Read
Smith's COVID-19 guidelines
(https://www.smith.edu/covid19)
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Sexual Misconduct Policy

Smith College seeks to maintain an environment that is free of conduct that unreasonably interferes with the academic and professional experience of any member of the community.

Consistent with this commitment, the college complies with Title IX of the Education Amendments of 1972 ("Title IX"), which prohibits discrimination on the basis of sex in education programs and activities, Title VII of the Civil Rights Act of 1964 ("Title VII"), which prohibits sex discrimination in employment and relevant laws of the Commonwealth of Massachusetts, which prohibit sex discrimination in education and employment. The college also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by relevant provisions of the Violence Against Women Reauthorization Act of 2013 ("VAWA"). Sexual misconduct on the college's campus or in other settings related to the college's educational offerings, programs, activities or employment is a form of sex discrimination that is unlawful and unethical and is strictly prohibited by the college.

Under this Sexual Misconduct Policy ("Policy"), the college will promptly respond to complaints of sexual misconduct and, where it is determined that such misconduct has occurred, will take measures to eliminate the conduct, prevent its recurrence, and address its effects, including imposing corrective action, as appropriate.

NOTE: These procedures for the Resolution of Title IX Sexual Misconduct Complaints Against Students, Faculty, Staff, Affiliates, and Non-Affiliates are effective as of August 1, 2021. The new Sexual Misconduct Policy and its corresponding procedures apply to conduct that occurs on or after August 14, 2020. Conduct occurring on or before August 13, 2020 will be handled under the college's Sexual Misconduct/Title IX Policy in place at that time. The procedures to address conduct occurring on or after August 14, 2020 are currently being revised to comply with the Massachusetts Campus Sexual Violence Act (https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter337). These procedures will include the following requirements and rights for both Respondents and Complainants:

- The parties will receive copies of the Sexual Misconduct Policy and related procedures applicable to their case, which will include information about available supportive

measures and the process for submission and consideration of evidence that may be used during a hearing or disciplinary proceeding.

- The parties may be accompanied by and may consult with an advisor or support person of their choice throughout the proceedings, although the availability of an advisor may not significantly delay any meeting. The college will have reasonable measures to provide for the involvement of the advisor, which will be applied equally.
- The Respondent will receive notice of an allegation of sexual misconduct that will include the date, time, and location, if known of the alleged incident, including a specific statement of policies allegedly violated.
- The complaint resolution process, including the investigation and any hearing and disciplinary proceedings, will be impartial and conducted by an individual who does not have a conflict of interest or bias and who will have not less than annual training on the college's Sexual Misconduct Policy and Procedures.
- The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility has been made by a preponderance of the evidence at the conclusion of the applicable complaint resolution process.
- The parties will have equal opportunities to inspect and review evidence obtained in an investigation that is directly related to the allegations.
- The parties have an equal opportunity to present evidence and witnesses on their behalf during a hearing or proceeding, and each party will be provided with timely and equal access to relevant evidence that will be used during any disciplinary process conducted under the Sexual Misconduct Policy and related procedures.
- There may be restrictions on evidence considered by the fact finder, including evidence regarding the prior sexual history or character evidence.
- The parties may not personally and directly question each other during an investigation or any complaint resolution process conducted under the Sexual Misconduct Policy and related procedures.
- The parties will receive written notice of the results of a hearing or disciplinary proceeding not later than 7 business days after a final determination of a complaint (not including time for an appeal) unless good cause for additional time is shown, and the parties will be informed of any appeals process.
- If the opportunity is made available to appeal a determination based on a perceived procedural error, previously unavailable evidence that could significantly impact the outcome of the case, or a sanction that is disproportionate to the findings, both parties will be permitted to appeal decisions regarding responsibility or sanctions.
- The college will not disclose the identity of the parties, except as necessary to carry out disciplinary proceedings under its Sexual Misconduct Policy and related procedures or as permitted under state or federal law.

If conduct brought forward under this policy is not found within its scope, other college policies and procedures that cover complaints of discrimination, including gender-based harassment and gender stereotyping include the Equal Educational Opportunity Policy (https://www.smith.edu/about-smith/equal-education), Discriminatory Harassment Policy (https://www.smith.edu/about-smith/equity-inclusion/policies/discriminatory-harassment), and the Equal Employment Opportunity/Affirmative Action Policy (https://www.smith.edu/about-smith/hr/employee-handbook/eeo) (this policy covers sexual harassment when both parties are

employees). For complaints of sexual harassment where both parties are employees see the college Employee Handbook (https://www.smith.edu/about-smith/hr/employee-handbook/gender-sexual-misconduct).

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I

Scope

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

This policy applies to conduct prohibited by this policy ("Prohibited Conduct") when the conduct occurs on campus and/or in the context of any college program or activity within the United States.

