

Hamilton College Sexual Misconduct Policy (recommended revisions 8.31.14)

INTRODUCTION

All members of the Hamilton College community are expected to conduct themselves in a manner that does not infringe upon the rights of others. Hamilton seeks to provide an environment whereby students, faculty, staff, and guests can work, study, and enjoy the College community without experiencing sexual misconduct, domestic violence, dating violence, or stalking. In addition to being antithetical to Hamilton's community values, these acts are prohibited under College policy, New York State law and by federal laws such as Title IX. When such actions are brought to its attention, the College is committed to providing prompt and thorough responses to actions that adversely impact, or have the potential to adversely impact, the educational, residential, or workplace environment of any member of the Hamilton community.

The College strongly encourages all members of its community to report any act of sexual misconduct, dating violence, domestic violence, stalking, and/or related retaliatory behavior to the College and to immediately seek appropriate support and health care. The College also encourages all community members to contribute to the creation of a safe, welcoming, and respectful environment on campus. This includes taking reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, or seeking assistance from a person in authority. Community members who choose to positively intervene will be supported by the College and protected from retaliation.

This Policy has been developed to provide recourse for individuals who believe their rights have been violated, and serves as a means to determine, after the fact, if specific behaviors constitute violations of this Policy.

Any individual who has experienced sexual violence has the option to make a report to local law enforcement, to initiate Hamilton's internal complaint process described in this Policy, to do both, or to do neither. This Policy also describes support resources and accommodations available to members of the Hamilton community who experience sexual violence, whether or not that individual decides to pursue a formal report on campus.

When a community member decides to make a formal report of an incident of sexual misconduct, dating violence, domestic violence, stalking, or related retaliatory behavior, then Hamilton will use the procedures outlined below to take reasonable, prompt, and appropriate action to respond.

WHAT IS TITLE IX AND WHO IS THE TITLE IX COORDINATOR?

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681, *et seq.*, a federal law, prohibits discrimination on the basis of sex in education programs and activities:

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.

All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal funds must comply with Title IX. Title IX mandates that colleges and universities create an environment free from sexual discrimination and harassment for all community members.

Under Title IX, discrimination on the basis of sex includes sexual harassment, gender-based harassment, sexual violence, sexual assault, other forms of sexual misconduct, stalking, and intimate partner violence. Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and other applicable statutes. The College's Title IX Coordinator is responsible for ensuring that the College responds to such complaints in a manner that is equitable, ensuring that the College responds to such complaints in a manner that is equitable, effective, and eliminates the harassment through remedies designed for the individual and, as needed, the entire College community.

Hamilton's Title IX Coordinator is **Meredith Harper Bonham (315-859-4020** or mbonham@hamilton.edu). The Title IX Coordinator is:

- responsible for oversight of the investigation and resolution of all reports of sexual assault and harassment;
- knowledgeable and trained in relevant state and federal laws and College's Policy and procedure;
- available to advise any individual, including a Complainant, a Respondent, or a third party, about the courses of action available at the College, both informally and formally, and the courses of action available externally, including reports to law enforcement;
- available to provide assistance to any Hamilton community member regarding how to respond appropriately to reports of sexual assault and harassment;
- responsible for monitoring full compliance with all requirements and timelines specified in the complaint procedures; and
- responsible for compiling required reports.

SCOPE

All College community members are responsible for their actions and behavior, and for adhering to College policies and local, state, and federal law. This Policy, therefore, applies to all members of the Hamilton College community who participate in any of Hamilton's programs or activities, including students, employees, contractors, and visitors. Those who conduct business with the College on College property are also expected to comply with this Policy.

This Policy applies to conduct occurring on campus. This Policy also applies to off-campus conduct that is likely to have a substantial adverse effect on, or poses a threat of danger to, any

member of the Hamilton community or the College, including activities that take place at events hosted by organizations recognized by the College, including fraternities and sororities; study abroad and internship programs; or conduct that has continuing effects on campus or in an off-campus education program or activity.

OPTIONS FOR IMMEDIATE ASSISTANCE

If you have been involved in an act of misconduct and desire immediate assistance, you have several on and off-campus options:

On Campus Support Resources

The **Counseling Center** (315-859-4340) is a **confidential** resource that cannot disclose *any* information without your permission and that can provide emotional support as well as information about reporting options. The Counseling Center also has a **Counselor on Call** available 24/7 (reached through Campus Safety at 315-859-4000).

The **Health Center** (315-859-4111) is a **confidential** resource that cannot disclose *any* information without your permission, that provides medical assistance, and that can share information about reporting options. After hours, **Emergency Medical Technicians** (EMTs) are available (reached through Campus Safety at 315-859-4000).

The **Chaplaincy** (315-859-4130) is a **confidential** resource that cannot disclose *any* information without your permission and that can provide pastoral counsel, emotional support, and information about reporting options. Visit <http://www.hamilton.edu/chaplain/office-hours> to learn how to contact individual staff in the Chaplaincy.

Campus Safety (315-859-4000) is available 24 hours a day, 7 days a week to respond to any community concern. Students who call Campus Safety after normal business hours may request to speak with the Dean on Call, who is a member of the Division of Student Affairs. Campus Safety and/or the Dean on Call will notify the Title IX Coordinator after responding to a call related to alleged sexual misconduct.

TipNow is an anonymous resource to report any concerning behavior, including sexual assault. Reports can be made by telephone at **315-282-5426** or email at **Hamilton@tipnow.com**.

The College's **Title IX Coordinator**, Senior Associate Dean of Students Meredith Harper Bonham, is also available as an immediate resource. **Talking with the Title IX Coordinator about a specific incident of sexual misconduct constitutes a report under this Policy to which the College must respond.** However, general conversations or questions about Hamilton's processes can remain private. Dean Bonham can provide information about all resources available to individuals who have experienced sexual assault or harassment, including where to obtain emergency mental health services and health care. Dean Bonham can review and determine the immediate academic and administrative accommodations that can be made to protect a Hamilton community member who has experienced sexual violence or harassment. Dean Bonham can also advise about options for reporting, including the option to report to local

law enforcement, to initiate the on-campus resolution procedures, to do both, or to do neither. Dean Bonham will provide guidance and assistance through the process of reporting on- and/or off-campus. She can be reached through the Dean of Students Office (315-859-4020) or after hours through the Dean on Call (reached through Campus Safety at 315-859-4000).

Off Campus Support Resources

YWCA Rape Crisis Services (315-797-7740) is an anonymous hotline available to provide counsel as well as in-person assistance getting to a hospital or the police.

Oneida Health Care (315-363-6000) is a hospital that provides a **Sexual Assault Nurse Examiner (SANE)** for medical attention (injuries from a sexual assault are not always immediately apparent) and collecting physical evidence (a “rape kit”). The College strongly encourages any individual who has experienced sexual violence to obtain a rape kit, which is critical: (1) to diagnose and treat the full extent of any injury or physical effect and (2) to properly collect and preserve evidence. Such an exam may include testing and prophylactic treatment for HIV/AIDS, STIs, and pregnancy; a vaginal examination; collecting fingernail scrapings and/or clippings; examining for injuries; and drawing blood. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Gathering such evidence does ***not*** commit an individual to pursuing legal action against the assailant, but does preserve that option. Although it may be difficult following a sexual assault, individuals who are considering or may consider legal action should try not to shower, rinse mouth, brush teeth or change clothes to allow for the maximum possible collection of evidence by a SANE nurse or other health care provider.

Hospitals are not required to report any non-identifying information to the College or to anyone else. However, hospitals providing care to individuals reporting sexual assault are required to:

- collect and maintain the chain of custody of sexual assault evidence for not less than 30 days ***unless*** the patient signs a statement directing the hospital not to collect it;
- advise the individual seeking medical treatment related to sexual assault of the availability of the services of a local rape crisis or victim assistance organization to accompany the individual through the sexual offense examination;
- contact a rape crisis or victim assistance organization providing assistance to the geographic area served by that hospital to establish the coordination of non-medical services to individuals reporting sexual assault who request such coordination and services; and
- provide emergency contraception upon the patient’s request.

Even if an individual who has experienced sexual violence does not have injuries requiring emergency attention, the College encourages that individual to seek medical care as soon as possible, whether at the Health Center or another health care provider or hospital. A medical evaluation is still important to check for physical injuries, reduce risk of complications from

sexually transmitted diseases as a result of the assault, and/or (if appropriate) reduce risk of pregnancy.

In most instances, any health care provider will likely encourage an individual reporting sexual assault to authorize collection of evidence. For individuals who seek initial medical treatment at the Health Center and decide to proceed with evidence collection, the individual may be escorted to Oneida Health by Campus Safety or may choose to travel by taxi (the College will provide a voucher) to any chosen medical provider. A Complainant can receive follow-up health care at the Health Center or the chosen health care provider or hospital.

Reporting to Law Enforcement

The College encourages Complainants to pursue criminal action for incidents of sexual assault or harassment that may also be crimes under New York criminal statutes. The **New York State Police** (315-366-6000) can assist with pressing criminal charges following a sexual assault.

A Complainant who wishes to report sexual assault has a number of options to resolve the complaint:

- report to law enforcement to initiate criminal action;
- report to the College to initiate the College's complaint process; *or*
- both criminal action and the College's complaint process.

The Title IX Coordinator or Campus Safety will assist any Complainant who wishes to pursue a formal complaint with local law enforcement in making the report. In addition, an individual making a report to local law enforcement may also obtain services through the New York State Office for Victim Services. The OVS funds local Victim Assistance Programs including YWCA Rape Crisis Services (listed above), which will, among other things, offer a crime victim advocate that can provide direct assistance to victims and their families as they navigate the criminal justice process.

The College will cooperate with law enforcement agencies (to the extent permitted by law) if a Complainant decides to pursue the criminal process. Except where the Complainant is less than 18 years old, the College will generally respect a Complainant's choice whether or not to report an incident to local law enforcement, unless the College determines that there is an overriding issue with respect to the safety or welfare of the Hamilton College community. Where a report involves suspected abuse of a minor less than 18, certain individuals at the College may be required by state law to notify law enforcement and/or the New York Statewide Central Register of Child Abuse and Maltreatment.

Amnesty Related to Other Policy Violations

In order to encourage reporting of the acts covered by this Policy, Hamilton may offer amnesty related to other policy violations (such as those involving alcohol if the parties are underage) revealed in the process of pursuing a complaint.

Additionally, individuals can report anonymously through **TipNow** at **315-282-5426** or email at **Hamilton@tipnow.com**.

