



## Procedures for Resolving Allegations of Discrimination, Harassment and Retaliation

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I. **KEYWORDS**

**Advisor** means a person chosen by a Party to accompany the Party to any meeting, interview, or hearing related to the investigative process. An Advisor may not speak on behalf of a Party or otherwise directly participate in the hearing or investigative meetings and must be a member of the Swarthmore College community as either professional or instructional staff.

**Age** means the number of years from the date of a person's birth. With respect to employment, individuals who are forty (40) years of age or older are protected from discrimination and harassment based on age. There is no age threshold for protection from discrimination for students or other participants in educational programs or activities.

**College Community** means Swarthmore College instructional staff, staff (including employees covered under Collective Bargaining Agreements), students, managers, officers, and other members of the College community. It also applies to applicants for admission or employment, visitors, and third Parties doing business or providing services on campus, including vendors, independent contractors, and consultants. When used in this Policy, "employee" generally refers to both staff and instructional staff members.

**Color** means an individual's skin tone, complexion or shade.

**Complainant** means an individual who is alleged to have been subjected to Discrimination, Harassment and/or Retaliation, as defined in this Policy, or the victim of Retaliation for engaging in a protected activity.

**Day(s)** means a business Day when the College is in normal operation. Although classes are not held, Fall, Spring and Summer break will typically be included as the College is in normal operation.

**Disability** means a physical or mental impairment that substantially limits one or more major life activities. Individuals are protected from discrimination if they have such an impairment; have a record of such impairment; or are regarded as having such impairment. A qualified person with a disability must be able to perform the essential functions of the employment or volunteer position or the academic, athletic or extra-curricular program, with or without reasonable accommodation.

**Designated Employee** means all deans, department heads, instructional staff, directors and supervisors, as well as any staff, student employees or volunteers who are responsible for student welfare. Designated employees must report immediately to the College's Equal Opportunity Officer any and all incidents they have reason to believe constitute discrimination and harassment under this Policy, regardless of whether or not the individual witnessed the incident themselves or learned of it through the Complainant or a Third Party.

**Determination** means a conclusion by the Preponderance of the Evidence as to whether there is sufficient information to conclude that the conduct occurred as alleged and, if so, whether such alleged conduct constitutes a violation of College Policy.

**Ethnic or National Origin** means an individual's actual or perceived country or ethnicity of origin.

**Equal Opportunity Officer** is an official designated by the College to ensure compliance with Title VI, Title VII, other civil rights and anti-discrimination laws, and this Policy. References to the Equal Opportunity Officer throughout this Policy may also include a designee for specific tasks.

**Formal Complaint** means a document signed by a Complainant or the Equal Opportunity Officer that includes a brief description of the allegations of discrimination, harassment and/or retaliation with date/location if known, identifying the Respondent and articulating the Complainant's intent to file a Formal Complaint and requesting a formal investigation. A Formal Complaint is required in order to begin participation in the Formal Resolution Process. However, under some circumstances, the Equal Opportunity Officer may pursue a Formal Resolution Process without a Formal Complaint.

**Gender** means a socially constructed set of expectations, roles, behaviors and activities a given society or culture considers appropriate for individuals generally based on an individual's sex assigned at birth.

**Gender Expression** means the external appearance of one's gender identity, usually expressed through behavior, clothing, haircut, or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

**Gender Identity** means one's innermost concept of self as a man, woman, a blend of both or neither - how individuals perceive themselves and what they call themselves. One's gender identity may or may not be aligned with their sex assigned at birth.

**Genetic Information** means information about (i) an individual's genetic tests, (ii) the genetic tests of family members of such individuals, and (iii) the manifestation of a disease or disorder in family members of such individuals. Genetic Information includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services by such individual or any family member of such individual.

**Hate Crime** is defined in federal and state statutes as a criminal offense committed against a person or property that is motivated, in whole or in part, by the offender's bias

against the victim's identity or group affiliation. See PA Ethnic Intimidation Act (Act 154 of 1982, 18 Pa. C.S. §2710).

**Initial Assessment** means an immediate assessment conducted in every report of Discrimination, Harassment, Retaliation and/or Conduct of Concern to evaluate any risk of harm to individuals or to the campus community and what steps are necessary for the College to take to address those risks.

**Investigator** means the person(s) charged by the College with gathering facts about an alleged violation of this Policy, assessing relevance, synthesizing the evidence, and compiling this information into an Investigative Report.

**Investigative Report** means a written document prepared by the Investigator that fairly summarizes all relevant evidence collected and reviewed during the course of an Investigation.

**Military/Veteran Status** means the status of an individual with respect to being or having been a military service member. This includes disabled veterans, special disabled veterans, veterans of the Vietnam Era, and other protected veterans as defined by federal and state law.

**Party** means the Complainant or Respondent.

**Parties** include the Complainant(s) and Respondent(s), collectively.

**Policy** means Swarthmore College's Policy on Prohibited Discrimination, Harassment, and Retaliation.

**Preponderance of the Evidence** This is the standard for determining whether a violation of this Policy has occurred and means that more than 50% of the evidence supports the finding. The Preponderance of the Evidence is equivalent to "more likely than not."

**Prohibited Conduct** Conduct defined in [Section V.G](#) that violates this Policy.

**Race** means an individual's actual or perceived racial or ethnic ancestry or physical characteristics associated with a person's race, such as a person's color, hair (including hair texture or hairstyle commonly associated with a particular race), facial features, height and weight.

