



HOBART AND WILLIAM SMITH  
COLLEGES

**SEXUAL MISCONDUCT POLICY**

**AUGUST 2019**

## STATEMENT OF INTENT

Hobart and William Smith Colleges are committed to fostering a welcoming, safe, non-discriminatory and harassment-free educational, living, and working environment for all members of the HWS community. The Colleges do not discriminate on the basis of sex in any of their education or employment programs or activities. This Policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 (“Title IX”), Title VII of the Civil Rights Act of 1964 (“Title VII”), New York’s Enough is Enough law, and the New York State Human Rights Law. This Policy complies with these laws as well as requirements under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013 (“VAWA”). The Colleges also comply with all federal and state civil rights laws banning discrimination in private institutions of higher education. The protections of this policy apply without regard to race, color, sex, pregnancy, religion, creed, national origin, familial status, disability, age, marital status, sexual orientation, gender identity, gender expression, veteran status, military status, predisposing genetic characteristics, domestic violence victim status, criminal conviction or any other protected category under applicable local, state, or federal law.

The Colleges specifically prohibit Sexual or Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Physical Assault, Stalking, and Retaliation. These forms of behavior are referred to in this Policy and accompanying Procedures interchangeably as Prohibited Conduct or Sexual Misconduct. Sexual Misconduct is unlawful and unacceptable in the HWS community and the Colleges will not tolerate such behavior.

The Colleges adopt this Policy to:

- (1) reaffirm the Colleges’ institutional values;
- (2) define community expectations;
- (3) provide for fair and equitable procedures for determining when this Policy has been violated; and
- (4) provide recourse for those individuals whose rights have been violated.

The Colleges respond promptly and equitably to reports of Sexual Misconduct to eliminate Prohibited Conduct, prevent its recurrence and address its effects. The Colleges conduct ongoing prevention, awareness, and training programs for students and employees and take disciplinary action against students, faculty and staff found to be in violation of this Policy. Disciplinary action for violations of this Policy may include expulsion of a student or termination of a faculty or staff member.

The Colleges require all members of the HWS community to conduct themselves in a manner that does not infringe upon the rights of others. The Colleges will not tolerate Sexual Misconduct. The Colleges expect all members of our community to foster a safe, welcoming, and respectful environment on campus. The Colleges

strongly encourage HWS community members to take reasonable and prudent actions to prevent or stop an act of Prohibited Conduct to which an individual is a bystander. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement or seeking assistance from a person in authority. The Colleges will support all HWS community members who choose to engage as an active bystander and protect all members of the community from retaliation for any reports made under this Policy.

## **I. SCOPE OF POLICY**

This Policy applies to all HWS community members, including students; faculty; staff; and third parties, such as volunteers, independent contractors, visitors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, or having any official capacity at the Colleges (“Third Parties”). This Policy applies to acts of Prohibited Conduct committed by or against students, faculty, staff, or Third Parties when the conduct:

- occurs on the Colleges’ campus or other property owned or controlled by the Colleges;
- occurs in the context of an HWS employment or education program or activity, including HWS-sponsored global education, athletic activities, or internship programs;
- occurs off-campus or outside of an HWS program or activity, but has continuing adverse effects on or creates a hostile environment for HWS community members while on the HWS campus or other property owned or controlled by the Colleges or in an employment or education program or activity of the Colleges; or
- otherwise has a reasonable connection to the Colleges.

This Policy refers to both reports and complaints. **Report** is used to indicate the process of giving a verbal or written account of Prohibited Conduct to a responsible employee of the Colleges (e.g., “a student reported or made a report to a faculty member that a sexual assault occurred at an off-campus party Friday night”.) **Complaint** is used where the Colleges seeks Formal or Informal Resolution under this Policy.

## **II. STUDENT BILL OF RIGHTS<sup>1</sup>**

All Hobart and William Smith students have the right to:

- Make a report (or decline to report) to local law enforcement and/or state police;
- Have disclosures of Sexual Assault, Intimate Partner Violence, Stalking and all other forms Prohibited Conduct treated seriously;

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<sup>1</sup> New York State law requires colleges and universities to adopt and make part of this Policy the Student Bill of Rights.

- Make a decision about whether or not to disclose a crime or violation and participate in the complaint resolution process and/or criminal justice process free from pressure by the institution;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the Colleges courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the Complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few HWS representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the Colleges, any student, the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the HWS;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a Complainant or a Respondent during any meetings and hearings under this Policy and procedures; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or complaint resolution process of the Colleges.

### III. APPLICABLE PROCEDURES

A “**Complainant**” is the individual who reports or is reported as having experienced Prohibited Conduct.<sup>2</sup> A “**Respondent**” is the individual accused of having violated this Policy. This Policy sets forth the provisions applicable to all community members, including how the Colleges will handle the initial assessment of reports of Prohibited Conduct. If Formal or Informal Resolution is required, the report will be considered a **Complaint**. The specific procedures used to resolve a Complaint will depend upon the nature of the relationship of the Respondent to the Colleges:

- Where the Respondent is a student, the Colleges will resolve Complaints by the procedures outlined in the Procedures for Resolving a Sexual Misconduct Complaint Against a Student, set out in Appendix A to this Policy.
- Where the Respondent is a faculty member, the Colleges will resolve Complaints by retaining an outside investigator to investigate the matter, substantially in the same manner set out in the Procedures for Resolving a Sexual Misconduct Complaint Against a Student, excepting that the investigator will make credibility determinations, observations of demeanor, and recommended findings. The Provost will then

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<sup>2</sup> The Colleges recognize that individual Complainants may also choose to self-identify as a victim or survivor.

either accept or reject the recommended finding of the investigator and propose an appropriate sanction. If the faculty member does not accept the Provost's recommendations, then the faculty member may file a grievance under the procedures set out in the Faculty Bylaws and Procedures. Any procedures relating to termination of a tenured faculty member will be subject to the Faculty Bylaws and Procedures.