PRIVACY OF RESOURCES

The resources listed above (also listed in Addendum A) can provide different levels of privacy. An overview of these different levels of privacy follows:

Confidential resources are those required to keep all information disclosed to them confidential within the legal and ethical bounds of their profession. At Hamilton, these individuals include:

- All staff in the Counseling Center, including the Counselor on Call
- All staff in the Health Center, including student EMTs
- All staff in the Chaplaincy

Confidential resources can direct individuals towards other avenues of support as well, including providing information about Hamilton's process for pursuing disciplinary action.

Non-confidential resources are all faculty and staff who are not listed above, including student Resident Advisors employed by the Office of Residential Life. These individuals are "Responsible Employees" (defined further below) who must report an act of alleged misconduct to the Title IX Coordinator. General questions about Hamilton's policies and procedures, or conversations where specific individuals or acts are not identified or implied, may remain private.

Additional protected resources for individuals impacted by a prohibited act include student-run programs such as Hamilton's Peer Advocates (advocate@hamilton.edu). Volunteers in these programs are not Responsible Employees and are not required to report any information. In addition, information disclosed at public awareness events such as "Take Back the Night" is not considered notice of an act described in this Policy and cannot be used to trigger an investigation.

DEFINITIONS

The following definitions outline the types of Sexual Misconduct prohibited under this Policy and identify the individuals and processes involved in the investigation of and response to allegations of those prohibited acts:

Prohibited Acts

Sexual harassment is defined as unwelcome verbal or physical conduct of a sexual nature that has the effect of unreasonably interfering with an individual's work or academic performance or that creates an intimidating, hostile, or offensive working, educational, or living environment. A form of quid pro quo (this for that) sexual harassment exists when submission to or rejection of unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature results in adverse educational or employment action, or the threat of such adverse

action, or limits or denies an individual's educational or employment access, benefits, or opportunities.

The determination of whether an environment is "hostile" must be based on all the circumstances. These circumstances could include, but are not limited to:

- The frequency of the speech or conduct;
- The nature and severity of the speech or conduct;
- Whether the conduct was physically threatening;
- Whether the speech or conduct was humiliating;
- The effect of the speech or conduct on the complainant's mental and/or emotional state;
- Whether the speech or conduct was directed at more than one person;
- Whether the speech or conduct arose in the context of other discriminatory conduct;
- Whether the speech or conduct unreasonably interfered with the complainant's educational opportunities or performance (including study abroad), university-controlled living environment, work opportunities or performance;
- Whether a statement is a mere utterance of an epithet which engenders offense in an employee or a student or offends by mere discourtesy or rudeness; and/or
- Whether the speech or conduct deserves the protections of academic freedom

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex or sex- or gender-stereotyping, even if those acts do not involve conduct of a sexual nature.

Sexual harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance or someone with whom the Complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.

- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the Complainant and/or third parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- Physical conduct:
 - unwelcome touching, sexual/physical assault, impeding, restraining or blocking movements
 - unwanted sexual advances
- Verbal conduct:
 - making or using derogatory comments, epithets, slurs or humor, not pedagogically appropriate
 - verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations, not pedagogically appropriate
 - objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes, which a reasonable peer would find offensive and which are not pedagogically appropriate
- Visual conduct:
 - leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum, not pedagogically appropriate
 - severe, persistent or pervasive visual displays of suggestive, erotic or degrading sexually oriented images, not pedagogically appropriate
- Written conduct: letters, notes or electronic communications containing comments, words or images described above, not pedagogically appropriate
- Quid pro quo conduct:
 - direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
 - offering employment benefits in exchange for sexual favors
 - making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose

- making or threatening reprisals after a negative response to sexual advances

Retaliation is defined as verbal or physical conduct that occurs in response to a complaint of harassment. Hamilton extends zero tolerance to those who retaliate for complaints of harassment. Hamilton College views retaliatory harassment to be just as severe as the initial harassment itself. Actions are considered retaliatory if they are in response to a good faith disclosure of real or perceived misconduct and the actions have a materially adverse effect on the working, academic or university-controlled living environment of an employee or student; or if the faculty, employee, or student can no longer effectively carry out his or her responsibilities.

Non-Consensual Sexual Contact is defined as any intentional sexual touching, however slight, with any body part or object, by a man or a woman upon a man or a woman, without effective consent.

Non-Consensual Sexual Penetration is defined as any sexual penetration (anal, oral, or vaginal), however slight, with any body part or object by a man or woman upon a man or woman, without effective consent.

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute another form of sexual misconduct. Examples of sexual exploitation include, but are not limited to, prostitution, non-consensual video or audio-taping of sexual or other private activity, exceeding the boundaries of consent (e.g., permitting others to hide in a closet and observe consensual sexual activity, videotaping of a person using a bathroom), engaging in voyeurism, or engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted diseases (STD) and without informing the other person of such infection.

Domestic Violence is defined as causing, or attempting to cause, bodily injury to a family or household member, or causing that individual to fear imminent serious bodily injury. Additionally, domestic violence includes incitement or provocation to violence, negligent or reckless use of physical force, exploitation or coercion, restraint, use of threats to prevent someone from communicating or moving freely, violation of another's privacy, and uninvited presence in another's room or office. "Household members" are individuals who are living together or have lived together, or who are or who have been engaged in a dating or sexual relationship. This definition does not apply to roommates who have not expressed interest in entering into, or who have not entered into, a dating or sexual relationship.

Dating Violence is defined as causing, or attempting to cause, bodily injury to a person who one is dating or has dated, or causing that individual to fear imminent serious bodily injury. Additionally, dating violence includes incitement or provocation to violence, negligent or reckless use of physical force, exploitation or coercion, restraint, use of threats to prevent someone from communicating or moving freely, violation of another's privacy, and uninvited presence in another's room or office. "Dating" is a social relationship of a romantic and/or sexual nature that is defined by the nature, length, and frequency of interaction within the relationship.

Stalking is defined as taking specific actions directed towards another person that causes the other individual to fear for their physical safety. These actions are defined by a course of conduct that would cause a reasonable person to fear for his or her safety or that of others, or to suffer substantial emotional distress.

Related Terms

Consent: In order for individuals to engage in sexual activity of any type with each other, there must be clear consent. Consent is permission, freely given by word or action, by both participants in a sexual activity. Since two people may experience the same interaction in different ways, it is the responsibility of both parties to make certain that the other has consented before engaging in any sexual activity. Silence cannot be assumed to show consent. Consent to some form of sexual activity cannot be automatically taken as consent to any other sexual activity and consent may be withdrawn at any time. Consent to an activity with one person does not imply consent to engage in that activity with another person. Consent to an activity in the past does not constitute consent in the future. All individuals who consent to sex must be able to understand what they are doing. In order to give consent, one must be of legal age, which is 17 in New York State. Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not – by itself – imply consent to future acts.

Coercion: Coercion is the use of 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. A person's words or conduct are sufficient to constitute coercion if they impair another individual's ability to choose whether or not to engage in sexual activity. Examples of coercion include 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. Coercing an individual into engaging in sexual activity violates this Policy in the same way as physically forcing someone into engaging in sexual activity.

Capacity to give consent: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. Incapacitation may result from the use of alcohol and/or drug, but consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; and

- capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known that the Complainant was incapacitated. Individuals engaging in sexual activity should continually evaluate incapacitation throughout the encounter.

Persons who have sexual activity with someone whom they know to be— or could reasonably be expected to know to be— mentally or physically incapacitated (including being substantially impaired by alcohol or other drug use or unconscious) are in violation of this Policy, and any consent perceived to have been obtained is presumptively invalid. Possession, use and/or distribution of any of the so-called “date rape” drugs (including Rohypnol, Ketamine, GHB, Burundanga and others) is prohibited, and administering any of these drugs to another is a violation of this Policy.

Individuals and Processes

Complainant: An individual who has allegedly been subjected to Prohibit Conduct and is pursuing a complaint under the procedures outlined in this Policy. In the case of complaints that are pursued when the impacted individual does not want to participate in the process, Hamilton may pursue a complaint without such individual in which case Hamilton will be the Complainant.

Respondent: This is the individual whose conduct is alleged to have violated this Policy and whose conduct is being investigated.

Responsible Employees: The U.S. Department of Education’s Office for Civil Rights defines Responsible Employees as employees who have the authority to take action to redress sexual violence, who have been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee, or whom a student could reasonably believe have this authority or duty. Responsible Employees who receive information or a report about any act that potentially constitutes sexual assault, domestic violence, dating violence, or stalking must further report that information to the Title IX Coordinator. The following employees of the College are Responsible Employees: faculty, staff (except staff in the Counseling Center, the Health Center, and the Chaplaincy), and Resident Advisors. In addition, Responsible Employees are expected to make every effort to explain their duty to report to anyone disclosing, or about to disclose, information to them.

Title IX Coordinator: The individual who oversees the College’s centralized review, investigation, and resolution of reports of sexual assault and harassment pursuant to this Policy and the Sexual Misconduct Policy. The Title IX Coordinator also coordinates the College’s compliance with Title IX, including equitable, timely, and effective processing of complaints regarding violations of rights protected by Title IX. The Title IX Coordinator is:

- responsible for oversight of the investigation and resolution of all reports of sexual assault and harassment;

- knowledgeable and trained in relevant state and federal laws and College’s Policy and procedure;
- available to advise any individual, including a Complainant, a Respondent, or a third party, about the courses of action available at the College, both informally and formally, and the courses of action available externally, including reports to law enforcement;
- available to provide assistance to any Hamilton community member regarding how to respond appropriately to reports of sexual assault and harassment;
- responsible for monitoring full compliance with all requirements and timelines specified in the complaint procedures; and
- responsible for compiling required reports.

Senior Staff Member: The Vice President who has supervisory authority over the area of the College with which the Respondent is affiliated. The Vice President and Dean of Students is the Senior Staff Member with respect to complaints brought against a student. In the case of complaints brought against members of the faculty, staff, or administration, the Vice President of the area in which the Respondent is employed is the Senior Staff Member. For example, the Vice President for Academic Affairs and Dean of Faculty is the Senior Staff Member with respect to complaints brought against a faculty member.