**Religion/Religious Expression** means all aspects of religious observance and practice as well as belief.

**Remedy(ies)** are measures directed toward the Complainant and/or the College Community to address safety, prevent recurrence, and restore equal access to the College's programs and activities after a Respondent is found to have violated this Policy.

**Respondent** means an individual who has been alleged to have committed acts of Discrimination, Harassment and/or Retaliation.

**Retaliation** means any adverse action taken against a person or group for raising concerns of discrimination, harassment or retaliation, making a good faith report of Prohibited Conduct, or participating, or choosing not to participate, in any process or proceeding under this Policy.

**Sanction(s)** means a consequence imposed by the College on a Respondent who is found to have violated this Policy.

**Sex (Assigned at Birth)** means a designation at birth (male, female, and intersex) generally based on external appearance of sex organs. Sex also includes pregnancy, childbirth, and medical conditions related to pregnancy or childbirth. Conduct of a sexual nature is by definition based on Sex as a Protected Category.

**Sexual Orientation** means one's sexual, romantic, physical, and/or emotional attraction (or lack of attraction) to others.

**Shared Ancestry** means an individual's actual or perceived shared ancestry or ethnic characteristics.

**Supportive Measures** are non-disciplinary, non-punitive individualized services that may be provided to parties upon request to restore or preserve a party's access to the College's program or activity, when deemed by the Equal Opportunity Officer to be appropriate and reasonably available. These measures are put in place under the discretion of the Equal Opportunity Officer who may consult with relevant authorities including, but not limited to other College administrators and external entities. Supportive Measures can be provided or considered even if no Formal Complaint is filed with the College.

**Third Party** means any other participant in the process, including a witness to the misconduct or an individual who makes a Report on behalf of another.

## II. COMPLAINT REVIEW, INVESTIGATION AND RESOLUTION PROCEDURE

### A. Review of Complaints

#### 1. Initial Assessment

As soon as practicable after receiving a report, the Equal Opportunity Officer will make attempts to contact the Complainant to schedule an intake meeting to discuss:

- the availability of Supportive Measures with or without filing a ***Formal Complaint***;
- the process for filing a Formal Complaint and that the College may choose to make a formal complaint on the Complainant's behalf; and
- ascertain and consider the Complainant's wishes with respect to Supportive Measures.

Following the intake meeting, the Equal Opportunity Officer will make an Initial Assessment, including a limited factual inquiry when appropriate to determine how to proceed. The Equal Opportunity Officer may consult with other offices as necessary.

The Equal Opportunity Officer will:

- determine whether the report on its face alleges an act of Prohibited Conduct as defined in [Policy Section V-G](#);
- determine whether the matter should be referred to another College office for evaluation pursuant to other College policies, processes or protocols that may be implicated;
- make an immediate assessment of the health and safety of the Complainant in consultation with the Complainant when possible;
- make an immediate assessment of the health and safety of the campus community;
- determine and oversee Supportive Measures that are deemed necessary upon Initial Assessment; and
- engage in outreach to the Complainant that includes, for example, an explanation of rights, resources and reporting options.

If a Complainant notifies the Equal Opportunity Officer that they choose not to participate in an Initial Assessment or any following resolutions or does not respond to outreach, an Initial Assessment and review will still move forward. The College may, depending on the circumstances and the availability of information relevant to the report - such as, but not limited to, the report showing a pattern of behavior, if the College has other

sufficiently corroborating evidence of the alleged conduct, or if the College has sufficient information indicating a threat to campus safety - move forward in the resolution process without the participation of the Complainant.

## **2. Closure After Initial Assessment**

Not all reports that the Equal Opportunity Officer receives are reports of Prohibited Conduct that can be resolved through a Resolution Process as described below. The Equal Opportunity Officer or their designee has sole discretion to dismiss and close a complaint or any allegations therein at any point during the investigation process if

- even if true, the alleged conduct is not Prohibited Conduct ([See Section V-G](#)); or
- the report does not contain sufficient factual detail to support a finding that Prohibited Conduct occurred; or
- the College is unable to identify the Respondent after taking reasonable steps to do so or there is otherwise not enough information to carry out a Resolution Process; or
- the Respondent or the Complainant is no longer enrolled at, affiliated with, or employed by the College; or
- a Complainant voluntarily withdraws any or all of the allegations in the complaint and the Equal Opportunity Officer determines that, without the Complainant's withdrawn allegations, the conduct that remains in the complaint, if any, would not constitute a Policy violation, even if proven true; or
- a Complainant's request that no Formal Resolution occur can be honored; or
- the alleged conduct occurred off-campus and there is no substantial adverse effect on any member of the Swarthmore College Community or Swarthmore College. To determine whether the alleged conduct has a substantial adverse effect, the Equal Opportunity Officer will consider factors such as:
  - Whether there is a connection between the alleged Prohibited Conduct and College property, College employment, or a College program or activity;
  - Whether the Complainant or Respondent were College Community members when the Prohibited Conduct allegedly occurred;

- Whether the Complainant or Respondent were College Community members at the time of the report;
- The degree to which the conduct involves free expression rights or academic freedom when balanced against the impact on the community, if any; and
- Whether there is information indicating an ongoing threat to the College Community.

In the event that the Equal Opportunity Officer determines that a complaint should be dismissed, they will promptly inform the Complainant in writing of the dismissal and the basis for dismissal and, if the dismissal occurs after the Respondent has been notified of the allegations, they will also inform the Respondent of the dismissal and the basis of the dismissal.