- Where the Respondent is a staff member, the Colleges will resolve Complaints by retaining an outside investigator to investigate the matter, substantially in the same manner set out in the Procedures for Resolving a Sexual Misconduct Complaint Against a Student, excepting that the investigator will make credibility determinations, observations of demeanor, and recommended findings. The investigator will submit an investigation report to the Director of Human Resources who will accept or reject the recommended finding and determine the appropriate sanction. The Director of Human Resources will consult with the Respondent's supervisor for resolution, including imposition of any sanction(s).
- Where the Respondent is third party, the Title IX Coordinator will determine the appropriate manner of resolution to ensure a prompt and equitable process and provide for the safety and well-being of the Complainant and the broader campus community. When a report involves students or employees from HWS and another institution, the institutions may work collaboratively to address Sexual Misconduct provided that such collaboration complies with the Family Educational Rights and Privacy Act codified at 20 U.S.C 123g; 34 C.F.R Part 99 and other applicable federal and state laws.

The Colleges' Procedures provide prompt and equitable responses to all reports of Prohibited Conduct and outline specific timeframes for major stages of the process. The Procedures provide all parties notice and an opportunity to present witnesses and evidence and the opportunity to view all information that will be used to determine whether a violation of this Policy has occurred. The Colleges apply the preponderance of the evidence standard to determine whether a violation occurred. The preponderance of the evidence means that it is more likely than not that a Policy violation occurred.

In any Complaint involving Sexual Misconduct, the Complainant and the Respondent will have the opportunity to review any documents that will be considered in the context of the proceeding, and both a Complainant and Respondent may be accompanied to any meeting by an advisor of choice.

#### **IV. TITLE IX AND THE TITLE IX COORDINATOR**

Title IX is a federal civil rights law that prohibits colleges and universities that receive Federal financial assistance from discriminating on the basis of sex in education programs and activities. Sexual harassment, which includes acts of Sexual Assault, is a form of sex discrimination prohibited by Title IX. Title IX provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681, et seq.

Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and other applicable statutes.

The Colleges have designated a Title IX Coordinator to coordinate compliance with Title IX. The Title IX Coordinator ensures training and education of the HWS community members, oversees all Title IX reports and coordinates the Colleges' response to all reports. The Title IX Coordinator is available to meet with any community member as needed to discuss available resources, options and supports.

Any inquiries or concerns about the Colleges' application of Title IX may be addressed to the Title IX Coordinator. The Title IX Coordinator is available in person or by phone or email during regular business hours:

Title IX Coordinator  
Hobart and William Smith Colleges  
Office of Title IX Compliance and Programs  
603 S. Main Street  
Seneca Room Annex (lake level)  
Geneva, NY 14456  
(315) 781-3922  
[titleix@hws.edu](mailto:titleix@hws.edu)

Any inquiries or concerns about the Colleges' application of Title IX may also be addressed to the U.S. Department of Education Office for Civil Rights:

U. S. Department of Education, Office for Civil Rights  
New York Office  
32 Old Slip, 26th Floor  
New York, New York 10005-2500  
Phone: 646.428.3800  
Fax: 646.428.3843  
[OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

Inquiries involving employees may also be addressed to:

New York State Division of Human Rights  
One Monroe Square  
259 Monroe Avenue, Suite 308  
Rochester, New York 14607  
Phone: 585.238.8250  
Email: [InfoRochester@dhr.ny.gov](mailto:InfoRochester@dhr.ny.gov)

New York State Division of Human Rights  
Office of Sexual Harassment  
55 Hanson Place, Suite 347  
Brooklyn, New York 11217  
Phone: 718.722.2060 or 1.800.427.2773  
Fax: 718.722.4525

U.S. Equal Employment Opportunity Commission  
New York District Office  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, New York 10004  
Phone: 1.800.669.4000  
Fax: 212.336.3790  
TTY: 1.800.669.6820

U.S. Equal Employment Opportunity Commission  
Buffalo Local Office  
6 Fountain Plaza, Suite 350  
Buffalo, New York 14202  
Phone: 1.800.669.4000  
Fax: 716.551.4387  
TTY: 1.800.669.6820

## **V. PROHIBITED CONDUCT**

This Policy prohibits specifically defined forms of behavior: Sexual or Gender-based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Physical Assault, Stalking, and Retaliation. Prohibited Conduct is determined without regard to the sex, gender, sexual orientation and/or gender identity/expression of the Complainant or the Respondent.

This section also includes definitions and a discussion of key terms, including Affirmative Consent and Incapacitation. The concept of Affirmative Consent is integral to the definition of Sexual Assault, expectations of the HWS community, and guidance for those who are involved in the implementation of the procedures, including the assessment, investigation and adjudication of Prohibited Conduct.

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

#### ***Sexual Harassment***

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature whether verbal, non-verbal, graphic, physical or other, when conditions (1) and/or (2), below, are present:

#### ***Gender-Based Harassment***

Gender-Based Harassment is any act of aggression, intimidation, or hostility, whether verbal, non-verbal, graphic, physical, or otherwise, even if the act does not involve conduct of a sexual nature, when the acts are based on the sex, gender, sexual orientation, gender identity or gender expression and conditions (1) and/or (2), below, are present:

- (1) submission to or rejection of such conduct is made, either explicitly or implicitly, a term or

condition of an individual's employment, academic standing or participation in any HWS program and/or activity or used as the basis for decisions affecting the individual (quid pro quo harassment);

(2) such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, pervasive or persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the Colleges' education or employment programs and/or activities. The conduct must be deemed severe, pervasive or persistent under both a subjective and objective standard.

The determination of whether an environment is "hostile" must be based on the totality of known circumstances, including:

- the frequency, nature and severity of the conduct;
- whether the conduct was physically threatening;
- the effect of the conduct on the Complainant's mental and/or emotional state;
- whether the conduct was directed at more than one person;
- whether the conduct arose in the context of other discriminatory conduct;
- whether the speech or conduct unreasonably interfered with the Complainant's educational or work opportunities or performance (including study abroad), HWS-controlled living environment, work opportunities, or performance; and
- whether the conduct implicates concerns related to academic freedom or freedom of speech.