Harassment and Sexual Misconduct Board: The Harassment and Sexual Misconduct Board (HSMB or the Board) shall be composed of eight members, one of whom shall be the Chair, appointed by the Title IX Coordinator to staggered terms of four years beginning in the Fall semester. Each year, the current Board will solicit applications and nominations for any open seat(s), and will recommend individuals to serve for the following year. Members of the Hamilton community may also nominate individuals for Board membership, provided the nominees are willing to serve if appointed. The Title IX Coordinator, in consultation with the Chair, will ultimately be responsible for appointing new members and designating a new Chair. Normally, the Chair will be a tenured member of the faculty and serve for two years as Chair. Every effort will be made to maintain a gender balance on the Board, and membership normally will be limited to tenured members of the faculty and full-time staff members. The Title IX Coordinator shall arrange for the Board members to receive annual training.

Investigation Team: One member of the HSMB (who is not a member of the Harassment and Sexual Misconduct Review Panel, defined below) and an external expert investigator (generally an attorney) will serve as the team (the “Investigation Team”) that conducts investigations following notice of alleged misconduct. Normally, to be eligible to serve on the Investigation Team, an HSMB member must have served for at least one year on the Board. Upon receipt of a complaint, the Title IX Coordinator will assign a member of the HSMB and retain the external investigator to begin the investigation. If the Title IX Coordinator determines that a legitimate conflict of interest exists between an Investigation Team member and a party to a complaint, the Title IX Coordinator, in consultation with the Chair of the HSMB, will appoint a replacement from those members of the Board eligible to serve.

Harassment and Sexual Misconduct Review Panel (HSMRP): The Title IX Coordinator will annually appoint a three person review panel (HSMRP) from the HSMB to review investigative

reports and determine appropriate actions to redress acts of misconduct. The HSMB Chair serves as a non-voting fourth member of the HSMRP and presides over the review process. The term of appointment to the panel shall be one year. If any vacancy on the HSMRP occurs during the academic year, or if the Title IX Coordinator determines that a legitimate conflict of interest exists between a member of the panel and a party to a complaint, the Title IX Coordinator, in consultation with the Chair of the HSMB, will appoint a replacement from those members of the Board eligible to serve.

Appeals Board: This is the group of individuals, defined in Hamilton's Code of Conduct, that considers all appeals of findings and sanctions issues under this Policy. The Appeals Board will receive annual training on relevant state and federal law (including Title IX) and this Policy.

CONFIDENTIALITY

Hamilton encourages the reporting of acts of sexual misconduct in order to help the College respond effectively to conduct that negatively impacts the safety of the community. The College also recognizes the importance of privacy and confidentiality. The following section describes how the College will maintain privacy while pursuing a complaint of misconduct, and how it will respond to requests for confidentiality.

General

In all cases of Sexual Misconduct covered by this Policy, Hamilton will limit the disclosure of information to only those individuals who are responsible for handling the school's official response. When information is released, the College will notify the Complainant, where possible, of the nature of the information disclosed, to whom it was disclosed, and why.

In accordance with the Clery Act, the College must also report statistics concerning the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include any personally identifiable information. The College may issue a timely warning if a report of sexual misconduct presents information that there is an ongoing threat to the community. The announcement will include the nature of the violation and the action(s) being taken, using no names. Certain college administrators (e.g., the College President and Director of Campus Safety) may be provided additional details on a need to know, private basis.

The College will not inform students' parents or guardians of their involvement in a complaint of harassment or sexual misconduct, but the Title IX Coordinator will speak with involved students about the student's decision to personally inform their parents or guardians. College officials will directly inform a student's parents or guardians when requested to do so by the student.

Requests for Confidentiality

If the Title IX Coordinator has received notice of an act covered by this Policy but the individual impacted requests confidentiality or otherwise asks that an investigation not be pursued, the Title IX Coordinator will make every effort to balance this request with Hamilton's policy of

providing a safe and non-discriminatory environment for all members of the community. Honoring such a request will limit Hamilton's ability to conduct a thorough investigation and take appropriate disciplinary action. The Title IX Coordinator will consider many factors when determining whether or not the College can honor the request for confidentiality, including but not limited to whether:

- the individual impacted is a minor;
- the information provided suggests an increased risk that the alleged perpetrator has committed prior acts or will commit additional acts;
- the alleged misconduct was perpetrated with a weapon;
- the sexual violence was committed by multiple perpetrators;
- the information provided suggests that the act is part of a larger pattern at a specific location or by a particular group; and
- information can be obtained by means other than from the impacted individual (e.g., by personnel or security cameras, witnesses, or through physical evidence).

If confidentiality cannot be maintained, the impacted individual will be informed of the decision prior to the start of an investigation. In addition, to the extent possible, the College will only share information with people responsible for handling the College's response. In appropriate cases, the course of action may include steps to limit the effects of the alleged misconduct and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

In the event that the College proceeds with an investigation and is unable to maintain confidentiality, the College will continue to evaluate methods and measures to protect the reporting student from retaliation or harm. The Title IX Coordinator will work with the Complainant to create a safety plan. Retaliation against the reporting student(s), whether by students or College employees, will not be tolerated.

The College will also:

- assist the reporting student in accessing other available advocacy support, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus;
- provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the Respondent pending the outcome of an investigation) or adjustments for assignments or tests; and
- inform the reporting student of her or his right to report a crime to local law enforcement and provide her or him with assistance if s/he wishes to do so.

If the College determines that it can respect a Complainant's request for confidentiality, the College will also take immediate action as necessary to protect and assist the Complainant. Such protection and assistance could include: issuing a no contact order, helping arrange a change of

living or working arrangements or course schedules (including for the Respondent pending the outcome of an investigation) or adjustments for assignments or tests. The College will also assist the Complainant in accessing other available advocacy support, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus.

PROTECTION FROM RETALIATION

Hamilton prohibits retaliation for individuals who pursue complaints or who are otherwise involved in any of the processes outlined in this Policy. The College will take appropriate and strong responsive action if retaliation occurs.

INTERIM MEASURES

Upon receipt of a report pursuant to this Policy, the College will evaluate and impose reasonable and appropriate interim measures designed to eliminate the reported hostile environment and protect the parties involved, including measures specifically designed to reduce the burden on the Complainant. Interim measures may be imposed at any time regardless of whether formal disciplinary action is sought by the Complainant or the College and may be imposed prior to the commencement or conclusion of an investigation. Interim measures will be kept confidential to the extent that maintaining the confidentiality would not impair the ability of the College to provide the interim measures.

The parties may request some form of interim measure, or the College may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader College community, and/or the integrity of the investigative and/or complaint resolution process. Possible interim measures include (but may not be applicable depending on the parties' status as students or employees):

- limitations on the Respondent regarding contact with the Complainant during the investigation and while the complaint is being reviewed (typical in cases involving students);
- changing class schedules, including the ability to transfer course sections or withdrawal from a course without penalty;
- changing work schedules or job assignments;
- changing a student's College owned housing;
- rescheduling of exams, papers, or other assignments;
- taking an incomplete in a class;
- transferring class sections;
- temporary withdrawal;
- alternative course completion options;

- access to counseling services on- and off-campus and assistance in setting up an initial appointment;
- limiting an individual's or organization's access to certain Colleges' facilities or activities pending resolution of the matter;
- voluntary leave of absence;
- providing an escort to ensure safe movement between classes and activities;
- providing medical services;
- providing academic support services, such as tutoring;
- College-imposed leave or separation; and/or
- any other remedy that can be tailored to the involved individuals to achieve the goals of this Policy.

All individuals are encouraged to report concerns about failure of another individual to abide by restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

COMPLAINT RESPONSE PROCEDURES

The following steps outline Hamilton's process for addressing notice of sexual misconduct:

Notice of Complaint

Complaints of prohibited acts may be made verbally or in writing, and may come from the report of a Responsible Employee or directly from a Complainant. This will be considered "notice" that an act of misconduct is alleged to have occurred. This notice must ultimately be recorded in written form by the Complainant, Responsible Employee, or Title IX Coordinator, and must include, at a minimum, the time, place, and nature of the alleged offense and the name of the Respondent. After receiving notice, the Title IX Coordinator will determine if the conduct alleged by the Complainant falls within this Policy.

In cases where action against an alleged Respondent cannot be taken because that individual is not a member of the College community, the Title IX Coordinator will assess the information given and provide appropriate recommendations and resources to the Complainant.

In cases where it is determined that the act, if proven, does not fall within this Policy, no further investigation will be pursued and the Complainant will be advised by the Title IX Coordinator of other avenues of recourse and support as appropriate.

In cases where it is determined that the act, if proven, falls within this Policy, the procedures described in this Policy will be activated. This process will involve the Chair of the HSMB, the appropriate Senior Staff Member, the Title IX Coordinator, an Investigation Team, and the HSMRP. In the event the Complainant, Respondent, Chair of the HSMB, or Title IX Coordinator identifies a conflict of interest involving the Chair or the Title IX Coordinator, the appropriate Senior Staff Member will appoint another member of the HSMB to oversee the process. If there

is a conflict of interest involving the Senior Staff Member, the President of the College will take the place of the Senior Staff Member.

The Title IX Coordinator will meet with the Complainant and explain the investigation procedures that will be followed. The Title IX Coordinator will meet separately with the Respondent to provide notification of the complaint and to explain the procedures that will be followed.

The Respondent has the right to accept responsibility prior to an investigation. A Respondent choosing this path must provide the Senior Staff Member and the Chair a written statement accepting responsibility for the alleged violation and waiving the right to an investigation. In such cases, the appropriate Senior Staff Member – in consultation with the Chair and Title IX Coordinator – will determine a sanction, which may range from a warning to permanent separation from the College (in the case of students), and will respond within 48 hours to the Respondent with the assigned sanction. By accepting responsibility, the Respondent also waives the right to appeal and accepts the Senior Staff Member's decision as final. If the Respondent does not agree to accept responsibility and disputes the description of alleged conduct, an investigation will proceed.

Investigation of Complaint

General

Hamilton College uses an investigation model to resolve complaints of sexual misconduct. A trained Investigation Team will interview all parties and witnesses and collect relevant information. The Investigation Team is authorized to contact any relevant people and to access any relevant records not otherwise prohibited by legal protections of privilege or confidentiality. It is the responsibility of the Investigation Team to take custody of, and arrange safekeeping for, any physical or electronic records, documents, or other tangible items to be used in making a finding.

The Investigation Team will make every effort to conclude a thorough investigation, including submission of its written report, within 30 business days of the receipt of a complaint. Should a Respondent choose not to participate in the investigative process, the investigation may proceed, a decision will be made, and, if appropriate, a sanction may be imposed based on available information.

The Complainant and Respondent may have an advisor of their choice present at any meeting related to the investigation and resolution process, but these advisors can only advise the Complainant or Respondent privately and cannot act as speaking advocates. Parties must advise the Title IX Coordinator of the identity of their advisor of choice within five business days of receiving the Notice of Complaint.

