

## **APPENDIX A**

### **RESOURCE GUIDE AND PROCEDURES FOR REPORTS AGAINST STUDENTS Revised 9/21/16**

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#### **I. INTRODUCTION**

Hampshire College (the “College”) is committed to maintaining a safe and non-discriminatory learning, living, and working environment for all members of the College community. The College prohibits Sexual Assault, Relationship Violence, Stalking, Sexual or Gender-Based Harassment, Complicity, and Retaliation (“Sexual Misconduct Violations”), as set forth in the Sexual

Misconduct, Relationship Violence, and Stalking Policy (the “Policy”). This Appendix provides resources for counseling, support, and reporting (“Resources”) and sets forth the College’s procedures for reporting, investigating, and resolving violations of the Policy where an incident involving a Student as a Respondent is reported to Hampshire College (“Procedures”). These Resources and Procedures should be read in the context of the Policy and capitalized terms used in this document are defined in the Policy.

## **II. COLLEGE AND COMMUNITY RESOURCES**

### **A. Emergency Medical, Law Enforcement, and Crisis-Response Resources**

1. Medical Assistance: An individual who experiences sexual assault or any other form of interpersonal violence is strongly encouraged to seek immediate medical attention at one of these locations:

- Cooley Dickinson Hospital, 30 Locust Street, Northampton, MA 01061 (413) 582-2000
- Baystate Medical Center, 759 Chestnut Street, Springfield, MA 01199 (413) 794-0000
- University Health Services at the University of Massachusetts, 150 Infirmary Way, Amherst, MA (413) 577-5000 (Visitors not affiliated with UMass will be seen on a fee for service basis only)

Each of these facilities has access to Sexual Assault Nurse Examiners (also known as “SANE Nurse”). SANE Nurses can assess injuries related to physical trauma; evaluate for sexually-transmitted infections and possible pregnancy; provide medical care (including medications to prevent infections and pregnancy); and can, within the first 72 hours after a sexual assault, administer a “forensic sexual assault examination.” During the forensic exam, the SANE Nurse documents and collects evidence of sexual contact and/or physical trauma (including injuries to the body and genitals), trace evidence, biological fluids, and identifiable DNA. When there is reason to believe that an assault may have been facilitated by the use of drugs or alcohol, the forensic exam may also include the collection of urine and blood samples for toxicology testing. A patient who requests a SANE exam is not required to report the incident to law enforcement or the College in order to receive medical attention or a forensic exam. Patients may have a support person of their choosing present throughout the forensic exam. Students may access follow-up care at Hampshire College Health Services, or through any appropriate health care provider outside of the College. Employees may access follow-up care through any appropriate health care provider of their choice.

For medical assistance on campus, contact:

- Hampshire College Health Services (413) 559-5458. Clinic hours are 8:30 a.m. to 5:00 p.m. weekdays. When Health Services is closed during the academic year (nights, weekends, and during vacation periods), students with emergencies may be seen at one of the locations listed above.

- The College also has a student-run Emergency Medical Service, staffed by student EMTs, that provides 24-hour emergency medical services to the Hampshire College community, and can direct students to any of the locations above. (413) 559-5555.

2. Law Enforcement: All Hampshire community members have the right to report Sexual Misconduct Violations that may constitute a crime to local law enforcement (“Police”). Police have unique legal authority to seek and execute search warrants, to collect forensic evidence that may have been left at the scene or at other relevant locations, to obtain cell phone and electronic records, and to make an arrest when supported by probable cause to believe a crime has been committed. Police are also able to provide assistance in seeking Emergency Protective Orders (see below).

- Hampshire College Campus Police can be reached by dialing “5555” (for emergencies) or (413) 559-5424 (for non-emergencies). Students seeking medical attention at Hampshire College Health Services can ask that Police be called on their behalf.
- Town of Amherst Police can be reached by dialing “911” (for emergencies) or (413) 259-3000 (for non-emergencies).

3. Crisis Resources (Support and Counseling): All Hampshire community members are urged to seek immediate emotional support after any Sexual Misconduct Violation. There are a number of resources and “hotlines” for crisis counseling, both at the College and in the local community. Some of these resources are able to maintain legally-protected confidentiality (see Section VI of the Policy). Crisis counselors can provide trauma-informed support and offer information about reporting options.

a. **Confidential** College Crisis Resources

These individuals may provide confidential counseling and support without disclosing the reported incident to the Title IX Coordinator or other employee of the College:

- Hampshire College Health and Counseling Services (413) 559-5458
- Hampshire College Spiritual Life Professional Staff (413) 559-5282
- University of Massachusetts Health Services (413) 577-5000 (students may receive free transportation provided by Hampshire College Campus Police)

b. **Confidential** Community and National Crisis Resources

These individuals may provide confidential counseling and support without disclosing the reported incident to the Title IX Coordinator or other employee of the College:

- Cooley Dickinson Hospital (413) 582-2000 (students may receive free transportation provided by Hampshire College Campus Police)
- Holyoke Medical Center (413) 534-2500
- Baystate Medical Center (413) 794-0000
- Center for Women and Community at UMass 24 hour hotline (413) 545-0800
- Safe Passage Domestic Violence Program 24 hour hotline (413) 586-5066 or (888) 345-5282 (toll-free).
- Rape and Incest National Network (RAINN) Hotline (800) 656-4673  
<https://rainn.org/>
- Students and Employees may also visit their own health and counseling providers.

c. Private College Support Resources:

These individuals will disclose the reported incident to the Title IX Coordinator, but may be able to maintain the anonymity of the person seeking assistance:

- Emily Rimmer, Director for Queer/Women Services, Center for Feminisms (413) 559-5320
- Peer Chaplains, [peerchaplains@hampshire.edu](mailto:peerchaplains@hampshire.edu)

d. Additional College Support Resources:

These individuals will disclose the reported incident and all available details of the report to the Title IX Coordinator, but will maintain the privacy of any resources provided:

- Office of the Dean of Students, Merrill Student Life Center, Second Floor, (413) 559-5412
- Resident Advisors, paraprofessional residence life staff who provide programming, located at <https://www.hampshire.edu/housing/fall-2016-resident-advisors>
- Sexperts, a group of students who serve as health peer educators, [sexperts@hampshire.edu](mailto:sexperts@hampshire.edu)

## **B. Legal Resources**

There are several resources that may help Students and Employees explore and understand their legal rights and options – both criminal and civil – following a Sexual Misconduct Violation.

- Campus Police Victim/Witness Assistance Center, located at [https://www.mtholyoke.edu/campuspolice/victim\\_assistance](https://www.mtholyoke.edu/campuspolice/victim_assistance)
- Mass Legal Services <http://www.masslegalservices.org/FindLegalAid>

- Mass Legal Help <http://www.masslegalhelp.org/domestic-violence>
- Jane Doe Inc. [http://www.janedoe.org/find\\_help/mass\\_legal\\_help](http://www.janedoe.org/find_help/mass_legal_help)
- Northwestern District Attorney's Office <http://northwesternda.org/victim-witness-assistance-unit>

The Northwestern District Attorney's Office Domestic Violence and Sexual Assault Unit works closely with police departments, courts and social service agencies to address the serious problem of domestic violence and sexual assault through prosecution of the offenders and the development of strategies for prevention and intervention for the victims. If you are the victim of abuse and you notify the District Attorney's office, they may file charges against the Respondent. You will be assigned a victim witness advocate to keep you informed of court proceedings. You have the right to be notified of the proceedings and to submit a victim impact statement to the court at sentencing.

Complainants and Respondents may consult with an attorney or use one as a supporter during the College Resolution process. The College does not provide or arrange for attorneys.

### **C. Interim Remedial and Protective Measures**

The Title IX Coordinators and Deputy Coordinators and the Office of the Dean of Students staff can provide Students with information, support, and assistance and can arrange for a broad range of remedial and protective measures. As outlined in the Policy, remedial and protective measures, which may be temporary or permanent, may include no contact directives, separation orders, residence modifications, academic arrangements and support, work schedule or work location modifications, and other reasonable and appropriate measures. Complainants are entitled to receive information, assistance, and a broad range of support and remedial measures regardless of whether they choose to pursue criminal and/or College disciplinary resolution of a Sexual Misconduct Violation. For more information about such measures, please see the Remedial and Protective Measures section of the Sexual Misconduct, Relationship Violence, and Stalking Policy or contact the College's Title IX Coordinator.

## **III. REPORTING SEXUAL MISCONDUCT VIOLATIONS**

The College encourages anyone who experiences or becomes aware of a Sexual Misconduct Violation to make an immediate report. There are multiple channels for reporting Sexual Misconduct Violations. A Complainant may choose to report a Sexual Misconduct Violation to the College for Resolution under these Procedures, to law enforcement for potential criminal prosecution, to both, or to neither. Complainants may simultaneously pursue criminal and College disciplinary action. The College will support Complainants in understanding and assessing their reporting options.

### **A. Reporting to the College**

The College strongly encourages anyone who has experienced, has knowledge of, or has witnessed a Sexual Misconduct Violation to make a report to the College. Under Title IX, once an educational institution has notice of a Sexual Misconduct Violation, it is required to (1) take immediate and appropriate steps to investigate or otherwise determine what occurred; (2) provide interim measures to support a Complainant; and (3) take prompt and effective action to end any Sexual Misconduct Violation that occurred; remedy its effects; and prevent its recurrence.