A hostile environment can be created by persistent or pervasive conduct or, if sufficiently severe, by a single incident. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

## **B. Sexual Assault**

Sexual Assault is having or attempting to have *sexual intercourse* or *sexual contact* with another individual without Affirmative Consent.

*Sexual intercourse* is any vaginal or anal penetration, however slight, with any object or by a penis, tongue, finger or other body part performed by an individual upon another individual. Sexual intercourse also includes any contact, however slight, between the mouth of one individual and the genitalia of another individual.

*Sexual contact* is any intentional sexual touching however slight, of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, with any object or body part performed by an individual upon another individual. *Sexual contact* includes making an individual touch another individual with or on the breasts,



buttocks, groin or genitals.

### 1. *Affirmative Consent*

Affirmative Consent is a knowing, voluntary and mutual decision among participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, gender, sexual orientation, gender identity, or gender expression.

Affirmative Consent cannot be obtained through force, including physical force, threats, intimidation, or coercion. Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity against their will. Intimidation is an implied threat that menaces or causes reasonable fear in another individual. Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against that individual's will. When a person makes clear a decision not to participate in a particular form of Sexual Contact or Sexual Intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion existed, the Colleges will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Affirmative Consent cannot be obtained by taking advantage of the incapacitation of another individual where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated. Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity. An individual is incapacitated if the individual lacks conscious knowledge of the nature of the act or is physically helpless, asleep, unconscious, or otherwise unaware that sexual activity is occurring. An individual may be incapacitated as a result of the consumption of alcohol or other drugs or due to a temporary or permanent physical or mental health condition.

In evaluating Affirmative Consent in cases of alleged incapacitation, the Colleges ask two questions: (1) Did the person initiating sexual activity know that the other party was incapacitated? And if not, (2) should a sober, reasonable person in the same situation have known that the other party was incapacitated? If the answer to either of these questions is "yes," Affirmative Consent was absent.

Consent is required to be obtained regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

### 2. *Evaluating Affirmative Consent and Incapacitation*

An individual who is under the influence of alcohol and/or other drugs may be incapacitated, and therefore unable to consent. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. Incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or other drugs impacts an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; and
- capacity to appreciate the nature and the quality of the act.

Common and obvious warning signs can show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person’s decision-making capacity, ability to communicate clearly, awareness of the consequences, and ability to make informed judgments. Individuals engaging in sexual activity should continually evaluate Consent throughout the encounter. An individual who does not initially appear to be incapacitated may become incapacitated as the effects of alcohol or other drugs increase. If there is any doubt as to the level or extent of the other individual’s intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity. **Being impaired by alcohol or other drugs is not a defense to a violation of this Policy.**

### 3. *Guidance on Affirmative Consent*

A person who wants to engage in a specific sexual activity is responsible for obtaining Affirmative Consent for that activity. Silence and/or passivity do not constitute Consent. Lack of resistance does not constitute Consent. Consent is active, not passive. The Colleges offer the following guidance on Affirmative Consent:

- All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
- Consent may be withdrawn by any party at any time. An individual who seeks to withdraw Affirmative Consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.
- Consent to one form of sexual activity does not, by itself, constitute Consent to another form of sexual activity. Consent to sexual activity on one occasion does not constitute consent to sexual activity on other occasions. Consent to sexual activity with one person does not constitute consent to sexual activity with any other person. Each participant in a sexual encounter must consent to each form of sexual activity with each participant.
- Each party must consent to each instance of sexual contact each time. Prior consensual sexual activity does not, by itself, constitute consent to future sexual activity. In cases of prior relationships between the parties, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of Affirmative Consent.

- In New York, an individual less than 17 years old is incapable of giving consent.
- Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this Policy. Participants are encouraged to talk with one another before engaging in sexual activity. If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

### **C. Sexual Exploitation**

Sexual Exploitation is purposely or knowingly:

- Observing or allowing third parties to observe an individual’s genitalia, groin, breasts or buttocks or private sexual activity without the knowledge and consent of the participants, including through a hidden location or through electronic means in a place where there is a reasonable expectation of privacy;
- Recording or photographing an individual’s genitalia, groin, breasts or buttocks or private sexual activity without consent;
- Disseminating recordings or photographs of an individual’s genitalia, groin, breasts or buttocks or private sexual activity without consent;
- Exposing genitals or inducing another to expose their own genitals without Affirmative Consent;
- Exposing another individual to a sexually transmitted infections without the other’s knowledge;
- Causing incapacitation of another individual through alcohol, drugs, or any other means, for the purpose of compromising that individual’s ability to consent to sexual activity; or
- Assisting or otherwise facilitating any act of Prohibited Conduct.

### **D. Intimate Partner Violence**

Intimate Partner Violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a relationship of a sexual, dating, domestic, or other intimate nature with the Respondent. Intimate Partner Violence is not a distinct form of Prohibited Conduct. Intimate Partner Violence can encompass a broad range of behavior and may include Sexual or Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Physical Assault, Stalking, and Retaliation.

The Colleges will evaluate the existence of the relationship based upon the Complainant’s statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship.

### **E. Physical Assault**

Physical Assault is threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. The Colleges will address Physical Assault under this Policy when it occurs in the context of Intimate Partner Violence or is based upon the sex, gender, sexual orientation and/or gender

identity or expression of the Complainant.

#### **F. Stalking**

Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for the person's safety or safety of others or to suffer substantial emotional distress.

- **Course of conduct** means two or more acts, including but not limited to, acts in which an individual directly, indirectly or through third parties, by any action, method, device or means follows, monitors, observes, surveils, threatens or communicates to or about another individual, or interferes with another individual's property.
- **Substantial emotional distress** means significant mental suffering or anguish.
- **Reasonable person** means a reasonable person under similar circumstances and with similarities to the victim.

Stalking includes cyber-stalking, a particular form of stalking in which an individual uses electronic media such as the internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact.