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

All members of the community including students, faculty, and staff are expected to cooperate fully in efforts to investigate and enforce this policy. Retaliation is prohibited against those who participate in a resolution process under this policy.

A Note About the Five College System

Smith College has joined with Amherst College, Mount Holyoke College, Hampshire College and the University of Massachusetts Amherst to form the Five College Consortium. Smith College students, when studying on the campus or otherwise participating in a program or activity of the five colleges, riding a Five College bus or attending a college-related event for one of the five colleges, will be subject to Smith College policies as well as the policies of the visited institution. The student conduct

adjudication procedures of the institution at which the accused student is enrolled shall govern. Five College students, including Smith College students, who wish to report concerning behavior that occurs at an institution other than their home campus may do so by contacting the Title IX officer/coordinator at either: (1) their home institution; or (2) the institution where either: (a) the behavior occurred or (b) where the alleged perpetrator of the concerning conduct is enrolled. As appropriate, the Smith College Title IX coordinator will coordinate with another institution in support of any persons affected by reported sexual misconduct.

II

Notice of Nondiscrimination

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

Smith College does not discriminate in its educational and employment policies on the basis of race, color, creed, religion, national/ethnic origin, sex, sexual orientation, gender identity and expression, genetic information, age, disability, or veteran status/membership in the uniformed services.

Under Title IX

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

The college's Title IX coordinator is responsible for ensuring the college meets its Title IX obligations and will maintain oversight of the college's investigation, resolution and response to reports of sexual misconduct.

Concerns about the college's application of Title IX may be directed to the Title IX Coordinator, Amy E. Hunter, Office for Equity and Inclusion, College Hall, Room 302. 413-585-2141, ahunter65@smith.edu (mailto:ahunter65@smith.edu) or the United States Department of Education Office for Civil Rights Boston Office, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921, 617-289-0111, OCR.Boston@ed.gov (mailto:OCR.Boston@ed.gov).

III

Prohibited Conduct and Definitions

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

Conduct"). An attempt to engage in conduct that constitutes sexual misconduct, as defined by this policy, even if the attempt does not result in a completed act, may be treated itself as a violation of this policy.

A. Sexual Harassment

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

1. submission to or rejection of the conduct is made either explicitly or implicitly a term or condition of an individual's employment, evaluation of academic work, participation or enrollment (quid pro quo);
2. submission to or rejection of the conduct is used as a basis for employment or educational decisions, placement services or evaluation of academic achievement (quid pro quo); or
3. unwelcome conduct of a sexual nature that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies someone equal access to an educational program.

B. Forms of Prohibited Sexual Harassment

Sexual harassment can take many forms. Conduct reported as sexual harassment will be evaluated by considering factors including the nature, frequency, intensity, location, context, and duration of the questioned behavior. Although repeated incidents generally create a stronger claim of sexual harassment, a single incident, even if isolated, can create a hostile environment, if sufficiently serious. For example, a single instance of sexual assault may constitute sexual harassment. In general, the more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. In addition, conduct that was initially welcomed may develop into a form of sexual harassment depending on the circumstances.

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

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

- Direct or implied requests by a supervisor, professor, athletic coach or trainer, or other individual(s) responsible for work or academic evaluations for sexual favors in exchange for actual or promised job-related or academic benefits. Actual or promised benefits may relate to grades, academic assignments, research opportunities, favorable reviews and recommendations, salary increases, promotions, increased benefits, continued employment or enrollment, or any other benefit.
- Bullying or cyberbullying based on sex.

C. Sexual Assault

Sexual assault, as defined under this policy, includes both Non-Consensual Sexual Contact and Non-Consensual Sexual Penetration as defined below:

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

ii. **Non-Consensual Sexual Penetration** is having or attempting sexual penetration with another individual without consent. Sexual penetration includes oral-genital contact, or vaginal or anal penetration by a penis, tongue or finger or other object, no matter how slight the penetration or contact.

a. Consent

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

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

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

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

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

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

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

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

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

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

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

- Intoxication may impact one's ability to give consent and may lead to incapacitation;
- A person's level of intoxication is not always demonstrated by objective signs; however, some signs of intoxication may include slurred or incomprehensible speech; unsteady gait, difficulty walking or clumsiness; combativeness or emotional volatility; vomiting; incontinence, poor judgment and difficulty concentrating; and
- An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass and metabolism. No matter the level of an individual's intoxication, if that individual has not agreed to engage in sexual contact, there is no consent. Voluntary intoxication by a respondent does not diminish the responsibility to obtain valid consent. The respondent's

knowledge will be viewed from the perspective of a sober, reasonable person under the same circumstances.