Making a report to the College does not require participation in any subsequent College proceedings, nor is a report required in order for a Student to receive support or remedial measures. Individuals are encouraged to report Sexual Misconduct Violations by contacting the Title IX Coordinator or the Title IX Deputy Coordinator for Students:

**Diana Sutton-Fernández, Title IX Coordinator**

[dfernandez@hampshire.edu](mailto:dfernandez@hampshire.edu)

(413) 559-6253

Office: Cole Science Center, Room 106

**Shannon Da Silva, Title IX Deputy Coordinator for Students**

[sdasilva@hampshire.edu](mailto:sdasilva@hampshire.edu)

(413) 559-4510

Office: Merrill Student Life Center, Second Floor

All disclosures of Sexual Misconduct Violations to any “Responsible Employee” will be reported, as required by College Policy, to the Title IX Coordinator. This reporting allows the College’s Title IX Coordinator to provide information about resources and procedural options to a Complainant, evaluate any safety risk posed by the reported conduct, track patterns and trends, and initiate appropriate action to end the conduct, prevent its recurrence and address its effects. A Responsible Employee is any College Employee who is not a Confidential Employee. Contact information for Confidential Employees is located in Section II.

Upon receipt of a report of a Sexual Misconduct Violation, the College will conduct an initial assessment and take any immediate action that may be necessary to protect the health and safety of the Complainant and the College community, as described in the Procedures below.

The College also offers access to confidential resources for individuals who are unsure about whether to report a Sexual Misconduct Violation or are seeking counseling or other emotional support in addition to (or without) making a report to the College. Information about confidential resources can be found in Section II of these procedures and Section VI of the Policy.

Although there is no time limit for reporting Sexual Misconduct Violations to the College, the College's ability to respond may diminish over time, as evidence may erode, memories may fade, and Respondents may no longer be affiliated with the College. If the Respondent is no longer a Student or an Employee, the College will provide reasonably appropriate remedial measures, assist the Complainant in identifying external reporting options, and take other reasonable steps to respond under Title IX.

### **B. Reporting to the Police**

A Complainant has the right to notify Police or decline to notify Police. Anyone may contact the Police directly (see Section II.A.2., above). Alternatively, College community members may seek assistance in notifying Police from the Office of the Dean of Students (ODOS). ODOS can assist in setting up an initial meeting with Police and can accompany Students to that meeting. Filing a Police report does not obligate an individual to participate in any subsequent criminal proceedings. A Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should contact law enforcement directly:

- Hampshire College Campus Police can be reached by dialing “5555” (for emergencies) or (413) 559-5424 (for non-emergencies). Students seeking medical attention at Hampshire College Health Services can ask that Police be called on their behalf.
- Town of Amherst Police can be reached by dialing “911” (for emergencies) or (413) 259-3000 (for non-emergencies).

### **C. Preservation of Evidence**

The College recognizes that making the decision to report a Sexual Misconduct Violation often takes time. Nevertheless, pending the decision to report, a Complainant is strongly encouraged to take immediate steps to preserve all evidence that might support a future report of a Sexual Misconduct Violation, a Protective Order, or an investigation by the Police, by the College, or both. Such evidence may include:

- A forensic sexual assault examination (within 72 hours);
- Any clothing, sheets or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags);
- Electronic exchanges (e.g., text messages, emails, and Facebook, Instagram, Snapchat or other social media posts, to the extent that they can be captured or preserved);
- Photographs (including photographs stored on smartphones and other devices); and
- Voice-mail messages and other physical, documentary and/or electronic data that might be helpful or relevant in an investigation.

Electronic and photographic evidence may be lost through the upgrade or replacement of equipment (including smartphones), software and/or accounts or may simply be lost to the passage of time or damage to devices.

#### **D. Seeking a Protective Order**

Where a Sexual Misconduct Violation is reported to the Police, it may be possible to obtain a court-ordered Protective Order. These Protective Orders may be issued if the judge or magistrate believes that there is an immediate threat to health or safety. For more information on Massachusetts law about Protective Orders see:

<http://www.masslegalhelp.org/domestic-violence/wdwgfh/chapter6-209a-protective-orders>

“Protective Orders” are separate and distinct from “No-Contact Directives” (described in Section VII.A. of the Policy). Protective Orders may be obtained only from a court of law and are enforceable anywhere in the United States; their violation may result in criminal charges.

In contrast, No-Contact Directives may be obtained from the Title IX Coordinator and are enforceable through the College. The Title IX Coordinator or Deputy Coordinators can explain the process for seeking a Protective Order and can escort a Complainant to the appropriate office in order to initiate a petition seeking a Protective Order.

### **IV. INITIAL RESPONSE AND TITLE IX ASSESSMENT**

When a Complainant or witness reports a Sexual Misconduct Violation, the College will take immediate and appropriate steps to investigate or otherwise determine what happened and work to resolve the matter promptly and equitably. The first step in this process is called an initial assessment.