Complaints that are dismissed will still be documented with their reason for dismissal. An Educational Response or other steps may be taken aimed at preventing the occurrence of prohibited conduct.

When the reported conduct is not Prohibited Conduct under this Policy but may be conduct prohibited by or addressed by other College policies, the Equal Opportunity Officer will refer the matter to another office for review and resolution.

## **B. Overview of the Resolution Process**

Reports not closed after the Equal Opportunity Officer's Initial Assessment may be addressed through an Educational Response, a Negotiated Resolution, a Formal Investigation or an Other Inquiry as determined appropriate based on the sole discretion of the Equal Opportunity Officer or designee. Resolution Processes are non-adversarial proceedings.

### **1. Educational Response**

An Educational Response involves measures taken by the College in response to a report of Discrimination, Harassment, or other Conduct of Concern when a formal resolution is not desired by the Complainant, when there is not enough information to proceed with a formal resolution against a known Respondent, and/or where the College, in its sole discretion, deems it an appropriate response based on the assessment of the complaint and the totality of the circumstances. Educational Responses are not used when the Equal Opportunity Officer determines that it would not be an appropriate means of addressing the reported conduct.

An Educational Response is a case-specific response, tailored to address the harms alleged by the reporting party and impacts on the community, is



non-disciplinary, and does not result in findings related to responsibility or in **Sanction**. An Educational Response does not preclude further steps, including Formal Resolution or Negotiated Resolution, if a complaint is later made or additional information is received by the Equal Opportunity Officer.

Educational Responses may include:

- An educational meeting regarding College Policy with the Respondent;
- A facilitated discussion with an appropriate resource;
- Training for an individual, group, or unit.

Depending on the form of Educational Response, it may be possible for a reporting party, Complainant or Respondent to remain unidentified to the other party.

## **2. Negotiated Resolution**

Either Complainant(s) or Respondent(s) may request Negotiated Resolution, but all Parties must agree to participate and the College must agree that the matter is appropriate for Negotiated Resolution. Negotiated Resolution is voluntary, and, while the College may suggest such a process, the College will not require Parties to engage in this process. Negotiated Resolution utilizes resolution mechanisms alternative to a formal adjudication to resolve complaints of Discrimination, Harassment, and/or Retaliation. Negotiated Resolution may be especially useful when:

- an investigation is not likely to lead to a resolution;
- both Parties prefer an informal process; or
- Where an agreeable outcome may be reached in the appropriate case without an extended Formal Investigation process

Negotiated Resolutions may include, but are not limited to, Facilitated Agreements. Facilitated Agreements are communications between the Parties where a facilitator(s) serves as an intermediary to help the Parties reach a mutually agreed upon resolution to the complaint. Parties may engage in Facilitated Agreements either directly (Facilitated Dialogue) or indirectly (Shuttle Negotiation). Examples of resolution terms obtained through this process may include but are not limited to:

- Conducting targeted or wide-spread educational and training programs;
- Referral of Parties to counseling;

- Written or facilitated accountability statements;
- Agreed-upon restrictions from participation in campus events and/or registered student organizations, or agreements to alternative participation to avoid contact;
- Restorative practices;
- Agreed-upon relocation or removal from on-campus housing; or
- Separation of the Parties.

The Complainant, Respondent, and College must agree to participate in Negotiated Resolution. If any Party does not agree and the matter has been found, during the Initial Assessment, to constitute a report of potential Discrimination, Harassment or Retaliation, the matter will proceed with another resolution process. If any Party does not agree and the matter has not been found, during the Initial Assessment, to constitute a report of Discrimination, Harassment or Retaliation, the College reserves the right to review the matter to determine if an Educational Response is appropriate.

Parties interested in this resolution option will receive written notification of the parameters agreed to under the Negotiated Resolution.

The Equal Opportunity Officer or their designee may also terminate the Negotiated Resolution process if they believe it is no longer an appropriate option for the Parties. The decision to terminate a Negotiated Resolution process will be based on factors such as the nature and/or severity of the conduct described in the report, concerns related to safety/risk to campus community, or if the Parties are unable to reach a mutual resolution agreement.

The Equal Opportunity Officer or their designee will be responsible for assigning a facilitator(s) to particular matters. The facilitator(s) for the negotiated resolution process must not be the same person as the investigator or decision maker in a particular matter.

### **3. Formal Investigation**

A formal investigation will occur following an Initial Assessment when: (1) a decision has been made not to close a report; (2) the Complainant has filed a Formal Complaint; and (3) either (i) an Educational or Negotiated Resolution process is not appropriate, or (ii) the Parties do not agree to

participate in the Negotiated Resolution process or it ends before they agree on terms.

If the Complainant does wish to participate in a Formal Investigation, the Equal Opportunity Officer will endeavor to honor that request. The Equal Opportunity Officer may determine, however, that a Formal Investigation is necessary to mitigate a risk to the campus community. If the Equal Opportunity Officer decide to open a Formal Investigation despite the Complainant's request, the Equal Opportunity Officer will:

- inform the Complainant of the decision before beginning the Formal Investigation or otherwise notifying the Respondent of the Complainant's identity;
- inform the Respondent that the Complainant did not request a Formal Investigation, but the Equal Opportunity Officer determined one was necessary; and
- provide the Complainant with all information required by this Policy unless the Complainant states in writing that they do not want it.

