

## Hamilton College Policy on Sex-Based Discrimination

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## I. Introduction

Sex-Based Discrimination (including sexual assault, dating violence, domestic violence, stalking, sex-based harassment, sexual exploitation, and/or related retaliatory behavior) can be reported here: [https://cm.maxient.com/reportingform.php?HamiltonCollege&layout\\_id=12](https://cm.maxient.com/reportingform.php?HamiltonCollege&layout_id=12) and/or directly to the Title IX Coordinator Rachel Koegel at [titleix@hamilton.edu](mailto:titleix@hamilton.edu), [rkoegel@hamilton.edu](mailto:rkoegel@hamilton.edu) or 315-859-4245.

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 in which students, faculty, staff, and guests can work, study, and enjoy the College community without experiencing Sex-Based Discrimination. 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 or workplace environment of any member of the Hamilton community.

The College strongly encourages all members of its community to report any prohibited act of Sex-Based Discrimination which they experience (including sexual assault, dating violence, domestic violence, stalking, sex-based harassment, sexual exploitation, and/or related retaliatory behavior, as more fully defined in Article IV) to the College and to immediately seek appropriate support and health care.

In addition, many College employees are considered Responsible Employees who are required to report instances of Sex-Based Discrimination that they are made aware of to the Title IX Coordinator (see Article IV, Responsible Employees). For purposes of this Policy, Sex -Based Discrimination includes discrimination on the basis of pregnancy and related conditions. Individuals who experience pregnancy or a related condition can learn more about their rights under the Policy on Pregnancy and Related Conditions. 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 Sex-Based Discrimination. 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 and with fairness to all involved, if specific behaviors constitute violations of this Policy.

Any individual who has experienced Sex-Based Discrimination has the right to make a report to local law enforcement, and/or the New York State Police, or choose not to report; to report the incident to the Title IX Coordinator; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from the College.

This Policy describes support resources and accommodations available to members of the Hamilton community who experience Sex-Based Discrimination, whether or not that individual decides to pursue a formal report on campus. See Article VIII, Supportive Measures, and Article XXI, Options for Immediate Assistance.

When a community member (i.e., a current student or member of the faculty or staff) decides to make a formal report of an incident of Sex-Based Discrimination involving another community member, Hamilton will use the procedures outlined below (see Articles X and XI) to take reasonable, prompt, equitable, and appropriate action to respond. When a guest or other non-College community member decides to make a formal report, or a community member makes a formal report involving a guest or non-College community member, the process in Article XII will apply. For purposes of this Policy, a formal report by a former student about an incident involving another community member which occurred while that former student was a current student, will be processed under this Policy in the same manner as a formal report by a current student (though the procedures to be utilized will depend on the status of the Respondent(s) at the time the report is processed).

## **II. Scope of Policies**

### **A. Relevant Laws**

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 sex-based discrimination and harassment for all community members. The College recognizes its obligation under Title IX to take steps to prevent the recurrence of sex discrimination, including in admissions and employment, and to correct its discriminatory effects.

Under Title IX, discrimination on the basis of sex includes sexual harassment, gender-based harassment, sexual assault, dating violence, domestic violence, stalking, and discrimination on the basis of pregnancy or a related condition. Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, New York State Law 201-g, and other applicable statutes.

Pursuant to the Violence Against Women Reauthorization Act, the College also prohibits sexual assault, domestic violence, dating violence, and stalking.

This Policy also reflects the requirements of New York Education Law Article 129-B, relating to sexual assault, domestic violence, dating violence and stalking.

The College's Title IX Coordinator is responsible for ensuring that the College responds to such complaints in a manner that treats all parties equitably, is effective, and eliminates the Sex-Based Discrimination through remedies designed for the individual and, as needed, the entire College community.

## **B. Scope of Policies**

All College community members are responsible for their actions and behavior, and for adhering to College policies and local, state, and federal law.

The Sex-Based Discrimination Policy applies to all members of the Hamilton College community who participate in any of Hamilton's educational programs or activities, including students, employees, contractors, and visitors. Those who conduct business with the College on College property must also adhere to this Policy. Where an individual experiences a sex-based hostile environment within its educational programs and activities and some of the conduct that contributes to the hostile environment occurred outside of the College's educational programs or activities or outside of the United States, the College will take steps to address the hostile environment.

One or more of the College's personnel policies or faculty and staff handbook policies may overlap with this Policy in a particular situation. This Policy applies to any situation where a student is the Complainant or Respondent. In all other situations, the College reserves the right to apply this Policy or another applicable College policy or process to address potential violations of the behavioral standards described in this Policy. The College will apply this Policy to any situation where the College determines that Title IX requires the application of this Policy.

This Policy sets forth conduct expectations for the College community and provides a process for the reporting, investigation, and adjudication of alleged violations. This Policy applies to alleged conduct as defined in Article IV.

The protections of this Policy apply regardless of a person's race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, pre-disposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

This Policy applies to conduct alleged to have occurred on or after August 1, 2024.

## **III. Title IX Coordinator**

The Title IX Coordinator is:

- responsible for oversight of the investigation and resolution of all reports of Sex-Based Discrimination;
- knowledgeable and trained in relevant state and federal laws and the College’s policies and procedures;
- available to advise any individual, including a Complainant (defined below), a Respondent (defined below), or a third party, about the courses of action and resources available at the College, both informally and formally, and the courses of action and resources available externally, including reports to law enforcement;
- available to provide assistance to any Hamilton community member regarding how to respond appropriately to reports of Sex-Based Discrimination;
- responsible for monitoring full compliance with all requirements and timelines specified in this Policy;
- responsible for compiling and maintaining required reports; and
- responsible for monitoring the College’s education programs and activities for barriers to reporting information about conduct that reasonably may constitute a violation of this Policy, and taking steps reasonably calculated to address such barriers.

Hamilton’s Title IX Coordinator is Rachel Koegel. Rachel can be reached at (315) 859-4245, rkoegel@hamilton.edu or titleix@hamilton.edu.

#### IV. Definitions

The following definitions outline the types of Sex-Based Discrimination prohibited under this Policy and identify the individuals and processes involved in the investigation of and response to allegations of those prohibited acts. The term “Sex-Based Discrimination” is an umbrella term used in this Policy to more conveniently refer to any form of conduct prohibited by this Policy. To be covered under this Policy, the conduct, or its effects, must have a connection to the College and/or the College community.

##### A. Prohibited Conduct

**Sex-Based Discrimination** includes discrimination based on sex, sex stereotypes, gender, sexual orientation, sex characteristics, pregnancy or pregnancy-related conditions, or gender identity or expression. Sex-Based Discrimination includes, but is not limited to, Sex-Based Harassment, Sexual Assault, Domestic Violence and Dating Violence, and Stalking on the basis of sex.

**Sex-Based Harassment** includes conduct on the basis of sex, including gender, sexual orientation, or gender identity or expression, that falls within one of the two following categories:

Quid pro quo - An employee, agent, or other person authorized by the College to provide an aid, benefit, or service under the College’s education program or activity explicitly or impliedly conditioning the provision of such aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct.

Hostile environment - Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's education program or activity (*i.e.*, creates a hostile environment).

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant's ability to access the College's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the College's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the College's education program or activity

Sex-based 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 individual 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 within the College's educational programs and activities;
- 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 subject of the harassment and/or third parties who witness or observe harassment and are affected by it.

Sex-based harassment includes gender-based harassment, which may include acts of verbal, nonverbal or physical aggression or hostility based on gender, gender identity, gender expression, sexuality, pregnancy or pregnancy-related conditions, or sex- or gender-

stereotyping, even if those acts do not involve conduct of a sexual nature.

Examples of conduct that may constitute Sex-Based Harassment include:

- 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, cartoons, 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

**Sexual Assault** - Sexual assaults can take a number of forms, including:

- **Non-Consensual Sexual Contact** is defined as any intentional sexual touching, however slight, either directly or through clothing, with any body part or object without



affirmative consent.

- **Non-Consensual Sexual Act** is defined as penetration and/or oral contact, however slight, with any body part or object of or with the genitals or anus of another person, without affirmative consent.
- **Incest** is defined as non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** is defined as non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.

**Retaliation** - means intimidation, threats, coercion, or discrimination against any person by for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations or this Policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner (as a complainant, respondent, witness or otherwise) in an investigation, proceeding, or hearing under this policy, including in an informal resolution process.

**Intimate partner violence (IPV)** is abuse or aggression that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate Partner Violence includes, but is not limited to, “dating violence” and “domestic violence,” as defined by VAWA.

