

*INTERIM REPORT*



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July 16, 2013

Rebecca Chopp, Ph.D.  
President  
Swarthmore College  
500 College Avenue  
Swarthmore, Pennsylvania 19081

RE: Interim Findings & Recommendations

Dear President Chopp:

We are honored to assist Swarthmore College in its efforts to assess and improve its current policies and procedures for preventing and responding to incidents of sexual misconduct.<sup>1</sup> The overall goal of our efforts is to provide recommendations and opportunities for the College to evaluate and enhance its processes to ensure a sensitive, fair, and equitable response to acts of sexual misconduct, and which align with applicable federal and state laws, guidelines, and best practices.

We are convinced, based on our interactions to date, that the Swarthmore College community is committed to creating a campus environment and climate devoid of sexual misconduct in all its ugly forms, including sexual discrimination, harassment and sexual violence. We believe there are many steps the College can take to achieve this goal, while recognizing that lasting change must include significant and ongoing dialogue with the campus community, in the spirit of the Swarthmore culture.

**I. Context**

Swarthmore College is at a critical crossroads – on the one hand, President Chopp recognized the need for an objective, external review to assess the College’s policies and practices for preventing and responding to sexual misconduct – while on the other, and shortly after that

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<sup>1</sup> For the purposes of this report, the phrase “sexual misconduct” refers to sexual discrimination, sexual harassment, sexual assault, intimate partner violence, stalking, gender identity violence, and all forms of sexual and gender violence.

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review was announced, students filed complaints with the U.S. Department of Education alleging that the College has not done enough to create an environment free from sexual misconduct. In our professional opinion, the College has taken progressively meaningful and impactful steps to foster a culture free from sexual misconduct since the Department of Education (ED) Office of Civil Rights (OCR) issued its Dear Colleague Letter (DCL) in April 2011. These efforts included designating a Title IX Coordinator; assigning a newly hired staff member to serve as the primary investigator for complaints of sexual harassment/assault; and conducting training for faculty, staff, and students. In spite of these actions, there is much work needed to ensure the College has firmly grounded and fully compliant policies, procedures, and practices to prevent and respond to allegations of sexual misconduct. Additionally, recently enacted amendments to the Clery Act, known collectively as the Campus Sexual Violence Elimination Act (Campus SaVE), impose new obligations on colleges and universities to do more about sexual and gender violence, including sexual assault, domestic and intimate partner violence, and stalking. (The Department of Education expects institutions to make a good faith effort to comply with the statutory requirements in accordance with the statutory effective date of March 7, 2013, while the reporting requirements are effective with the annual security report published by October 1, 2014.)

Our review to date has focused on gaining a better understanding of the culture, policies, systems, and practices for preventing and responding to issues of sexual misconduct. Our ongoing work will engage with the wider Swarthmore College community to identify challenges faced by complainants at the College, better understand how sexual misconduct is perceived by the wider College community, and develop additional recommendations for improving the College's prevention and response initiatives based on these insights.

In the interim, however, we have identified a number of essential opportunities for the College to consider in order to enhance its compliance with Title IX (and associated guidance), the Clery Act, and best and promising practices for preventing and responding to complaints of sexual misconduct. In our professional opinion, implementation of many of the near-term recommendations in this Interim Report will lead to clearer, more concise policies and transparent processes. We outline these opportunities and ways to achieve them in the pages that follow.

## **II. Charge**

Swarthmore College retained Margolis Healy & Associates (MHA) to assess the College's policies, procedures, and practices related to Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in all educational programs and activities that receive federal financial assistance and the College's compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (referred to as the Clery Act; (20 USC §1092(f)), a federal law that requires the annual disclosure of campus

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crime statistics and information about certain security policies and programs and real time disclosure of information related to safety and security threats and crimes reported to the campus security authorities. (We note, as well, that there have been two complaints lodged with the Department of Education by two Swarthmore students (and others, as yet unidentified) against the College alleging violations of the Clery Act and Title IX. MHA does not have access to the actual complaints. An important part of our assessment is to hear firsthand from survivors about their experiences. We have already met with some survivors and will continue to do so in the fall.). Our work is intended to be done in concert with the newly established Task Force on Sexual Misconduct, which is comprised of Swarthmore students, faculty, staff, and members of the Board of Managers. The Task Force, according to its Chair, Professor of Sociology Sarah Willie-LeBreton, will “offer recommendations that ensure the College fulfills its obligations in a manner that is both within the letter of the law and its spirit.” The Task Force has been meeting this summer and was urged, by President Chopp, to go beyond their primary charge and recommend ways of improving how Swarthmore community members “relate to each other, ideas for fostering greater mutual respect, and suggestions for achieving the conditions necessary to ensure a safer space for everyone who lives and works at Swarthmore College.”