#### **A. Initial Assessment**

Upon receipt of a report, the Title IX Coordinator or Deputy Coordinator will conduct an initial assessment. As part of the initial assessment, the Title IX Coordinator or Deputy Coordinator will:

- Assess the Complainant’s safety and well-being and offer the College’s immediate support and assistance;
- Provide the Complainant with written information about on-campus and off-campus resources and the range of appropriate and available interim measures based on the status of the Complainant;
- Inform the Complainant of the right to seek medical treatment, and explain the importance



- of obtaining and preserving forensic and other evidence;
- Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
  - Inform the Complainant of the right to seek Alternative Resolution (where available) or Formal Resolution under these Procedures, discuss the Complainant's expressed preference for the manner of resolution and discuss any concerns or barriers to participating in any College investigation and resolution under these Procedures;
  - Explain the College's prohibition against Retaliation and that the College will take prompt action in response to any act of Retaliation;
  - Assess the nature and circumstances of the report;
  - Ascertain the ages of the Complainant and Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective services agency; and
  - Assess whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

#### **B. Requests to Maintain Privacy or Not Seek Disciplinary Action**

Where a Complainant requests that personally identifying information not be shared with the Respondent, that no investigation into a particular incident be conducted and/or that no disciplinary action taken, the College will balance that request against the College's obligation to provide a safe, non-discriminatory learning, living and working environment for all community members, including the Complainant. This request may occur at any point after the report is made.

The Title IX Coordinator or Deputy Coordinator will evaluate the Complainant's request. When considering whether to honor a Complainant's request that no personally identifying information be shared with the Respondent or that no Investigation or disciplinary action be pursued, the College will consider the totality of the circumstances, including:

- The impact of moving forward on the Complainant's well-being;
- The increased risk that the Respondent will commit additional acts of sexual or other violence, taking into consideration, among other matters, any known history of arrests, violence, or other reports of Sexual Misconduct Violations involving the Respondent, any threats of future violence made by the Respondent, and whether multiple perpetrators were involved in the reported incident;
- Whether the Sexual Misconduct Violation was perpetrated with the use or threat of use of a weapon or involved physical violence or threat of physical violence;
- Whether the report reveals a pattern of Sexual Misconduct Violations;
- Whether the Complainant is or at the time was a minor; and
- Whether the Sexual Misconduct Violation occurred while the Complainant was

unconscious, physically helpless or unaware that the Sexual Misconduct Violations was occurring;

- Whether the Sexual Misconduct Violation was facilitated through the use of a “date rape” or similar drugs or intoxicants;
- Whether the College is able as a practical matter to pursue the investigation without the participation of the Complainant (e.g., whether there has been other relevant evidence of the Violation such as admission by the Respondent, security cameras, other witnesses, or physical evidence); and/or
- Whether other aggravating circumstances exist.

Where possible based on the facts and circumstances, the College will seek action consistent with the Complainant’s request to maintain privacy and/or not conduct further Investigation or disciplinary action. If the College is able to honor the request, the College’s ability to meaningfully investigate and respond to a report may be limited. The College may only be able to respond in more general ways, such as providing targeted training or prevention programs or offering reasonably available remedial measures to the Complainant.

At any time, the Complainant who has initially requested to maintain privacy or declined to participate in an Investigation may choose to pursue Alternative or Formal Resolution where available. The College may also reopen and pursue a report where new or additional information becomes available.

There are times when the College may not be able to honor a Complainant’s request in order to provide a safe, non-discriminatory environment for the College community. Where the balance of factors requires that further investigation be conducted, that disciplinary action be taken, or that the identity of the Complainant be disclosed, the College will inform the Complainant of its intent to investigate prior to commencing the investigation and/or of its intent to disclose the identity of the Complainant. In such cases, the College will make reasonable efforts to protect the privacy of the Complainant consistent with the needs of the Investigation and resolution of the matter, and will, to the extent possible, only share information with people responsible for handling the College’s response; however an investigation normally involves speaking with the Respondent and others who may have relevant information about the incident and disclosing the identity of the Complainant may be necessary in those conversations.

The College will take ongoing steps to protect the Complainant from retaliation or harm and assist the Complainant in accessing support and safety services regardless of their level of participation or engagement with these Procedures.

Because the College is under a continuing obligation to address sexual and gender-based harassment and violence campus-wide, reports of Sexual Misconduct Violations (including reports

that do not include personally-identifiable information) will also prompt the College to consider broader remedial action, such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

### **C. Determination after Assessment**

These Procedures offer two forms of resolution for reports of Sexual Misconduct Violations: (1) Formal Resolution, which involves investigation, and review and sanction (if applicable) by an Adjudicator as described below; and (2) Alternative Resolution as described below, which includes a variety of informal options for resolving reports.