**Domestic Violence** is defined as a felony or misdemeanor crime of violence committed by:

- a current or former spouse or intimate partner of the person against whom the violence is committed;
- a person with whom the person against whom the violence is committed shares a child in common;
- a person who is cohabiting with, or has cohabited with, the person against whom the violence is committed as a spouse or intimate partner;
- a person similarly situated to a spouse of the person against whom the violence is committed under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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 violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person against whom the violent act is/acts are committed. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the

length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

IPV can vary in how often it happens and how severe it is. It can range from one episode of violence to chronic and severe episodes over multiple years.

IPV can include any of the following types of behavior:

- **Physical violence** is when a person hurts or tries to hurt a partner by using physical force.
- **Sexual violence** is forcing or attempting to force a partner to take part in a sex act, sexual touching, or a non-physical sexual event (e.g., sexting) when the partner does not or cannot consent.
- **Psychological aggression** is the use of verbal and non-verbal communication with the intent to harm a partner mentally or emotionally or to exert control over a partner.

IPV may consist of acts covered under the definitions of dating violence or domestic violence, or may consist of other conduct meeting the definition of IPV set forth above.

**Stalking** occurs when a person engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances that would cause a reasonable person to fear for personal safety or the safety of others or suffer substantial emotional distress.

- **Course of conduct** means two or more acts, including but not limited to, acts in which the stalker directly, indirectly or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person, or interferes with a person's property.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the person against whom the stalking was committed.

Stalking includes the cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion. Although only stalking on the basis of sex (including sex stereotypes, gender, sexual orientation, sex characteristics, pregnancy or pregnancy-related conditions, or gender identity or expression) constitutes a form of sex-based harassment, stalking is a violation of this policy regardless of the basis on which it occurs.

**Sexual Exploitation** occurs when a person takes non-consensual sexual advantage of another, and that behavior does not otherwise constitute another form of Sex-Based Discrimination.

Examples of sexual exploitation include, but are not limited to, non-consensual video or audio-recording 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, or making a consensual intimate video or audio recording of another but then distributing the recording to others without the person's consent or in a way that exceeds the bounds of consent), compelling another person to sexually touch themselves or another person without consent of all parties to the touching, intentional sexual transmission of bodily fluids (including seminal fluid, vaginal fluid, blood, urine or feces) onto a clothed or unclothed individual without affirmative consent, 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, or administering any of the so-called "date rape" drugs (including Rohypnol, Ketomine, GHB, Burundanga, and others) for the purpose of engaging in sexual activity.

### C. Related Terms

The terms defined below apply to Prohibited Conduct as defined in this Policy.

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

- a) Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- b) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- c) Consent may be initially given but withdrawn at any time.
- d) Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- e) When consent is withdrawn or can no longer be given, sexual activity must stop.
- f) Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

**Coercion:** Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual activity. When a person makes clear a decision not to participate in a particular form of

sexual activity, a decision to stop, or a decision not to go beyond a certain sexual activity, continued pressure can be coercive. In evaluating whether coercion was used, the College will consider: (i) the nature of the pressure; (ii) the frequency of the application of the pressure, (iii) the intensity of the pressure, (iv) the degree of isolation of the person being pressured, and (v) the duration of the pressure.

**Capacity to give consent:** Incapacitation is a state where an individual lacks the ability to knowingly choose to engage in sexual activity. In assessing capacity, the College will consider whether the individual had the ability to understand the nature of the act (e.g., to understand the who, what, when, where, why, or how of the sexual interaction) and/or was physically helpless. Incapacitation may result from the use of alcohol and/or drugs, 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 affect 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.

Persons who engage in sexual activity with someone who lacks the mental or physical capacity to consent (including being incapacitated by alcohol or other drug use or unconscious) are in violation of this Policy, and any consent perceived to have been obtained is 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 and engaging in sexual activity with that person is a violation of this Policy.

### Individuals and Processes

**Complainant:** This term refers generally to an individual who has allegedly been subjected to Sex-Based Discrimination in violation of this Policy, whether a complaint has been filed or not. However, by their very nature, some aspects of this Policy apply only after the College has been put on notice of a possible violation and references to "Complainant" in that context should be read (and will be applied by the Title IX Coordinator) accordingly. In some cases, the Title IX Coordinator may file a complaint and thereby initiate an investigation and adjudication process pursuant to this policy. In that instance, the Title IX Coordinator is not the "Complainant"; the Complainant remains the person who allegedly experienced the Sex-Based Discrimination.

**Respondent:** This term refers to an individual whose conduct is alleged to have violated this Policy, whether a complaint has been filed or not. However, by their very nature, some aspects of this Policy apply only after the College has been put on notice of a possible violation and references to "Respondent" in that context should be read (and will be applied by the Title IX Coordinator) accordingly.

**Responsible Employees:** Responsible Employees who receive information or a report about any act that potentially constitutes Sex-Based Discrimination 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, staff in the Health Center, and ordained Chaplains acting within the scope of their duties as Chaplains), and Community Advisors. In addition, Responsible Employees are expected to make a reasonable effort to explain their duty to report to anyone disclosing, or about to disclose, information to them.

A College supervisor or manager who receives a complaint or information about workplace Sex-Based Harassment is required to take appropriate action. In all instances, appropriate action must include reporting the situation to the Title IX Coordinator. Appropriate action may also include immediately intervening if the harassment is witnessed by the supervisor or manager. In addition to being subject to discipline if they themselves engage in sex-based discrimination, sexually harassing conduct, or retaliation, persons with supervisory authority over other College employees will be subject to discipline for knowingly allowing Sex-Based Harassment to continue.

**Confidential Employees:** Confidential employees are College employees whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.

When a Confidential Employee receives information or a report about any act that potentially constitutes Sex-Based Discrimination, they must inform the reporter:

- Of the employee's status as confidential for purposes of this Policy, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute Sex-Based Discrimination;
- How to contact the College's Title IX Coordinator and how to make a complaint of Sex-Based Discrimination; and
- That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the formal resolution process.

The **Harassment and Sex-Based Discrimination Board** (HSDB or the Board) shall be composed of at least eight members (one of whom shall be designated 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 one year as Chair. Every effort will be made to maintain a diverse Board, and membership normally will be limited to members of the faculty who have

attained the rank of associate or full professor, and full-time staff members. The Title IX Coordinator shall arrange for the Board members to receive annual training as required by this Policy. Members of the HSDB are required to maintain the privacy of all information they acquire in this role, unless disclosure is authorized by the Title IX Coordinator. Members of the HSDB can be removed prior to the end of their term by the Title IX Coordinator, with the agreement of the Chair of the HSDB (unless the member to be removed is the Chair), for good reason (e.g., dereliction of duty, failure to abide by the provisions of the Policy, etc.). The Title IX Coordinator may appoint, and train, additional Board Members as necessary.

**Investigator(s):** Individual(s) assigned by the Title IX Coordinator to conduct investigations following notice of alleged Sex-Based Discrimination. The Investigator(s) may be an appropriately trained College employee or an external investigator(s) as deemed appropriate by the Title IX Coordinator. Upon receipt of a complaint, the Title IX Coordinator will assign the investigator(s) to begin the investigation. If the Title IX Coordinator determines that a legitimate conflict of interest exists between an Investigator(s) and a party to a complaint, the Title IX Coordinator, in consultation with the Chair of the HSDB, will appoint a replacement. The Investigator(s) issues a report of the investigation to Title IX Coordinator, but does not make a recommendation with respect to responsibility for violating the Policy.

**Sex-Based Harassment Review Panel (Review Panel):** In each investigation involving student Respondents, the Title IX Coordinator will appoint a three-person Review Panel to review the investigative report, attend the hearing, determine whether this Policy was violated, and, if so, impose a sanction. This Review Panel will ordinarily be comprised of two members of the HSDB and the Hearing Officer, but the Title IX Officer has the discretion to appoint other, appropriately trained, individuals to serve as necessary. If the Title IX Coordinator determines that a legitimate conflict of interest exists between a member of the Review Panel and a party to a complaint, the Title IX Coordinator, in consultation with the Chair of the HSDB, will appoint a replacement from those members of the Board eligible to serve.

**Hearing Officer:** The individual assigned by the Title IX Coordinator to preside over the hearing process. In matters involving students, the Hearing Officer will moderate the hearing and deliberate with the members of HSDB appointed to serve on the Review Panel. In matters involving employees, the Hearing Officer will determine whether the Policy has been violated. The Hearing Officer may be an appropriately trained College employee or an external Hearing Officer as deemed appropriate by the Title IX Coordinator. If the Title IX Coordinator determines that a legitimate conflict of interest exists between a Hearing Officer and a party to a complaint, the Title IX Coordinator, in consultation with the Chair of the HSDB, will appoint a replacement

**Senior Staff Member:** The Vice President who has supervisory authority over the area of the College with which the Respondent is affiliated, and who will (as outlined in this Policy) make a final decision on sanction following the Hearing Officer's recommendation. 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.