### **III. Summary of Documents & Policy Review**

Before our site visits, we requested and received numerous College documents related to sexual misconduct policies and Clery Act compliance. Before, during and after our visits, we conducted and continue to conduct extensive reviews of these documents, which included copies of all College grievance procedures (pertaining, as applicable, to anti-harassment, sexual assault, staff/faculty misconduct, and/or general student misconduct prohibitions and procedures); policies providing for the prompt and equitable resolution of student and employee sex discrimination; policies related to sexual harassment and/or sexual violence complaints; descriptions of relevant resources, listings of academic/residential accommodations; documents relating to advice for victims of sexual violence; documents pertaining to the curriculum for training programs developed and delivered by the College to ensure those persons involved in implementing related investigations and grievance procedures have appropriate training and/or experience in handling investigations and adjudicating complaints; and records verifying such training, among other documents.

### **IV. Summary of Our Work to Date**

The MHA team, consisting of MHA Managing Partner and Project Manager Steven J. Healy; MHA Managing Partner Dr. Gary J. Margolis; Associate(s) Pamela Heatlie, Esq.; Dr. Linda Langford; Anne Munch, Esq.; and Thomas R. Tremblay, conducted extensive documentation review and research before and during our initial visit to campus from Monday, May 20 through Thursday, May 23, 2013. The team conducted interviews of faculty and staff in

various departments related to the scope of work, and met with stakeholders including College leadership; the Task Force on Sexual Misconduct; the Title IX Coordinator; staff from the Deans' Office (including Worth Health Center and CAPS), Public Safety, Athletics, Human Resources; self-identified survivors; peer advisors; and other campus community members. These sessions were intended, first and foremost, to orient our team to the systems, people, and culture surrounding Swarthmore's response to reports of sexual misconduct. Steven J. Healy, and MHA Associate Michael Webster visited the campus a second time from Wednesday, June 19 through Friday, June 21, 2013 to focus specifically on Clery Act compliance. Additional campus visits are being conducted in July, August and September, 2013.

## **V. Recommendations**

Based on our on-going research, site visits, and continuing conversations with members of the Swarthmore College community, we have identified a number of actions the College should consider during the coming months to enhance its compliance with Title IX (and associated guidance), the Clery Act, and best and promising practices for preventing and responding to complaints of sexual misconduct. The recommendations that follow reflect our assessment of steps the College can take in the near-term, in keeping with its desire to institute immediate, effective change. We will issue a final report, with a complete list of recommendations, following additional campus visits in the fall.

### **1) Title IX Coordinator and Deputy Coordinators**

- Based on our initial assessment of Swarthmore's structures and systems to ensure Title IX compliance, we recommend the College create an independent Title IX Coordinator position, reporting directly to the President or other appropriate cabinet level officer. Given that the College will likely need to fill this position through a national search, we further recommend an interim appointment, filled by an individual who can dedicate their full attention to managing the immediate implementation of the changes outlined in this initial report. The Title IX Coordinator should assume the oversight responsibilities outlined in the April 4, 2011 DCL.
- The College should revisit its current designations of Deputy Title IX Coordinators and appoint individuals to serve the various constituent groups at the College. Specifically, the College should consider appointing individuals in the Office of Human Resources (staff), the Dean's Office (students), the Provost's Office (faculty), and Athletics (student athletes) to support the Title IX Coordinator's responsibilities of overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of Title IX complaints. The College should identify and designate these positions during the summer months and ensure they receive necessary training before the start of the 2013-2014 Academic Year.

**2) Notice of Title IX Coordinator, Notice of Non-Discrimination, and Related Sexual Misconduct Policies**

- The College should revise the Notice of Sexual Misconduct Policy (and Sexual Misconduct Policy) to include full contact information for the Title IX Coordinator, to clearly state that inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or the U.S Department of Education Office of Civil Rights (OCR), and to indicate that sex discrimination is prohibited in the College's education programs and activities. The Notice (and Sexual Misconduct Policy) should also be clear that it applies to employment and admissions.
- Review the Sexual Misconduct Policy and the two Prohibition of Sexual and Discriminatory Harassment policies for consistency in terms of content, definitions and terminology and to ensure they address sexual discrimination (including sexual misconduct) by any individual whether student, faculty, staff or visitor/third party.
- Create a comprehensive sexual misconduct response and investigation policy based on national best practices and model policies, including directives for staff to follow, and that includes MOU's with local police and local victim service providers.

