

# **Sexual Respect and Title IX**

The College of the Holy Cross is a community of trust based in the Jesuit tradition whose existence depends on strict adherence to standards of conduct set by its members. Among these are standards regarding human sexuality, any expression of which must affirm the integrity and dignity of oneself and others. Sexual misconduct, in all forms, violates the sanctity of the human body and spirit and will not be tolerated within the College community. The College is committed to providing an environment of well-being, learning, and accountability for its members by preventing the occurrence of sexual misconduct and addressing its effects.

## **Overview of the College of the Holy Cross Sexual Misconduct Policy**

following person has been designated by the College to respond to general inquiries regarding the College's non-discrimination policies:

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

### **III. How the College Will Address Sexual Misconduct**

The College's commitment to non-discrimination includes an assurance that the College will not tolerate discrimination or harassment on the basis of sex, sexual orientation or gender identity, including, but not limited to sexual violence, dating or domestic violence, or stalking, or retaliation, in its community. The College follows through on that commitment, in part, through the implementation of a Sexual Misconduct

Hogan Campus Center, Room 505  
508-793-3336  
[tkennedy@holycross.edu](mailto:tkennedy@holycross.edu)

Where the Title IX Coordinator is listed as the designated point of contact for any role in the Sexual Misconduct Policy, he or she may designate a Deputy Title IX Coordinator or another appropriate member of the College community to assume the role at issue, as necessary. Each of these individuals is available to receive a report from any member of the College community who believes the Sexual Misconduct Policy has been violated. The Deputy Title IX Coordinators can also assist others, including Responding Parties and witnesses in understanding the College's Sexual Misconduct Policy and procedures.


**The College's Deputy Title IX Coordinators are:**

Cheryl Rogers

individuals in many different ways. **These resources are available to both Complainers and Responding Parties.**

- A. **Confidential On Campus Medical, Counseling and Pastoral Resources.** Some College resources are individuals designated as “confidential resources.” These College employees serve in professional roles in which communications are provided confidential status under the law (e.g., licensed mental health care providers, licensed medical providers, pastoral counselors and clergy) and may not report identifying information about behavior that may implicate the Sexual Misconduct Policy without the consent of the individual who supplied the information in question or otherwise in compliance with law.<sup>3</sup> However, these confidential resources are instructed to inform individuals of their right to file a complaint under the Sexual Misconduct Policy and/or with the police and may assist in that process.

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

COMMUNITY MEMBER	STATUS	REPORTING OBLIGATIONS
<b>Health Services</b> Loyola Hall 508-793-2276 (M-F, 9:00-12:00; 1:00-5:00); Nights and Weekends: Contact the Physician On Call at 508-334-8830	Confidential Resource	None, unless they are being consulted outside the scope of their role within Health Services
<b>Counseling Center</b> Hogan 207 508-793-3363 (M-F, 9:00-12:00; 1:00-5:00); After hours, contact Public Safety (508-793-2222) and request to be put in touch with the Psychologist On Call.	Confidential 	None, unless they are being

COMMUNITY MEMBER	STATUS	REPORTING OBLIGATIONS
<p><b>Faculty Ombudspersons:</b></p> <p>Isabel Alvarez-Borland ialvarez@holycross.edu, 508-793-3451</p> <p>Mathew Schmalz mschmalz@holycross.edu; 508-793-2557</p>	<p>Confidential Resource for faculty</p>	<p>mem-re.56 Tm [(m)-1ol20CID 11 o432.96 0 0 9.cs 0.933 Tc12.012 0</p>

described above, are obligated by law to disclose reports and information concerning unlawful discrimination on the basis of sex, sexual orientation, gender identity, or marital or parental status (including pregnancy and pregnancy related conditions), sexual harassment (including, but not limited to

complaint filed under the College's Investigation and Resolution Procedures, contact the government agencies set forth below.