After the initial assessment, the Title IX Coordinator will determine whether the circumstances warrant proceeding to an investigation. The Title IX Coordinator may consult with other College administrators or legal counsel. The determination as to how to proceed will be communicated to the Complainant in writing. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the College takes action that would impact a Respondent, such as protective measures that restrict the Respondent's movement on campus, the initiation of an Investigation, or the decision to seek to involve the Respondent in Alternative Resolution, Investigation, or other Disciplinary Process. Notice to the Respondent will include a written explanation of all available resources and options. The Respondent will also be offered the opportunity to meet to discuss those resources and options. The College will also provide the Respondent an opportunity to respond to such actions.

Following this initial assessment, during an Investigation, or at any point in the Disciplinary Process, Hampshire College may seek an Alternative Resolution that, as appropriate, endeavors to prevent future Sexual Misconduct Violations and addresses their effects without conducting or concluding, as applicable, a formal Disciplinary Process against a Respondent. Alternatively, if appropriate, the College may pursue an Investigation and Disciplinary Process.

### **V. FORMAL RESOLUTION**

Formal Resolution is commenced when:

- A Complainant reports that a Student has engaged in one or more Sexual Misconduct Violations and requests, at any time, an investigation; or
- Alternative Resolution does not resolve a reported Sexual Misconduct Violation and, in the

Title IX Coordinator's discretion, an investigation of the report of the Sexual Misconduct Violation is required; or

- At the conclusion of the assessment process described in Section IV of these Procedures, the Title IX Coordinator has determined, based upon a review of the totality of the circumstances, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the College community, notwithstanding the Complainant's request that personally identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

#### **A. Investigation**

Whenever Formal Resolution is commenced, Investigation will proceed as follows:

1. As a first step, the Title IX Coordinator or Deputy Coordinator will meet with the Complainant and Respondent, separately, to describe the process and resources available. The Respondent will be notified in writing (via email) of the report, with a summary of the allegations in the report and the potential violations at issue. The Complainant will also receive a copy of this notice.
2. The Title IX Coordinator or Deputy Coordinator will assign an investigator to conduct a prompt, thorough, fair, and impartial investigation of the report. Any individual designated as an investigator will receive annual training under Title IX and VAWA. The Investigator may consult with the Title IX Coordinator, Deputy Coordinators, or others during the Investigation as necessary. Both parties will be provided with the name of the assigned investigator. The Complainant and Respondent should inform the College of any actual bias or conflicts of interest in the choice of investigator.
3. During the Investigation, the Complainant and Respondent will have an equal opportunity to be heard, to submit information and corroborating evidence, and to identify witnesses who may have relevant information. The investigator will notify and seek to meet with all involved parties separately (e.g., the Complainant, the Respondent, and identified witnesses) and also will gather other evidence and information relevant to the determination as to whether or not a Policy violation has occurred. Witnesses must have information deemed relevant to the Investigation, as determined by the investigator, and cannot be participating solely to speak about an individual's character.
4. Medical and counseling records of a Complainant and Respondent are privileged confidential records that individuals are not required to disclose. However, these records

may contain relevant and material information and a party may voluntarily chose to share such records with the investigator. Any records provided by a party become part of the file and are available to review by the other party.

5. Where there is evidence of a pattern of similar conduct by the Respondent or of violent acts or other related conduct, either before or after the conduct in question, regardless of whether there has been a prior finding of a Policy violation, this information may be deemed relevant to the determination of a Policy violation and/or in assigning a sanction. The determination of relevance will be based on an assessment of whether the previous or subsequent incident was substantially similar to the conduct cited in the report, indicates a pattern of behavior and substantial conformity with that pattern, or is otherwise associated with the conduct cited in the report. Prior or subsequent conduct of the Respondent also may be admissible to prove intent, motive, or absence of mistake.
6. A Complainant's prior sexual history will never be considered as evidence of a person's reputation or character. Moreover, evidence related to prior sexual history is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances. For example, where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges that consent was given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in the Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another questions raised by the report.
7. The investigator has the discretion to determine the relevance of any evidence and may determine that certain types of evidence should be included or excluded in the determination of responsibility. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the investigator during the interview stage will not be considered at a hearing. The investigator will communicate to the parties a deadline for submitting evidence.
8. Throughout the process, the Complainant and Respondent have the right to be accompanied by an advisor of their choice (referred to in this policy as a "supporter"). The supporter may be invited by the Complainant or Respondent to attend meetings, investigation interviews, and the hearing, and must follow the guidelines for supporters located in the Student Handbook (see <https://handbook.hampshire.edu/node/208>). The supporter may be any person, including an attorney, who is not otherwise a party or witness to the reported incident(s). While the supporter may be present, the supporter may not speak on behalf of a party, nor be disruptive to the meetings.

