

# **2022-2023 Procedures for Resolution of College-Defined Sexual Misconduct Complaints against Students**

## **I. Scope**

The *Title IX and College-Defined Sexual Misconduct Policy* applies to all members of the College community, including students, employees, volunteers, independent contractors, visitors, or any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity at the College. The College has jurisdiction over complaints of allegations involving Title IX-covered conduct or College-defined sexual misconduct and may take disciplinary action against a respondent who is a current student or employee. The policy's full scope is described in the *Title IX and College-Defined Sexual Misconduct Policy* (the "Policy"). For a full description of policy intent, privacy/confidentiality issues, definitions of prohibited conduct, and related definitions (i.e., consent), supportive measures, reporting options, the roles of the Title IX coordinator and Title IX deputies, and retaliation, please see the Policy.

These specific procedures apply to College-defined sexual misconduct complaints against students. A separate document addresses the procedures that apply for allegations involving Title IX-covered conduct against students (see *Procedures for Resolution of Title IX Complaints against Students*).

Any reference to a College administrator throughout these procedures refers to the named College administrator or their designee.

## **II. Distinction between the Two Procedures**

On May 19, 2020, the U.S. Department of Education issued regulations under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence) under Title IX
- Addresses how institutions must respond to reports of conduct falling within that definition of sexual harassment, and
- Mandates procedures that institutions must follow to comply with the law in these specifically covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

The definition of “sexual harassment” under Title IX does not cover all of the conduct the College has traditionally addressed under our previous *Sexual Assault and Harassment Policy*. Swarthmore College remains committed to addressing conduct that we have traditionally viewed as violating our community standards, that now does not fall within the definition of “sexual harassment” under Title IX, by providing procedures for College-defined sexual misconduct. The umbrella term to describe both Title IX-covered conduct and College-defined sexual misconduct is “prohibited conduct.” The term prohibited conduct is used in the Policy and in these procedures.

To be clear, the College has not narrowed the range of behavior that can be addressed under the revised *Title IX and College-Defined Sexual Misconduct Policy*. In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. However, under the new Title IX regulations, the College must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Title IX definition of sexual harassment must be adjudicated through a live hearing compliant with the procedures required under Title IX. To the extent that the alleged misconduct falls outside the scope of Title IX, the College retains authority to investigate and adjudicate the allegations under the policies and procedures for College-defined sexual misconduct.

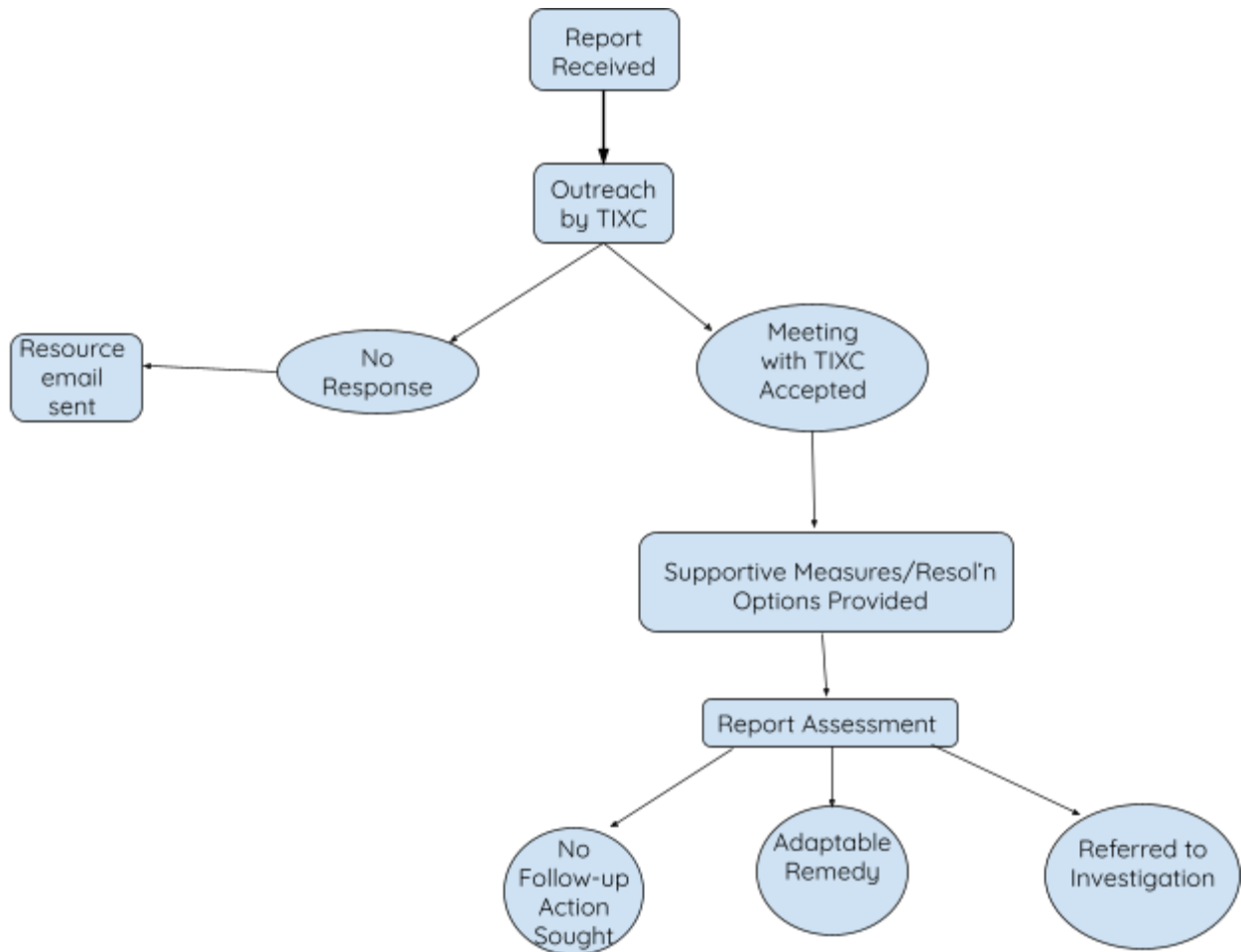
This document addresses the procedures that apply to allegations involving College-defined sexual misconduct against a student. A separate document addresses the procedures that apply for allegations involving Title IX complaints against a student (see *Procedures for Resolution of Title IX Complaints against Students*).