If the Equal Opportunity Officer is able to honor a Complainant's request to forgo a Formal Investigation, the Equal Opportunity Officer will inform the Complainant that this limits possible resolution options. The Equal Opportunity Officer may still provide Supportive Measures as appropriate. If a Formal Investigation is initiated, the Equal Opportunity Officer will provide written notice to the Complainant and Respondent, if their identities are known, that includes:

- Notice of Swarthmore's complaint resolution process, including this Policy;
- An explanation of their rights throughout the process;
- Available support resources; and
- Sufficient details of the allegations that are known at the time so the Parties may prepare for their investigative interview, including:
  - The identities of the Parties involved in the incident, if known;
  - The alleged conduct in question;
  - The alleged violation of Policy; and

- The date and location of the incident(s), if known.

The written notice will inform the Parties of the College's prohibition on Retaliation and knowingly making false statements or knowingly submitting false information during the complaint resolution process.

**a) Timeframe**

The College seeks to complete investigation and return a finding of all reports within 90 **Days** after notifying the Parties in writing of the initiation of the Formal Investigation, although the complexity of a report, availability of parties, witnesses, and adjudicating bodies and other extenuating circumstances may require a longer time frame to complete the process. The time frames may be extended, at the sole discretion of the Equal Opportunity Officer and/or their designee, to ensure the integrity and completeness of the investigation, to reasonably accommodate the availability of witnesses, College breaks or vacations, or other legitimate reasons.

The actual time required to complete a Formal Investigation depends on the specific circumstances, including the complexity of the matter and availability of witnesses and evidence. The College seeks to provide a Complainant and Respondent with periodic updates as to the status of the review or investigation.

If the police are also investigating the alleged conduct, the Equal Opportunity Officer may temporarily delay an investigation if asked by the police to do so, but will nonetheless act promptly in the pursuit of the Formal Investigation.

**b) Investigation overview**

Typically, the Equal Opportunity Officer serves as the Investigator in the Formal Investigation process, but the Equal Opportunity Officer may also designate another staff member or an external investigator to serve as the Investigator. All Investigators are trained in applicable law and the College's policies and procedures. Depending on the circumstances and in its discretion, the Equal Opportunity Officer or their designee may either consolidate the investigation and/or Sanctioning of multiple complaints involving the same Respondent and/or situations where the Parties have complaints against each other (cross-complaints).

During the investigation, the Investigator will identify, elicit, and gather evidence related to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a **Determination** of whether or not a Policy violation has occurred lies with the College and not with the Parties.

**c) Selecting an Advisor**

The Complainant(s) and the Respondent(s) are each permitted to have an Advisor. The Advisor must be a Swarthmore College employee who is not a Party or witness involved in the investigation. The Advisor does not have an active role in the interview or other meetings. This includes, but is not limited to, a prohibition on the Advisor speaking on behalf of a Party or otherwise directly participating in the hearing or investigative meetings. The Complainant or Respondent may confer with an Advisor within reason during such meetings. The Advisor may not interrupt the proceedings or otherwise interfere with the meeting, investigation or hearing.

The Advisor may be required to meet with the Equal Opportunity Officer or designee in advance of any participation in the Formal Investigation process.

**d) Witnesses**

The Complainant and Respondent will have an equal opportunity to present the names of potential witnesses and to propose questions the Investigator(s) might ask the other Party or witnesses. Complainants and Respondents may identify potential factual witnesses but may not present character witnesses. The Investigator(s) will take the witness lists provided by the Complainant and Respondent into consideration when identifying the witnesses they will interview and what questions they might ask each witness, but these decisions are solely within the Investigator's discretion. The Investigator retains discretion to limit the number of witness interviews the Investigator conducts if the Investigator finds that testimony would be unreasonably cumulative or redundant, or if the witnesses do not have information relevant to the allegations at issue. The Investigator may also choose to interview other witnesses not identified by the Parties.

**e) Participation**

During the investigation, the Complainant will have the opportunity to describe their allegations and present supporting evidence to

the Investigator(s). The Respondent will have the opportunity to hear the allegations, respond to them, and present supporting evidence to the Investigator(s). Respondents or Witnesses who are employed by the College are required to participate in and comply with all aspects of investigations of conduct alleged to have violated this Policy. Other Parties or Witnesses are not required to participate and the Investigator will draw no adverse inference from a decision by any Party or Witness not to participate.

**f) Recording interviews**

The Investigator will record, with recorded permission of the Party or Witness, and transcribe (or arrange for transcription of) all interviews. This recording shall be considered the sole record and Parties or Witnesses are prohibited from recording the interview. For Parties or Witnesses who elect not to have their interview recorded, the Investigator will prepare a statement of the interview, and the Party or Witness who declined to be recorded will be given the opportunity to review the interview statement of their own interview and correct spelling/grammar and factual errors and provide clarification if needed by the deadline set by the Investigator. If the Party or Witness does not provide any response to the interview statement within the allotted time frame, the Investigator will consider the interview statement accurate. The Investigator may address any substantive comments or corrections submitted in the ***Investigative Report***. Meetings that do not constitute an interview are not audio or video recorded by the College and may not be recorded by any participant. Parties and witnesses may take notes during investigation meetings. The Investigator may have follow-up questions for a Complainant, Respondent, or Witnesses after their respective initial interviews. Each participant will have a reasonable time to complete any follow-up interview requested by an Investigator, but if a follow-up interview is not completed within a reasonable time frame, the investigation will move forward with the investigation process.

**g) Investigative report**

**(1) Preliminary report**

The Investigator will prepare a preliminary report summarizing the factual findings gathered during the investigation.