**Appeals Board:** The Sex-Based Discrimination Appeals Board shall be composed of the faculty members of the College Appeals Board. This is the group of individuals that considers appeals that are permitted under this Policy. The Sex-Based Discrimination Appeals Board will receive annual training on relevant state and federal law (including Title IX) and this Policy.

## **V. Protection from Retaliation**

Hamilton prohibits Retaliation against individuals who pursue complaints or who are otherwise involved in any of the processes outlined in this Policy. The College views Retaliation as a serious violation of this Policy that is subject to the same range of sanctions and responsive action as Sex-Based Discrimination. (Retaliation is defined in Article IV).

## **VI. Privacy and Confidentiality**

Hamilton encourages the reporting of acts of Sex-Based Discrimination 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 Sex-Based Discrimination, and how it will respond to requests for confidentiality. (Information about confidential resources can be found in Article XXI)

### **A. General**

In all cases of alleged Sex-Based Discrimination covered by this Policy, Hamilton will treat information as private and will, to the extent permitted by law, limit the disclosure of information to only those non-party individuals who are responsible for handling the College's response, and to those parties entitled to knowledge of the information in connection with processes undertaken pursuant to this Policy. Certain College administrators (e.g., the College President and Director of Campus Safety) may also be provided information on a need to know, private basis. In accordance with the Clery Act and other state and federal mandates, the College must also report information concerning the occurrence on campus of certain 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 Sex-Based Discrimination presents information that there is serious or continuing threat to the community. The announcement will include the nature of the violation and the action(s) being taken.

The College will take reasonable steps to protect the privacy of the parties and witnesses during the pendency of its processes contemplated by this Policy, provided that such steps do not restrict the ability of the parties to obtain and present evidence, to speak to witnesses, to consult with their family members, Confidential Employees, or advisors, or otherwise prepare for or participate in a process. The College will also take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the processes contemplated by this Policy. However, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the

complaint of Sex-Based Discrimination will be authorized.

The College will normally not inform students' parents or guardians of their involvement in a complaint of Sex-Based Discrimination without their consent, but the Title IX Coordinator will speak with each party about their 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, and may do so in emergency circumstances when necessary to prevent imminent harm or as otherwise permitted by law.

## **B. Requests for Confidentiality**

If the Title IX Coordinator receives notice of an alleged incident of Sex-Based Discrimination under 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 may 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 the College can honor the request for confidentiality and/or the request that the College take no investigatory or disciplinary action, including but not limited to whether:

- whether the Respondent has a history of violent behavior or is a repeat offender;
- whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
- whether the alleged misconduct was perpetrated with a weapon or force;
- whether the alleged misconduct was committed by multiple perpetrators;
- whether the information provided suggests that the act is part of a larger pattern at a specific location or by a particular group;
- the Complainant's request not to proceed with initiation of a complaint;
- the Complainant's reasonable safety concerns regarding initiation of a complaint;
- the risk that additional acts of Sex-Based Discrimination would occur if a complaint is not initiated;
- the severity of the alleged Sex-Based Discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- the age and relationship of the parties, including whether the individual impacted is a minor and whether the Respondent is an employee of the College;
- the scope of the alleged Sex-Based Discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- the availability of evidence to assist a decisionmaker in determining whether Sex-Based Discrimination occurred (for example whether information can be obtained by means



other than from the impacted individual, e.g., by personnel or security cameras, witnesses, or through physical evidence); and

- whether the College could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents the College from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.

If confidentiality cannot be maintained, the impacted individual will be informed of the decision prior to the start of an investigation. 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 individual or Complainant from Retaliation or harm. The Title IX Coordinator will work with the Complainant to create a safety plan. Retaliation against the reporting individual or Complainant, whether by students or College employees, will not be tolerated.

Regardless of a request for confidentiality and the College's decision with respect to that request, 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, as appropriate;
- provide other supportive measures, 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 (see Article VIII); and
- inform the Complainant of the right to report a crime to local law enforcement and provide assistance if the Complainant wishes to do so.

## **VII. Rights of Parties**

### **A. Common Rights**

Each party has the right to:

- be treated with dignity and to receive from the College courteous, fair, and respectful health care and counseling services, where available;
  - 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 (1-800-834-3947);
- have disclosures of Sex-Based Discrimination treated seriously;
- make a report to local law enforcement and/or state police;
- make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
- describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- preservation of privacy, to the extent possible and allowed by law;
- receive appropriate, reasonably available measures to reduce the burden on either the Complainant and/or Respondent, which may include (but may not be applicable to all depending on their status as a student or an employee):
  - placement of limitations on contact between the parties 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/or the Respondent and the College's assistance in effecting such change;
  - rescheduling of exams, papers, or other assignments;
  - taking an incomplete in a class, changing class sections, temporary withdrawal, or alternative course completion options;
- be protected from Retaliation by the College, any student, the other party, and/or the other party's friends, family, and acquaintances within the jurisdiction of the College;
- participate in a process that is fair, timely, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College;
- be informed of campus judicial rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;
- be informed in advance of any meeting they are required or eligible to attend, the purpose of the meeting and the rules allegedly violated and potential sanctions (if not previously advised);
- receive the counsel and support of an advisor (as more fully described below) throughout the investigation and resolution processes;
- provide information at any step of the procedures outlined in this Policy outside the physical presence of the other party;
- have their own privileged or irrelevant mental health diagnosis and/or treatment excluded from consideration by the Review Panel for purposes of determining responsibility as provided in this Policy;
- have other irrelevant information concerning character or incidents not directly related

to the complaint excluded from the investigation and resolution proceedings (the HSDB Chair, Title IX Coordinator, or other appropriate person may determine that information about unrelated incidents demonstrating a pattern of behavior directly related to the alleged violation is relevant, and therefore admissible, information);

- have the College request the presence of individuals at investigative and resolution proceedings (as appropriate);
- petition the Title IX Coordinator for removal of any Investigator(s), Hearing Officer or member of the Review Panel (as applicable) on the basis of demonstrated bias or conflict of interest as provided in this Policy;
- have complaints investigated and adjudicated in a timely, impartial, and thorough manner, by individuals who have received annual training in conducting investigations and/or adjudication (as applicable) of allegations of sexual violence, the effects of trauma, impartiality, the rights of the Respondent (including the right to a presumption that the Respondent is “not responsible” until a responsibility determination has been made), and other issues relating to Sex-Based Discrimination (including as provided in this Policy);
- review information obtained during the investigation as and to the extent provided in this Policy;
- submit a personal impact statement prior to the consideration of any sanction;
- have College policies and procedures followed without material deviation;
- an outcome based solely on information obtained by the Investigator(s) and during the Review Panel hearing or other applicable proceeding;
- be notified of the findings as to responsibility and sanction (where applicable); and
- appeal determinations as to responsibility and sanction, in accordance with the standards for appeal established by this Policy.

## **B. Additional Rights of the Complainant**

A Complainant has the right 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;
- be free from any suggestion that the Complainant is at fault when crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- have their own past sexual history with persons other than the other party precluded from consideration for purposes of determining responsibility, except as specifically provided in this Policy;
- file a report of Sex-Based Discrimination and consult the Title IX Coordinator and other appropriate College personnel for information and assistance;

- receive assistance from appropriate College representatives if interested in initiating legal proceedings in family court or civil court (e.g. orders of protection), such assistance to consist of facilitation in contacting appropriate local agencies (e.g., YWCA), who can provide direct assistance with court proceedings; and
- withdraw a complaint or involvement from the College processes at any time, with the understanding that in appropriate cases, the College may nonetheless be required to proceed even if the Complainant does not wish to do so (see Article VI, Privacy and Confidentiality).

### **C. Additional Rights of the Respondent**

A Respondent has the right to:

- a presumption that the Respondent is “not responsible” until a finding of responsibility has been made;
- review the complaint made;
- have their own irrelevant past sexual history with persons other than the other party precluded from consideration for purposes of determining responsibility;
- waive Review Panel or other proceedings by admitting responsibility (in which case, the Senior Staff Member, in consultation with the Title IX Coordinator and Chair of the HSDB, will determine a sanction) (see Article XI, Section E); and
- withdraw from the College, subject to Article XI, Section F, of this Policy.