**U.S. Department of Education, Office of Civil Rights**

5 Post Office Square, 8th Floor  
Boston, MA 02109  
(617) 289-0111

**U.S. Equal Employment Opportunity Commission**

John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203  
(617) 565-3200/(800) 669-4000

**Massachusetts Commission Against Discrimination**

Worcester Office  
484 Main Street  
Room 320  
Worcester, MA 01608  
(508) 453-9630

Boston Office  
One Ashburton Place  
Sixth Floor, Room 601  
Boston, MA 02108  
(617) 994-6000

Springfield Office  
436 Dwight Street  
Second Floor, Room 220  
Springfield, MA 01103  
(413) 739-2145

New Bedford Office  
800 Purchase Street  
Room 501  
New Bedford, MA 02740  
(508) 990-2390

**E. Additional Resources and Guidance for Individuals Who Have Experienced Sexual Violence, Other Inappropriate Sexual Contact, Relationship Violence and/or Stalking.**

Individuals who have experienced sexual violence, other inappropriate sexual contact, relationship violence, and stalking experience a wide range of normal feelings and have many questions and concerns. No one deserves to be abused, assaulted or stalked. We want you to know that you are not alone. There are many resources at the College and other local and national resources to assist individuals.





identified only by a number, not a name. It is an individual's right to ask for a sexual assault nurse examiner to perform the examination.

There is no charge for a sexual assault medical examination completed in a Massachusetts hospital within five days of a sexual assault occurring in the Commonwealth. The hospital where the examination occurred will work with the Massachusetts Victim Compensation & Assistance Division for the payment of any lab work, emergency room fees, physician fees during the hospital visit and/or medications prescribed. You may also be eligible for additional expenses associated with your aftercare deemed medically necessary as a result of the incident. This can include further medical treatment, medications, counseling, replacement bedding and clothing (taken during the administration of the kit), security measures, etc. To be eligible for these post-exam expenses, you will need to complete the MA Sexual Assault Forensic Kit Post Exam Application provided at the time of discharge.

If a victim-survivor did not obtain an examination, the MA Victim Compensation Fund may also cover the costs of the examination care as well as post-examination care (for example, for follow up care for sexually transmitted infection prevention, medication, and testing, counseling, security measures, lost wages, among others) but only if a standard Crime Victims Compensation application to the fund is completed and submitted from the victim-survivor. Additionally, a report must be filed with law enforcement. More information can be obtained at [www.mass.gov/ago/vcomp](http://www.mass.gov/ago/vcomp).

The Director of Health Services is available to assist individuals in determining what resources are available. A confidential meeting can be scheduled by calling Health Services at 508-793-2276. The staff can provide immediate care in a safe environment and review available options with you. Transportation to a local hospital with a support person of your choice can be arranged.

Students can also go to Health Services, which is located in Loyola, as described below.

#### **F. Confidential Support On-Campus for Complaining Parties and Responding Parties.**

1. **Medical Services at Health Services.** Health Services is available to assist students with immediate needs and to review available medical options. Health Services can offer support, testing and treatment for sexually transmitted infections and follow up appointments for further testing if medically indicated. If medical care is sought weeks, months or years after an incident, Health Services can provide support and perform testing for sexually transmitted infections and treatment for students, if necessary.

The College recommends that any person who has experienced sexual violence obtain medical assistance at a hospital immediately after or within 72 hours of a sexual assault as described above. The Director of Health Services at the College is available to assist survivors of sexual assault and other violence in determining what resources are available. A confidential meeting can be scheduled by calling Health Services at 508-793-2276. Transportation to a local hospital with a support person of your choice can be arranged.

2. **Psychological Counseling at the Counseling Center.** Your visits to the Counseling Center are confidential and no information will be released without your permission

except as required by law.<sup>4</sup> You and your therapist will review confidentiality so you are able to make an informed decision about what information you choose to share.