9. At the conclusion of the Investigation, the investigator will prepare an investigation report that summarizes the information gathered, outlines the contested and uncontested information, and includes a threshold determination as to whether the allegations, if proven, would provide sufficient information to establish a violation of the Policy by a preponderance of the evidence. A threshold determination does not involve findings of fact or determinations of credibility. This report will include any other related and available documents such as campus police reports, statements, and other relevant materials. The investigator has the discretion to determine the relevance of any evidence and may determine that certain types of evidence should be included or excluded in the investigation report.
10. Both the Complainant and the Respondent will be given the opportunity to review the investigation report, identify any additional information or witnesses, and provide feedback or comment to the report.
11. . The Director of Student Conduct, Rights and Responsibilities (“Director”) will designate a reasonable time for review and response. Upon receipt of any additional information or comments, the investigator will issue a final investigation report.
  - a. If the investigator determines that the threshold has been reached (i.e., that the allegations, if proven, would provide sufficient information to establish a violation of the Policy), the report will be submitted to the Director or their designee, who will convene a hearing as described below in Section V.B.
  - b. If the investigator determines that the threshold has not been reached (i.e., that the allegations, if proven, would *not* provide sufficient information to establish a violation of the Policy), a copy of the report will be provided to the Director. The Director will provide the Complainant and the Respondent an opportunity to review the report. The Complainant may request that the Director or their designee (the “Reviewer”) conduct an Administrative Review of the finding by making a written request for review within five (5) business days. The Reviewer may affirm the threshold finding, reverse the finding, or remand the matter for additional investigation as warranted. The Reviewer will render a decision in writing, to both parties, within ten (10) business days of receipt of the request for review. The decision of the Reviewer is final.
12. Typically, the period from notice of an investigation through resolution (finding and sanction, if any) will not exceed sixty (60) calendar days. This time frame may be extended for good cause as necessary to ensure the integrity and completeness of the Investigation, to

comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for Hampshire College breaks or vacations, and to account for complexities of a case. Any extension of the time frame for resolution, and the reason for the extension, will be communicated to the parties in writing.

13. At the request of law enforcement, the College may agree to defer its Title IX Investigation until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Complainant regarding the availability of remedial and protective measures and available courses of action under the Policy and these Procedures. Hampshire College will promptly resume its Title IX Investigation as soon as it is notified by law enforcement of the completion of its initial fact-gathering.

## **B. Hearing**

The Hearing and Appeal process consists of: (1) Pre-Hearing Steps; (2) a Hearing; and (3) a Determination of Violation and Sanctions.

### **1. Pre-Hearing Steps**

- a. The Director or their designee will receive and review the investigation report. The Director may accept the report as rendered or may request that an investigator (1) conduct additional interviews or (2) seek out other evidence as deemed to be appropriate. The Director may consult with the Title IX Coordinator as needed. Any additional Investigation, and a supplemental report, will be completed within seven (7) business days. This time period may be extended for good cause at the discretion of the Director.
- b. Convening of Hearing Panel: The hearing will be adjudicated by a three-person panel of Hampshire College faculty and/or staff selected by the Director, which may include faculty or staff members trained to serve on the Community Review Board (“CRB”). (The three-person panel is referred to here collectively as the “Adjudicator”.) All persons serving as an Adjudicator must receive training under Title IX and VAWA and must also be impartial and free from actual bias or conflict of interest. The Complainant and Respondent will be notified of the composition of panelists and must advise the College of any actual bias or conflicts of interest. Panelists may also recuse themselves. The College may make alternative arrangements in Adjudicator assignment as appropriate.
- c. Notice of Hearing: The Complainant and Respondent will be notified in writing of the date, time, and location of the hearing as well as the specific charges to be reviewed by the Adjudicator. In general, the hearing will be scheduled within ten (10) business days of the date of the Notice of Hearing. This time frame may be extended for good cause at the

discretion of the Director. Good cause may include the availability of the parties, the timing of semester breaks, or any other extenuating circumstances.

- d. **Pre-Hearing Review of Documents:** The Complainant and Respondent will each have the opportunity to review the final Investigation report, including any supplemental report, and any relevant documents that will be provided to the Adjudicator. The Adjudicator will be provided with the same set of materials before the hearing. Either party may also submit to the Adjudicator at least one (1) business day in advance of the hearing a statement outlining the impact it has had on them and what they would like to see in terms of sanctioning outcomes if the Adjudicator finds a violation did occur and sanctions are warranted.
- e. **Request to Postpone Hearing:** Permission to postpone a hearing may be granted provided that the request to do so is based on a compelling emergency and where possible is provided to the Director at least 36 hours prior to the time of the hearing.