## **VIII. Supportive Measures; Emergency Removal**

### **Supportive Measures**

Upon receipt of a report pursuant to this Policy, the College will evaluate and if warranted implement reasonable and appropriate supportive measures designed to restore or preserve, to the extent practicable, equal access to the College’s educational programs and activities, protect the safety of all parties without unreasonably burdening the other party or parties, and provide support during an informal or formal resolution process. Supportive 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 of, during, or upon conclusion of an investigation. When the College receives a report of potential Sex-Based Discrimination, the Title IX Coordinator will inform the individual(s) who may have experienced Sex-Based Discrimination that they may receive supportive measures whether or not they pursue a complaint. Once the Respondent is informed of a report or a formal complaint, the Respondent will be contacted by the Title IX Coordinator and informed that they may receive supportive measures. Supportive measures will be kept confidential to the extent that maintaining confidentiality will not impair the ability of the College to provide the supportive measures.

A party may request of the Title IX Coordinator some form of supportive measure, or the College may choose to impose supportive measures at its discretion to enhance the safety of all parties,

the broader College community, and/or the integrity of the investigative and/or complaint resolution process.

Possible supportive measures include (but may not be applicable depending on the parties' status as students or employees):

- mutual "No Contact" orders and, in certain cases, one-way no contact orders;
- 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;
- 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 between classes and activities;
- increased security and monitoring of certain areas of the campus
- providing medical services;
- providing academic support services, such as tutoring; and
- any other remedy that can be tailored to the involved individuals to achieve the goals of this Policy.

The Title IX Coordinator is responsible for coordinating the implementation of supportive measures, including coordinating with the various College departments and offices that may be involved. Supportive measures will be offered free of charge.

All individuals are encouraged to report concerns about the failure of another individual or organization to abide by restrictions imposed by a supportive measure. The College will take prompt and responsive action to enforce a previously implemented measure.

If a party's request for a supportive measure is denied, the party will be afforded an opportunity to have the denial promptly reviewed to assess whether the supportive measure is reasonable under the circumstances. In addition, an individual may also seek a prompt review of the need for and/or terms of any supportive measure that directly affects said individual, by submitting a written request for review to the Title IX Coordinator, providing the basis for that request and any evidence in support. Each party will be allowed to submit evidence in support of, or in opposition to, the request to the extent the supportive measure under review affects that party. Information about how to request a review will be included in a written communication to each party that will outline the supportive measures offered and any that were requested by the party

but denied.

## **Emergency Removal**

When a student accused of Sex-Based Discrimination is determined to be an immediate threat to the health or safety of any student or other individual arising from the allegations of Sex-Based Discrimination, the College may undertake an emergency removal of the student from some or all College programs or activities pending the outcome of any proceedings under this Policy. Prior to effectuating an emergency removal of a student, the College will undertake an individualized safety and risk analysis. If the individualized safety and risk analysis determines that an immediate threat to the health or safety of any student, including the student Respondent, or other individual justifies removal, then a student Respondent will be removed. Both the Complainant and the Respondent will, upon written request, be afforded an opportunity for a review of the need for and/or terms of an emergency removal, including potential modification, by the Vice President for Diversity, Equity, and Inclusion. Parties desiring such a review should submit a written request to the Title IX Coordinator, providing the basis for that request and any evidence in support.

The emergency removal process applies only to student Respondents. Employee Respondents are not subject to this section and may be placed on administrative leave pursuant to the College's employment policies and practices (including applicable collective bargaining agreements).

## **IX. Amnesty Related to Other Policy Violations**

The health and safety of every student at the College is of utmost importance. Hamilton recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to sexual harassment, sexual exploitation, sexual assault, domestic violence, dating violence, or stalking, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Hamilton strongly encourages students to report incidents of sexual harassment, sexual exploitation, sexual assault, domestic violence, dating violence, or stalking to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of sexual harassment, sexual exploitation, sexual assault, domestic violence, dating violence, or stalking to College officials or law enforcement will not be subject to College code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the sexual harassment, sexual exploitation, sexual assault, domestic violence, dating violence, or stalking.

Persons cooperating by furnishing information in good faith in connection with College processes under this Policy (whether as Complainants, Respondents, or witnesses), or in connection with law enforcement proceedings arising out of reported incidents of Sex-Based Discrimination, will not be subject to College code of conduct action for violations of alcohol and/or drug use policies, or other minor conduct offenses (i.e., those that can be expected to result in sanctions no more than probationary status) based on their conduct occurring at or near the time of a

reported incident of Sex-Based Discrimination.

Additionally, individuals can report anonymously through their smart phones using the Reach Out App (<https://www.captivation.com/reach-out/hamilton-college/default.html>).

## **X. Informal Resolution**

In cases where the Title IX Coordinator and HSDB Chair determine that mediation or a restorative justice process may be appropriate, the Title IX Coordinator will first consult with the Complainant about the option to pursue one of these alternative processes. If the Complainant is agreeable, then the Title IX Coordinator will consult with the Respondent to discuss the mediation or restorative justice process. If both parties agree in writing to pursue the proposed informal resolution process, mediation or a restorative justice process will be coordinated by the Title IX Coordinator. Either party or the College may discontinue the informal resolution process at any time. The mediator or restorative justice facilitator will report to the Title IX Coordinator and the HSDB Chair the results of the process, which are subject to the acceptance of the Title IX Coordinator.

In implementing an informal resolution the College will provide to the parties a written notice disclosing:

- the allegations;
- requirements of the informal resolution process;
- that, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the College's formal resolution process;
- that the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming the formal resolution process arising from the same allegations;
- the potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- what information the College will maintain and whether and how the College could disclose such information for use in the formal resolution process if the formal process is initiated or resumed.

## **XI. Formal Resolution Procedures**

In cases of alleged Sex-Based Discrimination under this Policy, where an informal resolution is not used or if used is not successful, the following process will apply. This process may involve the Chair of the HSDB, the appropriate Senior Staff Member, the Title IX Coordinator, an Investigator(s), and a Hearing Officer and/or the Review Panel. In the event the Complainant, Respondent, Chair of the HSDB, 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 HSDB to oversee the process.

## A. Complaint

Reports of Sex-Based Discrimination may be made orally or in writing, and may come from the report of a Responsible Employee, directly from a Complainant, or from a third party. In order to proceed with a formal resolution the Complainant, or in certain instances the Title IX Coordinator, must make a complaint. The complaint may be an oral or written request that objectively can be understood as a request for the College to investigate and make a determination about alleged Sex-Based Discrimination. The complaint may be provided to the Title IX Coordinator by mail, electronic mail, or delivered in person, and may be provided orally. Where the Title IX Coordinator files a complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this Policy.

Based on the complaint, the College will issue a Notice of Complaint. The Notice of Complaint will include, to the extent known, the identities of the parties involved in the alleged incident(s), the conduct allegedly constituting a violation of the Policy, the Policy provisions allegedly violated, and the date, time and location of the alleged incident(s). The Notice of Complaint will also include the following:

- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A description of the investigation and adjudication process.
- A statement informing the parties that they may have an advisor of their choice as provided by this Policy, who may be, but is not required to be, an attorney.
- A statement that the parties may inspect and review evidence in accordance with this Policy.
- A description of potential sanctions.
- A statement, where applicable, that the College's Student Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the processes contemplated by this Policy.
- A statement that the College prohibits retaliation as defined by this Policy.

If, in the course of the investigation, the College decides to investigate allegations that are not included in the notice initially provided to the parties, the Title IX Coordinator will provide notice of the additional allegations to the parties.

The Title IX Coordinator will meet with the Complainant, provide a copy of the Notice of Complaint, and explain the investigation and hearing procedures that will be followed. The Title IX Coordinator will meet separately with the Respondent to provide a copy of the Notice of Complaint, explain that the College is investigating the possibility that the Respondent may have violated this Policy, and explain the investigation and hearing procedures that will be followed. Both parties will also receive a copy of this Policy. To the extent the Title IX Coordinator has reasonable concerns for the safety of any person as a result of providing the Notice of Complaint, the Title IX Coordinator may reasonably delay providing the Notice in order to



address the safety concern appropriately. Reasonable concerns must be based on an individualized safety and risk analysis and not on mere speculation or stereotypes. In any event, the parties will receive the Notice of Complaint with sufficient time to prepare a response before any initial interview.

#### Dismissal of Complaint or Specific Allegations

The College may dismiss the complaint, or specific allegations within the complaint, under the following circumstances:

- the College is unable to identify the Respondent after taking reasonable steps to do so;
- the Respondent is not participating in the College's education program or activity and is not employed by the College;
- the Complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not be covered by this Policy; or
- The Title IX Coordinator determines that the conduct alleged in the complaint, even if proven, would not constitute a violation of this Policy.

