the actions the College took in response; and
- All materials used to provide training regarding issues related to Prohibited Conduct. The College will provide an on-campus, in-person opportunity for members of the public to review such materials upon request, in the presence of a College official.

An audio-recording or transcript 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 Title IX Coordinator, as part of the Respondent's conduct record for as long as the conduct record is maintained.

If a student or employee has been found responsible by the decision-maker 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.

XII. Training, Prevention and Awareness Programs

A. Students. 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 Prohibited Conduct.

B. Employees. The College will provide to all employees training on:

- i. The College’s obligation to address Prohibited Conduct in its education program or activity;
- ii. The scope of conduct that constitutes Prohibited Conduct, including the definition of sex-based harassment; and
- iii. All applicable notification and information requirements.

C. Individuals involved in implementing these resolution procedures. In addition to the training provided to employees, the College will provide to (1) investigators, decision-makers, appeals officers, (2) other persons who are responsible for implementing resolution procedures described in this policy, or (3) individuals have the authority to modify or terminate supportive measures training on the following topics to the extent related to their responsibilities:

- i. The College’s obligations to respond to Prohibited Conduct, as required by federal regulations;
- ii. The resolution process described in this policy;
- iii. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- iv. The meaning and application of the term “relevant” in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance as described above; and
- v. Training, annually, on issues relating to Prohibited Conduct, investigatory procedures and any applicable hearing procedures to protect the safety and rights of students and employees and promote accountability, which will include:
 - a. information on working with and interviewing persons subjected to Prohibited Conduct;
 - b. information on particular types of conduct that constitute Prohibited Conduct;
 - c. information on consent and the role drugs and alcohol may play in an individual’s ability to consent;
 - d. the effects of trauma, including any neurobiological impact on an individual;
 - e. cultural competence training regarding how Prohibited Conduct may impact individuals differently depending on factors that contribute to an individual’s cultural background, including, but not limited to, national origin, sex, ethnicity, religion, gender identity, gender expression and sexual orientation;
 - f. ways to communicate sensitively and compassionately with a reporting party of Prohibited Conduct including, but not limited to, an awareness of responding to a reporting party with consideration of that party’s cultural background and providing services to or assisting in locating services for the reporting party;
 - g. training and information regarding how Prohibited Conduct may impact individuals with developmental or intellectual disabilities; and
 - h. training on the principles of due process necessary to ensure that proceedings are conducted impartially in a manner that is fundamentally fair to all parties.

D. Voluntary Informal Resolution Facilitators. The College will, in addition to the training provided to all other employees, provide to facilitators of the College’s voluntary informal resolution process training on the rules and practices associated with that process and on how to serve impartially, including by avoiding conflicts of interest and bias.

- E. Title IX Coordinator. The College will ensure the Title IX Coordinator and designees receive training on their specific responsibilities in those roles as defined by federal regulations, the College’s obligations to prevent discrimination and ensure equal access based on pregnancy and related conditions, respond to Prohibited Conduct and provide supportive measures as required by federal regulations, keep records as required by federal regulations, and any other training necessary to coordinate the College’s compliance with Title IX.

The College will provide training to its Title IX coordinator and its campus safety personnel regarding the awareness and prevention of sexual misconduct.

- F. Prevention and Awareness. 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.

XII. Academic Freedom

As an academic institution, the College considers teaching, conducting research, and learning to be 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.

XII. Policy Review Cycle

This policy will be reviewed at least biannually or as needed to reflect changes in laws, regulations or major changes in College operations.

XIII. Related Policies

Policy on Pregnancy and Related Conditions

[SGA Chartering Committee](#)

Sexual Misconduct Policy, effective August 1, 2020 through August 1, 2024

Gender-Based and Sexual Misconduct Policy, effective August 1, 2020 through August 1, 2024

SMITH COLLEGE.

Appendix A **Decision-making Procedure for** **Sex-Based Harassment Complaints Where One or More of the Parties Is a Student**

The following decision-making procedures, which will include a live, remote hearing process, will apply to resolve matters involving alleged sex-based harassment where one or more of the parties is a student. If the matter also involves allegations that the Respondent engaged in another type of Prohibited Conduct or violated another College policy, all of the allegations will be resolved under the procedures outlined in this Appendix.