**3) Identify dedicated, trained support for complainants and respondents**

- The College should create a sexual misconduct support function dedicated to providing advocacy and support for survivors of sexual assault and other forms of sexual harassment. This individual will primarily be responsible for helping victim/survivors' navigate the College's resources and systems to ensure appropriate support, and guidance throughout. The advocate will work closely with other College staff already providing support to survivor groups, such as Beth Kotarski, who advises the SMART Team students. We believe this position logically aligns with Student Life (or appropriate sub-division).
- With respect to the DCL's requirements for institutions to provide prompt and equitable resolution of sexual harassment complaints, we recommend the College also commit dedicated resources for respondents, including support through the grievance process.

**4) Enhance investigative capacity**

- The College needs additional capacity to effectively respond to multiple simultaneous reports of sexual misconduct and to ensure adequate, reliable, and impartial investigations of such reports. The College should address this issue by training more of its staff, consider hiring an additional investigator, and through appropriate outsourcing, if necessary. All investigators should receive current, best practice based training for investigating reports of sexual misconduct. MHA is currently working with the Department of Public Safety to arrange this training.

## 5) Enhance the College's response to High Risk Drinking

- While this assessment is not a review of the College's Alcohol and Other Drugs (AOD) policies and drinking and other substance abuse culture, we would be remiss to ignore the role of AOD in sexual and gender violence. In addition, it is important to be aware that violence prevention programs are situated within a broader environment and to take that context into account when developing prevention efforts. This includes many aspects, for example, the geographic environment, the institutional culture, the social environment, and student norms of behavior. One aspect of the broader environment includes the role of alcohol in the campus community. Because campuses with higher levels of alcohol abuse experience more crime and violence generally, including sexual violence,<sup>2,3</sup> strong alcohol and other drug abuse prevention efforts can be an important complement to dedicated efforts to address sexual violence, intimate partner violence, and stalking. Over the longer term, we recommend the College conduct a comprehensive examination of the social environment on campus and in particular, the events identified or perceived as high risk for sexual misconduct and consider whether additional prevention and mitigation efforts are merited beyond the current risk reduction programs. The organization, management, and norms surrounding these events may be creating a climate in which sexual aggression can flourish and victims are less likely to be believed.
- A strong AOD program and staff is critical to the College's success in this area. We recommend a dedicated, trained, and certified professional with expertise in alcohol and other drug counseling be part of the College's broader commitment to health and wellness efforts. The individual in this role should have expertise in state-of-the-art alcohol prevention practices (i.e., evidence-based practices in campus AOD prevention, environmental management, and brief interventions/BASICS). The individual should also have expertise concerning the current literature regarding AOD abuse, dependence and addiction and dual diagnoses involving AOD. We highly recommend the decoupling of this role with any other role that potentially conflicts with the primary role of an AOD counselor or programming staff.

## 6) Education and Prevention Programming

- The College must provide comprehensive, clear, and consistent information and education regarding sexual assault, harassment, and other forms of sexual misconduct to meet the DCL's recommendations for proactive measures to prevent sexual misconduct. Since strong student involvement and ownership is a hallmark of the College's current educational efforts, the College should build upon these efforts by continuing and enhancing its close work with the SMARTeam and ASAP to refine information, publications, trainings, etc. One

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<sup>2</sup> Grossman, M., and Markowitz, S. *Alcohol Regulation and Violence on College Campuses*, NBER Working Paper No.7129 (Cambridge, Mass.: National Bureau of Economic Research, 1999). Available online at <http://www.nber.org/papers/w7129>.

<sup>3</sup> Wechsler, H., Lee, J. E., Kuo, M., Seibring, M., Nelson, T. F., & Lee, H. (2002). Trends in college binge drinking during a period of increased prevention efforts. Findings from 4 Harvard School of Public Health College Alcohol Study surveys: 1993-2001. *Journal of American College Health*: 50(5), 203-217.

possible option would be to require new students to take an on online course and adjust the orientation sessions accordingly. If feasible, the College may wish to consider involving SMART team members in choosing the online course for incoming students. We are in the process of identifying possible online courses appropriate for Swarthmore College.