If the College dismisses the complaint in whole or in part, the College will inform both parties (except if the dismissal occurs before the Respondent has been notified of the allegations, in which case the Title IX Coordinator will provide notice only to the Complainant) of the decision, the reason for the action, and whether the College intends to proceed under this Policy or another College policy. A decision to dismiss a complaint, or an allegation in a complaint, is immediately appealable pursuant to the applicable process specified in Section I.

### **B. Overall Time Frame for Investigation and Complaint Resolution**

#### **1. Formal Resolution Process**

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, the College will endeavor to conclude all reports of Sex-Based Discrimination within one hundred and seventy-five (175) days. The College will take every reasonable step to ensure that intake process is completed within ten (10) days, the investigation process is completed within ninety (90) days, the determination process is completed within- forty-five (45) days, and the appeals process is completed within thirty (30) days. In general, parties can expect that the process will proceed according to this and other time frames provided in this Policy. However, because circumstances may arise that require the extension of time frames—including possibly beyond the overall one

hundred and seventy-five (175) 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.

## **2. Appeals**

The College will seek to resolve any appeals within a reasonably prompt time frames as appropriate for the nature of the appeal. The College will endeavor to complete the appeals process in two (2) weeks, subject to extension based on the complexity of the investigation and/or appeals materials.

## **3. Informal Resolutions**

The College will seek to resolve informal resolution processes within a reasonably prompt time frames as appropriate for the resolution process. The College will provide written notice to all parties of the reason for any delay and the expected adjustment in time frames.

### **C. Advisors**

Each party in a formal or informal resolution process may have their advisor of choice present at any interview or other meeting related to the investigation and resolution process in which the party participates. Except as provided in the hearing procedures described in Section H, advisors can only advise the Complainant or Respondent privately and cannot act as speaking advocates in the investigation, adjudication, or informal resolution process. If an advisor does not adhere to these or other applicable ground rules, the advisor will be dismissed from the interview or other meeting or proceeding, which will continue without opportunity for the advisee to secure a new advisor (except as provided in the hearing procedures described in Section H). If an advisor is going to accompany a party, that party must advise the Title IX Coordinator of the identity of the advisor upon making that decision. Neither members of the HSDB nor the Appeals Board may serve as advisors. The College will determine its own schedule for interviews and other meetings, and it is incumbent upon each party to ensure that the party's advisor is available.

The role of an advisor in the Hearing Process is discussed in detail below.

### **D. Multiple Parties/Charges**

When multiple charges and/or parties are involved, including charges by and against individuals with different statuses (e.g. faculty and student), the Title IX Coordinator, in consultation with the HSDB Chair, will determine the appropriate procedures to be used, including varying from these procedures as may be necessary. Normally, multiple contemporaneous charges against the same Respondent, even when brought by multiple Complainants, will be investigated by a single

Investigator(s). The Title IX Coordinator may determine that cases where the allegations arise out of the same set of facts should be consolidated for purpose of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaints filed by the parties against each other, multiple complaints by a single Complainant against a Respondent, or multiple complaints by a single Complainant against multiple Respondents.

#### **E. Respondent Acceptance of Responsibility**

The Respondent, with the Senior Staff Member's agreement, may accept responsibility for alleged conduct. A Respondent choosing this path must provide the Senior Staff Member and the Title IX Coordinator a written statement accepting responsibility for the alleged conduct and waiving any further process under this Policy. 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. The full range of sanctions is listed in below in Section H. By accepting responsibility, the Respondent waives any right to appeal the finding of Responsibility. The Respondent may appeal the imposed sanction pursuant to the process in below in Section I. If the Respondent does not agree to accept responsibility and disputes the description of alleged conduct, the process below will proceed.

#### **F. Respondent Withdrawal**

Should a student Respondent choose to withdraw from the College with knowledge that a complaint against the Respondent has been made under this Policy and prior to the Hearing Panel's final decision, the Respondent's transcript will note that a complaint had been made at the time of withdrawal as described below in Section H. The College reserves the right, notwithstanding a withdrawal, to proceed with consideration of any complaint to completion and, if appropriate, impose a sanction.

#### **G. Investigation of Complaint**

##### **1. General**

Hamilton College uses an investigation and hearing model to resolve complaints of Sex-Based Discrimination that are not appropriate for voluntary mediation or a restorative justice process, or where either party does not want to pursue an informal resolution process.

A trained Investigator(s) will interview the parties and witnesses and collect relevant information. The Investigator(s) is authorized to contact any relevant people and to access any relevant and available records not otherwise prohibited by this Policy. It is the responsibility of the Investigator(s) to take custody of, and arrange safekeeping for, any physical or electronic records, documents, or other tangible items obtained during the investigation.

The Investigator(s) will make every effort to conclude a thorough investigation, including

submission of the written report, within ninety (90) days (absent circumstances such as school breaks and examination periods) of delivery of the notice of investigation. 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 choice present at any interview or other meeting related to the investigation and resolution process in which the party participates. In all cases, except to the extent provided in the hearing procedures described below in Section H, advisors can only advise the Complainant or Respondent privately and cannot act as speaking advocates. If an advisor does not adhere to these or other applicable ground rules, the advisor will be dismissed from the interview or other meeting, which will continue without opportunity for the advisee to secure a new advisor (except as provided in the hearing procedures).

## **2. Procedures for Submitting and Accessing Information Collected During College's Investigation**

The Complainant and Respondent will be invited to offer and/or identify all information they would like the Investigator(s) to review, and both may recommend witnesses and submit information for consideration, including proposed questions to be posed by the Investigator(s) to parties and witnesses. Decisions about interviews and collection and evaluation of relevant information, physical or electronic documents, and other tangible items, however, are ultimately at the discretion of the Investigator(s) in the context of impartial treatment of both parties. In the course of conducting interviews, the Investigator(s) will ask the interviewed individual to sign a statement attesting to, or otherwise verifying, the veracity of the information provided.

Once the investigation is complete, the Investigator will prepare a draft investigation report. The Complainant and Respondent will then be provided an equal opportunity to review the draft investigation report and to inspect and review any evidence obtained in the investigation that is relevant and not impermissible. The following types of evidence will be excluded as impermissible (even if otherwise relevant):

- (i) evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a Confidential Resource, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- (ii) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the College obtains that party's or witness's voluntary, written consent for use in the investigation and adjudication process; and
- (iii) Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the alleged Complainant's prior sexual conduct with the Respondent that is offered to prove consent.

The parties and their advisors will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the draft investigation report and the evidence, subject to redaction permitted and/or required by law. Both parties will have an opportunity to respond to this information, in writing, within ten (10) days, and the Investigator(s) will consider the parties' responses prior to completion of the final investigative report. If following the submission of these responses the Investigator(s) determine(s) that additional investigation is necessary and new information is gathered that is directly related to the allegations, it will be shared with the Complainant and Respondent and their advisors, and the parties will again have the opportunity to submit a written response as described above.

Following the review and response process described above, the Investigator(s) will complete their final written report and meet with the Chair and Title IX Coordinator to deliver that final written report. The Investigator(s) need not include information in the investigative report that the Investigator(s) determine(s) not relevant or otherwise impermissible. The Title IX Coordinator will notify the Complainant and Respondent of the completion of the investigative report. The Complainant and Respondent, and their respective advisors, will be provided a copy of the final investigative report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law, for review and (if desired) written response.

## H. Hearing Procedures

### General

A hearing will be convened not less than ten days after the parties have been provided access to the final investigative report, for the purpose of determining whether the Respondent is responsible or not responsible for the charge(s). In matters involving student Respondents, a Hearing Officer will preside over the hearing and the Review Panel, comprised of HSDB members and the Hearing Officer, will determine whether the Respondent is responsible or not responsible. In matters involving employee Respondents, a Hearing Officer will preside over the hearing and determine whether the Respondent is responsible or not responsible.

The Title IX Coordinator will notify the parties in writing of the date, time, and location of the hearing, the name[s] of the Review Panel members and/or Hearing Officer, and how to challenge participation by any Review Panel member and/or Hearing Officer for bias or conflict of interest.

Participants in the hearing will include the members of the Review Panel, where relevant, the Hearing Officer, the Complainant and the Respondent, their respective advisors, the HSDB Chair, and witnesses (solely during their own testimony). Hearings are private. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title IX Coordinator for purposes such as accommodation of a disability. The hearing will be

recorded by the College. Cell phones and recording devices may not be used by the parties or their advisors in the hearing room(s).