The College endeavors to complete the decision-making process through the procedures outlined in this Appendix within 30 days from the date when the final investigative report, appendix and any party responses are received by the decision-maker, unless that timeframe is extended for good cause.

The College will comply with these procedures before the imposition of any disciplinary sanctions against a Respondent, and it will not discipline a party, witness, or other person participating in this process for making a false statement based solely on the determination whether Prohibited Conduct occurred.

I. Decision Maker

The Title IX Coordinator will appoint at their discretion three decision-makers (“decision-makers”), who may be internal or external to the College, and a non-voting chair of the decision-makers.

The Title IX Coordinator will inform the parties of the identity of the decision-maker and will provide the parties with 3 business days to submit to the Title IX Coordinator any objection to the appointment of the decision-maker based on grounds that the decision-maker has a bias toward complainants or Respondents generally or a particular complainant or Respondent, or has a conflict of interest. The Title IX Coordinator will decide whether to sustain or deny such objections within 5 business days of receiving a party’s objection, and appoint an alternate decision-maker as necessary, following the same procedure.

II. Materials Provided to the Decision-Maker

In advance of the hearing, the Title IX Coordinator will provide to the decision-maker: 1) the final investigation report; 2) the appendix to the final investigation report; and 3) the parties’ written responses to the investigation report, if any.

The Title IX Coordinator will inform the parties that if they wish to do so, they may submit in writing to the Title IX Coordinator questions that they know in advance that they would like their advisor to pose to the other party and/or any witnesses who participate in the hearing. Any such questions should be numbered for ease of identification and should be submitted no later than 2

business days before the scheduled date of the hearing, so that the Title IX Coordinator can forward them to the decision-maker for their consideration.

III. Hearing

In advance of the hearing, the Title IX Coordinator will provide notice to Complainant and Respondent of the time and date of the hearing.

Hearings will be conducted through a secure virtual meeting platform with the parties physically present in separate locations, with technology enabling the decision-maker and parties to simultaneously see and hear the party or witness while that person is speaking. At no time during the hearing process will either party be permitted to address the other party or question the other party or witnesses directly. The College will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

The chair of the decision-makers will have broad discretion over the order of proceedings during the hearing.

- A. **Questioning.** Subject to that discretion, the chair of the decision-makers will ordinarily ask the questions of each party and witness that the decision-maker wishes to ask, then will allow the parties or parties' advisors to ask approved pre-submitted questions of the other party and/or witnesses, as well as any non-duplicative, relevant and otherwise not impermissible follow-up questions that the parties or parties' advisors wish to ask. If one party chooses advisor-conducted questioning, questioning for all parties must occur through an advisor. The College will provide both parties with an advisor of the College's choice for the limited purpose of advisor-conducted questioning. Parties may request that the chair of the decision-makers ask relevant and not otherwise impermissible questions on their behalf, and parties' advisors may ask such questions directly on behalf of the party they are advising. Parties are not allowed to directly question each other or witnesses during a hearing.
- B. **Relevance.** Before permitting a party or witness to answer a question posed, the chair of the decision-makers will determine whether the question is relevant and not otherwise impermissible, and will explain either before or during the hearing any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decision-maker will give a party or the party's advisor an opportunity to clarify or revise a question that the decision-maker determines is unclear or harassing. If the party or the party's advisor sufficiently clarifies or revises the question, the decision-maker will ask the question or allow the question to be asked, as applicable. Repetitive questions are not relevant because if they have already been asked and answered substantively by a party or witness, further answers to the same questions would not aid the decision-maker in determining whether sex-based harassment occurred.
- C. **Refusal to Respond.** If a party or witness refuses to respond to a question that was asked by the decision-maker and/or a question posed by a party or party advisor that was deemed relevant and not otherwise impermissible, the decision-maker may choose to place less or

no weight upon statements by a party or witness who refuses to respond to such questions. The decision-maker will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

- D. **Standard of Proof.** Following their evaluation of all relevant and not otherwise impermissible evidence, the decision-maker will use the preponderance of the evidence standard to determine whether sex-based harassment occurred and whether any other Prohibited Conduct being addressed through the process occurred. The standard of proof requires the decision-maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. The decision-maker will determine that no Prohibited Conduct occurred if not persuaded by a preponderance of the evidence.