In matters involving students, the College will typically issue “no contact” orders for the duration of the investigation and resolution process. In all other matters, the College will

evaluate and implement measures intended to reduce the burden on the Complainant; the College's evaluation of the appropriateness of such measures will be ongoing.

Rights of the Respondent and Complainant

Common Rights

Each party has the right to:

- preservation of privacy, to the extent possible and allowed by law;
- a timely investigation and appropriate resolution of all complaints of sexual misconduct through the processes described in this Policy;
- be informed of campus judicial rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;
- (in the case of students) medical and emotional support from the Student Health Service, the Counseling Center, and/or trained advocates;
- (in the case of employees) medical and emotional support through the College's Employee Assistance Program (1-888-293-6948);
- receive the counsel and support of an advisor of his or her choice throughout the investigation and resolution processes;
- have irrelevant information concerning sexual history, character, or incidents not directly related to the complaint excluded from the investigation and resolution proceedings (the HSMB Chair and Title IX Coordinator may determine that information demonstrating a pattern of behavior directly related to the alleged violation is admissible information);
 - any party seeking to introduce information about prior sexual history or pattern evidence should bring this information to the attention of the Investigation Team at the earliest opportunity. A party who provides this information and wishes to seek its admission at the hearing must submit a written request to the Investigation Team no later than five (5) business days after the notice of complaint has been provided:
 - a written statement and/or description of the proposed information, if not already provided;
 - a summary of the relevance of this information to making a decision of responsibility at the hearing; and
 - a brief explanation why this information was not shared earlier in the process.

Where sufficient foundation exists, the Investigation Team, in consultation with the Title IX Coordinator, will assess the relevance, form, and reliability of the information and determine if it is appropriate for inclusion at the hearing. Any information submitted will be for the exclusive use of the Investigation Team and Title IX Coordinator in making a determination about the relevance of such information. If the information is approved as appropriate for presentation at the

hearing, the Respondent and Complainant will be provided with a brief description of the approved information before the close of the investigation.

- be informed of the names of any additional individuals who may be called by the HSMRP to provide information;
- have the College request the presence of individuals at investigative and resolution proceedings;
- review all documentary information available regarding the complaint and investigation, subject to the confidentiality limitations imposed by state and federal law and the ability of the Title IX Coordinator to exercise discretion to redact or remove information deemed to be irrelevant, more prejudicial than probative, an unwarranted invasion of privacy, immaterial, a statement of personal opinion, or a statement as to general reputation for a character trait;
- be notified of the finding and any sanction following any HSMRP review;
- petition the Chair of the HSMB for removal of any member of the Investigation Team or HSMRP on the basis of demonstrated bias or conflict of interest;
- appeal the HSMRP's finding and any sanction, in accordance with the standards for appeal established by this Policy;
- have complaints investigated and reviewed by individuals who have received annual training;
- have College policies and procedures followed without material deviation;
- be informed in advance of any public release of information regarding the complaint.

Additional Rights of the Complainant

- implementation of reasonably available measures to reduce the burden on the Complainant, which may include (but may not be applicable to all Complainants depending on their status as a student or an employee):
 - placement of limitations on the Respondent regarding contact with the Complainant during the investigation and while the complaint is being reviewed;
 - separation or modification of the working, living, and/or academic arrangements of the Complainant and the Respondent and the College's assistance in effecting such change;
 - rescheduling of exams, papers, or other assignments;
 - taking an incomplete in a class;
 - transferring class sections;
 - temporary withdrawal; or
 - alternative course completion options.

- to be informed by College officials of options to notify appropriate law enforcement authorities and the option to be assisted by campus officials in notifying such authorities whether or not the individual intends to pursue on-campus complaint resolution procedures; and
- to provide information at any step of the procedures outlined in this Policy outside the presence of the Respondent.

Additional Rights of the Respondent

- to review the complaint made against him or her (subject to the ability of the Title IX Coordinator to exercise discretion to redact or remove information deemed to be irrelevant, more prejudicial than probative, an unwarranted invasion of privacy, immaterial, a statement of personal opinion, or a statement as to general reputation for a character trait), including timely notice of any HSMRP proceedings in which the Respondent could participate;
- to an investigative and resolution process as described in this Policy;
- to waive HSMRP proceedings by admitting responsibility following receipt of the formal Investigation Team report;
- to an outcome based solely on information obtained by the Investigation Team and during the HSMRP proceeding.

Procedures for Submitting and Accessing Information Collected During College's Investigation

The Complainant and Respondent will be asked to identify all information they would like the Investigation Team to review, and as such both may recommend witnesses and submit information for consideration. Decisions about interviews and collection and evaluation of relevant information, physical or electronic documents, and other tangible items, however, are ultimately at the sole discretion of the Investigation Team in the context of impartial treatment of both parties. In the course of conducting interviews, the Investigation Team will ask any participant in the investigation to sign a statement attesting to the veracity of the information provided. The Investigation Team will also encourage all student participants to keep the substance of an interview confidential.

At the conclusion of the investigation, the Complainant and Respondent will have the opportunity to review witness statements and other relevant materials gathered during the course of the investigation. Prior to this review, however, the Title IX Coordinator and HSMB Chair will review all materials to determine whether the information contained therein is relevant and material to the determination of the charged violation(s) of this Policy given the nature of the allegation(s). In general, the Title IX Coordinator may redact information that is irrelevant, more prejudicial than probative, an unwarranted invasion of privacy, or immaterial. The Title IX Coordinator may also redact statements of personal opinion rather than direct observations or

reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

After such review and redaction, the Title IX Coordinator will facilitate the opportunity for each party to access the information separately in a private setting. Both parties will have an opportunity to respond to this information, in writing, within seven business days. If at any stage following the submission of these responses new and relevant information is gathered, it will be shared with the Complainant and Respondent, who will again have the opportunity to submit a written response within a time frame determined by the Title IX Coordinator. The Complainant and Respondent may request to see the other party's written responses.

Following the initial seven-day review period by the Complainant and Respondent and any subsequent responses and gathering of new information, the Investigation Team will, within five business days, meet with the Chair and Title IX Coordinator to issue their final written report that includes all investigation materials, Complainant and Respondent statements and responses to the other's statement, any additional information gathered, and the Investigation Team's recommended finding of whether any College policy has been violated. The Investigation Team's recommendation relative to violations of this Policy will be based on the preponderance of evidence standard (i.e. whether it was "more likely than not" that this Policy was violated).

Simultaneous College and Law Enforcement Investigations

When a Complainant reports to both local law enforcement and the College, there will be some coordination of the simultaneous investigations.

At the request of law enforcement, the College may agree to defer its fact-gathering until after the initial stages of a criminal investigation. During that time, the College will continue to offer support to the Complainant, including discussing Title IX rights, procedural options, and needed interim measures to ensure safety and well-being. The College will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation.

The College will timely share information in simultaneous investigations except that local law enforcement may manage sharing of information so as not to impede its ongoing investigation. In addition, the College's ability to share information related to its own investigation and/or adjudication of certain offenses involving a student or students will be governed by the Family Educational Rights and Privacy Act, which prohibits disclosure of student education records containing personally identifiable information except under certain circumstances.

The College's Policy, definitions, and standard of review differ from New York criminal¹ law. Neither law enforcement's determination whether to prosecute a Respondent nor the outcome of any criminal prosecution is determinative of whether sexual assault or harassment has occurred under this Policy. Proceedings under this Policy may be carried out prior to, simultaneously with or following civil or criminal proceedings off campus.

¹ See Addendum B.

RESOLUTION PROCEDURES

HSMRP Procedures and Guidelines

Upon receipt of the final report from the Investigation Team, the Title IX Coordinator will convene the HSMRP. The HSMRP will review the final report and may request any additional relevant information from the investigators and/or to meet individually with any person(s). The Complainant or Respondent also has the right to meet separately with the HSMRP. The focus of any such meeting will only be to clarify information presented in the Investigation Team's final report. Utilizing this information, the HSMRP is responsible for recommending to the Senior Staff Member whether this Policy was violated and, if so, which specific portion(s). The HSMRP will apply a preponderance of evidence standard when arriving at a determination of whether this Policy was violated.

If the HSMRP determines that this Policy was not violated, no sanction will be recommended.

If the HSMRP determines that this Policy has been violated, the HSMRP will additionally recommend a sanction for the Respondent based on the nature of the violation and available precedent. Possible sanctions include:

- **Warning:** Notice, orally or in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
- **Restitution:** Charges for damages, including replacement of goods, payment of services, and/or assignment of unpaid service to the College community.
- **Mandatory educational workshop** for alcohol or drug-related misconduct.
- **Loss of status in housing lottery.**
- **Status of Probation:** To be assigned for a specified period of time. Terms of the probation shall be specified, and may include denial of specified social privileges, exclusion from extracurricular activities and other measures deemed appropriate. Violation of this Policy or the College's Code of Conduct during the period of probation will normally result in suspension or expulsion from the College.
- **Suspension:** Separation from the College, and exclusion from College premises, and from other privileges and activities. Readmission to the College after the term of suspension is not automatic, but requires application to the Dean of Students.
- **Expulsion:** Permanent termination of student status, and exclusion from College premises, privileges, and activities. An application for readmission shall not be considered. "Expulsion for Disciplinary Reasons" is recorded on the official College transcript. Students who have been expelled are expected to leave the campus within 48 hours unless the Dean of Students grants a special extension.
- **Other Actions:** In addition to or in place of the above actions, the Senior Staff Member may assign such other penalties, as it deems appropriate.

Individuals found responsible for Non-consensual Sexual Penetration should expect to be separated from the College.

The HSMRP will prepare a brief written summary of its determination and recommended sanction (if applicable) and submit it to the Senior Staff Member. The HSMRP will make every effort to conclude this process within ten business days of the receipt of the Investigation Team's final report.

The Senior Staff Member will make the final decision based on the HSMRP's determination and recommendation. The Senior Staff Member and Chair will meet separately with the Complainant and Respondent to inform them of the HSMRP's determination and recommendation and the Senior Staff Member's decision. Specifically, each party will be informed of the HSMRP's determination of any policy violation(s), any sanction(s) issued, and procedures to appeal the decision. The findings will be confirmed in a writing delivered simultaneously to the parties.