#### **G. Retaliation**

Retaliation is any adverse action taken against an individual because they were involved in the reporting, investigation or resolution of a report of Prohibited Conduct. Retaliation includes threats, intimidation, harassment, coercion, violence or any other conduct that would discourage a reasonable person from engaging in activity protected under this Policy.

Retaliation may occur even where there is a finding of "not responsible" under this Policy. Good faith actions lawfully pursued in response to a report of Prohibited Conduct are not Retaliation. Retaliation should be promptly reported to the Title IX Coordinator and will be investigated and resolved under this Policy and Procedures.

### **VI. AMNESTY, OBLIGATION TO PROVIDE TRUTHFUL INFORMATION AND GROUP INFRACTIONS**

#### **A. Amnesty**

The health and safety of every HWS student is of utmost importance. The Colleges recognize that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that Prohibited Conduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct or the conduct of others. The Colleges strongly encourage students to immediately report Prohibited Conduct to the Colleges or law enforcement. A bystander acting in good faith or a Complainant acting in good faith that discloses any incident of Prohibited Conduct to the Colleges or law enforcement will not be subject to disciplinary action under the HWS Community Standards for

violations of alcohol and/or drug use policies based on ingestion occurring at or near the time of the reported Prohibited Conduct.

Other individuals present will also not be subject to disciplinary action under the HWS Community Standards for violations of alcohol and/or drug use policies based on ingestion occurring at or near the time of the reported Prohibited Conduct.

**B. Obligation to Provide Truthful Information**

All HWS community members are expected to cooperate fully and provide truthful information in any report or proceeding under this Policy. Providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under the Colleges' Community Standards and disciplinary action under the appropriate employee disciplinary policy. This provision does not apply to reports made or information provided in good faith, even if the report is not later substantiated.

**C. Group Infractions**

When members of a student group, organization, team, or individuals act collusively in violation of the Sexual Misconduct Policy, they may be charged as a group and/or as individuals, and a hearing may proceed against the group as joint respondents or against one or more involved individuals, or both, as appropriate, given available information and the circumstances.

**VII. PRIVACY, CONFIDENTIALITY AND EMPLOYEE REPORTING RESPONSIBILITIES**

The Colleges are committed to protecting the privacy of all individuals involved in the resolution of a report of Prohibited Conduct. HWS employees who are involved in the Colleges' Title IX response, including the Title IX Coordinator, investigators, and adjudicators, receive specific training about safeguarding private information. Throughout the reporting, investigation and resolution of a complaint, including the implementation of remedial and protective measures, the Colleges will make reasonable efforts to protect the privacy interests of all involved individuals in accordance with federal and state law while also conducting a thorough review and response to eliminate, prevent and address Sexual Misconduct.

HWS Employees are designated as either a Responsible Employee or a Confidential Employee. Responsible Employees have reporting obligations under this Policy, but will maintain the privacy of an individual's information. Confidential Employees do not have a reporting obligation under Title IX and will keep information confidential (except as required or permitted to by law). In understanding the difference between speaking to a Responsible Employee or Confidential Employee, it may be helpful to understand the difference between privacy and confidentiality, as they each have distinct meanings under this Policy.

**A. Privacy**

Privacy means that information related to a report of Sexual Misconduct will only be shared with a limited circle of HWS employees who "need to know" in order to assist in the active review, investigation and resolution

of the complaint and implementation of remedial and protective measures.

**B. Confidentiality**

Certain campus and community professionals, including mental health providers, ordained clergy, rape crisis counselors, and health care providers, are legally required to keep information shared by an individual confidential and cannot reveal information to a third party. On campus, Confidential Employees are generally prohibited from sharing information unless there is written consent, imminent threat of harm to self or others, or reasonable suspicion of abuse of a minor (someone under the age of 18).

**C. Confidential Employees**

A Confidential Employee is licensed medical, clinical or mental health professional, or ordained clergy or staff member in the offices of a licensed medical, clinical or mental health professional, or ordained clergy. A Confidential Employee will not make a report to the Colleges unless there is written consent to do so from the patient/client, there is the risk of imminent threat of harm to self or others, or there is reasonable suspicion of abuse of a minor (someone under the age of 18). HWS Confidential Employees are:

- All employees in the Counseling Center
- All employees in the Office for Spiritual Engagement;
- All employees in Hubbs Health Center; and
- Any other professional with a legally recognized privilege.

Consistent with the Clery Act, any data collected from Confidential Employees about the disclosures of Prohibited Conduct will be done in an aggregate manner and in a way that does not reveal personally identifying information of the parties to include in annual crime statistics, address any systemic concerns, and inform training and education programs.

**D. Responsible Employees**

Unless designated as an HWS Confidential Employee, all HWS employees are Responsible Employees and are required to make an immediate report to the Title IX Coordinator upon receiving information about an incident of Prohibited Conduct. Responsible Employees include Resident Assistants, Teaching Assistants, and all other student employees, when disclosures are made to any of them in their capacities as employees. Responsible Employees will keep information private, but cannot maintain confidentiality. Responsible Employees are required to share all known details about an incident with the Title IX Coordinator, including dates, times, locations, names of involved individuals and the nature of the incident. HWS offices and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible.

**E. Public Awareness Events**

Responsible Employees are generally not required to report information reported during public awareness events. Public awareness events including candlelight vigils such as Take Back the Night or other public events or

forums at which individuals disclose experiences of sexual violence or other forms of Prohibited Conduct are not considered notice to the school for the purpose of triggering an individual investigation unless initiated by the Complainant. The Colleges may use any information provided at such events to review policy, inform ongoing education and prevention efforts, and assess climate to learn more about the prevalence of Sexual Misconduct at the Colleges.

#### **F. Clery Act Reporting**

Under the Clery Act, the Colleges are required to issue timely warnings to the HWS community where certain reported crimes (including some forms of Sexual Misconduct) pose a serious or continuing threat to the Colleges' community. The Clery Act also requires the Colleges to maintain, make available to the public, and provide to the United States Department of Education statistics about certain reported crimes in a daily crime log and annual security report. Timely warnings and the Colleges' crime statistics do not include personally identifying information of Complainants.