The Parties will be provided with an opportunity to review the preliminary Investigative Report and respond in writing. The report will be provided to each Party electronically via

the College's chosen cloud storage platform. The draft report may be redacted to protect privacy. Parties are expected to maintain the privacy of this document and may view but not download or distribute this document. The Parties, and, upon request, their Advisor or an Attorney engaged in their representation, are permitted to review the preliminary Investigative Report solely for the purposes of this complaint process and may not photograph or disseminate the report to others. Unauthorized distribution of this document may constitute Retaliation or otherwise result in referral to the appropriate office for disciplinary action.

The Parties may each submit written comments, feedback, additional documentary evidence, requests or additional steps in the investigation, suggest written relevant questions for any Party or Witness, names of additional witnesses, or any other information they deem relevant to the Investigator(s), within ten (10) Days after the preliminary report is made available for review. Upon a written request, the Equal Opportunity Officer and/or their designee, in their discretion, may grant a reasonable extension. Such an extension may delay the resolution of the complaint.

**(2) Final report**

The Investigator will prepare a Final Report after reviewing all responses submitted by the Parties to the preliminary Investigative Report. The Investigator(s) will review the written response provided by the Parties and conduct additional investigation that may be necessitated by that feedback. If the Investigator received information from a Party in response to the Preliminary Investigative Report that warrants further investigation, the Equal Opportunity Officer or their designee has the discretion to extend the investigation.

The Final Report will contain:

- The factual allegations and alleged Policy violations;
- Statements of the Parties;

- A summary of all Witness statements and evidence, including facts that may inform a credibility determination, such as observed demeanors during the interviews; evidence of motive, interest or bias; the manner in which facts were shared; the circumstances of the parties' disclosures to other areas of agreement and disagreement; and evidence of corroboration that was present or not present when it would reasonably be expected to exist; and

The Complainant and Respondent will simultaneously be provided a copy of the Final Report via the College's chosen cloud storage platform and may not download or distribute the Final Report. Unauthorized distribution of this document may constitute Retaliation or otherwise result in referral to the appropriate office for disciplinary action.

**h) Mandatory or Discretionary Administrative closure/dismissal**

**(1) During the Investigation**

The Equal Opportunity Officer may close a Formal Investigation before completing it if they determine that a significant change in circumstances has so substantially impaired the Formal Investigation that the adjudicating body cannot reach reasonably reliable conclusions about whether the alleged conduct occurred or would result in a Policy violation. The Equal Opportunity Officer may, when appropriate, still take steps to stop the reported conduct, prevent its escalation or recurrence, and address its effects, including offering appropriate resources and Supportive Measures to the Parties.

**(2) After completing the Final Report**

The Equal Opportunity Officer will review the Final Report as to whether the conduct alleged in the Formal Complaint falls within the scope of the Policy and the definitions of Prohibited Conduct as outlined above. In making this decision, the Equal Opportunity Officer may consider whether the Parties elected to participate in the investigation.



If, in consultation with the Vice President of Diversity, Equity and Inclusion, the Equal Opportunity Officer determines a mandatory or discretionary dismissal of the complaint is appropriate, they will issue a written Notice of Dismissal to both Parties as well as the Vice President of Diversity, Equity and Inclusion that includes a rationale as well as options to appeal, as described below.

The Equal Opportunity Officer may dismiss a complaint and may address, in partnership and consultation with relevant stakeholders (e.g., the Office of Human Resources, the Provost's Office, the Office of Student Conduct), unprofessional, disrespectful, and/or offensive conduct that:

- does not rise to the level of creating a hostile environment or a violation of this Policy;
- is not clearly based on a Protected Characteristic; and/or
- runs counter to the College's mission and values.

Addressing such behaviors will not typically result in the imposition of disciplinary Sanctions under the Policy, but may be addressed through the Educational Response, Negotiated Resolution or other alternative means of resolution including, but not limited to coaching, restorative practices, and/or effective conflict resolution.

**i) Acceptance of responsibility**

Prior to or at the conclusion of an Investigation, the Respondent may accept responsibility for the Prohibited Conduct by contacting the Equal Opportunity Officer in writing. Following an acceptance of responsibility, the Equal Opportunity Officer may solicit additional information relating to the matter and will issue a Determination to the Parties summarizing the allegations and stating the Respondent has accepted responsibility and will refer the matter to the appropriate office for Sanctioning as delineated in the resolution sections below. Following the Determination of Sanctions, Parties may appeal the Sanctions imposed but not the finding(s) of responsibility as accepted by the Respondent. In the event a Respondent decides to accept responsibility for some but not all of the allegations, the Equal Opportunity Officer will determine whether to sever the matter, sending the allegations for

which the Respondent has accepted responsibility to the appropriate office for Sanctioning and continuing with the formal resolution process for the remaining allegations. Alternatively, the Equal Opportunity Officer and/or their designee may determine whether the matter will proceed with the formal resolution process for all allegations.

**j) Withdrawal of complaint**

At any time prior to the conclusion of an investigation, the Complainant may request to withdraw the complaint, or any discrete allegations in the complaint, by contacting the Equal Opportunity Officer in writing. The Equal Opportunity Officer will determine whether to close the case or whether it is necessary to continue with the formal resolution process with regard to any other allegations without the Complainant's continued participation.

**4. Other Inquiry**

When a report is not closed after an Initial Assessment, yet is not appropriate for an Educational Resolution, Negotiated Resolution, nor a Formal Investigation because there is no individual identifiable Respondent over whom the College has jurisdiction, the Equal Opportunity Officer may

- conduct an inquiry to try to determine what occurred and
- take prompt steps reasonably calculated to stop any substantiated conduct, prevent its recurrence, and, as appropriate, remedy its effects.