OVERALL TIME FRAME FOR INVESTIGATION AND COMPLAINT RESOLUTION

The College has established time frames with the goal of addressing and reaching a determination about all complaints in a timely and efficient manner. In general, parties can expect that the College will conclude all reports of sexual misconduct within sixty (60) days (exclusive of any appeal) and, in general, parties can expect that the process will proceed according to the time frames provided in this Policy. However, because circumstances may arise that require the extension of time frames—possibly beyond the overall sixty (60) day timeline—all time frames expressed in this Policy are meant to be guidelines rather than rigid requirements. Such circumstances may include the complexity of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation or other unforeseen circumstances. The College will provide written notice to all parties of the reason for any delay and the expected adjustment in time frames. The College will make its best efforts to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

APPEALS

Any party may request an appeal of the final decision within five business days of being informed in writing of that decision. Respondents who accept investigation findings may only appeal on the basis of sanction. Acceptable grounds for an appeal are limited to:

- the sanctions imposed were substantially disproportionate to the violation committed; and/or
- procedural error(s) that had a material impact on the fairness of the hearing.

Previously unavailable relevant information that could significantly impact the result of the original hearing must be brought to the attention of the HSMB, who will reconvene the HSMRP to determine whether the information would have affected the result.

Appeal Procedures

An appeal must be made in writing to the Chair of the Appeals Board, and must state in detail the reasons for the appeal. Appeals are heard by a two-member subset of the Appeals Board (Appeals Panel) consisting of the Chair of the Appeals Board and one other faculty member from the Appeals Board, determined by the Appeals Board Chair. In cases where the two selected members do not agree, the third Appeals Board member will review the case and make a determination. If there is a conflict of interest, a student Appeals Board member shall be appointed.

The Chair of the Appeals Board will inform the Senior Staff Member and Chair of the HSMB that an appeal has been made and will invite the Senior Staff Member and Chair of the HSMB to make written statements to the Appeals Panel. Where an appeal is requested by the Respondent, the Complainant will be invited to respond. Where an appeal is requested by the Complainant, the Respondent will be invited to respond. Prior to this review, however, the Title IX Coordinator and HSMB Chair will review all materials to determine whether the information contained therein is relevant and material to the determination of the charged violation(s) of this Policy given the nature of the allegation(s). In general, the Title IX Coordinator may redact information that is irrelevant, more prejudicial than probative, an unwarranted invasion of privacy, or immaterial. The Title IX Coordinator may also redact statements of personal opinion rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty. Within five business days of the appeal, the Chair of the Appeals Board will convene the Appeals Panel to determine whether the appeal will be considered. In making that decision, the Appeals Panel will have access to the written records of the case.

If the Appeals Panel decides to consider the appeal, the Chair of the Appeals Board will schedule another meeting for consideration and disposition of the appeal. The Appeals Panel will have access to the records of the hearing. Normally, the parties, Senior Staff Member, and Chair of the HSMB will not appear before the Appeals Panel, though they may be summoned at the discretion of the Chair of the Appeals Board.

The Appeals Panel will not substitute its own judgment for that of the HSMRP and/or Senior Officer, nor will it concern itself with the possibility that others might have arrived at a different judgment. Its terms of reference extend only to investigation of the procedures by which the original judgment was reached. The Appeals Panel may:

1. Uphold the original decision.
2. Remand the matter to the HSMRP. The Appeals Panel may take this action when there is a procedural irregularity that could be corrected in a review.
3. Remand the matter to the appropriate Senior Staff Member with a recommendation that the penalty be modified, together with an explanation of why the original penalty is deemed inappropriate.
4. Remand the matter to an ad hoc review panel composed of members of the Board not previously involved in the matter. This will be done only in extraordinary cases when, in

the considered opinion of the Appeals Panel, the matter would be best addressed by a newly-constituted panel.

The Appeals Panel will provide the parties, the Senior Staff Member, and the Chair of the Appeals Board written notice of its decision, including grounds for the decision. The record of the appeal will consist of the letter of appeal; any written statements from the parties, Senior Staff Member and/or Chair of the HSMB; and the written decision whether to hear the appeal and the outcome of the appeal. This record will be appended to the written record of the original decision and will be kept with it.

Decisions of the Appeals Panel are final.

EDUCATION AND PREVENTION PROGRAMS

The College is committed to educating and promoting community awareness about the prevention of sex discrimination and harassment, sexual harassment, sexual violence, stalking, domestic violence, dating violence, and sex- and gender-based harassment that does not involve conduct of a sexual nature. The College will offer programs to promote awareness and prevention of such issues throughout the year, including an overview of the College's policies and procedures, relevant definitions (including prohibited conduct, discussion of the impact of alcohol and illegal drug use, and effective consent), and information about bystander information and risk reduction.

The Title IX Coordinator and others designated by the Title IX Coordinator oversee the development and implementation of the College's education and prevention programs, which are based on campus needs and climate. Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation. Returning students and employees will receive ongoing training on a periodic basis. All educational programs include a review of resources and reporting options.

ANNUAL REPORT

At the end of each academic year, the Title IX Coordinator shall prepare a report which will include the number of individuals who came to Board members for information, the number of notices of alleged misconduct, and the kinds of behaviors that gave rise to complaints during that academic year. The Title IX Coordinator will make the annual report public at the beginning of the next academic year. The report shall not mention the name of any individual or contain identifying details of any case.

RECORDS

The Title IX Coordinator shall keep only such records as are needed for the HSMB's annual report. The Senior Staff Member and the Title IX Coordinator shall keep on file in his or her office for seven years from the date of the filing of the formal complaint, copies of the written statement of the Complainant, the Respondent, and actions taken in response.

POLICY AMENDMENT

Members of the community may suggest changes to members of the HSMB or the Title IX Coordinator, who shall bring them to the Board for discussion. Final policy changes are to be approved by the President of the College.

INQUIRIES RELATED TO THIS POLICY AND TITLE IX

The College encourages members of the Hamilton community to bring any and all questions or concerns about this Policy and/or Title IX to the Title IX Coordinator: **Meredith Harper Bonham** at **315-859-4020** or **mbonham@hamilton.edu**.

Members of the Hamilton community may submit inquiries or complaints concerning Title IX to the U.S. Department of Education's Office for Civil Rights:

U. S. Department of Education, Office for Civil Rights New York Office 32 Old Slip, 26th Floor New York, New York 10005-2500 Phone: 646.428.3800 Fax: 646.428.3843 Email: OCR.NewYork@ed.gov	OCR National Headquarters U. S. Department of Education Office of Civil Rights, Customer Service Team Mary E. Switzer Building 330 C. Street, S.W. Washington, D. C. 20202 Phone: 800.421.3481 Fax: 202.205.9862
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Inquiries involving employees may also be referred to:

New York State Division of Human Rights Office of Sexual Harassment 55 Hanson Place, Suite 347 Brooklyn, New York 11217 Phone: 718.722.2060 or 1.800.427.2773 Fax: 718.722.4525	U.S. Equal Employment Opportunity Commission National Headquarters 131 Main Street NE Fourth Floor Suite 4NW02F Washington, D.C. 20507 Phone: 202.663.4900 Fax: 202.663.4912
U.S. Equal Employment Opportunity Commission New York District Office 33 Whitehall Street, 5 th Floor New York, New York 10004 Phone: 1.800.669.4000 Fax: 212.336.3790 TTY: 1.800.669.6820	

Portions of this Policy were adapted from policies of NCHERM, SUNY University at Buffalo, Skidmore College, and Middlebury College. This Policy also reflects principles and legal obligations established in the following:

- *Policy and Programming Changes Pursuant to the Campus SaVE Provisions of the Violence Against Women Act, Office of General Counsel, State University of New York, July 2014*
- *The Campus Sexual Violence Elimination Act of 2013 (Campus SaVE Act, 2013 VAWA Reauthorization Act)*
- *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*
- *Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, et seq.*
- *Violence Against Women Act (VAWA)*
- *United States Department of Education Office for Civil Rights Questions and Answers on Title IX and Sexual Violence April 29, 2014*
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>
- *United States Department of Education Office for Civil Rights Dear Colleague Letter April 4, 2011* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
- *Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault April 2014*
http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf

This Policy was revised on XX.

ADDENDUM A: RESOURCES

Title IX Coordinator

Hamilton's Title IX Coordinator is: **Meredith Harper Bonham, Senior Associate Dean of Students**. She can be reached in the Dean of Student's Office by calling **315-859-4020** or emailing **mbonham@hamilton.edu**.

Confidential Resources:

The Counseling Center can be reached at **315-859-4340**. The Counselor on Call can be reached through Campus Safety at **315-859-4000**. The Chaplaincy can be reached at **315-859-4130**.

Anonymous disclosures of information related to misconduct can be reported through "TipNow" by telephone at **315-282-5426** or email at **Hamilton@tipnow.com**.

YWCA of the Mohawk Valley Rape Crisis Services can be reached at **315-797-7740**.

The Health Center can be reached at **315-859-4111**. Emergency Medical Technicians (EMTs) can be reached through Campus Safety at **315-859-4000**.

The Chaplaincy can be reached at **315-859-4130**; information about individual chaplains and their contact information is available at <http://www.hamilton.edu/chaplain/office-hours>.

ADDENDUM B: NEW YORK CRIME DEFINITIONS

The Violence Against Women Act (VAWA) and its proposed regulations require the inclusion of certain New York State definitions in a campus's Annual Security Report and also require that those definitions be provided in campaigns, orientations, programs and trainings for employees and students. Definitions required include: consent; dating violence; domestic violence; sexual assault; and stalking.

CONSENT: Lack of consent results from: forcible compulsion; or incapacity to consent; or where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct. Where the offense charged is rape in the third degree, a criminal sexual act in the third degree, or forcible compulsion in circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. A person is incapable of consent when he or she is: less than 17 years old; or mentally disabled; or mentally incapacitated; or physically helpless; or committed to the care and custody of the state department of correctional services, a hospital, the office of children and family services and is in residential care, or the other person is a resident or inpatient of a residential facility operated by the office of mental health, the office for people with development disabilities, or the office of alcoholism and substance abuse services, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.

- **CONSENT, ABBREVIATED:** Clear, unambiguous, and voluntary agreement between the participating to engage in specific sexual activity.

DATING VIOLENCE: New York State does not specifically define "dating violence." However, under New York Law, intimate relationships are covered by the definition of domestic violence when the act constitutes a crime listed elsewhere in this document and is committed by a person in an "intimate relationship" with the victim. See "Family or Household Member" for definition of "intimate relationship."

DOMESTIC VIOLENCE: An act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breaching or blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of the act.