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

D. Intimate Partner Violence

Intimate partner violence is violence committed by a person who is or has been in a social relationship of a romantic, intimate, domestic partner, spousal, sexual or dating nature with the person subject to the violence. It is also referred to as dating violence, domestic violence and relationship violence. Intimate partner violence includes behavior or physical force that intimidates, manipulates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures or wounds an intimate partner. The existence of a romantic, intimate, domestic partner, spousal, sexual or dating relationship may be determined by factors such as the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Intimate partner violence does not require sexual contact between partners, but non- consensual sexual contact or unwelcome conduct, including the specific forms sexual misconduct prohibited by this policy, may constitute forms of intimate partner violence.

E. Sexual Exploitation

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

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

F. Stalking

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

G. Retaliation

Retaliation is defined as taking or attempting adverse action against a person or group because that person or group participated in a good faith report or investigation under this policy, whether as a complainant, respondent, witness, administrator or in any other role or related action (including the act of obtaining a letter of no contact). Retaliation can be committed by any individual or group of individuals, not just the respondent or complainant. Retaliation can take many forms, including threats, intimidation, bullying, harassment, physical harm, emotional abuse, damage to or theft of property, and exclusion from a position, association or event, among others.

IV

Prohibited Relationships by Persons in Authority

A. Prohibition of Relationships Between Faculty and Students and Staff and Students

Romantic involvement or sexual relationships between faculty and college students are prohibited by the Policy on Sexual Relationships Between Faculty and Students (https://www.smith.edu/sites/default/files/media/Documents/Provost/Code_of_Faculty_Governance.pdf).

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

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

V

Understanding the Difference Between Privacy and Confidentiality

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

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

Privacy and confidentiality have distinct meanings under this policy.

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

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

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

Under this policy, all faculty, staff, and administrators, student employees who have a responsibility for student welfare, and student volunteers who have a responsibility for student welfare are considered Responsible Employees under Title IX and are required to promptly report any acts of sexual misconduct that they become aware of to the college's Title IX Coordinator. This includes information that is shared directly by a complainant or another individual, conduct that is observed, or other information that could reasonably raise a concern that sexual misconduct may have occurred. While Responsible Employees may keep the information private, as above, they may not keep it confidential; all known information, including the names of the parties and any information about the details of the conduct must be shared with the Title IX Coordinator. As set forth later in this policy, the Title IX Coordinator will consider the interests of the complainant in determining how to proceed in response to the report. Questions about employee reporting responsibilities, or the college's potential responses to a report, can be directed to the college's Title IX Coordinator.

VI

Confidential Resources and Support

While Smith College encourages all of its community members to promptly report all incidents of sexual misconduct, the college recognizes that sometimes an individual may prefer to initially speak with someone in confidence. Accordingly, for members of the college community who do not want details of their report of sexual misconduct to be shared with the college's Title IX Coordinator, the college offers on-campus mental health counselors, campus health service providers and the dean of religious life as confidential resources. These resources are subject to confidentiality obligations that generally prohibit release of information without an individual's express consent, unless otherwise required by law. If someone discloses sexual misconduct to a college confidential resource, that confidential resource will not disclose to college officials any identifying information about the person subject to the misconduct or the person alleged to have committed the misconduct, but may provide

the Title IX Coordinator with limited nonidentifying information about the incident to permit the college to determine if the incident should be reported among the crime statistics the college is required to report under federal or state laws.

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

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

A. Confidential Resources

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

- Smith College Counseling Services, for counseling services, free of charge. Counselors can be seen on an emergency basis during the academic year. Contact Information: 413-585-2840.
- Smith College Health Services for medical assistance and referrals. Contact information: 413-585-2811.
- In addition, the Director of Religious Life is a confidential resource who will keep details of a report confidential upon request and subject to applicable law. Contact Information: 413-585-2750.
- Assistant Director of Student Affairs: 413-585-4908

B. Off-Campus Resources and Support

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

- Cooley Dickinson Hospital (open 24/7; has Sexual Assault Nurse Examiner—SANE—Program): 413-582-2000
- University of Massachusetts Health Services: 413-577-5000
- UMass 24-Hour Sexual Assault Support & Advocacy SASA Hotline (https://www.umass.edu/cwc/sexual-assault-services): 413-545-0800
- City of Northampton Police: 413-587-1100
- Sexual Assault Prevention and Survivor Services (https://www.mass.gov/service-details/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.
- Safe Passage (https://safepass.org/): 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 (mailto:info@safepass.org).

- Victim/Witness Assistance Unit, Northwestern District Attorney, Greenfield, Mass.: 413-774-3186
- Victim Rights Law Center (https://www.victimrights.org/about-vrlc), Legal Assistance Intake Line: 413-842-4020

VII

Reporting Acts of Sexual Misconduct

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

A. Emergency/Immediate Report Options

The first priority for any individual should be personal safety and well-being. The college encourages all individuals to make a prompt report to law enforcement and/or seek immediate medical treatment in response to an incident in order to address immediate safety concerns and allow for the preservation of evidence and an immediate investigative response. The college will help any individual get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about the college's resources and complaint processes.