## **2. Hearing**

- a. **Timing:** Typically a hearing will be held within fifty-five (55) calendar days from the date of the initiation of the Investigation. This timeframe may be extended for good cause as necessary to ensure the integrity and completeness of the Investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses during the investigation phase, to account for Hampshire College breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or to address other legitimate reasons. Any extension of this timeframe, and the reason for the extension, will be shared with the parties in writing.
- b. **Hearing Guidelines:** At any hearing under these Procedures, the following guidelines below will apply:
  - i. **Supporters:** Both the Complainant and Respondent have the right to be accompanied at the hearing and any meetings by a supporter of their choice who is not otherwise a party or witness involved in the Investigation. While the supporter may be present, the supporter may not speak on behalf of a party, may not address the Adjudicator or pose questions, and must not be disruptive to the hearing.
  - ii. **Presence at Hearing:** The parties are not required to participate in person at the hearing in order for the hearing to proceed, but are strongly encouraged to participate. A Complainant or Respondent may request alternative options that do not require physical proximity to the other party, including appearing in person at different times at the hearing or appearing via a remote electronic method. This



request should be made no less than five (5) business days prior to the hearing. If, despite being notified of the date, time, and location of the hearing, the Respondent or Complainant is not in attendance, the hearing may proceed and sanctions may be imposed. In doing so, the Adjudicator will consider the available evidence. In the absence of clear evidence that emergency circumstances beyond the control of the Complainant or Respondent prevented such person from being present, the decision of the Adjudicator will stand.

- iii. Questioning: The Complainant and Respondent will not be permitted to directly question one another, but will be allowed to propose questions to the Adjudicator who will screen the questions for appropriateness and relevance, in consultation with the Director.
- iv. Hearing Format: The Hearing is an opportunity for the parties to address the Adjudicator about any information in the Investigation Report and any impact and mitigation statements. Each party has the opportunity to be heard, to identify issues or information for the Adjudicator's consideration, and to respond to any questions of the Adjudicator. A typical hearing may include information presented by the investigator, with follow-up questions by the Adjudicator of the investigator; brief remarks by the Complainant and/or Respondent, with follow-up questions posed by the Adjudicator; and brief concluding remarks by the Complainant and/or Respondent. Absent compelling circumstances, it is not anticipated that witnesses will appear at the Hearing. The Director has the discretion to determine the specific hearing format.

### **3. Determination of Violation and Sanctions; Notice of Outcome**

At the conclusion of the hearing, the Adjudicator will determine whether there is sufficient information, by a preponderance of the evidence, to support a finding of responsibility for a violation of the Policy. After consulting with the Director or their designee, the Adjudicator will (1) determine if there is a violation and (2) if so, the Adjudicator will determine the appropriate sanction(s). Prior to making their decision final the Adjudicator's determinations of responsibility and sanctions may be reviewed by the Title IX Coordinator and/or a Deputy Coordinator to advise the Adjudicator with regard to consistency and proportionality in sanctions and sufficient action to eliminate the Sexual Misconduct Violation, prevent its recurrence and remedy its effects.

In determining the appropriate sanction(s), the Adjudicator will consider a number of factors, including:

- The nature of the conduct at issue, including whether it involved violence;

- The impact of the conduct on the Complainant;
- The impact or implications of the conduct on the Hampshire College community;
- Any previous misconduct by the Respondent, at Hampshire College or elsewhere;
- Whether the Respondent has accepted responsibility for the conduct;
- Maintenance of a safe and respectful environment conducive to learning; and
- Any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

The Adjudicator may also consider restorative outcomes that, taking into account the safety of the Hampshire College community as a whole, allow a Respondent to develop insight about their responsibility for the behavior, learn about the impact of the behavior on the Complainant and the community, and may impose a combination of sanctions.

The potential sanctions for a violation of the Policy, as set forth in the Outcomes and Sanctions set forth in Norms for Community Living and Policies, include: Deferred Sanction Statuses, Disciplinary Probation, Removal from Campus Housing, Housing Relocation, Housing Lottery Restriction, No Contact Order, Restitution, Suspension, and Expulsion. Any Student found responsible for Sexual Assault involving Sexual Intercourse will face a minimum sanction of suspension or expulsion.

Notification of Outcome: The Complainant and Respondent will be notified simultaneously in writing with an Outcome Letter (which may include email) within five (5) business days following the hearing. The Outcome Letter will set forth the violation(s) of the Policy for which the Respondent was found responsible or not responsible; the rationale for the finding; any sanction(s) imposed against the Respondent; and the rationale for any sanction(s) imposed. The Outcome Letter may also identify protective measures implemented with respect to the Respondent. The Outcome Letter will not disclose any remedial measures provided to the Complainant. In order to protect the privacy of the parties, the College will make reasonable efforts to maintain confidentiality of the Outcome Letter and materials related to the investigation, subject to release by court order, search warrant or subpoena.