IV. Notification of Outcome

The decision-maker will prepare a written report containing a determination of whether Prohibited Conduct occurred, which will include the following:

- A description of the alleged Prohibited Conduct;
- Information about the policies and procedures that the College used to evaluate the allegations;
- The decision-maker's evaluation of the relevant and not otherwise impermissible evidence and determination whether Prohibited Conduct occurred;
- Whether by the preponderance of the evidence the Prohibited Conduct occurred and Respondent was responsible for engaging in said Prohibited Conduct;
- If the decision-maker finds that Prohibited Conduct occurred, any disciplinary sanctions the College will impose on the Respondent, any remedies other than the imposition of disciplinary sanctions the College will provide the complainant and, to the extent appropriate, other students identified by the College impacted by the Prohibited Conduct; and
- The College's procedures and permissible bases for the complainant and Respondent to appeal, as provided in the Appeals, Section IX.N of the policy.

The decision-maker will not make a decision as to sanctions and will follow the process outlined in Section IX.M of the policy prior to providing this written notification to the parties.

The parties will be informed in writing of the results of the hearing not later than 7 business days after a final determination of a complaint, unless that timeframe is extended for good cause. A written determination regarding responsibility becomes final either on the date that the College provides it to the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

V. Sanctioning and Remedies

Sanction and remedy-related issues that will apply to all matters addressed through this policy are outlined at Section IX.M of the policy. Sanctions will be determined prior to the issuance of the written-determination as provided in Appendix A, Section IV

SMITH COLLEGE.

Interim Sexual Misconduct Policy

Appendix B: Adjudicating All Other Allegations of Prohibited Conduct

The following decision-making procedures, which will not include a live hearing process, will apply to resolve any and all matters that fall within the scope of this policy but that do not involve alleged sex-based harassment where one or more of the parties is a student.

The College endeavors to complete the determination process in matters addressed through the procedures outlined in this Appendix within 21 days from the date when the final investigative report and appendix and any party written responses were provided to the decision-maker, unless that timeframe is extended for good cause as discussed above.

The College will not impose discipline on a respondent for Prohibited Conduct unless there is a determination at the conclusion of the College's procedures that the respondent engaged in Prohibited Conduct.

I. Decision Makers

The Title IX Coordinator will appoint at their discretion a decision-maker, who may be internal or external to the College. The Title IX Coordinator will inform the parties of the identity of the decision-maker, and will provide the parties with 3 business days to submit to the Title IX Coordinator any objection to the appointment of the decision-maker based on grounds that they have a bias toward complainants or respondents generally or a particular complainant or respondent, or have a conflict of interest. The Title IX Coordinator will decide whether to sustain or deny such objections within 5 business days of receiving a party's objection, and appoint an alternate decision-maker as necessary, following the same procedure.

II. Materials Provided to the Decision-Maker

The Title IX Coordinator will provide to the decision-maker: 1) the final investigation report; 2) the appendix to the final investigation report; and 3) the parties' written responses to the investigation report, if any.

The decision-maker will determine based on those materials whether the decision-maker needs to question a party or witnesses in order to adequately assess their credibility to the extent credibility is both in dispute and relevant to evaluating the allegations of Prohibited Conduct, or whether those issues are addressed sufficiently in the investigator's report. If the decision-maker decides to question a party or witness, they will do so through an interview with the party or witness. Parties may be accompanied in such interviews by an advisor and/or support person. The role of advisors and support persons in such interviews will be limited on the same terms as the role of advisors and support persons in interviews by investigators, as outlined above.

Following their evaluation of all relevant and not otherwise impermissible evidence, the decision-maker will use the preponderance of the evidence standard to determine whether Prohibited Conduct occurred. The standard of proof requires the decision-maker to evaluate relevant and not

otherwise impermissible evidence for its persuasiveness. If the decision-maker is not persuaded under the applicable standard by the evidence that Prohibited Conduct occurred, whatever the quantity of the evidence is, the decision-maker will not determine that Prohibited Conduct occurred.

III. Notification of Outcome

The decision-maker or Title IX Coordinator will notify the parties in writing of the determination whether Prohibited Conduct occurred, the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal under the Appeal procedures outlined in Section IX.N.

IV. Sanctioning and Remedies

Sanction and remedy-related issues that will apply to all matters addressed through this policy are outlined at Section IX.M. of the policy.