Finally, our existing Title IX office and reporting structure remains in place. What has changed is which procedures apply to different types of reports arising from prohibited conduct, but not the support and resources available to our community members. Community members can always seek the advice of the Title IX office to determine what procedures apply, what options they have, and what resources are available without having to file a formal complaint. We remain here to help.

### **III. Overview of College-Defined Sexual Misconduct Procedures**

Once a report is received, the College’s response is informed by the reporting party’s wishes and the safety of the campus community. Below is a simplified overview of the steps that are taken

by the College when a report is received. A more detailed account of these procedures can be found in Section IV.



#### **IV. Detailed Description of College-Defined Sexual Misconduct Procedures**

- A. *Report Received by Title IX Office.* Reports are received by the Title IX office through a variety of sources. Typical sources of reports include faculty and staff members designated as “responsible employees” (see Section XIII.B.1.ii in the Policy for more information on responsible employees), resident advisors, friends of the reporting party, or the reporting party directly. Individuals who wish to make a report of prohibited conduct are encouraged to make a report directly to the Title IX coordinator. Although a report may come in through a variety of sources, the College is committed to ensuring that all reports of prohibited conduct are referred to the Title IX coordinator, which ensures consistent application of the Policy to all individuals and allows the College to respond promptly and equitably to eliminate harassment, prevent its recurrence, and reduce its effects.
- B. *Outreach.* Upon receipt of a report, the Title IX coordinator or designee will provide resources and support information by contacting the potential complainant (hereafter referred to as the “reporting party”) and offering an initial meeting between the reporting party and the Title IX coordinator or designee (often a deputy Title IX coordinator). The initial meeting is optional and the reporting party may decline. The purpose of the initial meeting is for the Title IX coordinator to gain a basic understanding of the nature and circumstances of the report and assess the need for any supportive measures; it is not a full investigative interview. At this meeting, the reporting party will be provided with information about resources, supportive measures, and resolution options.
- C. *Initial Meeting with Title IX Coordinator.* During the initial meeting, the reporting party is able to bring a support person and is free to share as much or as little information about the underlying incident as they would prefer. The Title IX coordinator or designee(s) will discuss and provide the reporting party with a written explanation of their rights and options, whether the incident occurred on or off campus, including (as applicable):
- The right to report or decline to report the incident to law enforcement if the conduct is potentially criminal in nature. The College is available to assist in this process;
  - The right to obtain a Protection from Abuse (PFA) Order from local authorities or request contact restrictions from the College;
  - The right and importance of seeking medical treatment to address physical health and to preserve evidence;

- The right to file a complaint through the applicable College resolution procedure;
- The right to request supportive measures, including options for changes in living, academic, transportation, working situations;
- Provide the reporting party with information about on- and off-campus resources, including support options and counseling;
- Explain the College’s policies for confidentiality and prohibiting retaliation, as described in the Policy;
- Explain the difference between confidential and non-confidential resources;
- Obtain the reporting party’s expressed preference for the manner of resolution and assess any barriers to proceeding;
- Provide the reporting party with an explanation of the limitations on the College’s response should the reporting party choose to remain anonymous;
- Provide information about a case manager and information about an advisor of their choice;
- The right to receive an explanation of the formal complaint resolution process and the preponderance of the evidence standard of proof used to resolve the complaint (“more likely than not”);
- The right to be provided a prompt, unbiased, and impartial investigation and resolution; and
- The right to receive an explanation of adaptable remedies and informal resolutions.

D. *Report Assessment.* Using the information provided in the initial report and the information gathered during the preliminary meeting with the reporting party, the Title IX coordinator will assess what supportive measures and resolution options are available to the reporting party. The Title IX coordinator may enlist the Title IX team and others to assist in this assessment. Members of this interdepartmental team may include the Title IX coordinator, deputy Title IX coordinators, members of the division of student affairs, or public safety. Depending on the relationship of the reporting party and the respondent (hereafter referred to as the “responding party”) to the College (student, staff, faculty, or other) and the nature of the report, additional team members may include human resources, the provost’s office, or alumni relations.

During this assessment, the Title IX coordinator and assessment team members will make a reasonable assessment of the safety of the individual and of the

campus community and will determine whether the College has sufficient information to determine an appropriate course of action. The Title IX assessment team will also consider the interests of the reporting party and the reporting party's expressed preference for the manner of resolution in light of all available information. During the Title IX assessment, the Title IX coordinator or designee(s) will:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being of the reporting party;
- Assess safety concerns for the broader College community;
- Determine if concerns exist for discrimination or harassment based on other protected classes;
- Assess the reported conduct for the need for a timely warning notice under federal law;
- Determine if past reports of similar conduct by responding party exist;
- Determine if any issues of academic freedom exist which may be reviewed by the provost or designee;
- If applicable, enter non-identifying information about the report into the College's daily crime log, pursuant to federal law.

#### 1. Assessing Requests by the Reporting Party to Remain Unidentified

In the event that a reporting party does not wish to participate, does not want the process to proceed and/or requests that identifiable information not be shared with the responding party, the Title IX coordinator, in consultation with the Title IX assessment team, as applicable, will decide, based on the available information, whether they can honor the request and whether additional steps are required. In making this decision, the Title IX assessment team will assess, but is not limited to, the following factors:

- The severity and impact of the sexual misconduct;
- The respective ages of the parties, including whether the reporting party is a minor under the age of 18;
- Whether the College can undertake any action without the participation of the reporting party;
- Whether the responding party has been the subject of a previous report or complaint;
- The existence of independent evidence;

- The extent of prior remedial methods taken with the responding party; and
- Any legal obligation to proceed based on the nature and/or severity of the conduct.