B. Campus Reporting Options

All members of the college community are encouraged to report incidents of sexual misconduct directly to the interim Title IX Coordinator or via EthicsPoint (https://secure.ethicspoint.com/domain/media/en/gui/46275/index.html). Any individual may contact the college's interim Title IX Coordinator by phone, email or in person at the following contact information:

Interim Title IX Coordinator
Office for Equity and Inclusion
Email: titleixcoordinator@smith.edu (mailto:titleixcoordinator@smith.edu)

Undergraduate students may also report sexual misconduct to the dean of students office at 413-585-4940. Graduate students may also report sexual misconduct to the director of graduate students at 413-585-3017. School for Social Work students may also report misconduct to the associate dean at 413-585-7966. Staff may also report sexual misconduct to human resources at 413-585-2288. Faculty may also report sexual misconduct to the associate provost and dean for academic development at 413-585-3000.

Individuals who choose to report information to the dean of students, human resources, provost's office, or Campus Safety will receive immediate assistance from each of those departments. Each of these departments will refer the report to the Title IX coordinator as part of the college's commitment to consistent, sensitive, trauma-informed and Title IX-compliant responses.

C. Reporting to Law Enforcement

The college encourages members of the college community to pursue criminal action for incidents of sexual misconduct when the incident may also constitute a crime under the law of the jurisdiction where the incident occurred. Individuals have the right to notify law enforcement or decline to notify law enforcement and may do so directly to the appropriate agency. Reporting incidents of and sexual misconduct may help protect others from future victimization, apprehend the 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 offcampus phones or cell phones, 24 hours a day, seven days a week. Campus Safety and/or the Title IX coordinator may assist the reporter in identifying the appropriate law enforcement agency if the incident occurred off-campus. Incidents of gender-based or sexual misconduct reported to Campus Safety, will be shared with the local law enforcement agency with jurisdiction.

When an individual reports the 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. Proceedings under the college's Sexual Misconduct Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Cooperation with law enforcement agencies may require the college to temporarily suspend its own investigation while the law enforcement agency gathers evidence. The college will promptly resume its own investigation as soon as it is notified that the law enforcement agency has completed its evidence gathering process.

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

D. Timeline for Reporting

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

E. Amnesty for Students Who Report Sexual Misconduct

The college encourages reporting incidents of sexual misconduct and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. The college recognizes that Smith students who have been drinking or using drugs at the time of the incident may be hesitant to report sexual misconduct because of potential consequences for their own alcohol or drug violations of the Code of Student Conduct (https://www.smith.edu/sao/handbook/socialconduct/socialcode.php). Students who report sexual misconduct, either as a complainant or a witness, will not be subject to disciplinary action by the college for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such consumption did not and does not place the health or safety of any person at risk. The college may, nevertheless, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. The amnesty policy applies only to the college's Code of Student Conduct process.

F. Retaliation

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

G. Bystander Intervention

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

VIII

Smith College's Procedure for Responding to Incidents of Sexual Misconduct

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

Every report received by a responsible employee of the college will be referred to the Title IX coordinator, who will conduct an initial assessment to determine if the matter falls within the scope of this policy. Complaints made under this policy must be signed by the complainant or the Title IX coordinator. Following the initial assessment, the college may seek voluntary informal resolution of the report or pursue steps to investigate or otherwise determine what occurred. The goal of the

investigation is to gather all relevant information. The Hearing Board, as described below, offers a process designed to consider relevant evidence and determinations regarding any policy violations as well as appropriate sanctions, if any. The resolution process is guided by the same principles of fairness and respect for all parties.

Once a complaint is accepted for investigation, the college will work closely with complainants and respondents to ensure their ability to complete their academic program or professional responsibilities during the review of a reported violation of this policy.

The college may amend or modify the procedures set forth in this policy at any time, if it determines such amendment or modification is warranted under the circumstances. For the purposes of this policy, the person who reports that they have been subject to sexual misconduct or is the subject of such a report shall be referred to as the "complainant." The person against whom a report of sexual misconduct is brought is referred to as the "respondent." A person who reports an incident of sexual misconduct, but who is not the subject of the report, is referred to as the "reporter."