- **FAMILY OR HOUSEHOLD MEMBER:** Person's related by consanguinity or affinity; Persons legally married to one another; Person formerly married to one another

regardless of whether they still reside in the same household; Persons who have a child in common regardless of whether such persons are married or have lived together at any time; Unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; Persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”; Any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

- **PARENT:** means natural or adoptive parent or any individual lawfully charged with a minor child’s care or custody.

SEXUAL ASSAULT: New York State does not specifically define sexual assault. However, according to the Federal Regulations, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape as used in the FBI’s UCR program.

SEX OFFENSES; LACK OF CONSENT: Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.

SEXUAL MISCONDUCT: When a person (1) engages in sexual intercourse with another person without such person’s consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person’s consent; or (3) engages in sexual conduct with an animal or a dead human body.

RAPE

- **RAPE IN THE THIRD DEGREE:** When a person (1) engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) Being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or (3) engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.
- **RAPE IN THE SECOND DEGREE:** When a person (1) being 18 years old or more, engages in sexual intercourse with another person less than 15 years old; or (2) engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense to the crime of

rape in the second degree the defendant was less than four years older than the victim at the time of the act.

- **RAPE IN THE FIRST DEGREE:** When a person engages in sexual intercourse with another person (1) by forcible compulsion; or (2) Who is incapable of consent by reason of being physically helpless; or (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

STALKING

- **STALKING IN THE FOURTH DEGREE:** When a person intentionally, and for not legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct (1) is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or (2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or (3) is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.
- **STALKING IN THE THIRD DEGREE:** When a person (1) Commits the crime of stalking in the fourth degree against any person in three or more separate transactions, for which the actor has not been previously convicted; or (2) commits the crime of stalking in the fourth degree against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) with an intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or (4) commits the crime or stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.
- **STALKING IN THE SECOND DEGREE:** When a person: (1) Commits the crime of stalking in the third degree and in the course of and furtherance of the commission of such offense: (a) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shirken, "Kung Fu Star," dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapons; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or (2) commits the crime of stalking in the third

against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree; or (4) being 21 years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or (5) commits the crime of stalking in the third degree, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

- **STALKING IN THE FIRST DEGREE:** When a person commits the crime of stalking in the third degree or stalking in the second degree and, in the course and furtherance thereof, he or she intentionally or recklessly causes physical injury to the victim of such crime.

CRIMINAL SEXUAL ACT

- **CRIMINAL SEXUAL ACT IN THE THIRD DEGREE:** When a person engages in oral or anal sexual conduct (1) with a person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, with a person less than 17 years old; (3) with another person without such persons consent where such lack of consent is by reason of some factor other than incapacity to consent.
- **CRIMINAL SEXUAL ACT IN THE SECOND DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) and is 18 years or more and the other person is less than 15 years old; or (2) who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense that the defendant was less than four years older than the victim at the time of the act.
- **CRIMINAL SEXUAL ACT IN THE FIRST DEGREE:** When a person engages in oral or anal sexual conduct with another person (1) by forcible compulsion; (2) who is incapable of consent by reason of being physically helpless; (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.
- **FORCIBLE TOUCHING:** When a person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. It includes squeezing, grabbing, or pinching.

SEXUAL ABUSE

- **PERSISTENT SEXUAL ABUSE:** When a person commits a crime of forcible touching, or second or third degree sexual abuse within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which a sentence

was imposed on separate occasions of one of one of the above mentioned crimes or any offense defined in this article, of which the commission or attempted commissions thereof is a felony.

- **SEXUAL ABUSE IN THE THIRD DEGREE:** When a person subjects another person to sexual contact without the latter's consent. For any prosecution under this section, it is an affirmative defense that (1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old; and (2) such other person was more than 14 years old and (3) the defendant was less than five years older than such other person.
- **SEXUAL ABUSE IN THE SECOND DEGREE:** When a person subjects another person to sexual contact and when such other person is (1) incapable of consent by reason of some factor other than being less than 17 years old; or (2) less than 14 years old.
- **SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact (1) by forcible compulsion; (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old; or (4) when the other person is less than 13 years old.

AGGRAVATED SEXUAL ABUSE

- **AGGRAVATED SEXUAL ABUSE:** For the purposes of this section, conduct performed for a valid medical purpose does not violate the provisions of this section.
- **AGGRAVATED SEXUAL ABUSE IN THE FOURTH DEGREE:** When a person inserts a (1) foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or (2) finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than 17 years old.
- **AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE:** When a person inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person (1)(a) by forcible compulsion; (b) when the other person is incapable of consent by reason of being physically helpless; or (c) when the other person is less than 11 years old; or (2) causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.
- **AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE:** When a person inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person by (1) forcible compulsion; or (2) when the other person is

incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old.

- **AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE:** When a person subjects another person to sexual contact: (1) By forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than eleven years old; or (4) when the other person is less than thirteen years old and the actor is twenty-one years old or older.

COURSE OF SEXUAL CONDUCT AGAINST A CHILD

- **COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE SECOND DEGREE:** When over a period of time, not less than three months, a person: (1) Engages in two or more acts of sexual conduct with a child less than 11 years old; or (2) being 18 years old or more engages in two or more acts of sexual conduct with a child less than 13 years old. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charges offense occurred outside of the time period charged under this section.
- **COURSE OF SEXUAL CONDUCT AGAINST A CHILD IN THE FIRST DEGREE:** When a person over a period of time, not less than three months in duration, a person: (1) Engages in two or more acts of sexual conduct, or aggravated sexual contact with a child less than 11 years old; or (2) being 18 years old or more engages in two or more acts of sexual conduct which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct, or aggravated sexual contact with a child less than 13 years old.
- **FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE:** A person is guilty of facilitating a sex offense with a controlled substance when he or she: (1) knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and (2) commits or attempts to commit such conduct constituting a felony defined in this article.

INCEST

- **INCEST IN THE THIRD DEGREE:** A person is guilty of incest in the third degree when he or she marries or engages in sexual intercourse, oral sexual conduct or anal sexual conduct with a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

- **INCEST IN THE SECOND DEGREE:** A person is guilty of incest in the second degree when he or she commits the crime of rape in the second degree, or criminal sexual act in the second degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.
- **INCEST IN THE FIRST DEGREE:** A person is guilty of incest in the first degree when he or she commits the crime of rape in the first degree, or criminal sexual act in the first degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or half blood, uncle, aunt, nephew or niece.

Hamilton College Harassment Policy (recommended revisions 8.31.2014)

INTRODUCTION

All members of the Hamilton College community are expected to conduct themselves in a manner that does not infringe upon the rights of others. Hamilton seeks to provide an environment whereby students, faculty, staff and guests can work, study, and enjoy the College community without harassment or discrimination. In addition to being antithetical to Hamilton's community values, harassment and discrimination are prohibited by this Policy and by state and federal laws. Therefore, the College commits to providing a prompt and thorough response to actions that adversely impact, or have the potential to adversely impact, the educational, residential, or workplace environment of any member of the Hamilton community.

This Policy has been developed to provide recourse for individuals who believe their rights have been violated, and serves as a means to determine, after the fact, if specific behaviors constitute violations of this Policy. Hamilton will use the procedures outlined below to take reasonable, prompt and appropriate action to respond to allegations of harassment and discrimination brought to its attention. This Policy applies to any member of the College community who may have experienced such behavior(s). The Director of Human Resources, whose contact information may be found in the "Resources" section, is responsible for responding to complaints covered under this Policy.

Hamilton College affirms every individual's right to freedom of expression, and fosters the culture of tolerance and civility necessary to fulfill its educational goals. The academic freedom of an educational institution can create a tension with the prohibition of certain behaviors. Hamilton College does not consider visual and/or aural demonstrations, depictions or conduct to be harassment or discrimination when there is a legitimate pedagogical context, such as material having an appropriate connection to course subject matter.

DEFINITIONS

The following definitions outline the types of conduct prohibited under this Policy and identify the individuals and processes involved in the investigation of and response to allegations involving those prohibited acts:

Prohibited Conduct

Harassment is defined as verbal or physical conduct on the basis of age, sex, gender or gender identity, race, color, national origin, sexual and affectional orientation/association, military or veteran status, marital status, mental/physical disability, genetic information, ethnic origin, religion, or any other characteristic protected by law that is sufficiently severe, pervasive, persistent or patently offensive that it has the effect of unreasonably interfering with that person's work or academic performance, or that creates an intimidating, hostile, or offensive working, educational, or living environment, from both a subjective (the Complainant's) and an objective (any reasonable person's) viewpoint.

Non-discriminatory harassment is defined as verbal or physical conduct that is sufficiently severe, pervasive, persistent or patently offensive that it has the effect of unreasonably interfering with that person's work or academic performance, or that creates an intimidating, hostile, or offensive working, educational, or living environment, from both a subjective (the Complainant's) and an objective (any reasonable person's) viewpoint.

Retaliatory harassment is defined as verbal or physical conduct that occurs in response to a complaint of harassment. Zero tolerance extends to those who retaliate for complaints of harassment. Hamilton College views retaliatory harassment to be just as severe as the initial harassment itself. This is true even if the initial allegation of harassment was unfounded.

Individuals and Processes

Complainant: An individual who has allegedly been subjected to Prohibit Conduct and who is pursuing a complaint under the procedures outlined in this Policy. In the event that the impacted individual does not want to participate in the process, Hamilton may pursue a complaint without such individual, in which case Hamilton will be the Complainant.

Respondent: The individual whose conduct is alleged to have violated this Policy and whose conduct is being investigated.

Responsible Employees: The U.S. Department of Education's Office for Civil Rights defines Responsible Employees as employees who have the authority to take action to redress sexual violence, who have been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee, or whom a student could reasonably believe have this authority or duty. Responsible Employees of the College are faculty, staff (except staff in the Counseling Center, the Health Center, and the Chaplaincy), and Resident Advisors. When a Responsible Employee receives a report or information about an act of sexual assault, domestic violence, dating violence, or stalking, the Responsible Employee must report to the Title IX Coordinator and Hamilton's Sexual Misconduct Policy will apply.