The College's ability to respond may be limited by a request to remain unidentified. The Title IX assessment team will take all reasonable steps to respond to a report consistent with a reporting party's request but must balance that request with its responsibility to provide a safe and non-discriminatory environment for all College community members and afford a responding party with a balanced process.

## **V. Post-Assessment Options**

### *A. Supportive Measures*

#### 1. Overview

Upon receipt of a report of prohibited conduct, the College may offer and/or impose actions, referred to as supportive measures, to immediately address the reported behavior. The College will maintain consistent contact with the parties to ensure that all safety, emotional, and physical well-being concerns are being addressed. The Title IX coordinator or a member of the Title IX assessment team will discuss the determination of supportive measures with the reporting party and provide information to assist in understanding available resources and procedural options, which will be communicated to the reporting party in writing. Supportive measures may be imposed regardless of whether a criminal or College formal complaint has been filed or at any time during the Title IX process.

#### 2. Options for Supportive Measures

The College, at its discretion, will implement supportive measures that may be applied to the parties, as appropriate and reasonable within a small campus community. Supportive measures may include, but are not limited to:

- Contact restrictions;
- Counseling services;
- Public safety escort to ensure safe movement on campus;
- Referral to medical or EMS services;

- Assistance with identifying off-campus resources;
- Assistance with transportation, parking, and/or travel needs;
- Assistance in obtaining a Protection from Abuse (PFA) Order;
- Academic assistance, including academic support services, tutoring, alternative course completion options, rescheduling of exams and assignments, changing class schedules, transferring course sections or withdrawing from a course without penalty;
- Change of work schedules, job assignments, and worksite location;
- Change of student's College-owned housing and/or assistance from College support resource staff in completing housing relocation;
- The option to restrict an individual's or organization's access to certain College facilities or activities pending resolution of the matter;
- Voluntary leave of absence;
- College-imposed leave; and/or
- Any other remedy within the College's authority and/or ability, that can be tailored to the involved individuals to achieve the goals of this policy.

The list above is not exhaustive. Supportive measures are specific to the needs of the party, so in order to have the best idea of what measures could be offered, it is highly encouraged that a reporting party meet with a member of the Title IX office.

These supportive measures by the College are implemented through the Title IX coordinator or designee. The violence prevention educator/advocate can also assist with referrals to medical assistance, counseling, campus resources, and provide detailed information about the supportive measures available.

### 3. Implementing Supportive Measures

The parties will be notified in writing when the College implements supportive measures that would impact a responding party, such as protective measures that restrict the responding party's movement on campus. The College will inform the parties that retaliation is prohibited by law under Title IX, the Violence Against Women Act (VAWA), and College policy and that the College will take strong responsive action to protect the safety of any individual. Should the College determine that



retaliation has occurred, it will not be tolerated and will result in disciplinary action.

The College has the discretion to modify any existing supportive measures, with appropriate notice provided to all parties.

#### 4. Failure to Comply with Supportive Measures

The College expects students to comply with directives related to supportive measures under this Policy. Allegations of failure to comply with supportive measures may result in an adjudication within the College's student code of conduct.

### B. *Adaptable Remedies*

Adaptable remedies are non-adjudication approaches designed to address the behavior of concern without taking disciplinary action against a responding party. Where the Title IX assessment concludes that adaptable remedies may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies.

Adaptable remedies are case-specific and are tailored to address the harms described by the reporting party and the impact on the community. Examples of potential remedies include some of the supportive measures referenced above in Section V.A.2. Other potential adaptable remedies include targeted or broad-based educational programming or training, communication with the responding party by the Title IX coordinator or other College administrator, or appropriate application of restorative/transformational justice frameworks designed to help the reporting party identify their needs and the responding party repair harm and rebuild trust. Depending on the form of adaptable remedy used, it may be possible for a reporting party to remain unidentified.

Adaptable remedies are sought prior to or in lieu of initiating the formal complaint process.

A reporting party and responding party's participation in an adaptable remedy is voluntary and each party can end their own participation at any time. The decision to pursue adaptable remedies will be made when the College has sufficient information about the nature and scope of the underlying conduct. The

Title IX coordinator may recommend additional adaptable remedies and has discretion to not allow an adaptable remedy as appropriate.

- C. *Emergency Removal.* If at any point following the receipt of a report of prohibited conduct, the College determines that the responding party poses an immediate threat to the physical health or safety of the reporting party or any other person(s), including the responding party, the College may immediately and temporarily remove the responding party from any or all of its programs or activities. The imposition of an emergency removal does not suggest a finding of responsibility for any prohibited conduct.

Before imposing an emergency removal of a student, the emergency removal team will undertake an individualized safety and risk analysis concerning the responding party at the request of the Title IX coordinator. The emergency removal team is composed of the student conduct administrator and the director of public safety. An emergency removal will be imposed only if the emergency removal team concludes that the threat to physical health or safety arises from the allegations of prohibited conduct and warrants the removal.

An emergency removal may involve the denial of access to some or all of the College's campus facilities, academic program, or other programs or activities. While the College may provide alternative academic or employment opportunities during an emergency removal, it is not required to do so. Non-punitive actions taken as supportive measures (*e.g.*, changes in housing) do not constitute emergency removals.

The Title IX coordinator will notify the responding party of the terms imposed in connection with an emergency removal. The responding party has the opportunity to challenge the emergency removal upon receipt of that notice. In order to challenge the emergency removal, the responding party shall submit an appeal via email to the dean of students, within three (3) calendar days from the date of the notice of emergency removal, explaining why emergency removal is not appropriate. In evaluating the appeal, the dean of students may seek additional information from the responding party or any other individual. The emergency removal will remain in place while the appeal is pending. The dean of students shall issue a decision as soon as possible under the circumstances. The decision is final and not subject to further appeal.