All of the psychologists in the Counseling Center are experienced in counseling both Complaining and Responding Parties in sexual assault, dating violence and domestic violence matters. Psychological counseling is intended to help you process your emotions and thoughts related to the allegations, the incident and/or the investigation process. The course of treatment is determined by your needs, which may change over time. The goals of treatment may include establishing safety, regaining a sense of

support you in making important decisions.





- x The misconduct was alleged to have been committed by multiple perpetrators
- x The alleged responding party holds a position of power over the alleged victim or others
- x The alleged victim is a minor
- x Whether the alleged behavior may constitute Quid Pro Quo Harassment or create an Inappropriate Environment Based on Sex
- x The College possesses no other means to obtain relevant evidence

The presence of one or more of these factors may lead the College to commence an investigation independently or continue an investigation. If so, the College will inform the Complaining/Reporting Party prior to proceeding and will to the extent possible share information only with the individuals responsible for handling the College's response and others involved in the investigation. In the event that a Complaining/Reporting Party requests that the College inform the Responding Party that the Complaining/Reporting Party asked the College not to investigate or seek discipline, the College will honor the request and inform the Responding Party that the College made the decision to proceed.

If the College does not proceed, the College will consider broader remedial action, such as increased or targeted education or prevention measures, increased monitoring, security or supervision, conducting surveys and/or revisiting its policies and practices.

supplied the information in question or otherwise in compliance with law.<sup>5</sup> However, these confidential resources are instructed to inform individuals of their right to file a complaint under the Sexual Misconduct Policy and may assist in that process. Please note that such employees who receive reports when not functioning in their licensed or confidential capacity (e.g., when teaching a

Policy. The College may make exceptions to this prohibition on a case-by-case basis and only in coordination with the Director of Human Resources and the Title IX Coordinator.

2. **Relationships between Supervisory Employees and Others.** Amorous relationships that might be appropriate in other circumstances have inherent dangers when they occur between supervisors and individuals whom they supervise. Such relationships are fundamentally asymmetric and unprofessional, and they raise serious concerns about validity of consent, conflict of interest and fair treatment. In addition, such relationships are to be avoided because they may create an impression on the part of colleagues of inappropriate or inequitable professional advantage or favoritism that is destructive of the working or learning environment and may raise doubts about the integrity of work performed. In addition to the prohibition of employee/student relationships described above, Holy Cross administrators, faculty, and staff should be aware that any sexual, dating or romantic involvement with any individual, including faculty, staff, or person engaged as volunteer, intern, or independent contractor, over whom they have direct supervisory responsibility, even if consensual, is prohibited by this policy. Even when both parties have initially consented to such a relationship, it is the administrator, faculty member, or staff member who, by virtue of his/her special supervisory responsibility, will be held accountable for the unprofessional relationship or abuse of authority. The Title IX Coordinator, together with either the Provost/Dean of the College with respect to faculty members, or the Director of Human Resources with respect to other employees will make exceptions to this prohibition in appropriate circumstances (e.g., a dual career couple recruited to work in the same scholarly area), with implementation of any necessary measures to avoid conflicts of interest or the appearance of conflicts of interest.





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

**Other Inappropriate Sexual Behavior.** Unwelcome conduct of a sexual nature that does not rise to the level of severe, persistent, or pervasive but is unreasonable in a living, working or educational

**Sexual Violence.** Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Physical sexual acts include, but are not limited to, vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact. This definition includes rape, sexual assault, sexual battery, and sexual coercion and includes assault with the specific

known to one another.

**Other Inappropriate Sexual Contact.** Having or attempting to have sexual contact of any kind other than that defined as "Sexual Violence" with another individual, in person

**Consent and Coercion.**

As used in the above definitions of prohibited conduct, consent and coercion have the following meanings:

The College's policy is that sexual interactions must be consensual. Consent is the affirmative and willing agreement to engage in a specific form of sexual contact with another person who is capable of giving consent. Consent cannot be obtained through: (a) the use of coercion, or (b) by taking advantage of the incapacitation or impairment of another individual, including someone who is incapacitated or impaired by intoxication or drugs, is underage, is unconscious, or is asleep. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has chosen freely to engage in a sexual contact.