Such an inquiry may be appropriate when, for example, the Complainant alleges Prohibited Conduct by an organization, an individual whose identity is unknown, or a Third Party, or alleges conduct by multiple people that rises to the level of Prohibited Conduct only when considered in the aggregate.

**C. Decisional Authorities**

The Equal Opportunity Officer, or their designee, in their sole discretion, may appoint an external party to serve as a decisional authority for any complaint. College Employees who serve as decisional authorities will receive annual training including, but not limited to, definitions and procedures contained within this Policy and evaluating credibility, the standard of evidence, and impartial service, and the identification of potential conflicts of interest or bias. Decisional authorities are charged with reviewing the information contained in the Final

Report and determining whether there is sufficient evidence to support a finding of responsibility by a ***Preponderance of the Evidence*** standard.

**1. For Student Respondents (including Student Employees)**

The Equal Opportunity Officer will provide the Final Report to the Senior Associate Dean of Student Life or their designee who will make a Determination as to whether the Respondent is responsible for a violation of College Policy that has occurred based solely on the information contained in the Final Report. The Senior Associate Dean of Student Life or their designee, in their sole discretion, may conclude in some circumstances that it is appropriate to meet with the parties and/or conduct a hearing before making a Determination. In the event of a finding of responsibility, the Senior Associate Dean of Student Life or their designee will determine Sanctions in accordance with Sanctioning guidelines.

The Senior Associate Dean of Student Life or their designee will provide written notice of the findings, rationale for the finding and any Sanctions to the Office of Diversity, Equity and Inclusion, the Respondent and the Complainant simultaneously within ten (10) Days of receipt of the Final Report. The notice will include a summary of the findings, a rationale, and information on the appeal process.

**2. For Staff Respondents**

The Equal Opportunity Officer will provide the Final Report to both the Vice President and the Assistant Vice President, Human Resources or their designees. The Assistant Vice President, upon consultation with the Vice President, Human Resources, will make a Determination as to whether the Respondent is responsible for a violation of College Policy that has occurred based solely on the information contained in the Final Report. In the event of a finding of responsibility, the Assistant Vice President of Human Resources, after consultation with the Vice President, Human Resources, and the Respondent's supervisor, is responsible for deciding what Sanctions should be imposed on the Respondent, in accordance with Sanctioning guidelines.

The Assistant Vice President of Human Resources will simultaneously provide written notice of the findings, rationale for the finding and any Sanctions to the Equal Opportunity Officer, the Respondent and the Complainant within ten (10) Days of receipt of the Final Report. The notice will also include information on the appeal process.

**3. For Instructional Staff Respondents**

The Equal Opportunity Officer will provide the Final Report to the Provost and Dean of the Faculty or designee who will make a Determination as to

whether the Respondent is responsible for a violation of College Policy that has occurred based solely on the information contained in the Final Report. In the event of a finding of responsibility, the Provost and Dean of the Faculty or designee is responsible for deciding what Sanctions or corrective actions should be imposed on the Respondent, in accordance with Sanctioning guidelines.

The Provost and Dean of the Faculty or designee will provide written notice of the findings, rationale for the finding and any Sanctions to the Equal Opportunity Officer, the Respondent and the Complainant simultaneously within ten (10) Days of receipt of the Final Report. The notice will also include information on the appeal process.

**4. For Equal Opportunity Officer, the Assistant Vice President of Human Resources, or Any Member of the President's Cabinet Respondent**

The matter will be referred to an outside Investigator, who will provide the Final Report to the President, their designee, or an outside adjudicator, who will make a Determination as to whether the Respondent is responsible for a violation of College Policy based solely on the information contained in the Final Report. The President, the designee, or the outside adjudicator, in their sole discretion, may conclude in some circumstances that it is appropriate to meet with the parties and/or conduct a hearing before making a Determination. In the event of a finding of responsibility, the President will determine Sanctions in accordance with Sanctioning guidelines.

The President, their designee, or the outside adjudicator will provide written notice of the findings, rationale for the finding and any Sanctions to the Respondent and the Complainant simultaneously within ten (10) Days of the decision. The notice will include a summary of the findings, a rationale, and information on the appeal process.

**5. For President Respondent**

The matter will be referred to an outside Investigator, who will provide the Final Report and recommended findings and sanctions to the Board of Managers, their designee, or an outside adjudicator, who will make a Determination as to whether the Respondent is responsible for a violation of College Policy based solely on the information contained in the Final Report. The Board of Managers, their designee, or the outside adjudicator in their sole discretion, may conclude in some circumstances that it is appropriate to meet with the parties and/or conduct a hearing before making a Determination. In the event of a finding of responsibility, the Board of Managers will determine Sanctions in accordance with Sanctioning guidelines.

The Board of Managers, their designee, or the outside adjudicator will provide written notice of the findings, rationale for the finding and any Sanctions to the Respondent and the Complainant simultaneously within ten (10) Days of the decision. The notice will include a summary of the findings, a rationale, and information on the appeal process.

**6. For Board of Managers Respondent**

The matter will be referred to an outside Investigator, who will provide the Final Report including a written rationale for findings and recommended sanctions to the Complainant, Respondent, and the entire Executive Committee of the Board of Managers simultaneously. The outside Investigator, in their sole discretion, may conclude in some circumstances that it is appropriate to meet with the parties and/or conduct a hearing before making a Determination. In the event of a finding of responsibility, an ad hoc committee of no less than 5 and no more than 15 members of the Board of Managers, but always an odd number, shall be convened and chaired by the Chair of the Board of Managers, their designee or, if in the event that the Chair has a conflict of interest, the Vice Chair or their designee to determine Sanctions in accordance with Sanctioning guidelines.