- Immediately undertake a comprehensive inventory of current education and prevention efforts that includes describing each program in detail, including its objectives/learning outcomes, audience, content, format and delivery mode, reach, effectiveness, and other key attributes. Use this inventory to identify gaps, ways to strengthen current efforts, and needed revisions to comply with federal mandates and best practices in the field. Engage the Task Force on Sexual Misconduct and other student groups in this initiative.

## **7) Training**

- The College should develop a comprehensive training plan, which can begin to be implemented in late summer and throughout the fall, for all members of the College community, prioritizing those who are most likely to receive complaints of sexual conduct.<sup>4</sup> During our campus visits, we heard multiple accounts – from self-identified survivors, staff, and campus community members-at-large – that led us to conclude that there are significant opportunities to improve training and education on the College’s goals and policies related to sexual misconduct. These opportunities include enhanced guidance and training about what types of responses to disclosures are compliant with Title IX obligations, supportive to the individual, and role-appropriate; what responses are inappropriate and outside the scope of an initial response; and on supportive ways to inform complainants and respondents about support services. The training should ensure that confidential resources understand the grievance procedures and can articulate them to complainants or others.
- Even as we begin to look more comprehensively at the College grievance procedure, it is clear that individuals responsible for administering grievance procedures should be knowledgeable about how to do so in a non-judgmental manner, and should be otherwise aware of how to interact with individuals who have concerns about misconduct, or have had such a complaint brought against them. Beginning this fall, the College should build specific content into the training designed to create responses that are sensitive to the distinct experiences of victims of sexual assault. For example, the training might include statements and behaviors that were perceived as victim blaming, and conversely, approaches that felt validating and supportive. Whenever possible, training should include active learning techniques like scenario-based learning and role-plays to build skills for supportive and role-appropriate responses.

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<sup>4</sup> While not specific to higher education settings, a helpful resource for creating a training plan is Training Professionals in the Primary Prevention of Sexual and Intimate Partner Violence: A Planning Guide, available at [http://www.cdc.gov/violenceprevention/pdf/Training\\_Practice\\_Guidelines.pdf](http://www.cdc.gov/violenceprevention/pdf/Training_Practice_Guidelines.pdf).

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- Consider developing supplemental materials that clearly designate and publicize which offices and/or individuals provide complainant and respondent support functions, the scope of these services, and the confidentiality level of each resource. Provide these materials to faculty, staff, and administrators as part of training and teach supportive ways to refer individuals to these support services. This information should be provided to the campus community through a number of modalities including a mobile app platform for sharing important safety and security information.

### **8) Clery Act revisions**

- Overall, the College has made significant improvements in its compliance program over the past year or so. Many of the improvement are directly attributable to the new Director and Associate Director of Public Safety. There are several remaining areas that the College should work to improve in the near term, including the following:
  - o Charter and form a Clery Compliance Coordinating Committee. The goal of this committee is to guide the College's Clery compliance activities;
  - o Revise the procedures for determining when to issue a Timely Warning Reports;
  - o Clarify the process for classifying Clery Act crimes;
  - o In the fall, begin to enhance systems and processes for the collection of crime data from non-public safety Campus Security Authorities (CSAs); and,
  - o Ensure identification, notification and training of all CSAs. This training should occur in conjunction with previously scheduled sessions (such as RA training in August) or in the fall once the semester is in full swing.

### **9) Immediate Next Steps**

- The College should undertake a comprehensive review of its grievance procedures to address any procedural deficiencies and revise them to ensure they are user-friendly and don't create barriers to reporting. Easily understood procedures play a large part in ensuring that members of the College feel encouraged to come forward with sexual misconduct concerns. Additionally, once the procedures are revised and appropriately vetted with the campus community, we suggest an aggressive strategy to ensure the procedures are easily accessible and fully understood by those College members who are likely to receive complaints, including confidential resources. We will be on campus the week of July 15 to assist with this on-going review.

While we have been able to glean much about the College's policies and practices in the areas under review, and hear about the experiences and perceptions of some survivors, we recognize that we have not had the opportunity to hear from all who should have a voice



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in these important discussions. Our work will continue over the summer and into the fall when we return to campus for additional interviews, documentation review, and focus groups. Our final report will articulate additional steps the College should take to continue its efforts to become a national model in the prevention, support, programming, and adjudication of sexual misconduct on college campuses.

Sincerely,

MARGOLIS HEALY & ASSOCIATES, LLC

/signed/

Steven J. Healy  
Managing Partner