Coercion is defined for purposes of this section as the application of unreasonable pressure to take part in



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Incapacitation, Stalking or Relationship Violence, as each of those terms is defined in the Sexual Misconduct Policy.

At any time prior to convening a Determination Panel, a Party may request an informal resolution of a complaint rather than an investigation by contacting the Title IX Coordinator in writing. All Parties and the Title IX Coordinator must agree to informal resolution for this option to be used. The Title IX Coordinator will assess the request for informal resolution against the severity of the alleged violation and the potential risks to campus community members. If the Title IX Coordinator determines that informal resolution is appropriate, the Title IX Coordinator will notify the Parties. The Title IX Coordinator will designate a College representative to facilitate a dialogue with the Parties in an attempt to reach a resolution. The allegation will be deemed resolved when the Parties expressly agree to an outcome that is acceptable to them which is approved by the Title IX Coordinator in consultation with other appropriate College administrators. A Party may withdraw from the informal resolution process at any time. The informal resolution process will be conducted in accordance with procedures specified by the Title IX Coordinator, as determined in his/her sole discretion.

The Title IX Coordinator may initiate an investigation at any time that deems it appropriate in  
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reviews, generally will not be made for any advisors if they unduly delay the process. The advisor is not permitted to attend a meeting or proceeding without the Party without the prior approval of the Title IX Coordinator, as determined in his/her sole discretion. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the Title IX Coordinator. A union-represented employee who is a Responding Party may choose as an advisor a person who is not a union representative, if the Responding Party does not desire to have the union representative participate in the proceeding.

**(c) Support Services and Resources.**





Parties, the Title IX Coordinator will forward them to the Investigator for review. After



with the Parties as set forth in Section VII.B.6. Sanctions may be determined during the same meeting in which responsibility is determined, as set forth in Sections VII.B.4(c) and (d).

**(ii) Teaching Faculty.** The Title IX Coordinator will provide the Provost/Dean of the College (“Dean of the College”) with a copy of the Determination Panel’s written notification of its determination of responsibility as well as the Investigative Report. The Dean of the Colleg deoorl726

(iv) **Considerations.** In determining an appropriate sanction, the College may take into account the following:

- x The nature and circumstances of the misconduct.
- x The impact of the misconduct on the Complaining Party.
- x The impact of the misconduct on the College community.
- x The disciplinary history of the Party deemed responsible.
- x Any other mitigating or aggravating circumstances in order to reach a fair and appropriate resolution in each case.
- x Range of sanctions typically imposed for similar violations.

**Possible sanctions for those found responsible for sexual violence, other inappropriate**

## **7. Appeals**

- (a) All Appeals (Other Than Appeals Involving a Responding Party Who Is a Teaching Faculty Member with a**

any other individual that the Appellate Officer(s) deems appropriate (and shall consult with any such individual who is alleged to have caused a procedural error). In appropriate circumstances, the Title IX Coordinator may give special instructions to the Appellate Officer(s).

Sanctions of all types (including, but not limited to, any form of suspension, dismissal, or separation from the College) can be imposed, in full or in part, while an appeal is pending at the sole discretion of the College.