The parties and their advisors will be required to participate in a pre-hearing conference, convened by the Hearing Officer, to review applicable procedures and ground rules and to address any questions in advance of the hearing.

Hearings may be conducted with all parties physically present in the same location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling the Review Panel, where relevant, Hearing Officer and the parties to simultaneously see and hear any party or witness while they are speaking. If either party so requests, the hearing will be conducted with the parties located in separate rooms using technology as described in the preceding sentence.

The Title IX Coordinator may postpone the hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances.

### **Procedural Matters**

The Hearing Officer is in charge of organizing the presentation of information to be considered at the hearing. Generally, the hearing will proceed in the following order:

1. Opportunity for Opening Statement by the Complainant
2. Opportunity for Opening Statement by the Respondent
3. If requested by the Hearing Officer, the Investigator may provide a summary of the results of the investigation by the investigator(s)
4. If the investigator is called as a witness, questions for the investigator(s) by the Review Panel and/or Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)
5. Questions for the Complainant by the Review Panel and/or Hearing Officer and, if desired, on behalf of the Respondent (as described below)
6. Questions for the Respondent by the Review Panel and/or Hearing Officer and, if desired, on behalf of the Complainant (as described below)
7. Questions for each witness by the Review Panel and/or Hearing Officer and, if desired, on behalf of Complainant and the Respondent (as described below)
8. Opportunity for Closing Statement by the Complainant
9. Opportunity for Closing Statement by the Respondent

Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this Policy, any information that the Hearing Officer determines is relevant and not impermissible may be considered, including hearsay, history and information indicating a pattern of behavior. Absent extraordinary circumstances as determined by the Hearing Officer, no party may seek to introduce at the hearing any evidence not previously made available for review by the parties, other than the investigative report itself and any responses to the investigative report submitted by the parties pursuant to Section G.

The Hearing Officer will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant or otherwise impermissible information. Subject to the terms of this Policy, the Hearing Officer will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, to alter the order of the proceedings from that described above, and/or to recall parties or witnesses for additional questions as the Hearing Officer deems necessary or appropriate. The Hearing Officer may impose additional ground rules as the Hearing Officer may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

### **Advisors**

The Complainant and the Respondent may each have present with them during the hearing an advisor of their choice (at the party's expense, if the advisor is a paid advisor). If a party does not have an advisor present at the hearing, the College will provide, without fee or charge to that party, an advisor of the College's choice. Where the College provides the advisor, the College will do so in advance of the hearing in order to provide the party and their advisor a reasonable opportunity to prepare for the hearing. The advisor will work with the party throughout the hearing and then after the hearing as necessary (i.e. in the appeal process).

Except with respect to questioning as described below, the advisor's role is limited to consulting with their advisee, and the advisor may not present evidence, address the Review Panel, where relevant, or the Hearing Officer during the hearing, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet nondisruptive manner or in writing. The advisor may consult with the advisee verbally outside the hearing during breaks, when such breaks are granted by the Hearing Officer. An advisor's questioning of the other party and any witnesses must be conducted in a respectful, nonintimidating, and non-abusive manner. If the Hearing Officer determines that an advisor is not adhering to these or other ground rules, the advisor may be required to leave the hearing, and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the College will assign an advisor of the College's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below.

Witnesses are not permitted to bring an advisor or other person to the hearing, absent an approved disability accommodation. The Hearing Officer, and the Review Panel in matters

involving the Review Panel, may be advised by and/or consult with the College's legal counsel as the Hearing Officer deems necessary or appropriate.

### **Questioning Procedures**

The Hearing Officer will permit each party's advisor to ask the other party and any witnesses all relevant and not impermissible questions and follow-up questions, including those challenging credibility. For purposes of the preceding sentence, following types of questions are impermissible even if otherwise relevant:

- (i) questions regarding information that is protected under a privilege as recognized by Federal or State law or information provided to a Confidential Resource, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- (ii) questions regarding a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the College obtains that party's or witness's voluntary, written consent for use in this process; and
- (iii) questions that relate to the Complainant's sexual interests or prior sexual conduct, unless evidence about the prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent.

Questioning must be conducted by the party's advisor in a respectful, nonintimidating, and non-abusive manner, and never by a party personally. If a party does not have an advisor present at the hearing, the Title IX Coordinator will arrange for the College to provide without fee or charge to that party, an advisor of the College's choice to conduct questioning on behalf of that party.

Before the party or witness answers a question posed by an advisor, the Hearing Officer will first determine whether the question is relevant not impermissible, and will explain any decision to exclude a question. If the Hearing Officer determines that an advisor's question is relevant and not otherwise impermissible, then the question may be asked, provided that the Hearing Officer will not permit questions that are unclear or harassing of the party or witness being questioned. The Hearing Officer must give an advisor an opportunity to clarify or revise a question that the Hearing Officer has determined is unclear or harassing and, if the advisor sufficiently clarifies or revises the question to satisfy the terms of this paragraph, the question may be asked. The advisor posing the question may request that the Hearing Officer reconsider any decision to exclude a question and the Hearing Officer, after soliciting the other party's advisor's opinion, will render a final determination. Such decisions by the Hearing Officer are final and not subject to further objection or reconsideration during the hearing.



If a party or witness does not submit to questioning by a party's advisor at the hearing, the hearing panel may choose to place less or no weight upon statements by the party or witness, but will not draw an inference about whether alleged conduct occurred based solely on a party's or witness's refusal to respond to such questions.

## Hearing Determinations

Following conclusion of the hearing, the decision maker(s) (either the Review Panel including the Hearing Officer or, in matters involving employees, the Hearing Officer individually) will deliberate and render a determination (by majority vote, if the decision is made by the Review Panel) as to whether the Respondent is responsible or not responsible for the alleged violation(s). The decision maker (either the Review Panel or Hearing Officer) will use "preponderance of the evidence" as the standard of proof to determine whether each alleged violation of the Policy occurred. "Preponderance of the evidence" means that the decision maker (either the Review Panel or Hearing Officer) must determine whether, based on the evidence presented, it is more likely than not that the Respondent engaged in the conduct charged.

If the decision maker (either the Review Panel or Hearing Officer) determines that the Respondent is responsible for one or more violations, the Complainant and Respondent will be invited by the Title IX Coordinator to submit a personal impact statement that will be provided to the decision maker (either the Review Panel or Senior Staff Member) for consideration in determining appropriate recommended sanctions. The Title IX Coordinator will set the time frame for the submission of personal impact statements which normally will be no less than 3 days. The Title IX Coordinator will provide each of the parties an opportunity to review any statement submitted by the other party.

In addition to the impact statement(s), if any, factors considered when determining sanctions may include:

- the nature and severity of, and circumstances surrounding, the violation(s);
- the Respondent's state of mind at the time of the violation(s) (intentional, knowing, bias-motivated, reckless, negligent, etc.);
- the Respondent's previous disciplinary history;
- the need for sanctions to bring an end to the conduct; and/or to prevent the future recurrence of similar conduct;
- the need to remedy the effects of the conduct on the Complainant and/or the community;
- the impact of potential sanctions on the Respondent;
- sanctions imposed by the College in other matters involving comparable conduct; and
- any other lawful factors deemed relevant by the decision maker.

In cases involving student Respondents, the Review Panel will assess sanctions for any violations. The following are the sanctions that may be imposed upon students or organizations singly or in combination:

- **Warning:** Notice, orally or in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
- Mandatory educational workshop or service.
- **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 or other campus privileges, exclusion from extracurricular activities, exclusion from study abroad or other off campus programs, and other measures deemed appropriate. Violation of this Policy or the College's Code of Conduct during the period of probation may 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. 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 Review Panel may recommend, and/or the Senior Staff Member may assign, such other penalties as deemed appropriate.

**Transcript Notation:** For those crimes of violence that the College is required by federal law to include in its Annual Security Report, the transcripts of suspended or expelled students found responsible after a hearing and appeal, if any, will include the notation "Suspended after a finding of responsibility for a code of conduct violation" or "Expelled after a finding of responsibility for a code of conduct violation." A student who has been suspended may request to have the notation removed no sooner than one year after the conclusion of the suspension. Requests should be submitted in writing to the Dean of Students. Transcript notations for expulsion may not be removed. In pending cases that could result in suspension or expulsion, the Dean of Students will normally place a temporary encumbrance on a student's transcript. If a student withdraws with such charges pending and does not participate through completion in any College process, the notation "Withdrew with code of conduct charges pending" will appear on the student's transcript.