The Chair of this ad hoc committee or their designee will provide written notice of the Sanctions to the Respondent and the Complainant simultaneously within ten (15) Days of the ad hoc committee receiving the Final Report. The notice will include a summary of the findings, a rationale, and information on the appeal process.

**D. Sanctions**

**1. Impact and Mitigation Statements**

All Parties may submit an impact statement (Complainant) or mitigation statement (Respondent) to the Equal Opportunity Officer for consideration by the Individual(s) determining the appropriate Sanction. An impact statement describes the impact of the Prohibited Conduct on the Complainant and a mitigation statement includes information that a Respondent believes should mitigate or otherwise be considered in determining Sanctions. Statements will only be reviewed by a decisional authority if a Respondent is found responsible for a Policy violation.

**2. Sanctioning**

If a Respondent is found to be responsible for one or more Policy violations, the notification of findings will include information regarding the Sanctioning process. In determining Sanctions, the decision maker(s) for Sanctions has the following objectives:

- Promoting safety and protecting the College Community.

## Swarthmore College Policy Prohibiting Discrimination, Harassment and Retaliation

- Sanctioning individuals for violating this Policy and deterring them from similar future behavior.
- Ending Prohibited Conduct.
- Taking steps to prevent the future recurrence of Prohibited Conduct.
- Remedying the negative effects on the Prohibited Conduct on others, including the Complainant.

The College considers the Sanctions listed below to be guidelines when a violation of the Policy is found. Each incident is reviewed on an individual basis. This Policy prohibits a broad range of behaviors, all of which are serious in nature. Depending on the specific facts of the incident, more or less severe Sanctions may be imposed.

In determining the appropriate Sanction, the following factors will be considered:

- The nature and degree of violence of the conduct at issue.
- The impact of the conduct on the Complainant or other appropriate Parties.
- Whether a power differential existed between the Complainant and the Respondent.
- The impact or implications of conduct on the community or the College.
- Prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the College or elsewhere (if known), including related criminal convictions.
- Whether the Respondent has accepted responsibility for the conduct.
- Maintenance of a safe and respectful environment conducive to learning.
- Protection of the College Community; and

- Any other mitigating, aggravating, or compelling circumstances relevant to reaching an appropriate resolution in each case.

For Respondents holding any status other than employee or student, sanctions and/or corrective actions will be determined by the appropriate College office, depending on the status of the Respondent.

Note that acting in a malicious manner as described in [Policy Section VI.D.](#) in order to damage or tarnish the reputation of any member of the Swarthmore College Community is also considered a violation of this Policy. In the case of students, Sanctions may include disciplinary action up to and including expulsion. In cases involving staff or instructional staff, Sanctions may include disciplinary action up to and including termination of employment. Third Parties who engage in such behavior also may be Sanctioned, including a no trespassing order or termination of the College's contract or other arrangements with such Third Party.

There may be instances when the College concludes that a violation of this Policy has not occurred, but that the conduct uncovered through the investigation invokes other College policies. In such cases, the Equal Opportunity Officer will refer the matter to the appropriate College office to determine the next steps.

In some instances, the College may not be able to pursue a potential Policy violation because the reported statements or conduct involve free expression interests. In such instances, the College will evaluate all available information, including the totality of the circumstances, to determine whether the reported conduct may have impacted culture or climate more broadly, when considered in the aggregate with other reported information. If so, the College will take steps reasonably calculated to address campus climate and environment needs.

**a) For Student Respondents**

Sanctions that may be imposed under this Policy for students include but are not limited to:

- *Warning:* A written notification that a violation of the Student Code of Conduct occurred and that any further responsible finding of misconduct may result in more severe sanctions or outcomes. Warnings are typically recorded for internal purposes only and not considered part of a student's permanent student conduct record. A student who receives a warning is still considered in good standing at the College.

- *Reprimand*: A written notification that a repeated or more significant violation of the Student Code of Conduct occurred. Contrary to a Warning, a reprimand is considered part of a student's permanent student conduct record. Though disclosed with a student's signed consent, a student who receives a reprimand is still considered in good standing at the College.
- *Contact Restrictions*: Restrict the contact and/or communication between or among designated parties.
- *Educational Requirements*: Completion of projects, programs, or requirements designed to help the student manage behavior and understand why it was inappropriate. May include appropriate and relevant community service assignments.
- *Referrals*: May include counseling, substance use assessments or referral to other appropriate offices or resources.
- *Probation*: A designated period of time during which a student may have restrictions on their activities, actions, and/or eligibility to hold certain student leadership positions, and may be subject to more severe sanctions if found responsible for additional violations of the Student Code of Conduct. A sanction of probation may be imposed when there has been a repeated or serious violation of the Student Code of Conduct. If a student on probation is found responsible for additional violations of the Student Code of Conduct, additional sanctions may include suspension or expulsion from the College. A student who is placed on probation is not considered in good standing during their period of probation.
- *Loss of privileges*: Denial of the use of certain College facilities or the right to participate in certain activities, events, programs, or to exercise certain privileges for a designated period of time.
- *Restitution*: A student may be required to make payment to an individual or to the College related to the misconduct for damage, destruction, defacement, theft, or unauthorized use of property.