### **VIII. HWS AND COMMUNITY RESOURCES**

The Colleges offer a wide range of resources to provide support and guidance from initial contact through report, investigation and resolution of Prohibited Conduct. The Colleges will offer reasonable and appropriate measures to Complainants and Respondents and facilitate the continued access to HWS education or employment programs and activities.

#### **A. Emergency Resources**

**Confidential Medical Assistance:** An individual who experiences Sexual Assault, Intimate Partner Violence, or any other form of violence is strongly encouraged to seek immediate medical attention at F.F. Thompson Hospital:

**[E.F. Thompson Hospital](#)**

350 Parrish Street  
Canandaigua, N.Y. 14424  
(585) 396-6000

F.F. Thompson Hospital is the closest hospital in the Geneva area where an individual can receive a forensic sexual assault examination by a Sexual Assault Nurse Examiner (also known as "SANE Nurse"). SANE Nurses can assess injuries related to physical trauma; evaluate for sexually-transmitted infections and possible pregnancy; provide medical care (including medications to prevent infections and pregnancy); and can, generally within the first 96 hours after a sexual assault, administer a "forensic exam." During the forensic exam, the SANE Nurse documents and collects evidence of sexual contact and/or physical trauma (including injuries to the body and genitals), trace evidence, biological fluids, and identifiable DNA. When there is reason to believe that an assault may have been facilitated by the use of drugs or alcohol, the forensic exam may also include the collection of urine and blood samples for toxicology testing. *Individuals are not required to report an incident to law enforcement or the Colleges in order to receive medical attention or a forensic exam.* Individuals may have a support person of their choosing present throughout the forensic exam. In addition, advocates from Safe Harbors of the Finger Lakes,

a local rape crisis center, are available to accompany and offer support to patients seeking a forensic exam. Transportation to F.F. Thompson can be arranged by contacting Campus Safety. It is not necessary to give your name or make a report in order to obtain transportation assistance.

Individuals are encouraged to seek follow-up care to address any ongoing medical concerns, including those related to sexually-transmitted infections and pregnancy, regardless of whether a forensic exam is obtained after a sexual assault. Follow-up care is available at F.F. Thompson Hospital, Hubbs Health Center, Geneva General Hospital or through any appropriate health care provider outside of the Colleges.

**Hubbs Health Center**

119 St. Clair Street  
Geneva, NY 14456  
(315) 781-4530  
By appointment  
Monday – Friday 8:30 a.m.-6:30 p.m.  
Sunday: 1-5 p.m. (nurse only)

**Geneva General Hospital**

North Main and North Streets  
Geneva, NY 14456  
(315) 787-4500

**Law Enforcement:** Law enforcement has unique legal authority to seek and execute search warrants, to collect forensic evidence that may have been left at the scene or at other relevant locations, to issue subpoenas to compel testimony or other evidence, and to make an arrest when supported by probable cause to believe a crime has been committed.

Local Law enforcement can be reached by contacting the Geneva Police Department (or one of contacts listed below). Call the Geneva Police Department directly for an immediate response.

**Emergency 911**

**Geneva Police Department<sup>3</sup>**

**(315) 828-6771**

**New York State Police**

(315) 539-3976 Troop E, Zone 2  
(844) 845-7269 (24-hour hotline)

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<sup>3</sup> The Geneva Police Department may notify the Colleges upon receipt of a report of Prohibited Conduct.



**HWS Campus Safety**: Campus Safety is available 24 hours a day, seven days a week, year round, to escort any HWS community member to a safe place, provide transportation to the hospital, assist in coordination with law enforcement, assist individuals in obtaining a civil order of protection, and provide information about the Colleges' resources and processes.

**HWS Campus Safety**

Campus Services Building  
Off Pulteney Street  
Medbery parking lot, NE corner

Emergency phone (315) 781-3333

Non-Emergency Phone  
(315) 781-3656  
(315) 781-3657

**Confidential Crisis Resources (Support and Counseling)**: All individuals involved in a report are strongly encouraged to seek immediate emotional support after any incident of Prohibited Conduct. In addition to the resources above, there are a number of confidential sources and "hotlines" for crisis counseling available through the Colleges and off campus. HWS counselors can offer students information about reporting options and provide trauma-informed support.

**Counseling Center** (for students)  
Hobart and William Smith Colleges  
91 St. Clair Street  
Geneva, NY 14456  
(315) 781-3388  
Monday – Friday 9 a.m. – 5 p.m.

Any individual who has experienced Prohibited Conduct may speak with a counselor in the Counseling Center at any time. During the academic year, an on-call counselor is available 24 hours a day, 7 days a week. Students can also access the on-call counselor by contacting their Resident Assistant or Area Coordinator or by calling Campus Safety. During an after-hours mental health emergency, call Campus Safety at (315) 781-3333 to reach the counselor on call. Campus Safety will not require an individual to disclose their name to be connected to the counselor on call.

**Safe Harbors of the Finger Lakes, Inc.**

(800) 247-7273 (24 hour crisis hotline)  
(315) 781-1093 (support during business hours)

Safe Harbors, Inc., a local rape crisis and intimate partner violence support agency offers free, confidential crisis counseling as well as support groups and other services.

**Family Counseling Service of the Finger Lakes, Inc.**

Employees may seek confidential counseling at Family Counseling Service of the Finger Lakes, Inc. through the Colleges' Employee Assistance Program. Family Counseling Service provides confidential counseling to eligible employees and their families. Family Counseling Service also maintains a 24 hour, 7 day a week domestic violence hotline with trained staff and volunteers for support and crisis counseling, and to assist in emergencies. The hotline number is (800) 695-0390.