In cases involving faculty or staff Respondents, the Hearing Officer will share the finding of responsibility with the Senior Staff Member, who will impose the sanction. The following are the sanctions that may be imposed upon faculty or staff:

- Warning

- Required counseling as a condition of continued employment or return to employment
- Implementation of a performance improvement plan
- Loss of annual pay increase
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- Other lawful actions deemed appropriate.

## Notice of Outcome

The decision maker (either the Review Panel or Hearing Officer) will issue a written determination including the following information:

- A description of the charges that were adjudicated;
- A description of the policies and procedures used to evaluate the allegations;
- The decision maker's evaluation of the relevant and not otherwise impermissible evidence and determination whether prohibited conduct occurred;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College's educational programs or activities will be provided to the Complainant or other affected individuals; and
- The procedures and permissible bases for the Complainant and Respondent to appeal. The Senior Staff Member, and the Title IX Coordinator, will provide the written determination, and final sanction if relevant, to the parties simultaneously.

### I. Appeals

#### 1. When the Respondent is a Student

Either party may appeal the findings as to responsibility and/or the sanction (if applicable), or a decision to dismiss the complaint or specific allegations in the complaint, within seven (7) days of being informed in writing of the determination to be appealed. Grounds for an appeal are limited to:

- a sanction inconsistent with the severity of the violation or otherwise inappropriate;
- procedural irregularity that affected the Review Panel's determination or the determination regarding dismissal (the Appeals Board is not to substitute its judgments on the merits for that of the Review Panel);
- conflict of interest or bias (generally for or against complainants or respondents or individually for or against a party) on the part of the Title IX Coordinator, investigator(s), Hearing Officer, or Review Panel member(s) that affected the Review Panel's

- determination or the determination regarding dismissal; and/or
- the discovery of new evidence that was not reasonably available at the time the determination regarding responsibility, sanction, or dismissal was made that could affect the Review Panel's determination or the determination regarding dismissal.

Either party may submit a written request for an appeal to the Chair of the Appeals Board. The Appeals Board will not consider submissions from anyone other than the parties themselves. In the request, the party must identify the specific grounds upon which the appeal is based and must provide all of the detail the party wants considered in support of the appeal. Within one week of receipt of the appeal or as soon as practicable thereafter, the Chair shall convene the Appeals Board to determine whether there are grounds for hearing the appeal.

If the Appeals Board decides that there are acceptable grounds for appeal, the Chair of the Appeals Board will inform the Title IX Coordinator and Chair of the HSDB that an appeal request has been made. The Title IX Coordinator will provide the Appeals Board access to the Investigation Report and any other written materials that were made available to the Review Panel. The Chair of the Appeals Board will invite the Chair of the HSDB, the Hearing Officer, and the Title IX Coordinator to review the appeal request and respond in writing, if warranted, ordinarily within seven days of that invitation.

Where the Appeals Board agrees to consider an appeal by the Respondent, the Complainant will be provided with a copy of the Respondent's appeal and invited to respond. Where the Appeals Board agrees to consider an appeal by the Complainant, the Respondent will be provided a copy of the Complainant's appeal and invited to respond. In either case, the Title IX Coordinator and HSDB Chair will review the appeal statement to determine whether the information contained therein is relevant and material to the determination of the appeal and, in general, the Title IX Coordinator and the HSDB Chair may redact information that is irrelevant or otherwise violative of this Policy.

The Chair of the Appeals Board will schedule meetings for consideration and disposition of the appeal after all materials are received, which should be within one week of the Board's decision, or as soon as practicable thereafter, to hear the appeal. In considering the appeal, the Appeals Board may request additional information from the Title IX Coordinator, the Hearing Officer, or the Chair of the HSDB. Normally, the parties, Title IX Coordinator, the Hearing Officer, and Chair of the HSDB will not appear before the Appeals Board, though they may be summoned at the discretion of the Chair of the Appeals Board.

The Appeals Board may:

- uphold the original decision as to responsibility, sanction, or dismissal;
- alter the decision as to responsibility, sanction or dismissal;
- remand the matter to the Review Panel. The Appeals Board may (but is not required to) take this action when there is a procedural irregularity that could be corrected in a review or the presentation of previously unavailable relevant information that could

- significantly impact the result of the Review Panel's determination;
- remand the matter to the Review Panel with a recommendation that the sanction be modified, together with an explanation of why the original sanction is deemed inappropriate;
  - remand the matter to the Title IX Coordinator for reinstatement of a dismissed complaint or allegation, together with an explanation of why the dismissal is deemed inappropriate; or
  - remand the matter to an ad hoc Review Panel composed of a new Hearing Officer and members of the HSDB not previously involved in the matter. This will be done only in cases in which the Appeals Board has concluded that bias exists, or otherwise when, in the considered opinion of the Appeals Board, the matter would be best addressed by a newly-constituted panel.

Any determination made following a remand of a matter is subject to appeal to the Appeals Board utilizing this same process.

The appeal will be decided by a majority vote. The Appeals Board will provide the parties, the Chair of the HSDB, and the Title IX Coordinator written notice of its decision, including grounds for the decision, normally within ten days of concluding its review process. The record of the appeal will consist of the letter of appeal; any written statements from the parties, Chair of the HSDB and/or the Title IX Coordinator, 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 as part of the case file maintained by the Title IX Coordinator.

Decisions of the Appeals Board are final.

## **2. When the Respondent is a Faculty Member**

Either party may request an appeal of the findings as to responsibility and/or the sanction (if applicable), or a decision to dismiss the complaint or specific allegations in the complaint, within seven (7) days of being informed in writing of the determination to be appealed. Grounds for appeal are limited to:

- a sanction inconsistent with the severity of the violation or otherwise inappropriate;
- procedural irregularity that affected the Hearing Officer's or Senior Staff Member's determination or the determination regarding dismissal (the President's and Vice President's judgment on the merits should not be substituted for that of the Hearing Officer and Senior Staff Member);
- Conflict of interest or bias (generally for or against complainants or respondents or individually for or against a party) on the part of the Title IX Coordinator, Investigator(s), Hearing Officer, or Senior Staff Member that affected the Hearing Officer's or Senior Staff Member's determination or the determination regarding dismissal; and/or
- the discovery of new evidence that was not reasonably available at the time the determination regarding responsibility, sanction, or dismissal was made that

could affect the Hearing Officer's or Senior Staff Member's determination or the determination regarding dismissal.

The appeal will be considered by the President and a Vice President not otherwise involved in the matter, as selected by the Title IX Coordinator. On appeal, the President and Vice President may uphold the original determination; remand the matter for either further consideration by the Hearing Officer, the Senior Staff Member and/or Investigator(s); remand the matter for further consideration by a different Hearing Officer, Senior Staff Member and/or investigator; or modify or reject the determination. The President and Vice President's decision is final, subject to the rights of the parties to appeal any proceedings ordered on remand. In the event the President and Vice President do not agree, the Title IX Coordinator will appoint to the panel another Vice President not involved in the matter.

### **3. When the Respondent is a Staff Member**

Either party may request an appeal of the findings as to responsibility and/or the sanction (if applicable), or a decision to dismiss the complaint or specific allegations in the complaint, within seven (7) days of being informed in writing of the determination to be appealed. Grounds for an appeal are limited to:

- a sanction inconsistent with the severity of the violation or otherwise inappropriate;
- a procedural irregularity that affected the Hearing Officer's or Senior Staff Member's determination or the determination regarding dismissal (the President's and Vice President's judgment on the merits should not be substituted for that of the Hearing Officer and Senior Staff Member);
- Conflict of interest or bias (generally for or against complainants or respondents or individually for or against a party) on the part of the Title IX Coordinator, Investigator(s), Hearing Officer or Senior Staff Member that affected the Hearing Officer's or Senior Staff member's determination or the determination regarding dismissal; and/or
- the discovery of new evidence that was not reasonably available at the time the determination regarding responsibility, sanction, or dismissal was made that could affect the Hearing Officer's or Senior Staff Member's determination or the determination regarding dismissal.

The appeal will be heard by the President and a Vice President not otherwise involved in the matter, as selected by the Title IX Coordinator. On appeal, the President and Vice President may uphold the original determination; remand the matter for further consideration by the Hearing Officer, the Senior Staff Member and/or Investigator(s); remand the matter for further consideration by a different Hearing Officer, Senior Staff Member and/or investigator; or modify or reject the determination. The President and Vice President's decision is final, subject to the rights of the parties to appeal any proceedings ordered on remand. In the event the President and Vice President do not agree, the Title IX Coordinator will appoint to the panel another Vice President not involved in the matter.