## **VI. Formal Complaint Process - Investigation**

- A. *Overview.* After a Title IX assessment, the formal complaint process can be initiated by the College. Please note that once a formal complaint process is initiated the terms “complainant” and “respondent” are used to refer to the “reporting party” and “responding party,” respectively.
- B. *Informal Resolution.* At any point following the receipt of a formal complaint and before an adjudication, the parties may request consideration of an informal resolution to the complaint. An informal resolution presents the opportunity for the complainant and respondent to reach a resolution without an investigation or hearing. Participation in an informal resolution in lieu of the formal complaint process is purely voluntary.

### **1. Limitation of Informal Resolution**

Informal resolutions are available only when a formal complaint has been filed and the parties agree to its use in writing. Informal resolutions may be used only with the approval of the Title IX coordinator, who may determine whether an informal resolution is appropriate based on the specific allegations involved or other factors. Informal resolutions are not available to resolve a student-complainant’s allegations that an employee has engaged in College-defined sexual misconduct.

### **2. Procedures of Informal Resolution**

Prior to initiating an informal resolution, the Title IX coordinator will provide the parties with written notice disclosing the allegations, the requirements of the process, the right to withdraw from the informal resolution to pursue the formal complaint process (or resume the formal complaint process), and any consequences of participation (*e.g.*, as it relates to any subsequent formal resolution if informal resolution is not achieved). The outcome of the informal resolution will be documented in an agreement or other form that is signed by both the parties.

### **3. Possible Forms of Informal Resolution**

Informal resolutions may take many forms as agreed to between the parties and the Title IX coordinator, including, but not limited to, mediation, restorative justice conferences or circles, facilitated dialogue,

voluntary non-participation in certain College programs or activities, or any other voluntarily-agreed to forms of resolution.

C. *Notice of Allegations.* The Title IX coordinator will send a notice of allegations to both the complainant and the respondent, providing the parties with written notification of the receipt of a formal complaint. Providing the notice of allegations and initiating an investigation does not necessarily mean that a student conduct adjudication is inevitable or that a complainant must pursue the student conduct process.

The notice of allegations will provide the parties with the following information:

- Copies of the Policy and relevant procedures, including information about the informal resolution option;
- Sufficient detail of the allegations presented in the formal complaint;
- Statement that an investigation is being initiated and the identity of the investigator;
- Statement that the respondent is presumed not responsible for the alleged conduct and that a determination of responsibility is made at the conclusion of the student conduct process;
- Statement that knowingly providing false statements during the formal complaint process may subject the parties to discipline per applicable College policies;
- Inform the parties that they may have an advisor of their choice;
- Identify the case managers that have been assigned to each party;
- Inform the parties that if the investigation reveals additional allegations that may constitute violations of the Policy, the parties will receive a revised notice of allegations.

- D. *Investigator*. The College will designate a trained investigator(s) to investigate these reports. All investigators will receive annual training with an emphasis on investigating these complex and sensitive cases.
- E. *Case Managers and Witness Coordinator*. The complainant and respondent will each be assigned a separate College-appointed, trained case manager who can help a complainant/respondent navigate through the Policy and relevant procedures. Each party's respective case manager will be identified in the notice of allegations. The complainant/respondent case manager will receive access to case materials and may accompany the student to any meeting related to these procedures, including interviews with the investigator. Each party may request that their respective case manager not attend any meeting related to these procedures.

Witnesses will be assigned a witness coordinator who will offer them assistance in understanding their role as a witness within the Policy. At the discretion of the witness, the witness coordinator may accompany the student to any meeting related to these procedures, including interviews with the investigator. A witness may decline the services of the witness coordinator at any time.

The case manager/witness coordinator may communicate with the complainant/respondent/witness during proceedings in a non-disruptive manner and may ask for short breaks if the complainant/respondent/witness requires some time for composure or to collect thoughts. The case manager/witness coordinator may not delay, disrupt, or otherwise take action to interfere with the integrity of the meeting except as permitted within these procedures. The case manager/witness coordinator may be required to leave the meeting, if disruptive. If the complainant/respondent/witness has any questions or concerns about the assignment of their case manager/witness coordinator, they may contact the Title IX coordinator for assistance.

- F. *Advisor of Choice*. The complainant and respondent have the option to be assisted by an advisor of their choice. The advisor may be any person: friend, mental health professional, certified victim's advocate, attorney, an individual at the College, etc. The advisor cannot be an identified witness or have any conflicting role in the formal complaint process or with a party in the proceedings. The College's duty is to the complainant/respondent, not the advisor.

All communication is made directly with the complainant/respondent, who can share information with their advisor, at their discretion. At the discretion of the complainant or respondent, the advisor may accompany the complainant or respondent to any meeting related to these procedures, including interviews with the investigator. The advisor is expected to be a silent and non-participating observer, except to ask for a short break if the complainant/respondent requires some time for composure or to collect thoughts. The advisor may communicate with the complainant/respondent during proceedings in a non-disruptive manner. The advisor may be required to leave the meeting, if disruptive. The advisor may not delay, disrupt, or otherwise take action to interfere with the integrity of the process.

To serve as an advisor, the individual may be required to meet with the Title IX coordinator, student conduct administrator, the College's legal counsel, or designee in advance of any participation in the formal complaint process.

If the advisor is an attorney or other retained person, the advisor must be retained at the initiative and expense of the complainant/respondent. If the advisor is an attorney, the College's legal counsel may also attend any meeting. An attorney's participation in any meeting will be governed by these restrictions and parameters.

## G. *Investigation*

### 1. Overview

The investigator will conduct a thorough, impartial, and unbiased investigation. All individuals will be treated with compassion and respect and in a manner considerate of individual privacy concerns. An investigation may include multiple meetings with the investigator. An investigation will typically include interviews of the complainant, respondent, witnesses provided by either party with relevant information about the reported incident or discovered during the investigation, and any other individuals who may have relevant information about the reported incident and/or the parties involved. Interviews will typically take no longer than two hours on one day. Should additional time be needed, the investigator and affected party will mutually agree on either rescheduling for another day or extending the length of the interview past two hours.