- *Relocation or removal from College-operated housing:* Relocation is the reassignment of a student from one living space to another. Removal from housing is the removal of a student from all College-operated housing. Relocation and removal from housing are typically accompanied by the loss of privileges regarding the visitation to specific residential areas for a specified period of time. The College may take such action for remedial, rather than disciplinary purposes.
- *Revocation of Affiliation:* Revocation of affiliation is the permanent removal of a student as a member of a specific organization and/or the permanent removal of an organization's recognized affiliation with the College.
- *Suspension:* The separation of a student from the College for a specified period of time, after which the student is eligible to return. Conditions for re-enrollment may be required and will be included in the notification of suspension. A student who is placed on suspension, is not considered in good standing during their period of suspension and notice of this action will remain part of the student's student conduct file.
- *Expulsion:* Expulsion is the permanent separation of the student from the College. Students who have been expelled may not be on campus without specific written permission from the Vice President for Student Affairs or designee. A student who is expelled is permanently considered not in good standing with the College and notice of this action will remain part of the student's student conduct file.

Other Sanctions may be imposed instead of, or in addition to, those specified here. More than one of the Sanctions listed above may be imposed for any single violation.

**b) For Professional and Instructional Staff Respondents**

Sanctions that may be imposed for staff and instructional staff include:

- *Warning:* Notice, in writing, that continuation or repetition of Prohibited Conduct may be cause for additional disciplinary action.

- *Educational Requirements:* Completion of training, projects, programs, or requirements designed to help the employee manage behavior and understand why it was inappropriate. Includes appropriate and relevant community service opportunities.
- *Formal Performance Improvement Plan:* see [Employee Handbook. Staff Performance: Feedback, Evaluation, Misconduct, and Professional Development. Misconduct, Progressive Discipline, and Corrective Action Policy.](#)
- *Restitution:* Repayment to the College or to an affected Party for damages resulting from the Policy violation.
- *Suspension:* Exclusion from College premises, attending or instructing classes, and other privileges or activities, including serving on committees or in positions of leadership on campus, for a specified period of time, as set forth in the suspension notice. Suspension may be assigned with or without pay, as determined appropriate. Notice of this action will remain in the employee's file. Conditions for return to work may be specified in the suspension notice.
- *Termination:* Permanent termination of employment status and exclusion from College premises, privileges, and activities. This action will be permanently recorded in the employee's file.
  - *Termination of Appointments.* Termination of a tenured appointment, or of a term appointment before its expiration, occurs only for adequate cause. Where the disciplinary authority recommends termination as the appropriate sanction for tenured faculty or faculty for whom a term appointment has not expired, the College will employ the "Termination of Appointments" procedures found in III-A.14 in the [Handbook for Instructional Staff](#). In applying these procedures, the finding that the policy has been violated will not be revisited. The sole decision for the special committee of faculty, if convened under the

“Termination of Appointments” procedure, is whether the specific policy violation constitutes “serious shortcomings” sufficient to support adequate cause for termination or dismissal.

- *Termination of staff.* Immediate termination of staff may be warranted related to violation of this policy as outlined in the [Employee Handbook, Staff Performance: Feedback, Evaluation, Misconduct, and Professional Development, Misconduct Warranting Immediate Discharge](#). If this is the case, the appropriate Vice President will be notified.

Other Sanctions may be imposed instead of, or in addition to, those specified here. More than one of the Sanctions listed above may be imposed for any single violation.

## **E. Appeals**

### **1. Timeframes**

Both the Complainant and the Respondent may appeal the outcome or the Sanction. The Complainant and the Respondent will have ten (10) Days from the notification of Sanctions to file a notice of appeal and submit the appropriate documentation. The appeal documentation shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. Each Party will be notified if the other Party files an appeal. The other Party will be given an opportunity to review the appeal and supporting documentation and may submit a written response to the appeal within five (5) Days.

The Appellate Authority shall, in consultation with the Equal Opportunity Officer, make a Determination on the case, within ten (10) Days of receipt of the full appeal documentation. The decision of the Appellate Authority is final.

### **2. Appellate Authorities**

At the discretion of the Equal Opportunity Officer, an appeal may be assigned to either (1) an external appellate decision-maker or (2) the Vice President of Student Affairs or designee for incidents involving a student Respondent, the relevant President’s staff member or designee for incidents involving a staff Respondent, or the Committee on Faculty

Procedures, who will designate three (3) of their faculty members to hear the appeal, for incidents involving instructional staff Respondents.

If the Respondent is the Equal Opportunity Officer, the same processes apply, but will be addressed by the Office of Human Resources and the complaint will be investigated by an **Investigator** external to the College.

### **3. Grounds for Appeal**

The appeal is not a new review of the underlying matter. Appeals are confined to a review of the written documentation or record of the original investigation, and pertinent documentation regarding the grounds for appeal. The Appellate Authority may also consult the Equal Opportunity Officer or Investigator to clarify questions of process.

The Appellate Authority may decide whether to approve, reject, or modify the determination regarding responsibility or the Sanction, and may remand the matter for further proceedings consistent with the appeals decision. The determination of the Appellate Authority is final. Grounds for Appeal are limited to:

#### **a) Severity of the sanction imposed**

The sanctions imposed were grossly disproportionate to the violation committed.

#### **b) Improper procedure**

Procedural error(s) that had a material impact on the outcome.

#### **c) New information**

New evidence that would affect the outcome and that was unavailable at the time of the investigation.