The Appellate Officer(s) may deny the appeal and affirm all or part of the determination of responsibility or the determination of sanction, or the Appellate Officer(s) may refer the matter back to the Investigator(s), original or a new Determination Panel<sup>11</sup>, and/or the individual determining the sanction for further consideration. If the matter is referred back to the Investigator(s), the Determination Panel, and/or the individual determining the sanction r46fer h0.239 m r.

c. **That the sanction of dismissal was inappropriate** based on a

The Appeal Panel may deny the appeal and affirm all or part of the determination of responsibility or the determination of sanction, or may refer the matter back to the Investigator(s), the original or a new Determination Panel<sup>12</sup>, and/or the Dean of the College (regarding determination of the sanction) for further consideration. .6 (1B>>BDC .96 222.969i>BDCa)-2.4 (ppe)9.22 (



- a. If the Dean of the College recommended a sanction of dismissal and no appeal was requested, the President will refer the sanction recommendation to the Executive Committee of the Board for review and consideration.
- b. If the Dean of the College recommended a sanction of dismissal and the Appeal Panel recommended a sanction less than dismissal, the President will determine whether to accept the Appeal Panel sanction recommendation (which shall then become the final sanction); impose a different sanction that is less than dismissal (which shall then become the final sanction) or recommend a sanction of dismissal for review and consideration by the Executive Committee of the Board.
- c. If the Dean of the College and the Appeal Panel recommended dismissal, the President will refer the sanction recommendation(s) to the Executive Committee of the Board for review and consideration.
- d. If the President refers a recommended sanction of dismissal to the Executive Committee of the Board, the referral will be communicated in writing by the President to the Complaining Party and Responding Party. The President will provide the Executive Committee with the Investigative Report, any response of the Complai R Complr(i)8.3 (t((o)2 (m)8.3 (m)19.1 Compl7ai R C (pl)-4. Pr6(r)-3.9 (t)-4.6 (y)1 1.7 (a)-1d ( (i)-4.7 (po)10.9 (r 0.9 (t)6.3 (he)-I19...8 (nI)1B.9 (R).7( ( of)-b).9 (r( 6nd)10.9 (i)-.9 of athe Dsm of te Cl.9 2tt6 (g.6 (v)10.815.9o15.9o15.9r e5.7 nivoivee116 po2.6 (he)nd P P352-1.7 i2-1.7i (2)11.7u(.6 lt(a)11

## 9. Additional Matters

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

hold a student who in good faith reports or is a witness during an investigation of sexual violence, relationship violence and stalking under the Sexual Misconduct Policy accountable for disciplinary violations of the College's Community Standards that do not place the health and safety of any other person at risk or create a danger to the College community. The College retains the right to require students to attend counseling or drug/alcohol related courses even in circumstances in which disciplinary conduct will not be pursued under this part.

**(h) Special Situations.**

The College retains the right to determine, in its sole discretion, if it will address a report of conduct under the Sexual Misconduct Policy administratively and outside of the process described herein when the safety of the College community is at risk, if the material facts are undisputed, if there are extenuating circumstances involving either of the Parties, or if the Title IX Coordinator, in consultation with appropriate administrators, determines it is in the best interest of the College and/or the community to do so. Without limiting the foregoing:

- (i) In certain cases where the conduct in question is not part of a broader pattern or an ongoing danger to the College community and the potential sanctions, even assuming all of the allegations are true, would not result in either Party being temporarily suspended or permanently separated from the College, the College maintains the discretion to resolve the matter through an individualized and streamlined process. In the instance that this occurs (specifically excluding all allegations of the following Policy violations: sexual violence, quid pro quo harassment, other inappropriate sexual contact, relationship violence, and stalking), the Title IX Coordinator may direct the matter to be investigated and/or the process state prot i atto XI Te ec9Te o eo th(e)46.Ttl 94



## C. State Law Definitions

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

### Massachusetts

#### **Sexual Harassment**

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

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

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

#### **Sexual Assault (Rape, Indecent Assault & Battery)**

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

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

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

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

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

#### **Stalking**

(compiled from M.G.L. Ch. 265, § 43)

The act of “willfully and maliciously engaging in a knowing pattern of conduct or series of acts over a



discriminatory reason for the retaliatory action in question. If no legitimate non-discriminatory reason is put forward, or if the reason is found to be a mere pretext for retaliation, then OCR may find that there was retaliation.

## **New York**