671 South Exchange Street  
Geneva, NY 14456  
(800) 695-0390 (24 hour crisis hotline)  
(315) 789-2613  
(877) 789-2613

**B. Confidential Resources**

**HWS Confidential Employees**

**Counseling Center**

(315) 781-3388  
(See additional contact information above)

**Office for Spiritual Engagement**

Chaplain  
St. John's Chapel  
630 S. Main Street  
Geneva, NY 14456  
(315) 781-3670

Abbe Center  
315-679-6924

**Hubbs Health Center**

(315) 781-3600  
(See additional contact information above)

**Community Confidential Resources**

**Safe Harbors of the Finger Lakes, Inc.**

(800) 247-7273 (24 hour crisis hotline)  
(315) 781-1093 (support during business hours)

**Family Counseling Service of the Finger Lakes, Inc.**

Employees may seek confidential counseling at Family Counseling Service of the Finger Lakes, Inc. through the Colleges' Employee Assistance Program. Family Counseling Service provides confidential counseling to eligible employees and their families. Family Counseling Service also maintains a 24 hour, 7 day a week domestic violence hotline with trained staff and volunteers for support and crisis counseling, and to assist in emergencies. The hotline number is (800) 695-0390.

671 South Exchange Street  
Geneva, NY 14456  
(800) 695-0390 (24 hour crisis hotline)  
(315) 789-2613  
(877) 789-2613

**Legal Assistance of Western New York, Inc.**

Legal Assistance provides confidential services to individuals who meet their requirements for representation. The best way to determine if Legal Assistance can help is to contact their office and provide information about a specific concern.

361 South Main Street  
Geneva, New York 14456  
(315) 781-1465

**National Confidential Resources**

National Sexual Assault Hotline  
**(800) 656-4673**

**Rape and Incest National Network (RAINN)**

**<https://ohl.rainn.org/online/>** (online hotline)

**National Domestic Violence Hotline**

(800) 799 SAFE (7233)

**C. Remedial and Protective Measures**

The Title IX Coordinator can provide Complainants and Respondents with information, support, and assistance and can arrange for a broad range of remedial and protective measures. Remedial measures are designed to address a Complainant's safety, well-being and continued access to educational, employment or program opportunities. Protective measures involve action against a Respondent. Remedial and protective measures, which may be temporary or permanent, may include no-contact directives, housing modifications, academic modifications

and support, work schedule modifications, interim suspension, suspension from employment, and leave (with or without pay). **Remedial and protective measures are available regardless of whether a Complainant pursues criminal or HWS disciplinary action.** The Title IX Coordinator will assist individuals in determining whether certain forms of support, remedial and/or protective measures may be beneficial and appropriate.

The Title IX Coordinator also will promptly inform the Respondent of any action(s) (including any interim protective measures) that will directly impact the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any interim protective measures based on all available information. Interim protective measures will remain in effect, unless new circumstances arise which warrant reconsideration of the protective measures. A Complainant or Respondent may challenge interim protective measures or other actions, or failure to impose interim protective measures or take other actions, by contacting the Title IX Coordinator.

**Title IX Coordinator  
Hobart and William Smith Colleges  
Office of Title IX Compliance and Programs  
603 S. Main Street  
Seneca Room Annex (lake level)  
Geneva, NY 14456  
(315) 781-3922  
[titleix@hws.edu](mailto:titleix@hws.edu)**

The availability of remedial and protective measures will be determined by the specific circumstances of each case. The Title IX Coordinator will consider a number of factors in determining which measures to take, including the needs and requests of the individuals seeking remedial and/or protective measures; the severity or pervasiveness of the reported Prohibited Conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, dining hall, academic course(s), job location; and whether other judicial measures have been taken to protect the Complainant (e.g., Protective Orders). When implementing such measures, the Colleges will seek to minimize the burden on the individual seeking the measures while considering fairness to the Respondent.

Protective and remedial measures may be temporary or permanent and may be modified by the Colleges as circumstances change. Such measures include:

- Arranging a meeting with law enforcement to discuss or report Prohibited Conduct and/or safety planning;
- Imposition of a No-Contact Order against an HWS community member;
- Assistance seeking a civil Order of Protection<sup>4</sup> The Title IX Coordinator can arrange and/or attend a meeting with local law enforcement, who can explain the process for seeking an Order of Protection and

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<sup>4</sup> In New York, an order of protection is issued by the court to limit the behavior of someone who harms or threatens to harm another person. It is used to address various types of safety issues, including, but not limited to situations involving domestic violence. Family Courts, criminal courts, and Supreme Courts can all issue orders of protection.

can escort individuals to the appropriate office in order to initiate a petition seeking an Order of Protection;

- Arranging access to counseling services and assistance in setting up initial appointments;
- Arranging access to medical services and assistance in setting up initial appointments;
- Assistance in seeking academic assistance, including modified class schedules (including transfer to another section), permission to withdraw from and/or retake a class or attend a class via alternative means (e.g., independent study), extension of assignment deadlines, and voluntary leaves of absence;
- Assistance in modifying HWS housing arrangements, including immediate temporary relocation to safe spaces and/or permanent reassignment of HWS-owned housing;
- Assistance in modifying HWS employment arrangements, including changes in work schedules, job assignments, work locations and/or assigned parking;
- Imposing an interim suspension and/or leave, with or without pay, on the Respondent; and
- Any other measures that may be arranged by the Colleges (to the extent reasonably available) to ensure the safety and well-being of an individual who has been affected by Prohibited Conduct.

In some cases, students may choose to seek a leave of absence or a reduced course load; these actions may, in turn, impact matters such as a student's immigration, visa and/or financial aid status. In such cases, the Title IX Coordinator assists the student in coordination with the Director of International Student Affairs, the Hobart or William Smith Deans or other appropriate resources.

The Title IX Coordinator will ensure individuals receive written notification of all their rights and options, regardless of whether the individuals chooses to pursue disciplinary action under the Policy or make a report to law enforcement.

## **IX. REPORTING OPTIONS**

There are multiple channels for reporting Prohibited Conduct. Individuals may report Prohibited Conduct to law enforcement, to the Colleges, to both or to neither. These reporting options are not exclusive. Complainants may simultaneously pursue criminal and HWS disciplinary action. The Colleges will support Complainants in understanding and assessing their reporting options.