During the investigation process, all those interviewed will have an opportunity to review their own interview summaries for accuracy.

## 2. Deviation from College Policy or Procedure

During any interviews with the complainant, respondent, or witnesses, if any deviation from College policy or procedure is suspected, the respective case manager or witness coordinator will have the ability to call for a short break in the proceedings to convene with the investigator to ensure that the proceedings comply with College policy and procedure. Any deviation from College policy or procedure or concerns with the investigation may be communicated directly to the Title IX coordinator by the complainant, respondent, witness, respective case manager, or witness coordinator.

## 3. Additional Violations

If, during the course of the investigation, the investigator identifies conduct that may constitute an additional violation under the Policy that was not referenced in the provided notice of allegations, an amended notice of allegations will be issued to the parties.

## 4. Evidence

The investigator may request any available physical or medical evidence and/or documentation from the parties. The investigator may only use medical or psychological records obtained by a party when such records are accompanied by that party's voluntary, written consent. The investigator will seek to obtain relevant communications between the parties, including electronic records, voicemail messages, and/or letters. The complainant and respondent will have an equal opportunity to participate in the investigation with their case managers, and/or advisors of their choice, provide statements, submit additional information, and/or identify witnesses who may have relevant information. All information and/or materials the parties wish to include in the investigative report or have considered at the adjudication, must be provided to the investigator during the investigation. It is not the burden of the complainant, respondent, witnesses, or other community members to investigate these

matters. The investigator is solely responsible for all aspects of the investigation.

#### 5. Duration

The duration of the investigation is strongly influenced by the availability and/or responsiveness of all involved parties, the complexity of the circumstances of the complaint, and the College's academic calendar. Accordingly, the investigation will be conducted as quickly as practicable without sacrificing thoroughness and completeness.

#### 6. Applicability

The investigation will confirm whether the alleged conduct implicates possible Title IX-covered behavior, College-defined sexual misconduct, or neither. If the alleged conduct is not College-defined sexual misconduct but instead falls under Title IX-covered behavior, the complaint will be dismissed under these procedures and may be referred into another process that addresses the alleged conduct.

H. *Reviewing the Investigative Material.* At the conclusion of the investigation, the investigator will provide the investigative material gathered during the investigation to the Title IX coordinator (or designee). The investigative material will include all information gathered during the investigation that is directly related to the allegations raised in the formal complaint. The Title IX coordinator (or designee) will provide access to the investigative material to the parties and outline the available resolution options, including informal resolution or a student conduct adjudication. The parties will be provided a minimum of two (2) days to consider the information and options presented by the Title IX coordinator.

#### 1. Adjudicator Options

- i. *External Adjudicator.* The College can retain an external adjudicator to adjudicate allegations of violations of this policy. The external adjudicator will be a neutral party outside of the College, usually an attorney or seasoned student conduct administrator, who is trained and experienced in dispute resolution, the dynamics of sexual misconduct across identities, and is trained in the College's policies and procedures. The student conduct administrator will be present during the adjudication to serve as a resource for the external adjudicator on issues of policy and



procedure. Should the student conduct administrator recognize any deviation from College policy or procedure, the student conduct administrator will have the ability to call for a short break in the proceedings to convene with the external adjudicator to ensure that the proceedings comply with College policy and procedure. If the external adjudicator determines, by a preponderance of the evidence, that the respondent has violated the Policy, the student conduct administrator and the external adjudicator will determine the appropriate sanction.

- ii. *Administrative Adjudication.* While a complaint under this policy will typically be resolved by an external adjudicator, a complainant or respondent may request resolution through an administrative adjudication, to be conducted by the student conduct administrator (or their designee) if all parties agree or in cases of failure to comply with restrictions under this policy. The student conduct administrator will meet separately with the complainant and respondent to determine responsibility and render a decision as to what sanctions, if applicable, may be implemented. Both parties must agree to resolution by administrative adjudication. The investigative report will serve as the primary evidence in making a determination of responsibility. Both parties must have notice, the opportunity to review the investigative report in advance, and the opportunity to present relevant information to the student conduct administrator.

An administrative adjudication is particularly appropriate when the respondent has admitted to the sexual misconduct and there is no discernible dispute in the relevant facts of the investigative report. However, at the discretion of the student conduct administrator, it may also be used when the facts are in dispute.

In reaching a determination as to whether the Policy has been violated, the student conduct administrator will reach a determination by a preponderance of the evidence—that is, whether the conduct was more likely than not to have occurred as alleged. Depending upon the nature and severity of the allegations, the student conduct administrator may decline to handle the matter

administratively and refer the case to an external adjudicator at any time.

In cases when there are reports of failure to comply with contact restrictions related to this policy, the student conduct administrator or their designee will conduct an administrative adjudication.

## **VII. Formal Complaint Process - Student Conduct Adjudication**

- A. *Overview.* The student conduct adjudication process for prohibited conduct complaints is an administrative process and is not subject to the same standards as a court of law. Rules of evidence ordinarily found in legal proceedings will not apply. Student conduct resolution of complaints based on the Policy will occur through the use of an administrative adjudication.
- B. *Group Adjudication.* When members of a student group, organization, or team of individuals acting collusively operate in concert in violation of the Policy, they may be charged as a group or as individuals and an adjudication may proceed against the group as joint respondents or against one or more involved individuals as appropriate given available information and the circumstances.
- C. *Threshold Determination.* If a student conduct adjudication is the selected resolution option, the final investigative report will be reviewed by the Title IX coordinator and the student conduct administrator to make a threshold determination as to whether the conduct alleged in the investigation is covered under the Policy.

If the Title IX coordinator and the student conduct administrator determine that this threshold has been reached, the student conduct administrator will issue a notice of adjudication in order for the student conduct adjudication process to proceed.

If the Title IX coordinator and the student conduct administrator determine that this threshold is not reached, the complainant and respondent will be notified in writing that the allegation will not proceed to adjudication. The threshold determination is final. The Title IX coordinator may offer other supportive measures or other resolution options as appropriate.