Title IX Coordinator: The individual who oversees the College's centralized review, investigation, and resolution of reports of sexual assault and harassment pursuant to this Policy and the Sexual Misconduct Policy. The Title IX Coordinator also coordinates the College's compliance with Title IX, including equitable, timely, and effective processing of complaints regarding violations of rights protected by Title IX. The Title IX coordinator is:

- responsible for oversight of the investigation and resolution of all reports of sexual assault and harassment;
- knowledgeable and trained in relevant state and federal laws and the College's Policy and procedure;

- available to advise any individual, including a Complainant, a Respondent, or a third party, about the courses of action available at the College, both informally and formally, and the courses of action available externally, including reports to law enforcement;
- available to provide assistance to any Hamilton community member regarding how to respond appropriately to reports of sexual assault and harassment;
- responsible for monitoring full compliance with all requirements and timelines specified in the complaint procedures; and
- responsible for compiling required reports.

Director of Human Resources: The individual responsible for responding to all complaints made under this Policy. The Director of Human Resources must report all complaints related to sex, sex-based, gender-based, or sexual harassment to the Title IX Coordinator and must work with the Title IX Coordinator in carrying out all steps described in this Policy for such complaints.

Senior Staff Member: The Vice President with supervisory authority over the area of the College with which the respondent is affiliated. The Vice President and Dean of Students is the Senior Staff Member with respect to complaints brought against a student. In the case of complaints brought against members of the faculty, staff, or administration the Vice President of the area in which the respondent is employed is the Senior Staff Member. For example, the Vice President for Academic Affairs and Dean of Faculty is the Senior Staff Member with respect to complaints brought against a faculty member.

Harassment and Sexual Misconduct Board: The Harassment and Sexual Misconduct Board (HSMB or the Board) shall be composed of eight members, one of whom shall be the Chair, appointed by the Title IX Coordinator to staggered terms of four years beginning in the Fall semester. Each year the current Board will solicit applications and nominations for any open seat(s), and will recommend individuals to serve for the following year. Members of the Hamilton community may also nominate individuals for Board membership, provided the nominees are willing to serve if appointed. The Title IX Coordinator, in consultation with the Chair, will ultimately be responsible for appointing new members and designating a new Chair. Normally, the Chair will be a tenured member of the faculty and serve for two years as Chair. Every effort will be made to maintain a gender balance on the Board, and membership will normally include tenured members of the faculty and full-time staff members. The Title IX Coordinator shall arrange for the Board members to receive annual training.

Harassment and Sexual Misconduct Review Panel (HSMRP): A three-person review panel (HSMRP) annually appointed by the Title IX Coordinator to review investigative reports and determine appropriate actions to redress acts of harassment. The HSMB Chair serves as a non-voting fourth member of the HSMRP and presides over the review process. The term of appointment to the panel shall be one year. If any vacancy on the HSMRP occurs during the academic year, or if the Title IX Coordinator determines that a legitimate conflict of interest exists between a member of the panel and a party to a

complaint, the Title IX Coordinator, in consultation with the Chair, will appoint a replacement from those members of the Board eligible to serve.

Appeals Board: This is the group of individuals, defined in Hamilton’s Code of Conduct, that considers all appeals of findings and sanctions issues under this Policy. The Appeals Board will receive annual training on relevant state and federal law and this Policy.

OPTIONS IN RESPONSE

The following information outlines the options available to individuals who believe that they have been impacted by an act prohibited under this Policy:

1. **Information:** A member of the community may talk with any member of the Harassment and Sexual Misconduct Board (HSMB) about the College’s process regarding complaints of harassment. If they wish, a friend or advisor may accompany them. (Under Title IX, however, the College must initiate an investigation when any alleged case of sexual misconduct is reported to a “Responsible Employee,” as defined above and explained further in the Hamilton College Sexual Misconduct Policy.)
2. **Mediation:** An individual alleging any type of harassment as defined above may request a referral to a campus mediator (e.g., a member of the Counseling Center staff or Human Resources), who will attempt to facilitate understanding of the nature of the complaint with the Respondent, clear up misunderstanding, and resolve the complaint while maintaining confidentiality. Mediation is particularly appropriate when the Complainant seeks assistance in addressing the issue without pursuing formal action.

A person who desires mediation should notify the HSMB Chair and/or the appropriate Senior Staff Member in writing, outlining the complaint and requesting mediation. The Chair and Senior Staff Member will meet with the Complainant and refer the complaint to a trained campus mediator. A person seeking mediation must agree to be identified to the Respondent. A campus mediator will begin mediation efforts promptly and will report to the HSMB Chair that the mediation occurred. Complainants are strongly encouraged not to discuss the complaint with other members of the community, except as required by the need for psychological counseling.

At the conclusion of a successful mediation, both parties will sign a statement agreeing that the mediation was successful and that no further action will be taken under this Policy. If the mediation is unsuccessful, the Complainant can proceed to a formal complaint and hearing within six months after the conclusion of the mediation. A copy of the signed statement will constitute the record of the mediation.

3. **Formal Complaint:** An individual may file a formal complaint by submitting to the Director of Human Resources, Title IX Coordinator (in cases alleging sex or sexual harassment), or the HSMB Chair a signed written statement, including the time, place

and nature of the alleged offense and the name of the Respondent, at a minimum. Upon filing a formal complaint, the procedures outlined below will be activated.

CONFIDENTIALITY

The College will make its best efforts to maintain confidentiality during the process of investigating and addressing harassment complaints, and will discuss confidentiality standards and concerns with the parties during initial meetings about the complaint.

If a Complainant requests confidentiality or otherwise asks that an investigation not be pursued, the College will advise the Complainant that a request for confidentiality limits Hamilton's ability to conduct a thorough investigation and take appropriate disciplinary action. The College will further advise the Complainant about its prohibition on retaliation and its commitment to taking strong responsive action if retaliation occurs.

The College will balance requests for confidentiality with its obligation to provide a safe and non-discriminatory environment for all members of the community. Factors to be considered when making this determination include, but are not limited to, the seriousness of the alleged harassment and whether there have been other complaints or reports of harassment against the alleged harasser.

If the College determines that it can honor a request for confidentiality, the College may still take responsive action to address the harassment and prevent its recurrence without initiating formal action, including conducting sexual harassment training for the school site or academic department where the problem occurred, taking a student survey concerning any problems with harassment, or implementing other systemic measures at the site or department where the alleged harassment has occurred.

If the College determines that it cannot maintain a Complainant's confidentiality, it will notify the Complainant prior to commencing any investigation, and will—to the extent possible—only share information with people responsible for handling the College's response. Under these circumstances, the College will consider methods and measures to protect the Complainant from retaliation or harm.

FORMAL COMPLAINT RESPONSE PROCEDURES

The following steps outline Hamilton's procedures for addressing allegations of harassment made through a formal complaint:

Notice of Complaint

Complaints of the prohibited acts may be made verbally or in writing, and must ultimately be recorded in written form by the Complainant, the Director of Human Resources, or the Title IX Coordinator. This record must include, at a minimum, the time, place, and nature of the alleged offense and the name of the Respondent. After receiving the complaint, the Director of Human Resources will determine if the conduct alleged by the Complainant falls within this Policy.

In cases where action against an alleged Respondent cannot be taken because that individual is not a member of the College community, the Director of Human Resources will assess the information given and provide appropriate recommendations and resources to the Complainant.

In cases where it is determined that the act, if proven, does not fall within this Policy, no further investigation will be pursued and the Complainant will be advised by the Director of Human Resources of other avenues of recourse and support as appropriate.

In cases where it is determined that the act, if proven, falls within this Policy, the procedures described in this Policy will be activated. This process will involve the Chair of the HSMB, the appropriate Senior Staff Member, the Director of Human Resources, the Title IX Coordinator (as appropriate), an Investigation Team, and the HSMRP. In the event the Complainant, the Respondent, Chair of the HSMB, or the Director of Human Resources identifies a conflict of interest involving the Chair or the Director of Human Resources, the appropriate Senior Staff Member will appoint another member of the HSMB to oversee the process. If there is a conflict of interest involving the Senior Staff member, the President of the College will take the place of the Senior Staff Member.

The Director of Human Resources will meet with the Complainant and explain the investigation procedures that will be followed. The Director of Human Resources will meet separately with the Respondent to provide notification of the complaint and to explain the procedures that will be followed.

The Respondent has the right to accept responsibility prior to an investigation. A Respondent choosing this path must provide the Senior Staff Member and the Chair a written statement accepting responsibility for the alleged violation and waiving the right to an investigation. In such cases, the appropriate Senior Staff Member—in consultation with the Chair and the Director of Human Resources—will determine a sanction, which may range from a warning to permanent separation from the College (in the case of students) or termination of employment (in the case of employees), and will respond within 48 hours to the Respondent with the assigned sanction. By accepting responsibility, the Respondent also waives the right to appeal and will accept the Senior Staff Member's decision as final. If the Respondent does not agree to accept responsibility and disputes the description of alleged conduct, an investigation will proceed.

Investigation of Complaint

General

Hamilton College uses an investigation model to resolve complaints of harassment. A trained Investigation Team will interview all parties and witnesses and collect relevant information. The Investigation Team is authorized to contact any relevant people and to access any relevant records not otherwise prohibited by legal protections of privilege or confidentiality. It is the responsibility of the Investigation Team to take custody of, and arrange safekeeping for, any physical or electronic documents or other tangible item to be used in making a finding. The Investigation Team will make every effort to conclude a thorough investigation, including submission of its written report, within 30 business days of the receipt of a complaint. Should a

Respondent choose not to participate in the investigative process, the investigation may proceed, a decision will be made, and, if appropriate, a sanction may be imposed based on available information.

The Complainant and Respondent may have an advisor of their choice present at any meeting related to the investigation and resolution process, but these advisors can only advise the Complainant or Respondent privately and cannot act as speaking advocates. Parties must advise the Title IX Coordinator of the identity of their advisor of choice within five business days of receiving the Notice of Complaint.

In matters involving students, the College will typically issue “no contact” orders for the duration of the investigation and resolution process. In all other matters, the College will evaluate and implement measures intended to reduce the burden on the Complainant; the College’s evaluation of the appropriateness of such measures will be ongoing.