A. Initial Assessment

Upon receipt of a report of sexual misconduct, the Title IX coordinator will review the report and conduct an initial assessment of the reported conduct, the safety and emotional well-being of the complainant, the complainant's expressed preference for resolution, and the necessity for any interim measures to protect the safety of the campus community. This will typically involve a preliminary meeting between the complainant or reporter and the Title IX coordinator. The Title IX coordinator may also consult with other college administrators, including the dean of students, Campus Safety, human resources and the provost's office. As part of the initial assessment, the college will:

- Assess the nature and circumstances of the reported conduct
- Address immediate physical safety and emotional well-being
- Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding
- Notify the complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist them with notifying law enforcement
- Notify the complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence
- Notify the complainant of the importance of preservation of evidence
- Evaluate required actions under the Clery Act, including entering the report into the college's daily crime log, if required, and issuing a timely warning as appropriate
- Provide the complainant with information about on- and off-campus resources
- Notify the complainant of the range of reasonably available interim measures
- Provide the complainant with an explanation of the procedural options, including voluntary informal resolution and disciplinary action through an investigation and hearing
- 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
- Assess for pattern evidence or other similar conduct by the respondent
- Explain the college's policy prohibiting retaliation

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

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

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

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

- The available facts and circumstances and context of the report
- The impact on the complainant's emotional well-being or safety by proceeding (or not proceeding) with an investigation
- Whether the respondent has prior arrests, is the subject of prior reports and/or complaints related to any form of Prohibited Conduct, or has any history of violent behavior
- Whether the respondent has a history of failing to comply with any college "No Contact" directive, other college interim measures or similar impositions, and/or any civil protective order
- Whether the respondent has threatened to commit violence or any form of Prohibited Conduct
- Whether the Prohibited Conduct involved multiple respondents
- Whether the Prohibited Conduct involved physical violence
- Whether the report reveals a pattern of Prohibited Conduct by the respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location;
- Whether the Prohibited Conduct was facilitated through the use of "date-rape" or similar drugs or intoxicants
- Whether the Prohibited Conduct involved the use of a weapon
- Whether the Prohibited Conduct occurred while the complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring
- The respective ages and roles of the complainant and respondent, including whether the complainant is (or was at the time of the Prohibited Conduct) a minor (under 18);
- Whether any other aggravating circumstances or signs of predatory behavior are present
- Whether the college possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence)
- The right of the respondent to receive notice and an opportunity to meaningfully respond to relevant information before disciplinary action is sought

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

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

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

C. Dismissal of Complaints

The Title IX coordinator is required to dismiss complaints that if esablished to be true under the policy would not constitute sexual harassment as defined under this policy, or did not occur in the college's education program or activity, or did not occur against a person in the United States.

The Title IX coordinator may dismiss a formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the college; or specific circumstances prevent the college from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Written notice of any dismissal will be provided to both parties and either party may appeal a dismissal (see appeal process below).

D. Supportive Measures

To achieve the goals of this policy, upon receipt of a report of sexual misconduct, the college will implement supportive measures, as may be reasonable and appropriate for the individuals involved and for the parties, others involved and for the larger college community. These measures may be both remedial (i.e., designed to address safety and well-being and continued access to educational opportunities) or protective action. The college will determine the necessity and scope of any supportive measures.

Parties seeking an supportive intervention should speak with the Title IX coordinator, who will evaluate and coordinate such requests on behalf of the parties. Supportive remedial measures and campus resources are available to support a party regardless of the course of action chosen or their level of participation in college proceedings.

When implementing supportive measures, consistent with available information to support the reasonableness of the request, the college will seek to minimize the burden on the individuals seeking the intervention. These supportive measures may be kept in place until the end of any investigation and/or until further notice from the college. Even when a complainant or respondent does not

specifically request a supportive measure, the college may choose to implement such an intervention at its discretion to ensure the safety of any individual or the college community. Supportive measures may be modified by the college as circumstances change or new information is available.

The college offers a range of supportive measures, including, but are not limited to, letters instructing the parties not to contact each other; separation of or modification to the parties' academic, employment, extracurricular, and living situations; academic accommodations or modifications, including access to tutoring, rescheduling of exams or assignments, the ability to drop a course without penalty; assistance setting up initial appointments for counseling and/or medical services; providing an escort; assistance in evaluating implications for financial aid, immigration or visa status; assistance in obtaining a civil order of protection; and other measures tailored to the involved parties.

E. Emergency Removal/Administrative Leave

Where the report of sexual misconduct poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, the college may subject the respondent to emergency removal (students), may place an organization on supportive suspension or impose leave for an employee. Pending resolution of the complaint such individuals or organizations may be denied access to campus. When emergency removal, interim suspension or leave is imposed, the college will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

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

F. Voluntary Informal Resolution

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

To proceed with voluntary informal resolution, the Title IX coordinator will provide the parties with written notice disclosing the allegations and the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations.

To proceed with informal resolution, the Title IX coordinator must obtain the parties' voluntary, written consent to the informal resolution process. The college may not use informal resolution to resolve allegations that an employee sexually harassed a student.

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

Voluntary informal resolution is not appropriate for all forms of prohibited conduct, and the Title IX coordinator retains the discretion to determine which cases are appropriate for voluntary informal resolution. If a complainant requests voluntary informal resolution, and the Title IX coordinator concludes that voluntary informal resolution is appropriate based on the factors outlined in the initial

assessment, the college will take appropriate action by imposing individual and community remedies designed to maximize the complainant's access to all employment, educational, and extracurricular opportunities and benefits at the college and to eliminate a potential hostile environment. The outcomes of voluntary informal resolution conversations are mutually developed and agreed upon by the parties involved.