### **A. Preservation of Evidence**

The Colleges recognize that making the decision to report Prohibited Conduct often takes time. Nevertheless, pending the decision to report, individuals are strongly encouraged to take immediate steps to preserve all evidence that might support a future report of Prohibited Conduct, an Order of Protection, or an investigation by law enforcement, by the Colleges, or both. Such evidence may include:

- A forensic sexual assault examination conducted by a SANE nurse (as soon as possible but generally required to be within 96 hours of the incident);
- Photographs of injuries, property damage, or the location of the incident;
- Any clothing, sheets or other materials (items containing bodily fluids should be stored in cardboard

boxes or paper bags, not plastic bags);

- Electronic exchanges (e.g., text messages, emails, and Facebook, Instagram, Snapchat or other social media posts, to the extent that they can be captured or preserved);
- Photographs (including photographs stored on smartphones and other devices); and
- Voice-mail messages and other physical, documentary and/or electronic data that might be helpful or relevant in an investigation.

Evidence may be lost by the changing of clothes, bathing, brushing teeth, eating and drinking. If possible avoid these actions prior to the forensic sexual assault examination. Electronic and photographic evidence may be lost through the upgrade or replacement of equipment (including smartphones), software and/or accounts or due to the passage of time.

### **B. Reporting to Law Enforcement**

Individuals have the right to notify law enforcement or decline to notify law enforcement. Individuals may contact law enforcement directly (resources above). In keeping with its commitment to taking all appropriate steps to eliminate, prevent, and remedy all Prohibited Conduct, the Colleges encourage complainants to report Prohibited Conduct immediately to local law enforcement. Individuals may seek assistance in notifying law enforcement from the Title IX Coordinator or Campus Safety. The Title IX Coordinator can assist in setting up an initial meeting with law enforcement and can accompany individuals to that meeting. In instances that involve an immediate threat to health or safety, the Colleges may independently notify law enforcement.

### **C. Reporting to the Colleges**

The Colleges encourage individuals who have experienced, have knowledge of, or have witnessed Prohibited Conduct to make a report to the Colleges. Under Title IX, once an institution has notice of an act of Prohibited Conduct, it is required to (1) take immediate and appropriate steps to investigate or otherwise determine what occurred; and (2) take prompt and effective action to end any misconduct that occurred; remedy its effects; and prevent its recurrence. The Colleges will seek to honor the Complainant's request(s) for anonymity, that an investigation not be pursued and/or that no disciplinary action be taken if it is possible to do so while also protecting the safety and well-being of the Complainant and the HWS community **See below D.**

Making a Report to the Colleges does not require participation in any subsequent HWS proceedings, nor is a report required in order for an individual to receive support or remedial measures.

Although there is no time limit for reporting Prohibited Conduct to the Colleges, the Colleges' ability to respond may diminish over time, as evidence may erode, memories may fade, and Respondents may no longer be affiliated with the Colleges. If the Respondent is no longer a member of the HWS community, the Colleges will provide appropriate remedial measures, assist the Complainant in identifying external reporting options, and take other reasonable steps to respond under Title IX.

Individuals are encouraged to make a direct report of Prohibited Conduct by contacting the Title IX Coordinator:

**Title IX Coordinator**  
**Hobart and William Smith Colleges**  
**Office of Title IX Compliance and Programs**  
**603 S. Main Street**  
**Seneca Room Annex (lake level)**  
**Geneva, NY 14456**  
**(315) 781-3922**  
[titleix@hws.edu](mailto:titleix@hws.edu)

**D. Anonymous Reporting**

Any individual may make an anonymous report concerning an act of Prohibited Conduct, including through the Colleges' online [Bias Incident Reporting System](#). Any individual may report with or without disclosing a name, identifying involved persons, or requesting any action. Anonymous reports will go to the Title IX Coordinator and Campus Safety for review and appropriate response and action. The Title IX Coordinator is available to answer questions about reporting and procedural options at any time. Individuals may call the Title IX Coordinator to discuss options without identifying themselves or reporting any details about an incident, such as dates, times, locations, names of involved individuals and the nature of the incident.

**X. COLLEGES' INITIAL RESPONSE TO ALL REPORTS OF PROHIBITED CONDUCT**

**A. Intake Assessment**

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate safety or well-being concerns raised by the report. In this intake assessment, the Title IX Coordinator will:

- Assess the Complainant's safety and well-being and offer immediate support and assistance;
- Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
- Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- Inform the Complainant about HWS and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures;
- Inform the Complainant of the right to seek Informal Resolution (where available) or Formal Resolution; ascertain the Complainant's expressed preference for manner of resolution (Informal Resolution, Formal Resolution, or neither); and discuss with the Complainant any concerns or barriers to participating in any HWS investigation and resolution;
- Explain the Colleges' prohibition against Retaliation and that the Colleges will take prompt action in response to any act of Retaliation;

- Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
- Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency;
- Coordinate with appropriate HWS officials to determine whether the report triggers any Clery Act reporting requirements, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations; and
- Ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet to discuss those resources and options.

#### **B. Determination of Colleges' Response Following Intake Assessment**

Following the Intake Assessment, the Title IX Coordinator will promptly evaluate every report of Prohibited Conduct and review new information as it becomes available. The Title IX Coordinator will review all known information about the reported incident of Prohibited Conduct. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident. The Title IX Coordinator may consult with members of the HWS community, including the Director of Campus Safety, Vice President for Student Affairs, Vice President for Human Resources and/or Provost.

The Title IX Coordinator will determine whether the reported information and any other available information provides a reasonable basis for concluding that there is a threat to the safety or well-being of the Complainant or to the HWS community. The Title IX Coordinator will make this determination based upon a review of the totality of the known circumstances, and will be guided by a consideration of the following **safety factors**:

- Whether the Respondent has prior history, is the subject of prior reports and/or complaints related to any form of Prohibited Conduct, or has any history of violent behavior;
- Whether the Respondent has a history of failing to comply with any HWS no-contact orders, other HWS protective measures, and/or any judicial protective order;
- Whether the report is an escalation in Prohibited Conduct by the Respondent;
- Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
- Whether the Prohibited Conduct involved multiple Respondents;
- Whether the Prohibited Conduct involved physical violence or use of a weapon;
- Whether the report or other available information reveals a pattern of Prohibited Conduct;
- Whether the Prohibited Conduct was facilitated through the use of “date-rape” or similar drugs or intoxicants;



- Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring;
- Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18); and/or
- Whether any other aggravating circumstances or signs of predatory behavior are present.