- D. *Safeguarding of Privacy.* All participants, including advisors, involved in an adjudication are expected to keep the final investigative report and any information learned during the process private. The participants may not share any copies of the investigative and adjudicative materials. All documentation provided during the investigation and adjudication meeting must be returned to the College at the conclusion of the meeting and/or any appeals. Any violation of this directive may result in disciplinary action by the College. Nothing in this paragraph precludes disclosure of the outcome of the adjudication.
- E. *Notice of Adjudication and Review of Final Investigative Report.* If a student conduct adjudication is the selected resolution option, the student conduct administrator will issue a notice of adjudication to both parties indicating that a formal charge(s) has been issued by the College. This notice will provide a statement of the policy violation(s) that are alleged to have taken place, a brief description of the facts underlying the allegations, the name of the selected adjudicator, and the date scheduled for the adjudication meeting.

The parties will also receive access to the final investigative report and they will each have ten (10) days to review the final investigative report and provide their written responses. The final investigative report will include the interview summaries and any other documentary information. The final investigative report will not make a finding of responsibility or credibility, though it may include facts bearing on credibility. Any written responses by the complainant or respondent to the final investigative report must be provided to the student conduct administrator and the Title IX coordinator for their consideration. The student conduct administrator and Title IX coordinator will have two (2) days to review the responses and determine if any additional investigation is required. The final investigative report and any responses provided by the parties, together, will be known as the case packet. The parties and the adjudicator will receive the case packet a minimum of four (4) days prior to the date of the adjudication. All information and/or materials the parties wish to include in the investigative report or have considered at the adjudication, must be provided to the investigator during the investigation.

F. *Identification of Adjudicator; Contesting the Adjudicator.* The parties will also be provided the name of the selected adjudicator in the notice of adjudication. The parties may submit a written request to the student conduct administrator to contest the adjudicator. Such written requests must present reasonable, articulable grounds to suspect bias, conflict of interest, or an inability to be impartial on the part of the adjudicator. This challenge must be raised within four (4) business days of receipt of the notice of adjudication. All objections must be raised prior to the commencement of the adjudication. The student conduct administrator will make the determination within two (2) business days whether to seek an alternative adjudicator.

G. *Format of the Adjudication Meeting.* After reviewing the case packet, the external adjudicator will have an opportunity to meet with the investigator, complainant, and respondent. The adjudicator may also request to meet with identified witnesses, as described below. The meetings are not designed to reinvestigate the facts collected in the investigative report, but instead to assist the adjudicator in making a determination based on the evidence collected during the investigation. These meetings allow the adjudicator to ask questions they may have, to allow the complainant and respondent to make any statements they deem appropriate, and evaluate the credibility of the parties and witnesses. The adjudication meetings may be held in person or virtually using audio and audiovisual technology.

1. Complainant and Respondent Participation in the Adjudication

Should they choose to participate in the adjudication meeting, the complainant and respondent will meet separately with the adjudicator. A complainant or respondent may request to participate remotely in their own adjudication meeting. Any proposed alternative method of participation must be reviewed in advance by the student conduct administrator to ensure that it is consistent with the goals of an impartial and equitable process.

During all other meetings, the complainant and respondent will have the opportunity to listen remotely to the adjudication meetings of the other party, the investigator, and any witnesses. The student conduct administrator will work with each party's case manager to arrange the space and technological needs.

If a party misses the adjudication meeting for any non-emergency or non-compelling reason, the adjudication may proceed in the individual's absence at the discretion of the student conduct administrator.

If a respondent chooses to withdraw from the College prior to the conclusion of an investigation or student conduct adjudication under the Policy, for non-medical or non-disability-related reasons, the student must go through the re-admission process coordinated by the division of student affairs and the case must typically be adjudicated prior to the student's re-admission to the College.

## 2. Participants in Adjudication Meetings

Adjudication meetings are closed and not open to the public. The adjudicator will meet with the complainant and respondent individually along with their respective advisor and/or case manager. The adjudicator may also choose to meet with witnesses individually with their witness coordinator. The student conduct administrator will attend all meetings, and the College's attorney may also be present.

## 3. Duration of Adjudication Meeting

Adjudication meetings will typically conclude within one (1) day, though in some situations could be extended. Throughout an adjudication meeting, either party may request short breaks. The case managers, witness coordinator, and/or advisor of choice may request a short break on behalf of the individuals involved, which must be directed to either the adjudicator and/or the student conduct administrator. Additionally, the student conduct administrator will call for short breaks at regular intervals throughout the student conduct process.

## 4. Participant Integrity

Parties and other individuals who offer information at adjudication meetings are expected to respond honestly and to the best of their knowledge. A complainant, respondent, or witness who intentionally provides false or misleading information may be subject to discipline under the student code of conduct.

## 5. Adjudication Meeting Agenda

- i. The student conduct administrator will begin the meeting and explain the process and introduce meeting attendees. Prior to beginning the adjudication, the student conduct administrator will meet with all parties to answer any procedural questions.
- ii. Generally, the investigator will provide a summary of the investigation. The adjudicator, and the complainant or respondent, through the adjudicator, may make brief inquiries of the investigator at the conclusion of the summary.
- iii. The complainant may meet with the adjudicator. The adjudicator and the respondent, through the adjudicator, may pose questions to the complainant.
- iv. The respondent may meet with the adjudicator. The adjudicator and the complainant, through the adjudicator, may pose questions to the respondent.
- v. The adjudicator may meet with relevant witnesses. The adjudicator will question the called witness and provide the complainant or respondent an opportunity to pose questions through the adjudicator.
- vi. The adjudicator may call back any participant for additional questions or clarifications.
- vii. At the conclusion of the adjudication meeting, the complainant and respondent may submit a written impact statement to the student conduct administrator that will only be considered at the sanctioning phase should the respondent be found responsible for violating the Policy.