Voluntary informal resolution may include implementing supportive measures; conducting targeted or broad-based educational programming or training for relevant individuals or groups; service options; permanent measures; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; communication with the respondent by the Title IX coordinator and/or the dean of students; other forms of restorative justice options; and any other remedy that can be tailored to the involved individuals to achieve the goals of the policy. Voluntary informal resolution may also include conflict mediation or a restorative conference with a trained college community member selected in consultation with the dean of students.

Similarly, the college may determine to end voluntary informal resolution at any time where appropriate. Pursuing voluntary informal resolution does not later preclude resolution through formal adjudication process, unless disciplinary action has been imposed and all parties agree that the voluntary informal resolution is final.

At any time prior to agreeing to a final resolution, any party has the right to withdraw from the voluntary informal resolution process and resume the investigation process with respect to the formal complaint, and any consequences resulting from participating in the voluntary informal resolution process, including the records that will be maintained or could be shared.

Because the outcomes of voluntary informal resolution conversations are mutually developed and agreed upon by the parties involved, an appeal of the process and its result is not permitted. If the parties are unable to agree on a voluntary informal resolution, the matter will proceed to investigation and resolution. Both the complainant and the respondent have the right to withdraw from voluntary informal resolution at any time and begin a formal investigation. No statements made during the voluntary informal resolution process may be submitted to or considered in the investigation or by the Hearing Board.

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

G. Investigation

The Title IX coordinator will determine the most effective method of investigating the report of a violation of this policy. The Title IX coordinator may investigate reports of prohibited conduct or designate an investigator of the Title IX coordinator's choosing to conduct a prompt, thorough, fair and impartial investigation. Any investigator used by the college, whether internal or external, will be impartial, free from any conflict of interest, and have received annual and specific training on investigating prohibited conduct. Investigators do not function as advocates or support persons for complainants or respondents. Investigators may, however, identify issues of concern and refer the parties to the Title IX Coordinator for assistance in obtaining resources.

In gathering of evidence, the college will afford both the complainant and respondent a full and fair opportunity to be heard, including the opportunity to identify witnesses and other evidence. The parties may choose to provide a written statement, and other supporting materials regarding the

matter under review. However, it is the responsibility of the college, not the complainant or respondent, to gather the relevant evidence to the extent reasonably available. The investigator or designee will provide timely updates, as appropriate or requested, about the timing and status of the investigation.

Both the complainant and respondent will receive written notice that an investigation has been initiated, including the specific allegations being investigated. The notice will include a concise summary of the alleged conduct, and the potential policy violations, the name and contact information of the assigned investigator and an overview of the investigation procedures. The notice will also include that the parties have a right to an adviser of their choice, including an attorney; the respondent is presumed not responsible and a determination regarding responsibility is made at the end of the grievance process; and that the parties have a right to inspect and review evidence. The investigator may amend the potential charges as part of the investigative process if additional information is disclosed that would suggest the existence of additional policy violations, with notice to the parties.

In conducting an investigation, the investigator may meet separately with the complainant (if participating), respondent, and 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 investigator may also include relevant physical and medical evidence, relevant communications between the parties, and other relevant information offered by either party or discovered independently by the investigator.

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

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

The investigator will make an initial determination regarding relevant evidence in accordance with state and federal rules of evidence. Complainants or respondents may choose to participate or decline to participate in the process. However, even if a complainant or respondent declines to participate, the college may continue to investigate the matter and issue findings based on available information. Absent compelling circumstances, witnesses, both students and employees, are expected to participate in the process.

The college may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

The college will maintain appropriate investigative files and will document the provision of supportive measures, investigative steps, information gathered in the investigation, and the appeals process. These records will be maintained for seven years.

H. Evidence of Prior Sexual History or Pattern Evidence

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

1. Where there was a prior or ongoing relationship between the complainant and respondent, and the respondent asserts that consent was sought and given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of the Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.
2. Where there is evidence of a pattern or conduct similar in nature by the respondent, either before or after the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant. The determination of relevance will be based on an assessment of whether the prior or subsequent incident was substantially similar to the present allegation or the information indicates a pattern of behavior and substantial conformity with that pattern by the respondent.
3. In addition, other conduct by either party may, under limited circumstances, be relevant to establish intent, motive, absence of mistake, to explain an injury or physical finding, or another ground deemed probative by the investigator.

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

I. Acceptance of Responsibility

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

J. Withdrawal or Report

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

K. Standard of Proof

Findings of responsibility for conduct prohibited by this policy will be made using the preponderance of the evidence standard. This standard requires the information supporting a finding of responsibility to be more convincing than the information in opposition to it. Under this standard, individuals are

presumed to not have engaged in prohibited conduct unless a preponderance of the evidence supports a finding that the prohibited conduct occurred and the respondent was responsible for it.