### **C. Appeal**

The Complainant or Respondent may appeal the determination by submitting a written appeal within seven (7) calendar days of the date of the Outcome Letter to a senior administrator designated in the Outcome Letter. The designated senior administrator will have appropriate training and experience and will serve as an impartial decision-maker. The written appeal must include the specific grounds for the appeal and any information or argument in support of the appeal. Grounds for an appeal are limited to (1) a material procedural error that substantially

impacted the outcome, (2) previously unavailable relevant evidence that could affect the outcome; and/or (3) the sanction being substantially disproportionate to the violation.

The senior administrator will make a determination based on the written record. Appeals are not intended to be a *de novo* review, i.e., they are not intended to be a review from the beginning. The senior administrator can: 1) affirm the findings, or 2) alter the findings only where there is clear error based on the stated appeal grounds. The senior administrator will make a final decision within ten (10) business days of receiving the appeal. This timeframe may be extended for good cause as necessary to ensure the integrity and completeness of the review. Any extension of the timeframe, and the reason for the extension, will be shared with the parties in writing.

#### **D. Effect of a Pending Complaint on a Respondent**

If the Respondent withdraws from Hampshire College while a sexual misconduct complaint is pending, the Respondent's transcript will reflect a withdrawal. The College may withhold a Respondent's Hampshire College degree and transcripts pending conclusion of the Formal Resolution procedures and pending the fulfillment of any deferred sanction statuses or disciplinary sanctions. If a Respondent leaves the College for any reason while Formal Resolution procedures are underway, the Formal Resolution procedures will continue through to conclusion, regardless of whether the Respondent participates.

### **VI. ALTERNATIVE RESOLUTION**

A Complainant may seek Alternative Resolution instead of an investigation and Formal Resolution. The Title IX Coordinator, however, has the discretion to determine whether the nature of the reported conduct is appropriate for Alternative Resolution, to determine the type of Alternative Resolution that may be appropriate in a specific case, and, pursuant to Section V of these Procedures, to refer a report for Formal Resolution at any time. **Forms of Alternative Resolution that involve face-to-face meetings between the Complainant and the Respondent, such as mediation (even if voluntary), are not available in cases involving Sexual Assault.**

Participation in Alternative Resolution (including any specific form of Alternative Resolution) is voluntary. The College will not compel a Complainant or Respondent to engage in Alternative Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from Alternative Resolution at any time. The College may decline the request for Alternative Resolution in any particular case and may stop an ongoing Alternative Resolution process at any time. Pursuing Alternative Resolution does not preclude later use of Formal Resolution if the Alternative Resolution fails to achieve a resolution acceptable to the parties and the College. Where the Complainant or the Respondent withdraws from Alternative Resolution or Alternative Resolution is otherwise terminated for any reason, any statements or

disclosures made by the parties during the course of the Alternative Resolution may be considered in a subsequent investigation and Formal Resolution.

With any form of Alternative Resolution, each party has the right to choose and consult with a supporter. The supporter may be any person, including an attorney, who is not otherwise a party or witness to the reported incident(s). The parties may be accompanied by their respective supporters at any meeting or proceeding held as part of Alternative Resolution. While the supporters may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties, or in any manner disrupt, such meetings and/or proceedings.

Alternative Resolution may include:

Resolution with the Assistance of a Third Party: A Complainant may seek assistance in informally resolving a reported Sexual Misconduct Violation from the Title IX Coordinator, who can arrange to have a trained representative facilitate a meeting or meetings between the parties. The availability of this form of Alternative Resolution, and any resolution reached through such form of Alternative Resolution, is subject to the agreement of the Title IX Coordinator, the Complainant and the Respondent. This form of Alternative Resolution may not be used where the allegation involves Sexual Assault.

Interventions and Remedies: Alternative Resolution agreements may involve a host of interventions, remedial measures and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or College employment activities; increased monitoring, supervision, and/or security at locations or activities where the Sexual Misconduct Violation occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or College housing modifications for Student Complainants; workplace modifications for Employee Complainants; one or more of the restorative remedies or other sanctions described in these Procedures; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Policy.

Any form of Alternative Resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the College, the Complainant, and the Respondent is reached through Alternative Resolution, the terms of the agreement are implemented and the matter is resolved and closed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if a Respondent fails to comply with the terms of the Alternative Resolution, the matter may be referred for an investigation and Formal Resolution under these Procedures.

The Title IX Coordinator will maintain records of all reports and conduct referred for Alternative

Resolution, which typically will be completed within forty-five (45) calendar days.

## **V. RECORDS**

The College shall retain all records relating to reported Sexual Misconduct Violations for a period of ten years after the date the report was received, or for at least three years after termination of employment, whichever is later.