## 6. Questioning by Adjudicator at Adjudication

At times, the adjudicator may need to ask difficult or sensitive questions in order to understand areas of factual dispute or gain a full understanding of the context. Complainants and respondents may submit questions for the other party to the student conduct administrator for the adjudicator's consideration. At no time will the complainant or the respondent be permitted to directly question one another or any other participant.

## 7. Deliberation

After the adjudicator has met with all relevant parties, the adjudicator will conclude the adjudication and move to deliberation. The student conduct administrator will support deliberations by offering clarifications of the

Policy or providing any other appropriate information requested by the adjudicator. The adjudicator will make a decision, using a preponderance of the evidence standard, to determine if there were any violations of the Policy.

The adjudicator will provide the student conduct administrator a written summary of the findings, which will be included in the outcome letter. The summary will detail the findings of facts and determination of responsibility.

#### 8. Preponderance of the Evidence

The adjudicator will determine a respondent's responsibility by a preponderance of the evidence. This means that the adjudicator will decide whether it is "more likely than not," based upon the information provided in the case packet and through the adjudication meeting, that the respondent is responsible for the alleged violation(s). A not responsible finding means that the evidence presented did not meet the standard necessary to determine responsibility.

### H. *Issues Related to the Adjudication Meeting*

#### 1. Outside Agreements

The College will generally not recognize or enforce agreements between the parties reached outside of these procedures.

#### 2. Witnesses

During the investigation, the complainant and respondent will have been asked to identify witnesses. The investigator may also identify witnesses during the course of the investigation. Witnesses may opt to contact the assigned witness coordinator as a resource at any point in the process. Witnesses must have observed the acts in question or have information relevant to the incident and cannot participate solely to speak about an individual's character. After reviewing the case packet, including all witness information, the adjudicator will ask the student conduct administrator to notify relevant witnesses at least one (1) business day before the adjudication, that they may be asked to attend. The names of retained witnesses will be confirmed with parties at least one (1) business day before adjudication as well.

### 3. Relevance

The Title IX coordinator and student conduct administrator will review the final investigative report and associated materials to determine whether the included information is relevant to the determination of responsibility. The Title IX coordinator and student conduct administrator may redact information that is irrelevant, more prejudicial than probative, or immaterial. The parties will have a full and equitable opportunity to respond to the information included in the final investigative report.

- i. *Prior Sexual History of the Parties.* Prior sexual history of a complainant or respondent will never be used to prove character or reputation. Information related to the prior sexual history of the parties generally is not relevant to the determination of a Policy violation and only in limited circumstances will such evidence be made available for consideration by the adjudicator. For example, prior sexual history may be relevant to explain the presence of a physical injury, physical condition, or to help resolve another question raised in the investigation. Further, where there is a current or previous relationship between the complainant and the respondent, and the respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. However, as noted in other sections of the Policy, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent and does not preclude a finding of a violation of the Policy.
- ii. *Prior or Subsequent Conduct of the Parties.* When prior or subsequent conduct of the parties is included in the final investigative report, the Title IX coordinator and student conduct administrator will assess the investigative purpose(s) of the information. Prior or subsequent conduct of the parties may be considered by the adjudicator for the investigative purpose(s) of demonstrating any of the following: *knowledge, intent, state of mind, motive, opportunity, preparation, planning, method of operation, pattern, absence of mistake, absence of accident, or identity.*



Such evidence of prior or subsequent conduct, regardless of whether there has been a prior finding of responsibility, may be **relevant** and **probative** to a determination of responsibility and/or assignment of a sanction.

If these two criteria are met, the Title IX coordinator and the student conduct administrator will inform the adjudicator that the adjudicator must determine whether the prior or subsequent conduct is supported by a preponderance of the evidence and if so, use of that evidence is limited to the investigative purposes (listed above) for which the information was included.

#### 4. Consolidation of Adjudication

The student conduct administrator has the discretion to consolidate multiple reports against a respondent in one adjudication if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident and not unfairly prejudicial to the respondent.

#### 5. Recording of Proceedings

The College will create an audio recording of the adjudication meeting and make it available to the parties for their reasonable inspection and review.

#### 6. Request to Reschedule

Either party can request to reschedule their adjudication meeting. Absent extenuating circumstances, requests to reschedule must be submitted to the student conduct administrator at least three (3) business days prior to the scheduled meeting. A request to reschedule must be supported by a compelling reason. The student conduct administrator may also reschedule the adjudication meetings, without a request by the parties, when there is reasonable cause to do so. The student conduct administrator will notify the parties of any changes to the scheduled adjudication meetings.

- I. *Sanctions.* If the adjudicator finds a student, group, or organization responsible for a violation of the Policy, the adjudicator and the student conduct administrator (together, the sanctioning body) will determine the appropriate sanction(s). Sanctions can only be made against a respondent after a finding of responsibility is reached. The sanctioning body may issue a single sanction or a combination of sanctions.

1. Factors Informing Sanction Decision

In considering the appropriate sanction within the recommended outcomes, the sanctioning body will consider the following factors together with any impact statements provided from the complainant and/or respondent:

- i. the respondent's prior discipline history;
- ii. how the College has sanctioned similar incidents in the past;
- iii. the nature and violence of the conduct at issue;
- iv. the impact of the conduct on the complainant, and their desired sanctions, if known;
- v. the impact of the conduct on the community, its members, or its property;
- vi. whether the respondent has accepted responsibility;
- vii. whether the respondent is reasonably likely to engage in the conduct in the future;
- viii. any other mitigating or aggravating circumstances, including the College's values;
- ix. the respondent's optional good faith participation in adaptable remedies/informal resolutions during the report, complaint, and investigation portions of the resolution process

2. Remedial Actions

The sanctioning body may consider remedial actions and/or additional steps that may be taken to address and resolve any incident of discrimination or harassment and to prevent the recurrence of any discrimination and/or retaliation, including strategies to protect participants from retaliation; provide counseling for the parties; other steps to address any impact on the community; and any other necessary steps reasonably calculated to prevent future occurrences of harassment.