Upon completion of the safety and well-being assessment, the Title IX Coordinator will determine the course of action, which may include but is not limited to Formal Resolution and/or Informal Resolution (if available).

Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Title IX Coordinator will seek to honor the preferences of the Complainant wherever possible taking into consideration the safety factors listed above and its legal obligations. In all cases, the initial report, Intake Assessment, and the determinations of the Title IX Coordinator will be documented and retained by the Colleges in accordance with applicable law.

**C. Where the Complainant Wishes to Pursue Formal or Informal Resolution**

In every case in which the Complainant reports Prohibited Conduct and requests an investigation and disciplinary action, the Title IX Coordinator will promptly initiate Formal Resolution if, taking all known information as true, the report would constitute a violation of the Policy.

**D. Where the Complainant Requests Anonymity, that an Investigation not be Pursued, that a Complaint be Withdrawn and/or that No Disciplinary Action Be Taken**

A Complainant may request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, that a complaint be withdrawn, and/or that no disciplinary action be taken.

The Title IX Coordinator will consider the following factors in evaluating such request(s): (1) the totality of the known circumstances; (2) the presence of any **safety factors**; (3) the potential impact of such action(s) on the Complainant; (4) fairness to the Respondent (5) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (6) the existence of any independent information or evidence regarding the Prohibited Conduct; and (7) any other available and relevant information. The Colleges will seek to honor the Complainant’s request(s) if it is possible to do so while also protecting the safety and well-being of the Complainant and the HWS community.

*1. Determination that a Complainant’s Request(s) Can be Honored*

Where the Title IX Coordinator determines that a Complainant’s request(s) (that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken) can be honored, the Colleges may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the HWS community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Informal Resolution.

At any time, the Complainant may choose to pursue Informal Resolution (if available) or Formal Resolution under the Procedures applicable to the nature of the complaint. The Title IX Coordinator also may request that a report be re-opened and pursued under these Procedures if any new or additional information becomes available.

2. *Determination that a Complainant's Request(s) Cannot be Honored*

Where the Title IX Coordinator has determined that a Complainant's request(s) (that personally-identifying information not be shared with the Respondent, that no investigation be pursued, that a complaint previously filed be withdrawn, and/or that no disciplinary action be taken) cannot be honored (i.e., because honoring the Complainant's request(s) would impede the Colleges' ability to ensure the safety and well-being of the Complainant and other members of the HWS community), the Title IX Coordinator will first notify the Complainant when reasonably possible to do so. The Title IX Coordinator will take appropriate actions on behalf of the Colleges, which may include, without limitation, (i) imposing a no-contact order or requesting that the Colleges impose an Interim Suspension or Leave on the Respondent; (ii) initiating an investigation and Formal Resolution; and/or (iii) arranging, imposing, or extending any other appropriate remedial and/or protective measures.

Where the Title IX Coordinator has determined that the Colleges must proceed with an investigation despite a Complainant's request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, the Colleges' investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the Colleges intend to proceed with an investigation, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the Colleges. In such cases, the Colleges will serve as the Complainant in seeking disciplinary action against a Respondent.

Where a Complainant declines to participate in an investigation, the Colleges' ability to meaningfully investigate and respond to a report may be limited. In such cases, the Title IX Coordinator may pursue the report if it is possible to do so without the Complainant's participation in the investigation or resolution (e.g., where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the Colleges will only be able to respond to the report in limited and general ways (i.e., through the provision of remedial measures, targeted training or prevention programs, or other remedies tailored to the circumstances).

When a decision is reached that impacts a Respondent (including the imposition of interim protective measures), the Title IX Coordinator will ensure that the Respondent is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options.

## **E. Considerations and Rights Associated with Reports of Sexual Misconduct**

### *1. Advisors.*

Each party has the right to choose and consult with an Advisor of their choice. The Advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation or adjudication. The parties may be accompanied by their respective Advisors at any meeting or proceeding under this Policy and Procedures. While the Advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. Where an Advisor to any party is an attorney, the Colleges' Title IX Coordinator and/or attorney may also attend the meeting or proceeding.

### *2. Coordination with Law Enforcement*

The Title IX Coordinator will contact any law enforcement agency that is conducting its own investigation to inform that agency that the Colleges' investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the Colleges in its investigation. At the request of law enforcement, the Title IX Coordinator may delay the Colleges' investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will promptly resume the Colleges investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

## **XI. TRAINING, EDUCATION AND PREVENTION PROGRAMS**

The Colleges provide 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 sexual misconduct.

The Colleges are committed to the prevention of Sexual Misconduct through ongoing education and awareness programs. The Colleges offer programs to promote awareness and prevention of Sexual Misconduct, including an overview of the Colleges' Policy and Procedure, relevant definitions (including Prohibited Conduct, discussion of the impact of alcohol and illegal drug use, Affirmative Consent), and information about bystander intervention and risk reduction.

The Colleges' Title IX Coordinator oversees the education and prevention calendar, tailoring programming to campus needs and climate. Incoming first-year students and new employees will receive primary prevention and awareness programming. Returning students and employees will receive ongoing training on a periodic basis. All educational programs include information about resources and reporting options available for students, faculty, and staff.

## **XII. RELATED POLICIES**

For Students: [Handbook of Community Standards 2015-2016](#)

For Staff: [Employee Handbook](#)

For Faculty: [Faculty Handbook](#)

### **XIII. ANNUAL REVIEW**

The Colleges will evaluate changes in legal requirements, existing resources, the resolution of reports, including timeframes, sanctions and remedies, and other factors and update this Policy as appropriate. The Colleges will conduct a review of this Policy by August 15<sup>th</sup> each year and will communicate any changes to this Policy to the entire HWS community.