## **XII. Guests and Non-College Community Members**

The College expects all guests to be able to participate in its programs and offerings (to the extent otherwise appropriate) without experiencing Sex-Based Discrimination related to those programs and offerings. The College also expects guests and other non-community members to not engage in such conduct towards others in the context of those programs and offerings.

If guests or other non-community members believe they have been subjected to Sex-Based Discrimination by a member of the College community in connection with a College program or offering, they may request that the conduct be addressed pursuant to the applicable process under this Policy.

If College community members believe they have been subjected to Sex-Based Discrimination by a guest or other non-community member in connection with a College program or offering, they should make a report to the Title IX Coordinator, who will work with Campus Safety or other College officials to conduct an appropriate investigation. The officials will report their findings to the Title IX Coordinator for action. The decision of the Title IX Coordinator in such matters will be final.

## **XIII. Conflicts**

If the Title IX Coordinator determines that a legitimate conflict of interest exists between an Investigator(s), Hearing Officer, or a member of the Review Panel and a party to a complaint, the Title IX Coordinator, in consultation with the Chair of the HSDB, will appoint a replacement. In the event the Complainant, Respondent, Chair of the HSDB, 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 HSDB to oversee the process.

If a complaint is made against the President, or a member of the Board of Trustees, it will go to the Chair of the Board of Trustees (or the Vice Chair of the Board of Trustees if the charge is against the Chair), who may appoint different individuals to any role under this Policy as the Chair (or Vice Chair) deems appropriate to ensure a fair and appropriate process.

## **XIV. Coordination with Other Policies**

A particular situation may potentially invoke one or more College policies or processes. The Title IX Coordinator, in consultation with other College officials, reserves the right to determine the most applicable policy or process and to utilize that policy or process.

## **XV. Records**

The Title IX Coordinator shall keep on file in the Title IX office for seven years the following written documentation:

- Each Sex-Based Discrimination investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript made in connection with a formal resolution, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant or other affected individuals designed to restore or preserve equal access to the College’s education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- Any materials used to train the Title IX Coordinator, investigators, decision-makers, any person who facilitates an informal resolution process, and other College employees as described in Section XVI. The College will make these training materials available for inspection by members of the public on request.

For each report of potential Sex-Based Discrimination made to the Title IX Coordinator, the College will create records of any actions, including any supportive measures, taken in response to a report or complaint of Sex-Based Discrimination. In each instance, the College will document the reason for actions taken, and document that it has taken measures designed to restore or preserve equal access to the College’s education program or activity. If the College does not provide a party with requested supportive measures, then the College will document the reasons for that decision. The College will maintain these records for seven (7) years.

## **XVI. Training**

The College will ensure that all employees receive annual training on

- The College’s obligation to address Sex-Based Discrimination in its education program or activity;
- The scope of conduct that constitutes Sex-Based Discrimination under Title IX and this Policy, including the definition of sex-based harassment; and
- All applicable notification and information requirements with respect to reports of Sex-Based Discrimination and when an employee is informed that the student is pregnant or experiencing a pregnancy related event.

The College will ensure that Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process or has the authority to modify or terminate supportive measures, receive training on the following aspects of the Policy:

- The College’s obligations to respond to Sex-Based Discrimination under Title IX and other relevant laws;
- The College’s formal and informal resolution processes;
- The meaning and application of the term “relevant” in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance in the formal resolution process;
- The effects of trauma;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts



- of interest, and bias; and
- The rights of the Respondent (including the right to a presumption that the Respondent is “not responsible” until a finding of responsibility is made).

The College will ensure that decision-makers also receive training on

- any technology to be used at a live hearing, and
- issues of relevance and impermissibility of questions and evidence, including when questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not permissible.

The College will ensure that individuals who facilitate informal resolution process also receive training on

- the rules and practices associated with the College’s informal resolution process and
- on how to serve impartially, including by avoiding conflicts of interest and bias.

The College will ensure that investigators also receive training on:

- conducting investigations of Sex-Based Discrimination, and
- issues of relevance to create an investigative report that fairly summarizes relevant evidence.

## **XVII. Annual Report**

At the end of each academic year, the Title IX Coordinator shall prepare a report that will include the number of notices of alleged Sex-Based Discrimination, the kinds of behaviors that gave rise to complaints during that academic year, and the final resolution of those complaints. 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.

## **XVIII. Counsel**

Any College administrator or official when involved in the implementation of this Policy (e.g., HSDB member, Senior Staff Member, Director of Human Resources, etc.) may seek the advice of, and share information with, the College’s legal counsel through the Title IX Coordinator.

## **XIX. Policy Amendment**

Members of the community may suggest Policy changes to members of the HSDB or the Title IX Coordinator. Final policy changes, other than updates to contact information included in this policy, are to be approved by the President of the College. Unless otherwise provided in the amendment, amendments to this Policy will become effective upon approval.

## **XX. 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: Rachel Koegel, at (315) 859-4245 or [rkoegel@hamilton.edu](mailto:rkoegel@hamilton.edu) or [titleix@hamilton.edu](mailto:titleix@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](mailto: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

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, 5th Floor  
New York, New York 10004  
Phone: 1-800-669-4000  
Fax: 212-336-3790  
TTY: 1-800-669-6820

## XXI. Options for Immediate Assistance

### On Campus Support Resources

The **Counseling Center** (315-859-4340) is a **confidential** resource, available 24-hours a day/7 days a week, whose staff can provide students emotional support and information about reporting options.

The **Health Center** (315-859-4111) is a **confidential** resource for students whose staff provides medical assistance, and can share information about reporting options. After hours, **Emergency Medical Technicians** (EMTs) are available (reached through Campus Safety at 315-859-4000).

The **Chaplains** (315-859-4130) are **confidential** resources for students and employees whose staff can provide pastoral counsel, emotional support, and information about reporting options. Visit the Chaplaincy site (<http://www.hamilton.edu/chaplain/office-hours>) to learn how to contact individual staff in the Chaplaincy.

**Employee Assistance Program (EAP)** (1-800-834-3947) through BRiDGES is a **confidential** resource for employees regarding issues ranging from alcohol and drug abuse to financial and legal concerns. Appointments with a BRiDGES EAP professional are available 8:00 am until 5:00 pm Monday through Friday with evening hours on Tuesday. Call 315-697-3949 or 1-800-834-3947 during working hours and a staff member will assist in booking an appointment and/or answering any of your questions. A 24-hour answering machine is also available after hours to provide callers with the numbers for crisis services or to take messages. An employee or a family member may attend up to five sessions unless a referral to a community provider is recommended.

**Campus Safety** (315-859-4000) is available to students and employees 24 hours a day, 7 days a week to respond to any community concern. Campus Safety will notify the Title IX Coordinator after responding to a call related to alleged Sex-Based Discrimination. Campus Safety is not a confidential resource; however, every effort will be made to maintain privacy.

The College's **Title IX Coordinator**, Rachel Koegel, is also available to students and employees as a resource. **Talking with the Title IX Coordinator about a specific incident of Sex-Based Discrimination constitutes a report under this Policy to which the College must respond, although this does not necessarily mean that the College will take action if the Complainant does**

**not wish for action to be taken (see Article IV, Privacy and Confidentiality).** However, general conversations or questions about Hamilton’s processes can remain private. The Title IX Coordinator can provide information about all resources available to individuals who have experienced Sex-Based Discrimination, including where to obtain emergency mental health services and health care. The Title IX Coordinator can review and determine the immediate academic and administrative accommodations that can be made to protect a Hamilton community member who has experienced Sex-Based Discrimination. The Title IX Coordinator 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. The Title IX Coordinator will provide guidance and assistance through the process of reporting on- and/or off-campus. She can be reached at 315-859-4245 or after hours for emergencies 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. If requested, YWCA Rape Crisis Service may also provide victim advocacy services.

**Help Restore Hope Center** (855-966-9723) coordinates **Sexual Assault Nurse Examiner (SANE)** services for medical attention (injuries from a sexual assault are not always immediately apparent) and collecting physical evidence (a “rape kit”) at a regional hospital. 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. There is a limited window of time (typically up to 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 **confidential** resources and 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 encourage an individual reporting Sex-Based Discrimination 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 or Community Memorial Hospital (as designated by Help Restore Hope) 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.

### **Law Enforcement**

The College encourages anyone who is a victim of Sex-Based Discrimination to pursue criminal action for incidents that may also be crimes under applicable criminal statutes. The **New York State Police Campus Sexual Assault Victim Unit's 24-hour Hotline** (1-844-845-7269) or the Oneida County Sheriff (315-736-0141) can assist with pressing criminal charges following an incident in New York.