3. Suspension

If a sanction includes suspension, the respondent is subject to the re-admission process as described in the student handbook. Prior to re-admission, the complainant will be notified by the student conduct administrator or their designee.

#### 4. Possible Sanctions

The College reserves the right to impose other reasonable sanctions or to combine sanctions as it deems appropriate. Sanctions include:

- i. **Warning**—A written notification that a violation of the Policy occurred and that any further responsible finding of misconduct may result in more severe disciplinary action. Warnings are typically recorded for internal purposes only and are not considered part of a student’s permanent student conduct record. Though disclosed with a student’s signed consent, a student who receives a warning is still considered in good standing at the College.
- ii. **Probation**—A written notification that indicates a serious and active response to a violation of the Policy. Probation is for a designated period of time and includes the probability of more severe sanctions, if found responsible for additional violations of the student code of conduct or the Policy, including suspension or expulsion from the College. Notification of probation is considered a change in status and will normally be sent to parents or guardians. As a result of a change in status, a student who is placed on probation is not considered to be in good standing at the College during their period of probation.
- iii. **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. Suspended students are required to comply with the College’s re-admission process prior to being eligible for re-enrollment.

During the period of suspension, the student may not participate in College academic or extracurricular activities; may be barred from all property owned or operated by the College; and depending on

the severity of the charge, the student might not be allowed to progress toward completion of their Swarthmore degree by taking courses at other institutions while suspended. Students who are suspended may not be on campus without specific, written permission of the dean of students or designee.

Suspension is for a designated period of time and includes the probability of more severe sanctions, including expulsion, if found responsible for additional violations of the student code of conduct or the Policy. Notification of suspension will normally be sent to guardians or parents, as it results in a change of status. As a result of a change in status, a student who is suspended is not considered to be in good standing at the College during their period of suspension.

- iv. **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 dean of students or designee. Notification of expulsion will normally be sent to guardians or parents, as it results in a change of status.

Expulsion may be particularly appropriate if the College has determined that the respondent has engaged in the same or similar conduct and/or has been found in violation of the Policy in the past.

- v. **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. This includes contact restrictions, denial of ability to represent the College in an official capacity, and/or organizational sanctions.
- vi. **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.
- vii. **Fines**—Swarthmore reserves the right to impose fines, as appropriate, in addition to requiring payment for costs resulting from or associated with the offenses.

- viii. **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.
- ix. **Educational Requirements/Referrals**—The College reserves the right to impose counseling or substance assessments or other required educational sanctions.

*J. Notice of Outcome.* The student conduct administrator will communicate the outcome of the adjudication to the respondent and the complainant at the same time. The notice will be in writing and will include notification of appeal options. Generally, the outcome of the adjudication will be communicated to the parties within five (5) business days from the date of the conclusion of the adjudication meeting.

1. If the respondent has been found responsible for a violation under the Policy, the respondent will be informed of any sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. The complainant will be informed of any sanctions that directly relate to the complainant.
2. The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of the appeal.

*K. Appeals.* Either party may appeal the determination of responsibility or sanction(s) in writing to the vice president for student affairs or designee. The appeal must be filed within five (5) business days of receiving the written notice of outcome. Dissatisfaction with the outcome of the adjudication is not grounds for appeal. The limited grounds for appeal are as follows:

1. new evidence that would affect the finding of the adjudication and that was unavailable at the time of investigation;
2. procedural error(s) that had a material impact on the outcome;

3. the investigator or adjudicator had a conflict of interest or bias for or against the complainant or respondent that affected the outcome of the matter; or
4. the sanctions imposed were grossly disproportionate to the violation committed.

The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for the appeal. Upon receipt of an appeal, the vice president for student affairs will notify both parties. Each party has an opportunity to respond in writing to the appeal. Any response to the appeal must be submitted within two (2) business days from receipt of the appeal.

The appeal consideration will be conducted in an impartial manner by the vice president for student affairs (or designee). In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The appeal is not a new review of the underlying matter. The vice president for student affairs shall consider the merits of an appeal only on the basis of the three (3) grounds for appeal and supporting information provided in the written request for appeal and the record of the original adjudication. The vice president for student affairs can affirm the original findings, alter the findings, and/or alter the sanctions, depending on the basis of the requested appeal.

In the case of new and relevant information, the vice president for student affairs can recommend that the case be returned to the original adjudicator to assess the weight and effect of the new information and render a determination after considering the new facts.

If the appeal is granted based on procedural error(s) that materially affected the outcome of the adjudication, the vice president for student affairs may return the case to the adjudicator for additional review or forward the case for a new adjudication, which may be heard by an alternate adjudicator if the vice president for student affairs finds that to be appropriate.

Absent extenuating circumstances, the vice president for student affairs will simultaneously and in writing communicate the result of the appeal to the

complainant and respondent within three (3) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

## **VIII. Records**

The Title IX coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by Title IX assessment, informal resolution, or adjudicated resolution. Complaints resolved by Title IX assessment or informal resolution are not part of a student's conduct file or academic record.

The Title IX coordinator will document each report or request for assistance in resolving a case involving charges of prohibited conduct, whether by the complainant or a third party, and will review and retain copies of all reports generated as a result of investigations. These records will be kept for seven (7) years and will be confidential to the extent permitted by law.

Affirmative findings of responsibility in matters resolved through student conduct resolution are part of a student's conduct record. Such records shall be used in reviewing any further conduct or in developing sanctions and shall remain a part of a student's conduct record.

The conduct files of students who have been suspended or expelled from the College are maintained in the dean of students office for no fewer than seven (7) years after their departure from the College. Further questions about record retention should be directed to the dean of students.

Medical and law schools and some governmental agencies may require disclosure by the College of any student conduct findings. Students who transfer to other schools or participate in off-campus study programs may also be required to provide such information.

At the beginning of each academic year, the student conduct administrator will produce a summary of case dispositions summarizing the outcome of all cases that were adjudicated the previous academic year, without revealing the identity of any of the participants in the proceedings.