L. Advisers

Throughout the process, both the complainant and the respondent have the opportunity to be accompanied to any related meeting or proceeding by an adviser of their choice. The adviser may be any individual selected by the complainant or respondent, including an attorney. The college may not limit the choice or presence of adviser for either the complainant or respondent in any meeting or hearing proceeding. The college may establish restrictions regarding the extent to which the adviser may participate in the proceedings, as long as the restrictions apply equally to both parties.

M. Timeframe for Resolution

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

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

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

Good cause for delay may include considerations such as the absence of a party, a party’s adviser, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities

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IX

Investigation Findings

A. Review of Evidence and Investigation Report

The investigator must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the college does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

Prior to completion of the investigative report, the Title IX coordinator will send to each party and the party's adviser, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

The college will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination

The investigator will create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's adviser, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

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Sexual Misconduct Hearing Process

A. Hearing Board Composition

Hearings to address reports of sexual misconduct shall be chaired by the Dean of Students, or their designee (e.g appropriate personnel in graduate school or School for Social Work), and heard by three (3) Hearing Board members. The Hearing Board for a particular hearing comprises three persons who are drawn from a pool of trained individuals from the college and/or from within the Five College Consortium community. The composition of the panel will be determined by the dean of students, or their designee, and may consist of faculty and staff from other members of the college and/or the Five College Consortium. No Smith College students shall serve on the Hearing Board. Neither the Title IX coordinator nor the investigator will serve on the Hearing Board.

All Hearing Board members will receive annual training regarding issues relating to sexual misconduct, including how to conduct a hearing process for a report of sexual misconduct, as well as, training on the college's policies and procedures. The dean of students, or their designee, will serve as the nonvoting chairperson and adviser to the Hearing Board.

B. Notice of Hearing

The Dean of Students, or their designee, will deliver a written Notice of Hearing to the complainant and the respondent electronically or by hand delivery. The Notice of Hearing will identify the date, time and place of the hearing and identify the persons serving on the Hearing Board. The Notice of Hearing will be sent at least ten (10) calendar days prior to the hearing date.

C. Pre-Hearing Procedures

1. Meeting with complainant and respondent

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

2. Request to Reschedule Hearing

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

3. Request to Remove Board Member

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

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

D. The Hearing Process

The college will provide a live real time hearing either in-person or virtually. Live hearings may be conducted with all parties physically present in the same geographic location or, at the college's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

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

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

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

Questioning by Advisers: If a party does not have an adviser present at the live hearing, the college will provide one without fee or charge to that party, an adviser of the college's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

- At the live hearing, the Hearing Board will permit each party's adviser to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Cross-examination at the live hearing willt be conducted directly, orally, and in real time by the party's adviser of choice and never by a party personally, notwithstanding the discretion of the college to otherwise restrict the extent to which advisers may participate in the proceedings.
- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Hearing Board must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Prior Sexual History or Predisposition Excluded: Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Refusal to Submit to Cross-Examination: If a party or witness does not submit to cross examination at the live hearing, the hearing board cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

E. Standard of Review

The Hearing Board will review information in the Investigation Report, provided in the hearing and other related documentation to determine whether in applying a preponderance of the evidence standard, there is sufficient evidence to find the respondent responsible under the policy.

F. Hearing Outcome

After the Hearing Board has concluded its review of the relevant information presented, including in the final Investigation Report, submissions by the parties, information obtained in the hearing process, and other evidence, the Hearing Board shall apply this policy in making a determination regarding responsibility with respect to each allegation presented.

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

G. Sanctions

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

In determining the appropriate sanction(s), the Hearing Board may consider a number of factors including: the harm suffered by the complainant; the risk to either the complainant or the community posed by the respondent; the impact of the violation(s) on the college community; any previous

conduct violations by the respondent; any mitigating or aggravating circumstances; and the information contained in any written statement submitted by the complainant and respondent to the Hearing Board in accordance with the Hearing Process. The Hearing Board may consult with the Title IX coordinator or designee in reaching its determination of appropriate sanctions. Following is a list of possible sanctions for respondents:

- Formal Reprimand: A formal written censure that the student has violated college policy and that future violations of college policy may result in further disciplinary action, up to, and including, suspension or expulsion or termination from the college.
- Disciplinary Probation: This sanction will be in effect for a specified period of time determined by the Hearing Board. Should a student be found responsible for another violation of this policy or of the Code of Student Conduct during the probationary period, the Hearing Panel will be made aware of the student's standing on disciplinary probation and may impose additional sanctions to reflect a repeated offense. A student's status on disciplinary probation may have an impact on their ability to participate in certain activities connected with or related to the college both on and off campus.
- Apology: Letters of apology to individuals, houses, and/or the entire Smith community designed to help the respondent assess the effects of their policy violation(s). These letters will be maintained as part of the respondent's disciplinary record for as long as the record is maintained.
- Loss of authority: Removal from appointed or elected office or position of authority.
- Restriction from employment at the college: Prohibition of, or limitation of college employment.
- Restorative Project: A project specifically designed to lead the respondent to understand the harm done to the complainant and the community, to accept the responsibility for that harm, and to repair that harm, if possible.
- College House Transfer or College House Removal: Placement in another room or college house, or removal from a college house. Housing transfers or removals may be temporary or permanent depending on the circumstances.
- Professional Assessment: Completion of a professional assessment that could help the student or the college ascertain the student's ongoing supervision or support needed to successfully participate in the college community. The cost of professional assessment will be paid by the respondent.
- Removal from specific courses or activities: Suspension or transfer from courses or activities sponsored by or affiliated with the college for a specified period of time.
- Removal or non-renewal of a college-sponsored academic scholarship.
- No Contact Directive: Restriction from entering specific college areas and/or from all forms of contact with certain person(s).
- Suspension: The rights and privileges of being a student at the college are suspended for a specified period of time. The individual may not participate in academic or extracurricular activities, is required to leave Smith's campus, and restricted from college property. As part of the suspension, a respondent who later seeks 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.
- Dismissal: The respondent is no longer a student at Smith College and must leave the campus. An individual who has been dismissed from the college may be eligible to apply for readmission, but should not expect the application to be considered for a minimum of

one full semester after dismissal. The individual seeking readmission may be required to provide supporting documentation sufficient to satisfactorily demonstrate to the college readiness to resume the college career and fulfill standards of responsible conduct and citizenship at Smith. The college may deny any application for readmission in its discretion.

- Permanent separation: The respondent is no longer a student at Smith College and must leave the campus. The student is not eligible for readmission.

In addition to the sanctions imposed on the respondent, the college may initiate additional corrective action or remedial measures in response to a report to seek to eliminate the misconduct identified in the report, prevent its recurrence, or remedy its effects. Examples of additional actions may include, but are not limited to, the following:

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

H. Notice of Determination of Responsibility

Once the result of the hearing and any sanction(s) has been determined the dean of students, or designee, will simultaneously send the respondent and the complainant a written Notice of Determination and, if appropriate, sanction(s) within three (3) work days from the date the Hearing Board notifies the dean of students that it has concluded its deliberations, absent extenuating circumstances.

A written determination notice by the dean of students, in consultation with the Title IX coordinator, will be provided to the parties, which will identify the allegations potentially constituting sexual harassment; a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.

The written determination will also include conclusions regarding the application of this policy, as well as a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility; any disciplinary sanctions the board imposes on the respondent; and whether remedies designed to restore or preserve equal access to the college's education program or activity will be provided by the college to the complainant.

The college's procedures and permissible bases for the complainant and respondent to appeal.

I. Appeal Process

Either party may submit a written appeal within seven (7) calendar days of receiving notice of the determination from the dean of students, or designee.The written statement in support of, or challenging, the outcome must explain the grounds for the appeal. If either the respondent or

complainant appeals, the dean of students will notify the other party in writing that an appeal has been submitted, and the other party will have three (3) work days to submit a response in writing if they choose to do so.

NOTE: Although a complainant may appeal on the ground that the remedies are not designed to restore or preserve the complainant's access to the college's education program or activity, a complainant is not entitled to a particular sanction against the respondent.

J. Grounds for Appeal

The only grounds for appeal are:

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, and that could affect the outcome of the matter; and
3. The Title IX coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

K. Scope of Review

The appeal is an impartial review of the information considered by the Hearing Board. The appeal is not a new investigation of the report. The appeal will be heard by the dean of the college, who is a trained and impartial adjudicator. The dean of the college may affirm, reject or modify the decision of the Hearing Board, or may direct the Hearing Board to reconsider certain findings. The dean of the college 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) work days of the dean of the college's determination.

L. Records Maintained

All records related to complaint resolution will be maintained for seven (7) years by the Dean of Students, including transcripts, and documentation related to informal resolution, formal resolution, voluntary supportive measures, appeals and related training materials.

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 Dean of Students, or designee, as part of the respondent's conduct record for as long as the conduct record is maintained. Notes and records of the proceedings will be disposed of after the appeal period has expired.

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

XI

Training, Prevention and Awareness Programs

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

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

XII

Commitment to 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 (https://www.smith.edu/sao/handbook/policies/freeexpression.php). Actions or words used in the context of the academic curriculum and teaching environments that serve legitimate and reasonable educational purposes will not be evaluated as sexual harassment or other unlawful discrimination because of the principles underlying academic freedom. This policy replaces and supersedes all policies on sexual harassment and sexual assault.