Rights of the Respondent and Complainant

Common Rights

Each party has the right to:

- preservation of privacy, to the extent possible and allowed by law;
- a timely investigation and appropriate resolution of all complaints through the processes described in this Policy;
- be informed of rules and procedures established in this Policy, as well as the nature and extent of all alleged violations contained within the complaint;
- (in the case of students) medical and emotional support from the Student Health Service, the Counseling Center, and/or trained advocates as necessary;
- (in the case of employees) medical and emotional support from [PLEASE INSERT INFORMATION RE THE COLLEGE’S EAP];
- receive the counsel and support of an advisor of his or her choice throughout the investigation and resolution processes;
- have irrelevant information concerning incidents not directly related to the complaint excluded from the investigation and resolution proceedings (the HSMB Chair and Director of Human Resources may determine that information demonstrating a pattern of behavior directly related to the alleged violation is admissible information, however);
- be informed of the names of any additional individuals who may be called by the HSMRP to provide information;
- have the College request the presence of individuals at investigative and resolution proceedings;
- review all documentary information available regarding the complaint and investigation, subject to the confidentiality limitations imposed by state and federal law and the ability

of the Director of Human Resources and/or Title IX Coordinator to exercise discretion to redact or remove information deemed to be irrelevant, more prejudicial than probative, an unwarranted invasion of privacy, immaterial, a statement of personal opinion, or a statement as to general reputation for a character trait;

- be notified of the finding and any sanction following any HSMRP review;
- petition the Chair of the HSMB for removal of any member of the Investigation Team or HSMRP on the basis of demonstrated bias or conflict of interest;
- appeal the HSMRP's finding and any sanction, in accordance with the standards for appeal established by this Policy;
- have complaints investigated and reviewed by individuals who have received annual training;
- have College policies and procedures followed without material deviation;
- be informed in advance of any public release of information regarding the complaint.

Additional Rights of the Complainant

- implementation of reasonably available measures to reduce the burden on the Complainant, which may include (but may not be applicable to all Complainants depending on their status as a student or an employee):
 - placement of limitations on the Respondent regarding contact with the Complainant during the investigation and while the complaint is being reviewed;
 - separation or modification of the working, living, and/or academic arrangements of the Complainant and the Respondent and the College's assistance in effecting such change;
 - rescheduling of exams, papers, or other assignments;
 - taking an incomplete in a class;
 - transferring class sections;
 - temporary withdrawal; or
 - alternative course completion options.
- to be informed by College officials of options to notify appropriate law enforcement authorities and the option to be assisted by campus officials in notifying such authorities whether or not the individual intends to pursue on-campus complaint resolution procedures; and
- to provide information at any step of the procedures outlined in this Policy outside the presence of the Respondent.

Additional Rights of the Respondent

- to review the complaint (subject to the ability of the Director of Human Resources and/or Title IX Coordinator to exercise discretion to redact or remove information deemed to be irrelevant, more prejudicial than probative, an unwarranted invasion of privacy, immaterial, a statement of personal opinion, or a statement as to general reputation for a character trait), including timely notice of any HSMRP proceedings in which the Respondent could participate;
- to an investigative and resolution process as described in this Policy;
- to waive HSMRP proceedings by admitting responsibility following receipt of the formal Investigation Team report;
- to an outcome based solely on information obtained by the Investigation Team and during the HSMRP proceeding.

Procedures for Submitting and Accessing Information Collected During College's Investigation

The Complainant and Respondent will be asked to identify all information they would like the Investigation Team to review, and as such both may recommend witnesses and submit information for consideration. Decisions about interviews and collection and evaluation of relevant information, physical or electronic documents, and other tangible items, however, are ultimately at the sole discretion of the Investigation Team in the context of impartial treatment of both parties. In the course of conducting interviews, the Investigation Team will ask any participant in the investigation to sign a statement attesting to the veracity of the information provided. The Investigation Team will also encourage all student participants to keep the substance of an interview confidential.

At the conclusion of the investigation, the Complainant and Respondent will have the opportunity to review witness statements and other relevant materials gathered during the course of the investigation. Prior to this review, however, the Director of Human Resources (in consultation with the Title IX Coordinator in cases alleging sex, sex-based, gender-based or sexual harassment) will review all materials to determine whether the information contained therein is relevant and material to the determination of the charged violation(s) of this Policy given the nature of the allegation(s). In general, the Director of Human Resources (and/or Title IX Coordinator) may redact information that is irrelevant, more prejudicial than probative, an unwarranted invasion of privacy, or immaterial. The Director of Human Resources (and/or Title IX Coordinator) may also redact statements of personal opinion rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

After such review and redaction, the Director of Human Resources will facilitate the opportunity for each party to access the information separately in a private setting. Both parties will have an opportunity to respond to this information, in writing, within seven business days. If at any stage following the submission of these responses new and relevant information is gathered, it will be shared with the Complainant and Respondent, who will again have the opportunity to submit a written response within a time frame determined by the Director of Human Resources. The Complainant and Respondent may request to see the other party's written responses.

Following the initial seven-day review period by the Complainant and Respondent and any subsequent responses and gathering of new information, the Investigation Team will, within five business days, meet with the Chair and Director of Human Resources to issue their final written report that includes all investigation materials, Complainant and Respondent statements and responses to the other's statement, any additional information gathered, and the Investigation Team's recommended finding of whether any College policy has been violated. The Investigation Team's recommendation relative to violations of this Policy will be based on the preponderance of evidence standard (i.e. whether it was "more likely than not" that this Policy was violated).

RESOLUTION PROCEDURES

HSMRP Procedures and Guidelines

Upon receipt of the final report from the Investigation Team, the Director of Human Resources will convene the HSMRP. The HSMRP will review the final report and may request any additional relevant information from the investigators and/or to meet individually with any person(s). The Complainant or Respondent also has the right to meet individually with the HSMRP. The focus of any such meeting will only be to clarify information presented in the Investigation Team's final report. Utilizing all of the above information, the HSMRP is responsible for recommending to the Senior Staff Member whether this Policy was violated and, if so, which specific portion(s). The HSMRP will apply a preponderance of evidence standard when arriving at a determination of whether this Policy was violated.

If the HSMRP determines that this Policy has been violated, the HSMRP will additionally recommend a sanction for the Respondent based on the nature of the violation and available precedent. If the HSMRP determines that this Policy was not violated, no sanction will be recommended. The HSMRP will prepare a brief written summary of its determination and recommended sanction (if applicable) and submit it to the Senior Staff Member. The HSMRP will make every effort to conclude this process within ten business days of the receipt of the Investigation Team's final report.

The Senior Staff Member will make the final decision based on the HSMRP's determination and recommendation. The Senior Staff Member and Chair will meet separately with the Complainant and Respondent to inform them of the HSMRP's determination and recommendation and the Senior Staff Member's decision. Specifically, each party will be informed of the HSMRP's determination of any policy violation(s), any sanction(s) issued, and procedures to appeal the decision.

APPEALS

Any party may request an appeal of the final decision within five business days of being informed in writing of that decision. Respondents who accept investigation findings may only appeal on the basis of sanction. Acceptable grounds for an appeal are limited to:

- the sanctions imposed were substantially disproportionate to the violation committed; and/or

- procedural error(s) that had a material impact on the fairness of the hearing.

Previously unavailable relevant information that could significantly impact the result of the original hearing must be brought to the attention of the HSMB, who will reconvene the HSMRP to determine whether the information would have affected the result.

Procedures

An appeal must be made in writing to the Chair of the Appeals Board, and must state in detail the reasons for the appeal. Appeals are heard by a two-member subset of the Appeals Board (Appeals Panel) consisting of the Chair of the Appeals Board and one other faculty member from the Appeals Board, determined by the Appeals Board Chair. In cases where the two selected members do not agree, the third Appeals Board member will review the case and make a determination. If there is a conflict of interest, a student Appeals Board member shall be appointed.

The Chair of the Appeals Board will inform the Senior Staff Member and Chair of the HSMB that an appeal has been made and will invite the Senior Staff Member and Chair of the HSMB to make written statements to the Appeals Panel. Where an appeal is requested by the Respondent, the Complainant will be invited to respond. Where an appeal is requested by the Complainant, the Respondent will be invited to respond.

Within five business days of the appeal, the Chair of the Appeals Board will convene the Appeals Panel to determine whether the appeal will be considered. In making that decision, the Appeals Panel will have access to the written records of the case.

If the Appeals Panel decides to consider the appeal, the Chair of the Appeals Board will schedule another meeting for consideration and disposition of the appeal. The Appeals Panel will have access to the records of the hearing. Normally, the parties, Senior Staff member, and Chair of the HSMB will not appear before the Appeals Panel, though they may be summoned at the discretion of the Chair of the Appeals Board.

The Appeals Panel will not substitute its own judgment for that of the HSMRP and/or Senior Officer, nor will it concern itself with the possibility that others might have arrived at a different judgment. Its terms of reference extend only to investigation of the procedures by which the original judgment was reached. The Appeals Panel may:

5. Uphold the original decision.
6. Remand the matter to the HSMRP, which will generally be done when there is a procedural irregularity that could be corrected in a review.
7. Remand the matter to the appropriate Senior Staff Member with a recommendation that the penalty be modified, together with an explanation of why the original penalty is deemed inappropriate.

8. Remand the matter to an ad hoc review panel comprised of members of the Board not previously involved in the matter. This will be done only in extraordinary cases when, in the considered opinion of the Appeals Panel, the matter would be best addressed by a newly-constituted panel.

The Appeals Panel will provide the parties, the Senior Staff member, and the Chair of the Appeals Board written notice of its decision, including grounds for the decision. The record of the appeal will consist of the letter of appeal; any written statements from the parties, Senior Staff Member and/or Chair of the HSMB; and the written decision whether to hear the appeal and the outcome of the appeal. This record will be appended to the written record of the original decision and will be kept with it.

Decisions of the Appeals Panel are final.

ANNUAL REPORT

At the end of each academic year, the Director of Human Resources shall prepare a report which will include the number of individuals who came to Board members for information, the number of reports of prohibited conduct, and the kinds of behaviors that gave rise to complaints during that academic year. The Director of Human Resources will make the annual report public at the beginning of the next academic year. The report shall not mention the name of any individual or contain identifying details of any case.

RECORDS

The Director of Human Resources shall keep only such records as are needed for the HSMB's annual report. The Senior Staff Member and the Director of Human Resources shall keep on file in his or her office for seven years from the date of the filing of the formal complaint, copies of the written statement of the Complainant, the Respondent, and actions taken in response.

POLICY AMENDMENT

Members of the community may suggest changes to members of the HSMB or the Director of Human Resources, who shall bring them to the Board for discussion. Final policy changes are to be approved by the President of the College.

Portions of this Policy were adapted from policies of NCHERM, SUNY University at Buffalo, Skidmore College, and Middlebury College. This Policy also reflects principles and legal obligations established in the following:

- United States Department of Education Office for Civil Rights Questions and Answers on Title IX and Sexual Violence April 29, 2014
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>
- United States Department of Education Office for Civil Rights Dear Colleague Letter April 4, 2011 <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

- Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault April 2014
http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf
- **Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties Title IX**, January 19, 2001
<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>